EMPLOYER- EMPLOYEE RELATIONSHIP: INDIAN LABOUR LAWS

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INTRODUCTION

The Indian Labour legislations were enacted under the overarching framework of the Constitution of India, with a tradition of binding precedents and an adversarial system of conducting a trial. India has a wide variety of Labour laws which are essential for the smooth functioning of industrial relations in the country. Employees occupy a very strategic place in an organization because of their centrality to the production process. They contribute a very indefinable role both in the achievement of various organization goals and objectives as well as the government economic Programme. However, for employees to perform their crucial role effectively and efficiently there must exist a strong cordial relationship between the employer and employee of such organizations.[1]

Proper regulation of employee-employer relationships is one of the key aspects of a progressive society. India's dynamic employment laws have their roots in the promotion of social justice. Employment laws in India seek to achieve the objective to create conditions which are conducive to economic growth, establish social, political and economic justice, to maintain industrial harmony and to ensure rights of workers to bargain collectively for the betterment of their service conditions.

HISTORICAL BACKGROUND

The history of Labour legislation in India is naturally interwoven with the history of British colonialism. The Industrial/Labour legislations enacted by the British were primarily intended to protect the interests of the British employers. Considerations of British political economy were

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[1] Sen, Gupta, Anil K. and Sett, P.K.; (2000) "Industrial relations law, employment security and collective bargaining in India: myths, realities and hopes"; Industrial Relations Journal, volume 31, Number 2, June, Oxford: Blackwell Publishers, pp.144-153

naturally paramount in shaping some of these early laws. The earliest Indian statute to regulate the relationship between employer and his workmen was the Trade Dispute Act, 1929 (Act 7 of 1929). Provisions were made in this Act for restraining the rights of strike and lock out but no machinery was provided to take care of disputes.[2]

Labour legislations enacted post-independence of India have sought to tackle various problems relating to working conditions, industrial safety, hygiene and welfare, wages, trade unionism, social security, etc. Laws were also enacted to meet the special needs of specific industries and commercial establishments, such as mines, plantations, factories, shops and establishments, etc.

PROVISIONS UNDER THE CONSTITUTION

The Constitution of India provides the jural basis for laws regulating employment and labour in India (which are collectively also referred to as "industrial laws" or "Labour Laws"). The fundamental rights enshrined in the Constitution provide *inter alia* for equality before the law and for prohibition of discrimination on the basis of religion, caste, sex, etc. Similarly, the Directive Principles of State Policy laid down in Part IV of the Constitution adjure the State to *inter alia* ensure that all citizens have an adequate means of livelihood, right to education, and just and humane conditions of work, and to further ensure participation of workers in the management of industries.

The Constitution hence places emphasis on the concept of social justice as one of the fundamental objects of State policy, and these protective provisions edify the spirit of Indian industrial laws. Labour welfare[3], trade union; industrial and labour disputes[4] and factories[5] are items found in the Concurrent List of the Constitution. This means that subject to certain conditions, both the Parliament of India as well as the individual State legislatures has the power to enact laws on these matters.

[2] Nagaraju, S., Industrial Relations System in India, Chugh Publications,Allahabad, 1981

[3] Entry 24, List III, VII Schedule, Constitution Of India

[4] Entry 22, List III, VII Schedule, Constitution Of India

[5] Entry 36, List III, VII Schedule, Constitution Of India

EMPLOYMENT RELATIONSHIP IN ACCORDANCE WITH INTERNATIONAL LABOUR ORGANIZATION

The employment relationship is the legal link between employers and employees. It exists when a person performs work or services under certain conditions in return for remuneration. It is through the employment relationship, that reciprocal rights and obligations are created between the employee and the employer. It has been, and continues to be, the main vehicle through which workers gain access to the rights and benefits associated with employment in the areas of labour law and social security.[6] The existence of an employment relationship is the condition that determines the application of the labour and social security law provisions addressed to employees. It is the key point of reference for determining the nature and extent of employers' rights and obligations towards their workers.

The issue has become more and more important because of the increasingly widespread phenomenon of dependent workers who lack protection because of one or a combination of the following factors:

- Uncertainty with regard to the law
- Objectively ambiguous employment relationships
- Disguised employment relationships
- Triangular employment relationships
- Lack of compliance and enforcement.[7]

The above issues were dealt and adopted in the year 2003 & 2006 by The International Labour Organization in the International Labour Conference.[8]

SCOPE OF THE EMPLOYMENT RELATIONSHIP

[6] http://www.ilo.org/ifpdial/areas-of-work/labour-law/WCMS_CON_TXT_IFPDIAL_EMPREL_EN/lang--en/index.htm Accessed on 10th April, 2014

[7] Report V(1) of The employment relationship, Fifth item on the agenda, International Labour Conference, 95th Session, 2006, ISBN 92-2-116611-2

[8] R198 - Employment Relationship Recommendation, 2006 (No. 198), Adopted at Geneva, 95th ILC session (15 Jun 2006)

The National Commission on Labour was created in October 1999. Its terms of reference were to suggest rationalization of existing laws relating to labour in the organized sectors and to suggest umbrella legislation for ensuring a minimum level of protection for workers in the unorganized sector. With the aim of making the law universally applicable, the Commission suggested in its report that the definition of a worker should be the same in all laws. It recommended the enactment of a special consolidated law for small-scale enterprises (with less than 20 workers). This would not only protect the workers in these enterprises but would make it easier for small enterprises to comply with the law, as the Commission considered that the existing legislation, intended for large enterprises, was inadequate for this sector.[9]

A central feature of the traditional employment relationship is the hierarchical power of employers over employees. This hierarchical power combines three related elements:

1. The power to assign tasks and to give orders and directives to employees.
2. The power to monitor both the performance of such tasks and compliance with orders and directives.
3. The power to sanction both improper and negligent performance of the assigned tasks and given orders and directives.[10]

THE CONCEPT OF EMPLOYMENT

The existence of employer- employee relationship, direct or vicarious, is the sole foundation on which the labour law rests. In the case of **Chintama Rao** v. **State of M.P**[11] the Supreme Court reiterated that the concept of employment involves three ingredients:

a. Employer- one who employs or engages the services of other persons

b. Employee- one who works for another for hire

[9]Report of the Second National Commission on Labour, June 2002, at http://www.labour.nic.in/comm2/nlc_report.html

[10] The employment relationship: A comparative overview by Giuseppe Casale, International Labour Organization, 2011 ISBN 978-92-2-123302-2

[11] (1958) II LLJ 252 (SC)

c. The contract of employment- the contract of service between the employer and employee under which the employee agrees to serve the employer subject to his control and supervision.

CONTRACT OF SERVICE & CONTRACT FOR SERVICE

The contract of service is different from contract for service. According to the Halsbury's Law of England in any given case the relation of master and servant exists is a question of fact, but in all cases the relation imports the existence of power in the employer not only to direct what work the servant is to do but also the manner in which the work has to be done.[12] According to Salmond, the test of distinction between a servant and an independent contractor is the existence of a right of control over the agent in respect of the manner in which his work is to be done. A servant is an agent who works under the supervision and direction of his employer, an independent contractor is one who is own master. A servant is a person engaged to obey his employer's orders from time to time; an independent contractor is a person engaged to do certain work, but to exercise his own discretion as to the mode and time of doing it, he is bound by his contract but not by the employer's orders.

There are various tests to determine the relationship status of the employer- employee:

1. ***Control Test:*** the first test to determine the nature of relationship is control. There are majorly four ingredients of contract of service which are as follows:

   a. The master's power of selection of his servant

   b. The payment of wages or other remuneration

   c. The master's right of suspension or dismissal

   The principal requirement of a contract of service is the right of master in some reasonable sense to control the method of doing work. In the case of ***Montreal vs***

[12] Halsbury's Laws of England, Vol 22, Hailsham Edition, pg. 112

Montreal Locomotives Works Ltd[13]to decide the issue of tortuous liability on the part of the master the more complicated test of the modern industry has to be applied such as:

a. Control

b. Ownership of the tools

c. Chance of profit

d. Risk of loss

2. ***Integration Test:*** The control test started losing its authenticity during the emergence of the two other tests. In the case of **Bank Voor Handelen Scheepvaart NV** v. **Slatford**[14] it was stated that the test of being a servant does not rest on submission to orders it depends on whether the person is part and parcel of the organization

3. ***Economic Reality Test****:* This test incorporates the criteria of "*control", "integration*". This approach also known as 'multiple', 'mixed' or 'economic reality' test it states that factors such as control, integration and powers of selection are simply issues which contribute to the decision which must be based on all the circumstances.

EMPLOYMENT RELATIONS IN INDIA

Since labour laws form a part of the Concurrent List of the Constitution, both the Central as well as the various State Governments have legislated very extensively on labour issues. While the Centre has enacted over 45 (forty five) labour legislations, there is also a catena of labour legislations enacted by the State Governments. In view of the sheer volume of labour laws that are in force in India, their applicability to a particular organization is determined and affected by a variety of factors. There are the following principle factors in the determination of the issue whether such as:

- Particular person is a workman or not according to the labour legislation concerned,

[13] (1947) 1DLR 161

[14] (1952) 2 AII ER 957

- For the enforcement of the labour welfare legislations properly the determination of the actual employer of a workman.
- Nature of activity that the employees are employed in. For the determination of whether the organization is a "factory", "industry", "shop" or "establishment".
- The number of employees employed in an organization. For determination of applicability of a particular labour statute.
- The location of the organization i.e. the State in which the organization is located, since almost all the States in India have enacted State-centric labour laws, rules and regulations.[15]

The labour legislations in India are broadly divided into the following categories:

- Regulatory Legislation
- Protective Legislation
- Wage Control Legislation
- Specific Industry Legislation

A number of legislation effect employment relations. The labour laws in India not only deal with industrial relations i.e. relations between the employers and employees, but also relate to payment of wages, working conditions, social security, etc. Additionally, there are several labour laws which regulate service conditions in specific industries, such as building and construction work and mines etc. However, four important pieces of legislation have played a major role in shaping employment relations in the work place in India. They are as follows:

1. The Industrial Disputes Act, 1947
2. The Industrial Employment (Standing Orders) Act 1946
3. The Factories Act, 1948
4. The Workmen's Compensation Act 1923,

These statutes are of great significance as they have produced distinct employment relations in India in the post and pre-independence period.

[15] Report on Labour Laws In India By Amarchand & Mangaldas, New Delhi, 2009

LEGISLATION IN REALTION TO SOCIAL SECURITY

WORKMEN'S COMPENSATION ACT, 1923

The Workmen's Compensation Act has been well received by the Indian work force in the employment relations. Due to the poverty of the workers and the complexity of industry, the workers aspire for protection from accidents at the work place. This piece of legislation has emphasized that the employer shall provide adequate safety devices to reduce the number of accidents. Further, the employer must pay compensation for an accident suffered by an employee during the course of employment and in accordance with the Act.

The compensation provided by the employer under the Act in case of personal injury or death caused to a workman by accident arising out of and in the course of employment is statutory in nature. Injuries by accident also include diseases contracted in the course of employment. Such diseases may also be termed as 'occupational diseases'. The Act applies to workmen specified in Schedule II of the Act. The definition of the "workman" under the Act is inclusive in nature further states that include persons employed as drivers, persons employed in the manufacture or handling of explosives in connection with employer's trade or business, and persons employed as watchmen in any factory or establishment.[16] The provisions of the Act have been extended to cooks employed in hotels, restaurants using power, liquefied petroleum gas or any other mechanical device in the process of cooking.

This liability arises from the relationship of master and servant, which exists, between the employer and the employee. The amount of compensation has been fixed by the Act and it is not dependent on the suffering caused to the workman or on the expenses incurred by the workman in curing the illness. It is dependent on the difference between wage earnings capacity before and after the accident and it also relates to the age and disability of the workman

Accident Arising Out Of And In The Course Of Employment

[16] Section 2(n) of The Workman Compensation Act, 1923

Interpreting the phrase "accidents arising out of and in the course of employment" appearing in Section 3(1) and the doctrine of 'notional extension of the employer's premises', the Indian courts drew extensively from English decisions, for the reason that the Indian enactment was modeled on the lines of English statute. Lord Wrenbury stated a useful test in many cases is whether, at the moment of the accident, the employer would have been entitled to give the workman an order, and the man would have owed the duty to obey it such cases will fall under the ;incidents' of the employment.[17]

As a rule, the employment of a workman does not commence until he has reached the place of employment and does not continue when he has left the place of employment, the journey to and from the place of employment being excluded. It is now settled, however, that this is the subject to the theory of notional extension of the employer's premises so as to include an area which workman passes and re-passes in going to and in leaving, the actual place of work. There may be some reasonable extension in both time and place and a workman may be regarded as in the course of employment even though he had not reached or had left his employer's premises. The facts and circumstances of each case will have to be examined very carefully.[18]

These judicial trends clearly point to the fact that the "notional extension of employment" travels far beyond the workplace. More importantly, if the accident results in death, the courts generally placed a liberal interpretation on the phrase 'arising in the course of employment' with a view to give the benefit of monetary compensation to the dependents of the deceased. Thus, the judicial decisions have consistently discounted technicalities involved in the accident, including 'contributory negligence' on the part of workman and invariably fastened the liability to the employer or as the case may be the insurer.[19]

[17] St Helens Colliery vs Hewitson (1924) AC 59

[18] Saurashtra Salt Manufacturing Company vs Bai Valu Raja, AIR 1958 SC 881

[19] RAO, EM. Industrial Jurisprudence: A Critical Commentary, 2 ed., Lexis Nexis, Nagpur, 2008, Pg.819

CONCLUSION

Good employee relations providing fair and consistent treatment to all employees so that they will be committed to the organization. Companies with good employee relations are likely to have a human resource strategy that places a high value on employees as stakeholders in the business. Employees who are treated as stakeholders have certain rights within the organization and can expect to be treated with dignity and respect. The management should also give employees the freedom to air grievances about management decisions. Effective employee relations require cooperation between employer and employee's.

Participation of workers in the settlement of disputes and maintenance of peace and harmony in the workplace is seen as an innovation in employment relations in India. There is a cultural evolution from being internationally minded to becoming world minded. Thus a citizen is no more a citizen of a single country, the citizen may be considered as a corporate citizen of the global community. The concept of participation of employees in maintaining better employment relations has gained momentum. It is not only recognized in India but also throughout the world.