

## Employment Law Notes

### MODULE-1 Introduction to Labour Law

Employment law is the body of laws, administrative rulings, and precedents which address the legal rights of, and restrictions on, working people and their organizations. As such, it mediates many aspects of the relationship between trade unions, employers and employees. In other words, Labour law defines the rights and obligations as workers, union members and employers in the workplace. Generally, labour law covers: Industrial relations – certification of unions, labour-management relations, collective bargaining and unfair labour practices; workplace health and safety; employment standards, including general holidays, annual leave, working hours, unfair dismissals, minimum wage, layoff procedures and severance pay.

There are two broad categories of labour law. First, collective labour law relates to the tripartite relationship between employee, employer and union. Second, individual labour law concerns employees' rights at work and through the contract for work. The labour movement has been instrumental in the enacting of laws protecting labour rights in the 19th and 20th centuries. Labour rights have been integral to the social and economic developments since the industrial revolution.<sup>1</sup>

Labour law arose due to the demands of workers for better conditions, the right to organize, and the simultaneous demands of employers to restrict the powers of workers in many organizations and to keep labour costs low. Employers' costs can increase due to workers organizing to win higher wages, or by laws imposing costly requirements, such as health and safety or equal opportunities conditions. Workers' organizations, such as trade unions, can also transcend purely industrial disputes, and gain political power - which some employers may oppose. The state of labour law at any one time is therefore both the product of, and a component of, struggles between different interests in society. International Labour Organisation (ILO) was one of the first organisations to deal with labour issues. The ILO was established as an agency of the League of Nations following the Treaty of Versailles, which ended World War I. Post-war reconstruction and the protection of labour unions occupied the attention of many nations during and immediately after World War I.

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<sup>1</sup>[https://ncib.in/pdf/ncib\\_pdf/Labour%20Act.pdf](https://ncib.in/pdf/ncib_pdf/Labour%20Act.pdf)

Commission, a subcommittee of the Reconstruction Commission, recommended in its July 1918 Final Report that "industrial councils" be established throughout the world. The British Labour Party had issued its own reconstruction programme in the document titled Labour and the New Social Order. In February 1918, the third Inter-Allied Labour and Socialist Conference (representing delegates from Great Britain, France, Belgium and Italy) issued its report, advocating an international labour rights body, an end to secret diplomacy, and other goals. And in December 1918, the American Federation of Labor (AFL) issued its own distinctively apolitical report, which called for the achievement of numerous incremental improvements via the collective bargaining process. As the war drew to a close, two competing visions for the post-war world emerged. The first was offered by the International Federation of Trade Unions (IFTU), which called for a meeting in Berne in July 1919. The Berne meeting would consider both the future of the IFTU and the various proposals which had been made in the previous few years. The IFTU also proposed including delegates from the Central Powers as equals. Samuel Gompers, president of the AFL, boycotted the meeting, wanting the Central Powers delegates in a subservient role as an admission of guilt for their countries' role in the bringing about war. Instead, Gompers favored a meeting in Paris which would only consider President Woodrow Wilson's Fourteen Points as a platform. Despite the American boycott, the Berne meeting went ahead as scheduled. In its final report, the Berne Conference demanded an end to wage labour and the establishment of socialism. If these ends could not be immediately achieved, then an international body attached to the League of Nations should enact and enforce legislation to protect workers and trade unions. The British proposed establishing an international parliament to enact labour laws which each member of the League would be required to implement. Each nation would have two delegates to the parliament, one each from labour and management. An international labour office would collect statistics on labour issues and enforce the new international laws. Philosophically opposed to the concept of an international parliament and convinced that international standards would lower the few protections achieved in the United States, Gompers proposed that the international labour body be authorized only to make recommendations, and that enforcement be left up to the League of Nations. Despite vigorous opposition from the British, the American proposal was adopted.

The Americans made 10 proposals. Three were adopted without change: That labour should not be treated as a commodity; that all workers had the right to a wage sufficient to live on; and

that women should receive equal pay for equal work. A proposal protecting the freedom of speech, press, assembly, and association was amended to include only freedom of association. A proposed ban on the international shipment of goods made by children under the age of 16 was amended to ban goods made by children under the age of 14. A proposal to require an eight-hour work day was amended to require the eight-hour work day or the 40-hour work week (an exception was made for countries where productivity was low). Four other American proposals were rejected. Meanwhile, international delegates proposed three additional clauses, which were adopted: One or more days for weekly rest; equality of laws for foreign workers; and regular and frequent inspection of factory conditions. The Commission issued its final report on 4 March 1919, and the Peace Conference adopted it without amendment on 11 April. The report became Part XIII of the Treaty of Versailles. (The Treaty of Versailles was one of the peace treaties at the end of World War I. It ended the state of war between Germany and the Allied Powers. It was signed on 28 June 1919.) The first annual conference (referred to as the International Labour Conference, or ILC) began on 29<sup>th</sup> October 1919 in Washington DC and adopted the first six International Labour Conventions, which dealt with hours of work in industry, unemployment, maternity protection, night work for women, minimum age and night work for young persons in industry. The prominent French socialist Albert Thomas became its first Director General. The ILO became a member of the United Nations system after the demise of the League in 1946. Labour legislation that is adapted to the economic and social challenges of the modern world of work fulfils three crucial roles:

- it establishes a legal system that facilitates productive individual and collective employment relationships, and therefore a productive economy;
- by providing a framework within which employers, workers and their representatives can interact with regard to work-related issues, it serves as an important vehicle for achieving harmonious industrial relations based on workplace democracy;
- it provides a clear and constant reminder and guarantee of fundamental principles and rights at work which have received broad social acceptance and establishes the processes through which these principles and rights can be implemented and enforced.

But experience shows that labour legislation can only fulfil these functions effectively if it is responsive to the conditions on the labour market and the needs of the parties involved. The

most efficient way of ensuring that these conditions and needs are taken fully into account is if those

concerned are closely involved in the formulation of the legislation through processes of social dialogue. The involvement of stakeholders in this way is of great importance in developing a broad basis of support for labour legislation and in facilitating its application within and beyond the formal structured sectors of the economy.

#### Constitution of India and Law

"Labour" is a subject in the "Concurrent List" under the Constitution of India where both the Central and State Governments are competent to enact legislations subject, however, to reservation of certain matters for the Central Government.

<b>Union List</b>			<b>Concurrent List</b>		
<b>Entry</b>	<b>No.</b>	<b>55</b>	<b>Entry</b>	<b>No.</b>	<b>22</b>
Regulation of labour and safety in mines and oil fields			Trade unions, industrial and labour disputes		
<b>Entry</b>	<b>No.</b>	<b>61</b>	<b>Entry</b>	<b>No.</b>	<b>23</b>
Industrial disputes concerning Union employees			Social security and insurance, employment and unemployment		
<b>Entry</b>	<b>No.</b>	<b>65</b>	<b>Entry</b>	<b>No.</b>	<b>24</b>
Union agencies and institutions for "... vocational ... training ..."			Welfare of labour including conditions of work, provident funds, employers' invalidity and old-age pension and maternity benefits		

The following are the thrust areas of the Government concerning labour laws:

- Labour policy and legislation;
- Safety, health and welfare of labour;
- Social security of labour;
- Policy relating to special target groups such as women and child labour;

Industrial relations and enforcement of labour laws in the central sphere;

Adjudication of industrial disputes through Central Government Industrial Tribunals-cum-Labour Courts and National Industrial Tribunals;

- Workers' education;
- Labour and employment statistics;
- Emigration of labour for employment abroad;
- Employment services and vocational training;
- Administration of central labour and employment services; and
- International cooperation in labour and employment matters.

India has a number of labour laws that govern almost all the aspects of employment such as payment of wages, minimum wages, payment of bonus, payment of gratuity, contributions to provident fund and pension fund, working conditions, accident compensations, etc. The Government has enacted certain central legislations, viz, the Employees Provident Fund and Miscellaneous Provisions Act, Employees State Insurance Act, Payment of Wages Act, Minimum Wages Act, Equal Remuneration Act, Maternity Benefits Act, etc. In addition, at the State level, the State Governments usually have a separate Labour Ministry, which seeks to ensure compliance with State labour laws (viz, State Shops and Establishments Act, Labour Welfare Fund Act, etc) through its Labour Department, which is generally operational at the district level.

The various labour legislations enacted by the Central Government can be classified into the following different broad categories: Laws relating to Industrial Relations, Industrial Disputes Act, 1947, Trade Unions Act, 1926, Laws relating to Wages, Minimum Wages Act, 1948, Payment of Wages Act, 1936, Payment of Bonus Act, 1965, Laws relating to Social Security, Employees' Provident Funds and Miscellaneous Provisions Act, 1952, Employees' State Insurance Act, 1948, Labour Welfare Fund Act (of respective States), Payment of Gratuity Act, 1972, Employee's Compensation Act, 1923, Laws relating to Working Hours, Conditions of Services and Employment, Factories Act, 1948, Industrial Employment (Standing Orders) Act, 1946, Shops and Commercial Establishments Act (of respective States), Contract Labour

(Regulation and Abolition) Act, 1970, Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, Weekly Holiday Act, 1942, National and Festival Holidays Act (of respective States) 1963, The Plantation Labour Act, 1951, The Mines Act, 1952, The Dock Workers (Safety, Health & Welfare) Act, 1986, Laws relating to Equality and Empowerment of Women, Equal Remuneration Act, 1976, Maternity Benefits Act, 1961, Prohibitive Labour Laws, Bonded Labour System (Abolition), Act, 1976, Child Labour (Prohibition & Regulation) Act, 1986, The Beedi and Cigar Workers (Conditions of Employment) Act, 1966, The Sexual Harassment at the Workplace (Prevention, Prohibition and Redressal) Act, 2013, Laws relating to Employment and Training, Apprentices Act, 1961, Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959.<sup>2</sup> According to a study these laws have become archaic due to which recently the Indian parliament is considering following legislations to convert into few codes.

## LAWS RELATING TO WAGES

### Minimum Wages Act, 1948

The Minimum Wages Act, 1948 (the Minimum Wages Act) provides for fixing of minimum rates of wages in certain employments. The minimum wages are prescribed by States through notifications in the State's Gazette under the Minimum Wages Rules of the specific State.

In terms of the provisions of the Minimum Wages Act, an employee means (i) any person who is employed for hire or reward to do any work, skilled or unskilled manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed; (ii) an outworker, to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of that other person; and (iii) an employee declared to be an employee by the appropriate Government.

The term "wages" has been defined to mean all remuneration capable of being expressed in terms of money which would, if the terms of the contract of employment express or implied were

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<sup>2</sup><https://www.mondaq.com/india/employee-rights-labour-relations/631074/a-brief-guide-to-labour-and-industrial-laws-of-india>

fulfilled, be payable to a person employed in respect of his employment or work done in such an employment and includes house rent allowance but does not include: but does not include the value of the following,

- a. Any house accommodation or supply of light, water and medical attendance; or
- b. Any other amenity or any service excluded by general or special order of the appropriate Government;
- ii. Any contribution paid by the employer to any personal fund or provident fund or under any scheme of social insurance;
- iii. Any travelling allowance or the value of any travelling concession;
- iv. Any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or
- v. Any gratuity payable on discharge.

Further, the Minimum Wages Act requires the employer to pay to every employee engaged in schedule employment wages at a rate not less than minimum rates of wages as fixed by a notification without any deduction (other than prescribed deductions, if any).<sup>3</sup>

#### Payment of Wages Act, 1936<sup>4</sup>

The Payment of Wages Act, 1936 (the Payment of Wages Act) is an Act to regulate the payment of wages to certain classes of employed persons. The Payment of Wages Act seeks to ensure that the employers make a timely payment of wages to the employees working in the establishments and to prevent unauthorized deductions from the wages.

According to the Payment of Wages Act, all wages shall be in current coin or currency notes or in both. It is, however, provided that the employer may, after obtaining the written authorisation of the employed person, pay him the wages either by cheque or by crediting the wages in his bank account.

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<sup>3</sup><https://www.mondaq.com/india/employee-rights-labour-relations/631074/a-brief-guide-to-labour-and-industrial-laws-of-india>

<sup>4</sup><https://www.mondaq.com/india/employee-rights-labour-relations/631074/a-brief-guide-to-labour-and-industrial-laws-of-india>

## Payment of Bonus Act, 1965<sup>5</sup>

The Payment of Bonus Act, 1965 (the "Bonus Act") provides for the payment of bonus to persons employed in certain establishments in India either on the basis of profits or on the basis of production or productivity and is applicable to every establishment in which 20 or more persons are employed and to all employees drawing a remuneration of less than Rs 10,000. Those employees who have worked for less than thirty days are not eligible to receive bonus under the Bonus Act. The Bonus Act provides for the payment of bonus between 8.33% (minimum) to 20% (maximum). However, for the calculation of bonus, a maximum salary of Rs 3,500 is considered.

## LAWS RELATING TO SOCIAL SECURITY<sup>6</sup>

### Employees Provident Funds and Miscellaneous Provisions Act, 1952

The Employees Provident Funds and Miscellaneous Provisions Act, 1952 (the "EPF Act") provides for the institution of provident funds, pension funds, and deposit-linked insurance funds for employees and applies to all establishments employing 20 or more persons or class of persons. An establishment to which the EPF Act applies shall continue to be governed by this Act, notwithstanding that the number of persons employed therein at any time falls below 20.

On account of 2014 Amendment to the said Act, The definition of "excluded employee" has been amended whereby the members drawing wages exceeding Rs 15,000 per month have been excluded from the provisions of the PF Scheme. Accordingly, the wage ceiling for an employee to be eligible for the PF Scheme has been increased from Rs 6,500 per month to Rs 15,000 per month. It further provides that every employee employed in or in connection with the work of a factory or other establishment is required to become a member of the Provident Fund.

The 2014 Amendment further lays down the following changes:

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<sup>5</sup><https://www.mondaq.com/india/employee-rights-labour-relations/631074/a-brief-guide-to-labour-and-industrial-laws-of-india>

<sup>6</sup><https://www.mondaq.com/india/employee-rights-labour-relations/631074/a-brief-guide-to-labour-and-industrial-laws-of-india>

- a. New members (joining on or after 1 September 2014) drawing wages above Rs 15,000 per month shall not be eligible to voluntarily contribute to the Pension Scheme.
- b. The pensionable salary shall be calculated on the average monthly pay for the contribution period of the last 60 months (earlier 12 months) preceding the date of exit from the membership.
- c. The monthly pension for any existing or future member shall not be less than Rs 1,000 for the financial year 2014-2015.
- d. The contribution payable under the Insurance Scheme shall also be calculated on a monthly pay of Rs 15,000, instead of Rs 6,500.
- e. In the event of death of a member (on or after 1 September 2014), the assurance benefits available under the Insurance Scheme has been increased by twenty percent (20%) in addition to the already admissible benefits.

Contributions to the Provident Fund are to be made at the rate of 12% of the wages by the employers with the employee contributing an equal amount. The employee may voluntarily contribute a higher amount but the employer is not obliged to contribute more than the prescribed amount. Further, the EPF Act contains provisions for transfer of accumulations in case of change of employment.

In terms of power conferred under s 143(11) of the Companies Act, 2013, the Central Government has issued the Companies (Auditor's Report) Order, 2015 (CARO), which came into force on 10 April, 2015. Clause (vii) (a) of Paragraph 3 provides that:

The [Statutory] Auditor has to report, inter alia, on the following:

- i. Is the company regular in depositing undisputed statutory dues, eg, Provident Fund, Investor Education and Protection Fund, Employees' State Insurance, income tax, wealth tax, service tax, sales tax, customs duty, excise duty, cess and any other statutory duties with the appropriate authorities?
- ii. If not paid regularly, the extent of the arrears of outstanding statutory dues as on the last day of the financial year concerned for a period of more than six months from the date they became payable, then it shall be indicated in the report.

- iii. If such non-payment of dues is on account of any dispute, then the amount involved and for the forum where the dispute is pending should also be mentioned.

The CARO is, however, not applicable to a banking company, an insurance company, s 8 company, one person company, small companies and certain class of private companies, as specified under the CARO.

Employees' State Insurance Act, 1948<sup>7</sup>

The Employees' State Insurance Act, 1948 (the ESI Act) is a social welfare legislation enacted with the objective of providing certain benefits to employees in case of sickness, maternity and employment injury. In terms of the provisions of the ESI Act, the eligible employees will receive medical relief, cash benefits, maternity benefits, pension to dependants of deceased workers and compensation for fatal or other injuries and diseases. It is applicable to establishments where 10 or more persons are employed. All employees, including casual, temporary or contract employees drawing wages less than Rs 15,000 per month, are covered under the ESI Act. This limit has been increased from Rs 10,000 to Rs 15,000 w.e.f. May 1, 2010.

The Government enacted as the Employees' State Insurance (Amendment) Act, 2010 (No.18 of 2010). All the provisions of the ESI (Amendment) Act 2010 (except s 18) have come into effect from June 1, 2010. The salient features of the ESI (Amendment) Act are as under:

- facilitating coverage of smaller factories;
- enhancing age limit of dependent children for eligibility to dependants benefit;
- extending medical benefit to dependant minor brother/sister in case of insured persons not having own family and whose parents are also not alive;
- streamlining the procedure for assessment of dues from defaulting employers;
- providing an Appellate Authority within the ESI Corporation against assessment to avoid unnecessary litigation;
- continuing medical benefit to insured persons retiring under VRS scheme or taking premature retirement;

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<sup>7</sup><https://www.mondaq.com/india/employee-rights-labour-relations/631074/a-brief-guide-to-labour-and-industrial-laws-of-india>

- treating commuting accidents as employment injury;
- streamlining the procedure for grant of exemptions;
- third party participation in commissioning and running of the hospitals;
- opening of medical/ dental/ paramedical/ nursing colleges to improve quality of medical care;
- making an enabling provision for extending medical care to other beneficiaries against payment of user charges to facilitate providing of medical care from under utilised ESI Hospitals to the BPL families covered under the RashtriyaSwasthayaBimaYojana introduced by the Ministry of Labour& Employment w.e.f. 1.4.2008;
- reducing duration of notice period for extension of the Act to new classes of establishments from six months to one month;
- empowering State Governments to set up autonomous Corporations for administering medical benefit in the States for bringing autonomy and efficiency in the working.

The employer should get his factory or establishment registered with the Employees' State Insurance Corporation (ESIC) within 15 days after the Act becomes applicable to it, and obtain the employer's code number.

The employer is required to contribute at the rate of 4.75% of the wages paid/ payable in respect of every wage period. The employees are also required to contribute at the rate of 1.75% of their wages.

It is the responsibility of the employer to deposit such contributions (employer's and employees') in respect of all employees (including the contract labour) into the ESI account.

The [State] Labour Welfare Fund Act provides for the constitution of the Labour Welfare Fund to promote and carry out various activities conducive to the welfare of labour in the State so as to ensure full and appropriate utilisation of the Fund.<sup>8</sup>

Payment of Gratuity Act, 1972

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<sup>8</sup><https://www.mondaq.com/india/employee-rights-labour-relations/631074/a-brief-guide-to-labour-and-industrial-laws-of-india>

The Payment of Gratuity Act, 1972 (the Gratuity Act) applies to (i) every factory, mine, oilfield, plantation, port and railway company; (ii) every shop or establishment within the meaning of any law, for the time being in force, in relation to shops and establishments in a State, in which 10 or more persons are employed or were employed on any day of the preceding twelve months; and (iii) such other establishments or classes of establishments, in which 10 or more persons are employed or were employed on any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf.

The Gratuity Act provides for a scheme for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments. The Gratuity Act enforces the payment of "gratuity", a reward for long service, as a statutory retiral benefit.

Every employee, who has completed continuous service of five years or more, irrespective of his wages, is entitled to receive gratuity upon termination of his employment, on account of (i) superannuation; or (ii) retirement; or (iii) death or disablement due to accident or disease. However, the completion of continuous service of five years shall not be necessary where the termination of employment of any employee is due to death or disablement.

The gratuity is payable even to an employee who resigns after completing at least five years of service.<sup>9</sup>

The gratuity is payable at the rate of fifteen days wages for every year of completed service, subject to an aggregate amount of Rupees ten lacs only. However, if an employee has the right to receive higher gratuity under a contract or under an award, then the employee is entitled to get higher gratuity.

## LAWS RELATING TO WORKING HOURS, CONDITIONS OF SERVICE AND EMPLOYMENT

Factories Act, 1948

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<sup>9</sup><https://www.mondaq.com/india/employee-rights-labour-relations/631074/a-brief-guide-to-labour-and-industrial-laws-of-india>

The Factories Act, 1948 (the Factories Act) lays down provisions for the health, safety, welfare and service conditions of workmen working in factories. It contains provisions for working hours of adults, employment of young persons, leaves, overtime, etc. It applies to all factories employing more than 10 people and working with the aid of power, or employing 20 people and working without the aid of power. It covers all workers employed in the factory premises or precincts directly or through an agency including a contractor, involved in any manufacture. Some provisions of the Act may vary according to the nature of work of the establishment.

Some Major provisions of the Factories Act are explained below:

- a. Section 11 of the Act provides that every factory shall be kept clean and free from effluvia arising from any drain, privy or other nuisance. Section 13 of the Act focuses on ventilation and temperature maintenance at workplace. Every factory should work on proper arrangements for adequate ventilation and circulation of fresh air.
- b. Section 18 of the Act specifies regarding arrangements for sufficient and pure drinking water for the workers.
- c. Section 19 further mentions that in every factory there should be sufficient accommodation for urinals which should be provided at conveniently situated place. It should be kept clean and maintained.
- d. Section 21 of the Act provides from proper fencing of machinery. And that any moving part of the machinery or machinery that is dangerous in kind should be properly fenced
- e. Further s 45 of the said Act specifies that every factory should have a properly maintained and well equipped first aid box or cupboard with the prescribed contents. For every 150 workers employed at one time, there shall not be less than 1 first aid box in the factory. Also in case where there are more than 500 workers there should be well maintained ambulance room of prescribed size and containing proper facility.<sup>10</sup>

Industrial Employment (Standing Orders) Act, 1946

The Industrial Employment (Standing Orders) Act, 1946 (the IESO Act) is applicable to every industrial establishment wherein 100 or more workmen are employed or were employed on any

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<sup>10</sup><https://www.mondaq.com/india/employee-rights-labour-relations/631074/a-brief-guide-to-labour-and-industrial-laws-of-india>

day of the preceding twelve months. The IESO Act aims to bring uniform terms and conditions of service in various industrial establishments. The IESO Act requires every employer in an industrial establishment to clearly define and publish standing orders with respect to conditions of employment / service rules and to make them known to the workmen employed by it. The Act further specifies that every employer is required to submit to the Certifying Officer five draft copies of the standing orders which he intends to adopt for his establishment.

Further, the IESO Act requires display of standing orders in a prominent place for the knowledge of workers.

Shops and Commercial Establishments Act (of respective States)<sup>11</sup>

The Shops and Commercial Establishments Act(s) of the respective States generally contain provisions relating to registration of an establishment, working hours, overtime, leave, privilege leave, notice pay, working conditions for women employees, etc. The provisions of the Shops and Commercial Establishments Act apply to both white collar and blue-collar employees. IT and IT-enabled services have been given relaxations by various State Governments in respect of the observance of certain provisions of their respective Shops and Commercial Establishments Act.

Contract Labour (Regulation & Abolition) Act, 1970

The main objectives of the Contract Labour (Regulations & Abolition) Act, 1970 (the Contract Labour Act) are: (i) to prohibit the employment of contract labour; and (ii) to regulate the working conditions of the contract labour, wherever such employment is not prohibited.

The Act defines a "worker" as a workman who shall be deemed to be employed as "contract labour" in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer.

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<sup>11</sup><https://www.mondaq.com/india/employee-rights-labour-relations/631074/a-brief-guide-to-labour-and-industrial-laws-of-india>

The Contract Labour Act regulates the employment of contract labour in certain establishments and provides for its abolition in certain circumstances. It applies to every establishment or contractor wherein/with whom 20 or more workmen are employed or were employed on any day of the preceding twelve months as contract labour. The Government may, however, by notification in the Official Gazette, make the provisions of the Contract Labour Act applicable to establishments or contractor employing less than 20 workmen.

The Contract Labour Act is not applicable to establishments in which work only of an intermittent or casual nature is performed.

The Contract Labour Act prohibits the employment of contract labour on jobs that are perennial in nature. For such jobs, permanent employees need to be employed.

The Contract Labour Act provides that no contractor shall undertake any work through contract labour, except under and in accordance with a licence issued in that behalf by the licensing officer.

In terms of s 7 of the Contract Labour Act, the principal employer has to make an application in the prescribed form accompanied by the prescribed fee payable to the registering officer for registration.

The Employee's Compensation Act, 1923 (formally known as "The Workmen Compensation Act, 1923")

The Employee's Compensation Act, 1923 (the EC Act) aims to provide financial protection to workmen and their dependents in case of any accidental injury arising out of or in course of employment and causing either death or disablement of the worker by means of compensation.

This Act applies to factories, mines, docks, construction establishments, plantations, oilfields and other establishments listed in Schedules II and III of the said Act, but excludes establishments covered by the ESI Act.

The Act provides for payment of compensation by the employer to the employees covered under this Act for injury caused by accident. Generally, companies take insurance policies to cover their liability under the EC Act.

Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979

The Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (the ISMW Act) is an Act to regulate the employment of inter-state migrant workmen and to provide for the conditions of service and for matters connected therewith.

The ISMW Act applies to (i) any establishment in which five or more inter-state migrant workmen are employed or who were employed on any day of the preceding twelve months; and (ii) every contractor who employs or who employed five or more inter-state migrant workmen on any day of the preceding twelve months.

For the purpose of the ISMW Act, an inter-state migrant workman means any person who is recruited by or through a contractor in one state under an agreement or other arrangement for employment in an establishment in another state, whether with or without the knowledge of the principal employer in relation to such an establishment.

Weekly Holiday Act, 1942

The Weekly Holiday Act, 1942 provides for the grant of weekly holidays to persons employed in shops, restaurants and theatres. The Act provides that every shop shall remain entirely closed on one day of the week, which day shall be specified by the shop-keeper in a notice permanently exhibited in a conspicuous place in the shop. Further the state government may require in respect of shops or any specified class of shops that they shall be closed at such hour in the afternoon of one week-day in every week in addition to weekly day off.

The Plantation Labour Act, 1951

The Plantations Labour Act (PLA) seeks to provide for the welfare of labour and to regulate the conditions of workers in plantations. This Act empowers the State Governments to take all

feasible steps to improve the lot of the plantation workers. The passing of PLA has helped in creating conditions for organising the workers and the rise of trade unions.

The Act defines an employer as, the person who has the ultimate control over the affairs of the plantation and where the affairs of the plantation are entrusted to any other person, such other person shall be the employer in relation to that plantation.

Plantation: Any plantation to which this Act applies and includes offices, hospitals, dispensaries, schools and any other premises used for any purposes connected with such plantation.

The Act makes it mandatory for every employer to get their plantation registered within 60 days of its coming into existence.

The Mines Act, 1952

The Mines Act, 1952 (**Mines Act**) aims to secure safety and health and welfare of workers working in the mines. "Mine" is defined under the Mines Act as a place where any excavation work is carried on for the searching and obtaining of minerals.

The Mines Act provides that persons working in the mine should not be less than 18 years of age.

The Mines Act lays down provisions for appointment of one chief inspector who would be regulating all the territories in which mining is done and an inspector for every mine who would be subordinate to the chief inspector. Moreover, the District Magistrate is also empowered to perform the duties of an inspector subject to the orders of the Central Government. The chief inspector or any of the inspectors may make such inquiry, at any time whether day or night, in order to check whether the law is being abided in the mines or not.

LAWS RELATING TO EQUALITY AND EMPOWERMENT OF WOMEN<sup>12</sup>

Equal Remuneration Act, 1976

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<sup>12</sup><https://www.mondaq.com/india/employee-rights-labour-relations/631074/a-brief-guide-to-labour-and-industrial-laws-of-india>

The Equal Remuneration Act, 1976 provides for the payment of equal remuneration to men and women workers for the same work and prevents discrimination, on the ground of sex, against women in the matter of employment, recruitment and for matters connected therewith or incidental thereto. This Act applies to virtually every kind of establishment.

#### Maternity Benefit Act, 1961

The Maternity Benefit Act, 1961 (**Maternity Benefit Act**) regulates the employment of women in certain establishments for a certain period before and after childbirth and provides for maternity benefits and certain other benefits including maternity leave, wages, bonus, nursing breaks, etc, to women employees.

The Maternity Benefit Act, 1961 applies to (a) a factory, mine or plantation including any such establishment belonging to Government and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances; (b) every shops or establishments within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed on any day of the preceding 12 months.

Except for s 5A and 5B, the provisions of the Maternity Benefit Act shall not apply to the employees who are covered under the Employees' State Insurance Act, 1948 for certain periods before and after child-birth and for which the ESI Act provides for maternity and other benefits. The coverage under the ESI Act is, however, at present restricted to factories and certain other specified categories of establishments located in specified areas. The Maternity Benefit Act is, therefore, still applicable to women employees employed in establishments which are not covered by the ESI Act, as also to women employees, employed in establishments covered by the ESI Act, but who are out of its coverage because of the wage-limit.

Under the Maternity Benefit Act, an employer has to give paid leave to a woman worker for six weeks immediately following the day of her delivery or miscarriage and two weeks following a tubectomy operation. The maximum period for which a woman shall be entitled to maternity benefit shall be 12 weeks, of which not more than six weeks shall precede the date of her expected delivery.

A pregnant woman is also entitled to request her employer not to give her work of arduous nature or which involves long hours of standing, etc, during the period of one month immediately preceding the date of her expected delivery or any period during the said period of six weeks for which the woman does not avail leave of absence. When a woman absents herself from work in accordance with the provisions of the Maternity Benefit Act, it shall be unlawful for her employer to discharge or dismiss her during or on account of such absence.

## PROHIBITIVE LABOUR LAWS<sup>13</sup>

### Bonded Labour System (Abolition) Act, 1976

The Bonded Labour System (Abolition) Act, 1976 (**Bonded Labour Abolition Act**) is a prohibiting legislation which provides for the abolition of the bonded labour system with a view to prevent the economic and physical exploitation of the weaker sections of the society, and matters connected therewith or incidental thereto.

Under the Bonded Labour Abolition Act, the term "bonded labour" has been defined to mean any labour or service rendered under the bonded labour system.

The term "bonded labour system" has been defined to mean the system of, forced or partly forced, labour under which a debtor enters or has, or is presumed to have, entered into an agreement with the creditor to the effect that:

- i. In consideration of an advance obtained by him or by any of his lineal ascendants or descendants (whether or not such advance is evidenced by the document) and in consideration of the interest, if any, due on such advance; or
- ii. In pursuance of any customary or social obligation; or
- iii. In pursuance of any obligation devolving on him by succession; or
- iv. For any economic consideration received by him or by any of his lineal ascendants or descendants; or
- v. By reason of his birth in any particular caste or community.

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<sup>13</sup><https://www.mondaq.com/india/employee-rights-labour-relations/631074/a-brief-guide-to-labour-and-industrial-laws-of-india>

The debtor would render, by himself or through any member of his family, or any person dependent on him, labour or service, to the creditor, or for the benefit of the creditor, for a specific period or for an unspecified period, either without wages or for nominal wages.

Section 3 of the Bonded Labour Abolition Act provides that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

Section 20 of the Bonded Labour Abolition Act provides that whoever abets any offence punishable under this Act shall, whether or not the offence abetted is committed, be punishable with the same punishment as is provided for the offence which has been abetted. For the purpose of this Act, "abetment" has the meaning assigned to it in the Indian Penal Code.

Child Labour (Prohibition & Regulation) Act, 1986<sup>14</sup>

The Constitution of India incorporates provisions to secure labour protection to children. It expressly prohibits the employment of a child below the age of 14 years in work in any factory or mine or engagement in any other hazardous employment.

The policy of the Government is to ban the employment of children below the age of 14 years in factories, mines and hazardous employments and to regulate the working condition of children in other industries.

The Government enacted the Child Labour (Prohibition & Regulation) Act, 1986 (the Child Labour Prohibition & Regulation Act), which prohibits the employment of children who have not completed their 14th year in 16 occupations and 65 processes<sup>1</sup> like cinder picking, cleaning of ash pits, building operation, manufacturing or handling of pesticides and insecticides, and manufacturing of matches, explosives, fireworks, etc.

In addition, the Child Labour Prohibition & Regulation Act regulates the working conditions of children in all employments, which are not prohibited under the Act. It also fixes the number of

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<sup>14</sup><https://www.mondaq.com/india/employee-rights-labour-relations/631074/a-brief-guide-to-labour-and-industrial-laws-of-india>

hours and the period of work and requires the occupiers of establishments employing children to give notice to the local inspector and maintain the prescribed register.

Apart from the Child Labour Prohibition & Regulation Act, there are other legislations which also protect the interest of child labour. For example, the Factories Act, 1948 and the Mines Act, 1952 prohibit the employment of children below the age of 14 years. The Children (Pledging of Labour) Act, 1933, makes an agreement to pledge the labour of children void.

#### *Directions of the Supreme Court on the Issue of Elimination of Child Labour<sup>15</sup>*

In a landmark judgment on 10 December 1996, in the case of *MC Mehta v State of Tamil Nadu* (1996) 6 SCC 756 [Writ Petition (Civil) No. 465/1986], the Supreme Court of India gave certain directions on the issue of elimination of child labour. The main features of the judgment are as under:

- i. Survey for identification of working children;
- ii. Withdrawal of children working in hazardous industry and ensuring their education in appropriate institutions;
- iii. Contribution at the rate of Rs 20,000 per child to be paid by the offending employers of children to a welfare fund to be established for this purpose;
- iv. Employment to one adult member of the family of the child so withdrawn from work and if that is not possible a contribution of Rs 5,000 to the welfare fund to be made by the State Government;
- v. Financial assistance to the families of the children so withdrawn to be paid out of the interest earnings on the corpus of Rs 20,000/25,000 deposited in the welfare fund, as long as the child is actually sent to a school; and
- vi. Regulating hours of work for children working in non-hazardous occupations so that their working hours do not exceed six hours per day and education for at least two hours is ensured. The entire expenditure on education is to be borne by the concerned employer.

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<sup>15</sup><https://www.mondaq.com/india/employee-rights-labour-relations/631074/a-brief-guide-to-labour-and-industrial-laws-of-india>

The implementation of the directions of the Hon'ble Supreme Court is being monitored by the Ministry of Labour and Employment and compliance with the directions has been reported in the form of affidavits on 5 December 1997, 21 December 1999, 4 December 2000, 4 July 2001 and 4 December 2003, to the Hon'ble Supreme Court on the basis of the information received from the State Governments/Union Territories.

The Government is committed to eliminate child labour in all its forms and is moving in this direction in a targeted manner.

### Sexual Harassment at Workplace (Prohibition, Prevention and Redressal) Act, 2013

The Sexual Harassment at Workplace (Prohibition, Prevention and Redressal) Act, 2013 (SHW Act) was enacted by the Parliament to provide protection against sexual harassment of women at workplace and prevention and redressal of complaints of sexual harassment and for matters connected therewith.

The SHW Act makes it mandatory for every organization having 10 employees and more to constitute an Internal Complaints Committee (ICC) to entertain complaints that may be made by an aggrieved women.

The SHW Act also incorporates provisions for formation of a Local Complaints Committee (LCC) in every district for entertaining complaints of sexual harassment at workplace from organisations where ICC has not been established due to having less than 10 employees.

The SHW Act provides that an aggrieved women may in writing make a complaint of sexual harassment to the ICC or LCC as the case may be within a period of three months from the date of occurrence of such incident. Further, in a case where the aggrieved woman is unable to make a complaint on account of her physical incapacity or Death, a complaint may be filed inter alia by her relative or legal heirs.

### LAWS RELATING TO EMPLOYMENT AND TRAINING<sup>16</sup>

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<sup>16</sup><https://www.mondaq.com/india/employee-rights-labour-relations/631074/a-brief-guide-to-labour-and-industrial-laws-of-india>

## Apprentices Act, 1961

The Apprentices Act, 1961 (the Apprentice Act) provides for the regulation and control of training of apprentices to supplement the availability of trained technical employees for the industry and matters in connection thereto. It provides for qualification for being engaged as an apprentice, contract for apprenticeship, renewal of contract of apprenticeship, period for apprenticeship, termination of apprenticeship contract, obligation of employers and obligations of apprentices, payment to apprentices, health safety and welfare of apprenticeship, hours of work, overtime, leave and holidays and other conditions of working of apprentice.

The Apprentice Act requires employers to hire apprentices in certain designated trades, as notified by the Government. Accordingly, appointment of apprentices, according to the Apprentice Act, will be obligatory if the company falls under the notified industry.

The Government is considering amending the Apprentices Act, 1961, in consultation with all concerned Ministries. One of the proposed amendments relates to reserving 50% of direct recruitment posts for trained Trade, Graduate, Technician and Technician (Vocational) apprentices who have been trained under the Apprentices Act, 1961 in the same establishment.<sup>2</sup>

## Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959

The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 (the Employment Exchange Act) provides for the compulsory notification of vacancies to employment exchanges by the employers. Section 4(1) of the Employment Exchange Act makes it obligatory on every establishment in the public sector to notify, before filling up any vacancy in any employment in that establishment, vacancies to such employment exchanges as may be prescribed.

Further, s 4(2) of the Employment Exchange Act provides that the appropriate Government may, by notification in the Official Gazette, require that from such date as may be specified in the notification, the employer in every establishment in the private sector (ordinarily employing more than 25 employees) or every establishment pertaining to any class or category of

establishments in the private sector shall, before filling up any vacancy in any employment in that establishment, notify vacancies to such employment exchanges as may be prescribed.

E-Kranti: Ministry of Labour & Employment E-governance initiative

The Ministry of Labour & Employment has come up with a unique E-governance service called "*E-kranti*" which aims to make government services accessible to the common man in his locality, through Common Service Delivery outlets and ensure efficiency, transparency and reliability at affordable costs. For the purpose of E-governance the ministry has also developed a unified Web Portal called "*ShramSuidha Portal*". This portal integrates four major Organizations under the Ministry of Labour, The Chief central Labour Commissioner. The Directorate General of Mines Safety, Employees' Provident Fund Organization and Employees' State Insurance Corporation. The portal facilitates the following:

1. A Unique labour identification number (LIN) for Units to facilitate online registration.
2. Filing of self-certified and simplified Single Online Return by the industry Units.
3. Provides for filing a single consolidated Return online instead of filing separate Returns.
4. Timely redressal of grievances.
5. Transparent Labour inspection scheme through computerised system.