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NEHRU ACADEMY LAW REVIEW



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Empowering Labour : Insights, Challenges, and Progress in India's Labour Laws



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A Brief Study On Significance Of Labour And Employment Rights

Shubhalakshmi P.

ABSTRACT

For every human being employment is must. Labour and employment are closely related and by investing fruitful labour, one can become successful in his/her employment. There are wide-ranging professions and employments and based on working condition, tenure, contract, nature of work etc., persons can be classified as labourers, workers, employees, professionals etc. The fundamental law relating to labour and employment in India is Industrial Law and the very existence of this law focuses on protection of the rights of workers and to guide on their basic facilities to be granted to them. There are different legislations passed by the Parliament on labour and employment issues especially on industrial disputes, workmen's compensation, rights of factory workers, remuneration or wages, working conditions, etc.

Employment is one of the ways through which person can earn his livelihood, basic amenities, required to lead a satisfactory life and to satisfy his economic desires. Employment is one's own choice and some times people often change their sector or institutions or company for better salary or for experience. There are rights granted through law for the labourers and employees working in an establishment. Right against discrimination, equal treatment, right to have employment agreement, maternity benefit and prevention and protection from sexual harassment for female employees, right to remuneration, provident fund, gratuity and rights on bonus, leave facilities, appropriate working conditions and working hours etc are certain basic rights that are exercisable by the workers or employees.

KEYWORDS: *Employment, labour, rights of workers*



1. INTRODUCTION

Right to work is basic right and every individual can work as per his/her qualifications. There are different kinds of workers like daily wage earners, unorganised sector of labourers, organised labourers, employees working in Government establishments, private establishments etc. Every labourer or employee or worker has certain rights to protect his employment and self-respect.

Section-2(t) of the OSHWC Code, 2020 defines **employee** in respect of establishments as: A person (other than an apprentice engaged under the Apprentices Act, 1961) employed on wages by an establishment to do any skilled, semi-skilled, unskilled, manual, operational, supervisory, managerial, administrative, technical, clerical or any other work, whether the terms of employment be express or implied; and A person declared to be an employee by the appropriate Government.¹

Section-2(zzl) defines a **worker** as any person employed in any establishment to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and includes working journalists as well as sales promotion employees.²

The International Labour Organization (ILO) was established in 1919 with the aim of promoting social justice.³

II. RIGHTS OF WORKERS OR LABOURERS AND THEIR SIGNIFICANCE

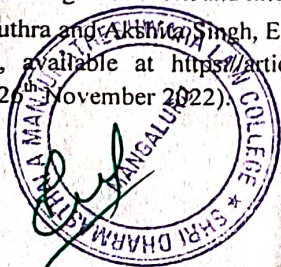
The right to work or employment signifies that every person or individual has right to get employment and the right not to be deprived of employment unfairly. There are certain migrant labourers who cannot enjoy any rights of labourers as they are not settled in any establishment properly.⁴ There is need to protect the rights of the labourers and the employees

¹ Madhu Damodaran and Animay Singh, Definition of Employee and Worker Under the OSHWC Code, (Oct.23, 2020), available at <https://www.simpliance.in/blog/definition-of-employee-and-worker-under-theoshwc-code> (visited on 20th November 2022).

² *Ibid.*

³ Fundamental Rights at Work and International Labour Standards, International Labour Office, Geneva, 2003.

⁴ Akshay Luthra and Akshita Singh, Emerging Challenges in Labour Laws, *Manupatra, Employment Laws*. (5th Jan, 2022), available at <https://articles.manupatra.com/article-details/Emerging-Challenges-in-Labour-Laws> (visited on 20th November 2022).



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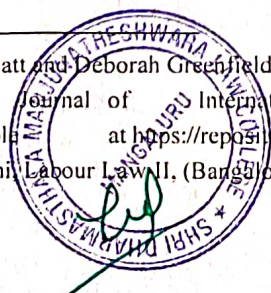
or workers because if there is absence of proper rules or codes for protection of their rights, the employers or the corporate entities tries to get more work from the workers or labourers and cheap labour may be encouraged by them. Under ILO's landmark Declaration on Fundamental Rights at Work, "the Declaration identifies four universally accepted workplace human rights as core labour rights, namely: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation."⁵

The workers or employees or the labourers must be granted with minimum standard of comforts in the workplace and they must have social security and economic justice for their work.⁶ Labour law aims to prevent a race to the bottom and to prevent insecurity status of labourers. There are certain legislations and rules to protect the rights of labourers or workers and employees.

1. Employment Agreement
2. Right against discrimination at workplace
3. Provident Fund
4. Maternity Benefit
5. Equal Remuneration
6. Payment of Bonus
7. Right to Leaves
8. Appropriate Working Hours and Overtime
9. Safe Working Condition

⁵ Jonathan P. Hiatt and Deborah Greenfield. The Importance of Core Labour Rights in World Development, Michigan Journal of International Law, volume 26 issue no. 1, 2004, available at <https://repository.law.umich.edu/mjil>, (visited on 30th November 2022), p.41.

⁶ Yashpal Puliani, Labour Law II, (Bangalore: Puliani and Puliani publishers, 2021), p. 73.



10. Protection from Sexual Harassment at Workplace

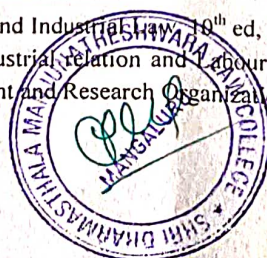
Employment Agreement

While entering into as an employee to any private company or establishment, the agreement on employment plays significant role. But for a labourer, usually such procedures are not followed and they have no security of employment. Some of the labourers are daily wage earners and unorganised sector of labourers. In an employment agreement, their terms of employment, designation, place of work, remuneration, hours of work, form of work, compensation, dispute settlement methods, procedures of removal etc will be mentioned. Whenever such agreements are made, employees must be vigilant because the agreement may favour the employer in terms. ⁷ Section 2(1) (n) of the Employees' Compensation Act contract must be entered into between employer and employee.

Right against Discrimination at Workplace

No discrimination can be made on the basis of caste, creed, colour, religion, sex and place of birth and residence between the workers or employees. All employees must be treated equally as they are working in the same establishment together. There must be right for everyone to take opportunity to gain his living by work which he freely chooses or accepts. Equal opportunity for everyone to be promoted in his employment to an appropriate higher level subject to no considerations other than those of seniority and competence.

⁷ Meenu Paul, Labour and Industrial Law, 10th ed, (Faridabad: Allahabad Law Agency, 2017), p. 372. ⁸ Pradeep Kumar Vannarath, Industrial Relation and Labour Law, Babasaheb Ambedkar Open University, Ahmedabad Knowledge Management and Research Organization, Pune, 2015.



Provident Fund

Every employee is eligible for provident fund provided the establishment has more than 20 salaried employees working in the establishment. During the time of retirement, the provident fund can be withdrawn and utilised by the employees. In fact, it contains 12% of the salary of the employees and that must be contributed by both the employees and the employers. If the employer has shown dissent towards contribution on Provident Fund, employee can get the matter redressed through PF appellate tribunal. But such facilities of provident fund are not available to daily wage earners or labourers who work in an unorganised sector.⁸ Provident fund is significant because, as there is no pension for employees or workers working in private establishments, they need to have some secured monetary benefit at least during their retirement.⁸ Provident fund is governed by Employees Provident Fund Organisation under the Ministry of Labour and Employment, Government of India.¹⁰ Gratuity can be given to an employee after his retirement from service or during termination of employment. Such gratuity is available not for every kind of employees and labourers who work on contract basis or daily wages etc are not be granted with the same.⁹

Maternity Benefit

Maternity benefit is available to any female employee working in any establishment and it is for 26 weeks with payment of salary. This can be availed together with before and after the delivery. Eight weeks leave can be availed before and remaining 18 weeks can be availed after delivering the child or some employees usually avail 6 months after delivery for the purpose of childcare.¹² Female employees must be provided with such facility and with no reason such female employee can be dismissed from the job during her maternity period. Such maternity

⁸ H. L. Kumar, *Labour Laws*, 6th ed. (New Delhi: Universal Law Publishing Company, 2011), p. 50. ¹⁰ S.N. Misra, *Labour and Industrial Laws-with latest Amendments*, 29th ed. (New Delhi: Central Law Publications, 2022), p. 658.

⁹ Meenu Paul, *Labour and Industrial Law*, 10th ed. (Faridabad: Allahabad Law Agency, 2017), p.805. ¹² S.N. Misra, *Labour and Industrial Laws-with latest Amendments*, 29th ed. (New Delhi: Central Law Publications, 2022), p. 1021.



leave is not granted to the daily wage earners and they must lose their jobs during maternity. They have no security of work.¹⁰

Equal Remuneration

The right to the enjoyment of just and favourable conditions of work is must and at the same time particular remuneration must be provided to all workers, as a minimum, with fair wages and equal remuneration for work of equal value and a decent living for themselves and their families etc are important elements for any worker or employee.¹¹

Fair and appropriate remuneration must be given to the workers. Under Article 39(d) of the Indian Constitution, it is stated that, there must be equal pay for equal work. Different provisions in legislations like the Equal Remuneration Act,¹² the Payment of Wages Act etc, has been laid down that timely and fair remuneration must be granted to the employees working in any establishment.¹³ If an employee is not receiving his/her remuneration as per the employment agreement, can approach the Labour Commissioner or file a civil suit for arrears in salary. An employee cannot be given wages less than the legal minimum wages, as per law.¹⁴

Payment of Bonus

Bonus is also a part of salary or wage and the employees are eligible for it who draws salary or wage up to Rs. 21,000 per month. The minimum bonus an employee can get is 8.33% and up to 20% of the salary or wages.¹⁵ Whether the company or establishment is running with

¹⁰ Aarsha, Constitutional Protection on Labour Laws, Legal Service India, available at <http://www.legalservicesindia.com/article/181/Constitutional-Protection-on-Labour-Laws.html>, (visited on 28th November 2022).

¹¹ Labour Laws & Practice, The Institution of Company Secretaries of India, New Delhi, p.123.

¹² S.N. Misra, Labour and Industrial Laws-with latest Amendments, 29th ed, (New Delhi: Central Law Publications, 2022), p. 1121.

¹³ S.S. Rana and Co., Labour Laws in India, 2013, available at <https://ssrana.in/corporate-laws/labour-laws-in-india> (visited on 29th November 2022).

¹⁴ N. Asmitha, A Summary on Existing Labour Laws in India, *Legal Service India-E-Journal*, available at <https://www.legalservicesindia.com/legal/article-4220-a-summary-on-existing-labour-laws-in-india.html>, (visited on 27th November 2022).

¹⁵ S.N. Misra, Labour and Industrial Laws-with latest Amendments, 29th ed, (New Delhi: Central Law Publications, 2022), p. 1121.



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profits or loss is immaterial for issuing bonus to the employees. Along with bonus, the employees must have the benefits of old-age pensions, invalidity benefit, unemployment benefit, survivors' benefit etc.¹⁶

Right to Leaves

Employees or workers can avail casual leave, sick leave, privilege leave and other leaves along with public holidays available every year. Even during emergencies, the employees can avail leaves. Daily wage earners or labourers can avail leave but they lose payments for the same. By taking leave there is also possibility of losing the job because their job is not secured one.¹⁷

Appropriate Working Hours and Overtime

Workers or the employees require to take required rest, leisure and they must be given with reasonable working hours. Fixation of working hours is required to ensure quality work or duty from the employees. If the employees are willing to do, over time can also be granted to them with genuine remuneration. Female workers required to get reasonable working hour and with appropriate timings. An adult worker shall work over nine hours per day or 48 hours per week and overtime shall be double the regular wages. A female worker can work from 6 am to 7 pm. This can be relaxed to 9.30 pm provided explicit permission and required payment for overtime and safe transportation facility is made available to them. The working hours for



¹⁶ Nidhi Rani Garg, Employee rights and responsibilities that you need to know about, available at <https://blog.ipleaders.in/employee-rights-and-responsibilities-that-you-need-to-know-about/>, (visited on 30th November 2022).

¹⁷ Atul Mittal, How Employees' Working Hours, Annual leave will change under the new Labour Laws, The Economic Times, English edition. (30th June, 2022).

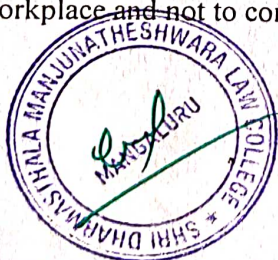
child workers are limited to 4.5 hours a day.¹⁸ But child labour is not allowed in hazardous industries.

Safe Working Condition

Working condition must be safe and secured to the employees. Unless and until workers working conditions are safe and with necessary security, they cannot work with quality and productive way. So productive, qualitative and efficient work demands safety and security for the employees or workers. There must be basic amenities in working place and comfortable working atmosphere also necessary for the workers or employees to work efficiently in their workplace. Healthy and safety work place like safe workplace, provision of free protective equipment, training on safety, labour inspection etc are very much necessary for the workers.¹⁹ For the employees working in certain establishments are provided with insurance and their medical care expenses also imburshed. Even contract labourers also can avail such facilities of insurance through the scheme of State Insurance for Employees.²⁰

Protection from Sexual Harassment

In any establishment where women are working along with men, a cell to prevent sexual harassment of women at workplace must be established. Internal committee on Prevention of Sexual Harassment (POSH) helps to prevent sexual harassment and if any grievances on sexual harassment can be redressed through this committee. There must be equality between men and women in workplace and not to commit sexual harassment against women.²¹



¹⁸ K R Shyam Sundar and Rahul Suresh Sapkal Changes to Labour Laws by State Governments Will Lead to Anarchy in the Labour Market, available at <https://www.epw.in/engage/article/changes-labour-lawsstatemarket-anarchy-labour-market>, (visited on 30th November 2022).

¹⁹ Gary Burtless, Workers' Rights: Labour standards and global trade, (September 1, 2001), available at <https://www.brookings.edu/articles/workers-rights-labor-standards-and-global-trade/>

²⁰ H. L. Kumar, Labour Laws, 6th ed, (New Delhi: Universal Law Publishing Company, 2011), p.25.

²¹ Veena Gopalakrishnan, Ajay Solanki and Vikram Shroff, India's New Labour Law - Prevention Of Sexual Harassment At The Workplace, Nishith Desai Associates, 9th May 2013.

III. CONCLUSION

If any employee is to be terminated, prior notice must be given as per law. In case of daily wage earners, such notice is not usually given and whenever the employer feels that no more to accommodate that worker, the employer conveys the same to the worker. The employees of any establishment have right to go for strikes and they can put forward their demands before the employers.²² The rights and privileges of employees or the workers are granted under different provisions of labour legislations like Industrial Disputes Act 1947, Factories Act 1948, etc. Presently the Government of India has enacted 4 labour Codes in which around 29 labour laws are subsumed in them. They are Code on Wages 2019, the Occupational safety, Health and Working Conditions Code 2020, the Code on Social Security 2020, and the Industrial Relations Code 2020.²³ These new Codes were formulated to consolidate and reform labour laws in India.

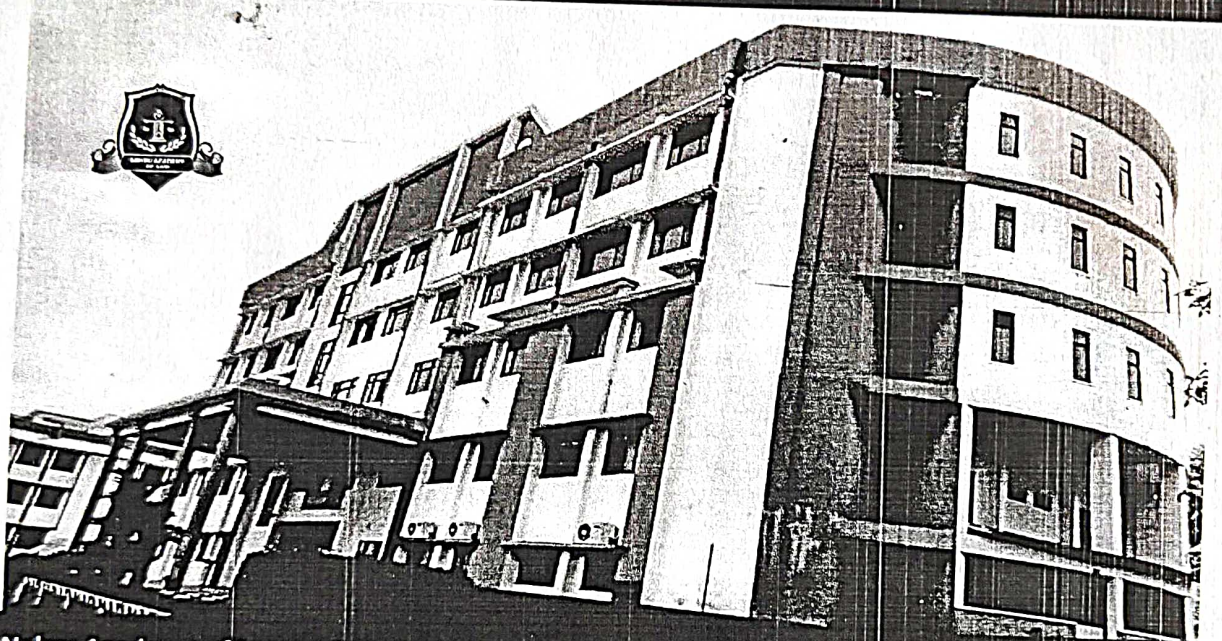


²² S.C. Srivastava, *Industrial Relations and Labour Laws*, 6th ed. (Noida: Vikas Publishing House Pvt. Ltd., 2015)p. 398.

²³ Anshul Prakash and Kruthi N Murthy, *Employment and Labour Laws and Regulations*, (25th March 2022), available at <https://iclg.com/practice-areas/employment-and-labour-laws-and-regulations/india>, (visited on 28th November 2022).



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Nehru Academy of Law, a sister concern of the prestigious Nehru Group of Institutions (NGI) which pioneered technical education in Tamil Nadu and Kerala in 1968 under the dynamic leadership of its founder chairman Late Shri. P. K. Das is a premier law institute in Kerala that is committed to imparting legal education to students and molding true law professional of high integrity and foresight. Established in the year 2015 with an objective of disseminating learning and knowledge of law and legal processes to the young minds, Nehru Academy of Law has been persistent in the pursuit of knowledge and academic endeavors to become a center of excellence in legal studies. With a team of experienced and highly qualified faculty NAL is committed to provide student-centric law education in order to foster the personal and Intellectual growth of the students and prepare them for productive careers, meaningful lives, and responsible citizenship in a global society. Situated in a lush green landscape at Jawahar gardens, Lakkidi, Nehru Academy of Law is a centre par excellence in the arena of legal education with its meticulous academic strategies and extensive law curriculum. The Academy seeks to incubate innovative approaches to legal education and profession and prepare students for leadership roles not only in legal profession but also in a wide range of social Institutions, including government, politics and business. It tries to combine teaching and research in an integrated manner to instill in the students a sense of responsibility to serve the society in the field of law and contribute to use law as an instrument of social transformation and empowerment.

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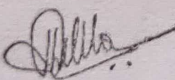
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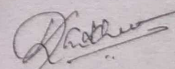
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Mr. KIRAN S SEKHAR
(Sub Editor, NALR)

