UNIT 3

ACTS OF PARLIAMENT

Acts of parliament, sometimes referred to as primary legislation, are texts of law passed by the legislative body of a jurisdiction (often a parliament or council).

In most countries, acts of parliament begin as a bill, which the legislature votes on.

Depending on the structure of government, this text may then by subject to assent or approval from the executive branch.

Bills

A draft Act of Parliament is known as a bill.

In other words, a bill is a proposed law that needs to be discussed in the parliament before it can become a law.

In territories with a Westminster system, most bills that have any possibility of

becoming law are introduced into parliament by the government.

This will usually happen following the publication of a "white paper", setting out the issues and the way in which the proposed new law is intended to deal with them.

Private Member Bill

A bill may also be introduced into parliament without formal government backing; this is known as a private member's bill.

In territories with a multi-cameral parliament, most bills may be first introduced in any chamber. However, certain types of legislation are required, either by constitutional convention or by law, to be introduced into a specific chamber.

For example, bills imposing a tax, or involving public expenditure, are introduced into the House of Commons in the United Kingdom, Canada's House of Commons, Lok

Sabha of India and Ireland's Dáil as a matter of law.

Once introduced, a bill must go through a number of stages before it can become law.

In theory, this allows the bill's provisions to be debated in detail, and for amendments to the original bill to also be introduced, debated, and agreed to.

In bicameral parliaments, a bill that has been approved by the chamber into which it was introduced then sends the bill to the other chamber. Broadly speaking, each chamber must separately agree to the same version of the bill. Finally, the approved bill receives assent; in most territories this is merely a formality and is often a function exercised by the head of state.

In some countries, such as in France, Belgium, Luxembourg, Spain and Portugal, the term for a bill differs depending on whether it is initiated by the government (when it is known as a "draft"), or by the Parliament (a "proposition", i.e., a private member's bill).

Procedure of converting a Bill into Act in India

In the Parliament of India, every bill passes through following stages before it becomes *an Act of Parliament of India*:

1. **First reading - Introduction Stage: Any member, or member-in-charge of the bill seeks the leave of the house to introduce a bill. If the bill is an important one, the minister may make a brief speech, stating its main features.**
2. **Second reading - Discussion Stage: This stage consists of detailed consideration of the bill and proposed amendments.**
3. **Third reading - voting stage: This stage is confined only to arguments either in support of the bill or for its rejection as a whole, without referring to its details. After the bill is passed, it is sent to the other house.**
4. **Bill in the other house (Rajya Sabha): After a bill, other than a money bill, is transmitted to the other house, it**

goes through all the stages in that house as that in the first house. But if the bill passed by one house is amended by the other house, it goes back to the originating house.

5. President's approval: When a bill is passed by both the houses, it is sent to the President for his approval. The President can assent or withhold his assent to a bill or he can return a bill, other than a money bill. If the President gives his assent, the bill is published in The Gazette of India and becomes an Act from the date of his assent. If he withholds his assent, the bill is dropped, which is known as pocket veto. The pocket veto is not written in the constitution and has only been exercised once by President Zail Singh: in 1986, over the postal act where the government wanted to open postal letters without warrant. If the president returns it for reconsideration, the Parliament must do so, but if it is

passed again and returned to him, he must give his assent to it.

Understanding Common Law

A precedent, known as stare decisis, is a history of judicial decisions which form the basis of evaluation for future cases. Common law, also known as case law, relies on detailed records of similar situations and statutes because there is no official legal code that can apply to a case at hand.

The judge presiding over a case determines which precedents apply to that particular case.

The example set by higher courts is binding on cases tried in lower courts.

However, lower courts can choose to modify or deviate from precedents if they are outdated or if the current case is substantially different from the precedent case.

Lower courts can also choose to overturn the precedent, but this rarely occurs.

Common Law vs. Civil Law

Civil law is a comprehensive, codified set of legal statutes created by legislators.

A civil system clearly defines the cases that can be brought to court, the procedures for handling claims, and the punishment for an offense.

Judicial authorities use the conditions in the applicable civil code to evaluate the facts of each case and make legislative decisions.

While civil law is regularly updated, the goal of standardized codes is to create order and reduce biased systems in which laws are applied differently from case to case.

Common law draws from institutionalized opinions and interpretations from judicial authorities and public juries.

Similar to civil law, the goal of common law is to establish consistent outcomes by

applying the same standards of interpretation.

In some instances, precedent depends on the case-by-case traditions of individual jurisdictions. As a result, elements of common law may differ between districts.

Special Considerations

As judges present the precedents which apply to a case, they can significantly influence the criteria that a jury uses to interpret a case.

Historically, the traditions of common law have led to unfair marginalization or disempowerment of certain groups.

Whether they are outdated or biased, past decisions continue to shape future rulings until societal changes prompt a judicial body to overturn the precedent.

This system makes it difficult for marginalized parties to pursue favourable rulings until popular thought or civil

legislation changes the interpretation of common law.

Judicial precedent

Judicial precedent or decisions is a process which is followed by the judges to take the decision.

In Judicial precedent, the decision is taken by following the similar cases happened in the past.

So judicial decision is based on the principle of stare decisis i.e. "stand by the decision already made".

Let us explore the types and principles of Judicial Precedent in detail.

There is a term called the doctrine of stare decisis which states that the court's decision becomes a precedent to be followed in future cases of a similar nature.

The reason why a precedent is recognized is that the verdict of the judiciary is assumed to be correct.

The use of precedents helps the litigant gain confidence in the judicial system.

The administration of the judicial decision becomes just and fair.

General Principle of Doctrine of Judicial Precedent

There are two rules that apply to the doctrine of judicial precedents:

1. **The first rule says that a court which is lower in a hierarchy is completely bound by the decisions of courts which are above it.**
2. **The second rule states that higher courts are bound by their own decision in general in matters of related to precedence.**

High Court

. **The decisions of the high court are binding on all subordinate courts. In case of a conflict between two benches of**

similar authority, the latter decision is to be followed.

- **The more the number of judges on a bench, the higher their authority.**
- **The decision of one high court is not binding on other high courts.**
- **The Supreme court is the highest authority and its decisions are binding on all other courts. Article 141 of the constitution says that any law decided by the supreme court shall be binding on all courts of the country.**

Supreme Court

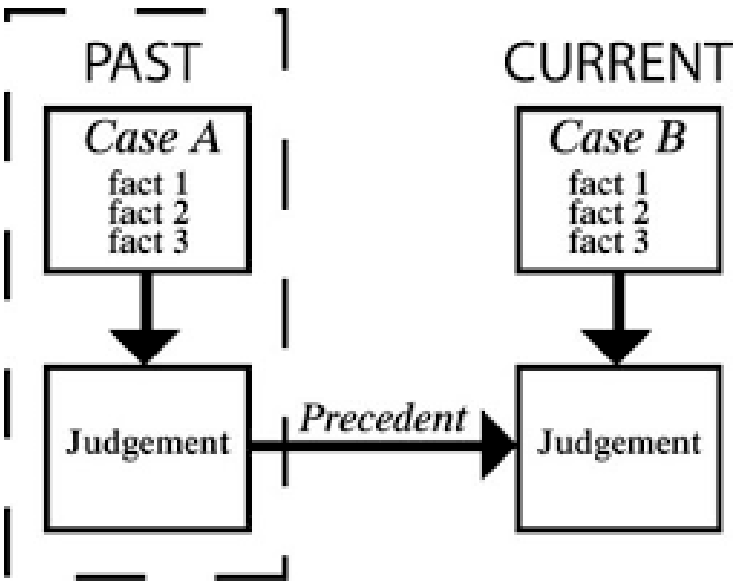
Article 141 states all courts are legally bound to the Supreme Court judicial decisions with the exception of Supreme Court itself.

The Supreme Court is not bound by its own decisions.

However, the Supreme Court recognises that its earlier decisions cannot be deviated

from, except in case of extenuating circumstances.

If an earlier decision is found to be incorrect, the Supreme Court will deviate from it.



Types of Judicial Precedent

1. Declaratory and Original Precedents

As John William Salmon explained, a declaratory precedent is one where there is only application of an already existing rule in a legal matter.

Whereas, an original precedent is one where a new law is created and applied in a legal

matter. Original precedents are responsible for the creation of new laws.

2. Persuasive Precedents

A persuasive precedent is a type of precedent where the judge is not required to follow the precedent in a legal matter but will take the precedent heavily into consideration.

So a persuasive precedent is not a direct source of law but is considered a historical source of law. In India, the decisions of one high court can act as persuasive precedents in other high courts.

3. Absolutely Authoritative Precedents

In an absolutely authoritative precedent, the judges have to compulsorily follow the judicial decision of the precedent in a case of law.

In other words, even if the judge finds the precedent to be a wrong judgment, he is

legally bound to give the same judicial decision.

For e.g. – Every court in India is absolutely bound by decisions of courts superior to itself because of hierarchy.

4. Conditionally Authoritative Precedents

A conditionally authoritative precedent is one where generally the precedent is absolutely authoritative but in certain special circumstances, like a supreme court decision, it can be disregarded. The court can disregard the decision if it is a wrong decision, or goes against the law and reason.

Arbitration is a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute. In choosing arbitration, the parties opt for a private dispute resolution procedure instead of going to court.

Its principal characteristics are:

- ***Arbitration is consensual***

Arbitration can only take place if both parties have agreed to it. In the case of future disputes arising under a contract, the parties insert an arbitration clause in the relevant contract.
An existing dispute can be referred to arbitration by means of a submission agreement between the parties. In contrast to mediation, a party cannot unilaterally withdraw from arbitration.

- ***The parties choose the arbitrator(s)***

The parties can select a sole arbitrator together. If they choose to have a three-member arbitral tribunal, each party appoints one of the arbitrators; those two persons then agree on the presiding arbitrator. Alternatively, the Center can suggest potential arbitrators with relevant expertise or directly appoint members of the arbitral tribunal. The Center maintains an extensive roster of arbitrators ranging from seasoned dispute-resolution generalists to highly specialized practitioners and experts covering the entire legal and technical spectrum of intellectual property.

- ***Arbitration is neutral***

In addition to their selection of neutrals of appropriate nationality, parties are able to choose such important elements as the applicable law, language and venue of the arbitration. This allows them to ensure that no party enjoys a home court advantage.

- ***Arbitration is a confidential procedure***

It protect the confidentiality of the existence of the arbitration, any disclosures made during that procedure, and the award. In certain circumstances, it allow a party to restrict access to trade secrets or other confidential information that is submitted to the arbitral tribunal or to a confidentiality advisor to the tribunal.

- *The decision of the arbitral tribunal is final and easy to enforce*

Laws at Workplace

Introduction

The Constitution of India (the "Constitution") is the cornerstone of individual rights and liberties, and also provides the basic framework within which all laws in India, including laws relating to labour and employment, must operate.The Constitution guarantees certain fundamental rights to individuals such as the right to life, privacy, equality before the law and prohibition of discrimination in public education and employment on the basis of religion, sect, gender and caste.

The Constitution recognizes 'right to livelihood' as an integral part of the fundamental right to life. In addition to fundamental rights, the Constitution also envisages certain 'directive principles' which serve as a guide to the legislature towards fulfilling social and economic goals

The ID Act or the Industrial Disputes Act, 1947:

The scope of this legislation, strictly speaking, is restricted to workmen alone.

However, the principles and processes laid down in this legislation have been replicated in other statutes with wider application.

The IDA covers industrial disputes, industrial action (i.e. strikes and lockouts), regulation of retrenchment, layoffs,

closure, transfer of undertakings, envisages the constitution of a works committees and also regulates changes in certain service conditions of workmen.

S&E Act / Shops and Commercial Establishments Act:

The S&E Act is State specific – almost all States in India have enacted their own S&E Act.

The S&E Act regulates service conditions of employees engaged in shops and commercial establishments, which includes most private companies and firms.

It regulates hours of work, payment of wages, overtime, leave, holidays and other conditions of service.

Provident Fund and Miscellaneous Provisions Act, 1952:

The EPF Act read with all rules and schemes framed thereunder is one of the major social security legislations in India.

Under the EPF Act, both the employer and employee are required to contribute 12% of an employee's 'basic wages' to the Employees Provident Fund / EPF.

The employer's contribution is also directed to a pension fund, from which an employee would be entitled to monthly pension upon retirement.

The EPF and pension scheme has extensive rules in relation to contribution and withdrawal of funds.

Wages Act / Payment of Wages Act, 1936:

The Wages Act regulates the mode and method of payment of wages to certain categories of employees, namely, those to whom the payable wages do not exceed INR 24,000 (~USD 330) per month, and to those employed in factories and industrial establishments. The Wages Act provides that wages must be paid without deductions of any kind except certain authorized deductions, such as taxes on income, fines, or deductions owing to absence from duty.

FA Act / Factories Act, 1948:

The FA Act was enacted to regulate working conditions in factories where manufacturing operations are undertaken.

It has extensive provisions in respect of health, safety and welfare of persons who work in factories.

MW Act / Minimum Wages Act, 1948:

The MW Act provides for the payment of minimum rates of wages to employees working in specified kinds of employment, termed ‘Scheduled Employment’.

Under the MW Act, the Government is required to fix industry-specific daily and monthly minimum wages, depending on the skill of the employee.

Once minimum wages have been fixed, an employer is required to pay to every employee engaged in Scheduled Employment, wages at a rate that is not less than the minimum rate of wages fixed by the concerned Government for that class of employees.

IESO Act/Industrial Employment (Standing Orders) Act, 1946:

The IESO Act is generally applicable to every industrial establishment wherein 100 or more workmen are employed, subject to any specific State rules in this regard.

The IESO Act requires employers in industrial establishments to formally define conditions of employment, such as classification of workmen, manner of intimating wage rates, working hours, leave periods, recruitment, shift working, attendance, procedure for availing leave, transfer of workmen, termination of workmen, and inquiries for misconduct.

Conditions are referred to as the 'Standing Orders'. The State specific rules framed under the IESO Act provide for 'Model Standing Orders', which are a set of default conditions applicable to those industrial establishments that have not framed their own Standing Orders or to those industrial establishments that are awaiting certification from the Government on their own Standing Orders. In most cases, the internal employee handbook/ service regulations of the employers are generally customized and filed as the Standing Orders of that establishment. The IESO Act however provides that while the Standing Orders adopted by an employer need not necessarily be a duplication of the Model Standing Orders, they should, as far as practicable, be in conformity with the same.

Trade Unions Act:

The Trade Unions Act provides for registration of a trade union and the rights and obligations of a registered trade union.

The minimum number of persons required to apply for registration of a trade union is 7; however, a trade union cannot be registered unless at least 10% of the workmen or 100 workmen (whichever is lesser, and subject to a minimum of 7 workmen), employed in an establishment are its members. While an employer is not legally bound to recognize a trade union or encourage collective bargaining, a registered trade union can enter into collective bargaining agreements with the employer for better wages and service conditions.

CLRA/Contact Labour (Regulation and Abolition) Act, 1970:

The CLRA provides for regulation of contract labour in establishments and provides for its abolition in certain circumstances.

A 'workman' is deemed to be 'contract labour' if he is hired in connection with the work of an establishment, by or through a 'contractor', with or without the knowledge of the 'principal employer".

The term contractor is defined to mean a person who undertakes to produce a given result for an establishment **through contract labour or who supplies contract labour for any work of the establishment.** The manager or occupier

of the establishment is the principal employer. Under the CLRA, every principal employer is required to make an application in the prescribed form, for the registration of the establishment with the labour authorities. Every contractor under the CLRA Act must also be licensed and should undertake work through contract labour only in accordance with such license. The contractor is required to pay wages and provide facilities for the welfare and health of the contract labour, which includes providing rest rooms, canteens, wholesome drinking water, toilets, washing facilities, and first aid facilities in every establishment. The above compliances vary depending on the number of contract labour engaged in an establishment. It is important to note that as per the CLRA, in case the contractor fails to pay wages to the contract labour, the principal employer will be responsible for the same.

New Developments

The Maternity Benefit (Amendment) Act, 2017 (that amended the Maternity Benefit Act, 1961 ("MB Act"))

Came into force on April 1, 2017.

Key changes include:

(i) increased paid maternity leave from 12 weeks to 26 weeks for women employees, for the first two children

(ii) recognition of the rights of an adopting mother and of a commissioning mother (using a surrogate to bear a child) to claim paid maternity leave of 12 weeks;

(iii) a ‘work from home’ option after the maternity leave expires;

(iv) effective July 1, 2017, mandatory crèche (day care) facilities for every establishment employing 50 or more employees, and the right of mothers to visit the crèche 4 times per day. Employers are also obligated to educate employees about these benefits.

The Rights of Persons with Disabilities Act, 2016 (“RPD”)

was notified on April 19, 2017 and rules notified on June 15, 2017. The Act was enacted in furtherance of India’s obligations under the United Nations Convention on the Rights of Persons with Disabilities. Though the RPD Act does not impose any kind of compulsory reservation of posts in the private sector for persons with disabilities, it does seek to incentivise private sector establishments to engage persons with disabilities. The Act requires private establishments to frame an ‘equal opportunity policy’ which would detail the facilities and amenities to be provided for persons with disabilities, so as to enable them to effectively discharge their duties.

Further, the head of the establishment is required to ensure that persons with disabilities are not unduly discriminated against. The establishments are also required to conform to certain building standards, website and document related standards to ensure greater accessibility for persons with disabilities.

The Payment of Gratuity (Amendment) Act, 2018 came into force on March 29, 2018

The maximum limit of the gratuity benefit has also been increased from INR 1,000,000 (about $14,000) to INR 2,000,000 (about $28,000). Further, as per recent declarations in the Union Budget 2019, it is now proposed to increase this gratuity benefit to INR 30,00,000 (about $42,000).

As part of a major rationalising and simplifying exercise, India has been attempting to consolidate about 44 Central laws into 4 comprehensive labour codes.

Drafts of three such codes, the Code of Wages Bill, 2017 (which seeks to consolidate 4 key labour laws, namely, the MW Act, the Bonus Act, Wages Act and the ERA),

The Draft Labour Code on Social Security (which seeks to consolidate major social security legislations such as the EPF Act and ESI Act)

Code on Occupational Safety, Health and Working Conditions (which seeks to overhaul major legislations such as the FA Act and the CLRA Act) are in the public domain, with the Code of Wages Bill, 2017 being introduced in the legislature.

Efforts are also being undertaken to simplify labour law compliances by the introduction of a unified portal

'Shram Suvidha Portal', and the consolidation of forms under various legislations. The Government is also undertaking efforts to increase EPF contributions by the

Government, in case of certain instances such as women employees and first-time workers.

In addition, there are certain significant amendments under State legislation, including the enactment of a new S&E Act in Maharashtra, the Maharashtra Shops and Establishments(Regulation of Employment and Conditions of Service) Act, 2017 as well as proposed amendments to the The Tamil Nadu Shops and Establishments Act, 1947 which would require establishments with 10 or more employees to seek registration with the labour authorities.

In another significant move, there have been major judgments relating to the right of privacy of individuals and data protection in India – it is expected that India will soon put in place a comprehensive legislation on data protection that protects the individual right to privacy.

Brief Overview of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("SHW Act")

As discussed above, the SHW Act provides for a detailed complaint and inquiry mechanism in case of sexual harassment complaints at the workplace.

Though it is not an anti-discrimination legislation perse, the SHW Act recognizes that women may be especially vulnerable to workplace, discrimination and harassment – thus, the scope of the SHW Act only extends to complaints raised by 'aggrieved women' that pertain to the 'workplace' (it is important to note that the SHW

Act is not a gender neutral legislation). That said, several companies do frame gender neutral policies on both general and sexual harassment.

EMPLOYMENTCONTRACTS

Grounds for Termination There are various modes of termination of employment that are recognized in India, including:

(i) Expiry of affixed term contract/mutual separation;

(ii) Resignation by an employee;

(iii) Retirement or Superannuation;

(vi) Layoffs, termination due to transfer of business/closure of an undertaking/ organizational restructuring;

(v) Termination by an employer for 'cause'. Termination for 'cause' may involve one or more of the following:

•Established breach of employment contract and/ or internal policies.

• Employee having committed any criminal offence / authorities having initiated criminal proceedings.

• Employee's inability to fulfill material obligations of his job

• Misconduct

• Inefficiency/ poor performance, after undertaking sufficient processes such as a performance improvement plan

• Loss of confidence by management.

• Abandonment of employment / continuous absenteeism

Collective Dismissals

'Collective dismissal' of employees is permitted under Indian labour laws, only in certain circumstances and upon satisfaction of specified conditions. In this context, the ID Act describes the following processes with respect to workmen:

(i) 'retrenchment', which is defined as termination of workmen's services for any reason whatsoever, otherwise than as punishment inflicted by way of disciplinary action;

(ii) 'lay-offs', which is defined as failure, refusal or inability of an employer, on account of shortage of power, raw materials, break-down of machinery, natural calamity or any other reason beyond the employer's control, to give employment to a workman.

The ID Act also prescribes conditions for transfer / closure of an undertaking that would result in redundancies.

In case of retrenchment, depending on the number of workmen engaged, employers are required to either

notify/seek prior approval of, the concerned labour department.

Also, employers are required to provide employees who have been in service for at least 1 year, notice of 1 or 3 months (or equivalent pay) and also 'retrenchment compensation' calculated at 15 days wages for every completed year of service.

It is important to note that in case of retrenchment, employers follow the **"last in, first out"** principle, wherein the shortest-serving employees will be the first to be terminated.

In a layoff situation, prior approval of the concerned Government may be required, and compensation would have to be paid, in the manner prescribed.

Laid off workmen can also be retrenched in the manner prescribed under the IDA.

The above stipulations are all in the context of workmen – in case of managerial employees, there are no specific requirements under statute, and any dismissal would be as per the terms of their contract.

Individual Dismissals

As per the IDA, any dismissal of an individual workman would also be considered 'retrenchment' as described above. Accordingly, (depending on the number of workmen engaged at the establishment), the employer would have to provide prior notice of termination of either 1 month or 3 months, or equivalent wages in lieu thereof.

In addition, 'retrenchment compensation' would have to an be paid, at the rate of 15 days wages for every completed year of service.

However, in case of employees who are dismissed for misconduct (provided the employer conducts an internal inquiry prior to such dismissal) no prior notice of termination or retrenchment compensation would be required.

In the case of employees other than workmen (i.e. managerial cadre), provisions of the employment contract and the relevant S&E Acts would have to be considered.

Since India does not recognize at-will employment, termination of employment without providing any prior notice at all (or equivalent pay) would typically render the contract of employment as an 'unconscionable bargain', and hence, illegal.