

The draft of the proposed National Policy on Prisons would require some changes in view of the developments that have taken place in the intervening period. For instance, the present committee is of the opinion that the enactment of a uniform and comprehensive legislation on prisons would be possible within the existing provisions of the Constitution of India, as India is a party to the International Covenant on Civil and Political Rights, 1966.

Thereafter, Government of India has constituted another committee on 26th May, 1986, namely, National Expert Committee on Women Prisoners under the chairmanship of Mr. Justice *Krishna Iyer* who has submitted its report on 18th May, 1987. This report has also been circulated to all States for taking necessary follow-up action.

In pursuance to the directions given by the Hon'ble Supreme Court in the year 1997 in case of *Sbri Ramamurthy v. State of Karnataka*⁴, the Government of India has constituted All India Model Prison Manual Committee in November, 2000 under the Chairmanship of Director General of Bureau of Police Research and Development (BPR&D) to prepare a Model Prison Manual for the Superintendence and Management of Prison in India in order to maintain uniformity in the working of prisons throughout the country.

The Government of India has constituted a high powered committee under the chairmanship of Director General, BPR&D for drafting a national policy paper on Prison Reforms and Correctional Administration on 1st December, 2005.

BPR&D has also placed a draft policy paper in the meeting of Advisory Committee on Prison Reforms held on 3rd November, 2006 for discussion to make document more viable. The BPR&D has finalized the draft national policy on prison reforms in the light of suggestions received from the States and the Advisory Committee on Prison Reforms of the BPR&D.⁵

The system of prison in India is governed by a statute enacted several decades ago; the rights of the prisoners could be located within the framework of a statute and the statutory rules. The Prisons Act and the Jail Manual therefore, were the main sources of the rights of the prisoners. The Prisons Act and Jail Manual are being inadequate; the need is felt of revamping the system of prisons. It is to be looked in drafting the national policy on prison reforms and correctional administration about reformatory aspect said by Justice *Krishna Iyer* that the State has to rehabilitate rather than avenge and re-culturalization to counter the anti-social behaviour.

EMPLOYMENT SECURITY IN CASE OF LAY-OFF AND RETRENCHMENT COMPENSATION IN INDIA

By

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The Industrial Disputes Act, 1947 contains provisions relating to the payment of compensation to the workers for lay-off, retrenchment, transfer of undertakings

and closure which are the one of the Social Security measures enacted to protect the workers from the contingency of unemployment. Lay-off arises when

4. 1997 AIR 1739

5. National Policy on Prisons <<http://bprd.nic.in/index3.asp?sslid=435&subsublinkid=151&lang=1>>

the employer, for reasons beyond his control (*i.e.*, shortage of coal, raw material, accumulation of stocks) is unable to provide employment to his workmen. Duration of lay-off must not be for a period longer than the period of emergency that compels the employer to put aside his workmen. The provisions are operative only in restrictive manner, *viz.*, to Industrial establishment where 50 or more workmen are an average employed in the calendar month preceding the year where a question of lay-off or retrenchment is raised. These provisions would not apply to seasonal establishments or to establishments where works performed intermittently. A workman whose name is on the muster roll of the establishment and who has completed not less than one year of continuous service, on being laid-off is entitled to lay-off compensation¹. The quantum of compensation so payable is 50% of the basic wages and dearness allowance that would have been payable to the workmen if he had not been laid off. The workman would be entitled to be paid compensation for all the days he has been laid-off subject to the following :

- (i) The compensation is not payable for the weekly holidays intervening during the period of lay-off.
- (ii) The compensation shall be limited to the maximum of 45 days during any period of 12 months; provided there is an agreement between the workmen and the employer that compensation shall be payable only for the first 45 days of lay-off.

The employer will be entitled to deduct from the retrenchment compensation due to the workman all the lay-off compensation paid to him during the preceding 12 months. The question whether an employer was

responsible for deliberately bring about the situation leading to lay-off or whether the workmen were laid-off in order to victimize them for some other ulterior motives, was examined in the case *Tatanagar Foundry Co. v. Their Workmen*² and the Supreme Court of India held that unless the *mala fides* on the part of the management of the employer are proved the Industrial Tribunal has no jurisdiction to ensure that a mere prudent management could have avoided the lay-off and it may be determined by the Tribunal and such findings of fact are not to be interfered with by the High Court under Article 226 of the Constitution. Right to lay-off cannot be claimed as inherent right of an employer if he cannot provide work for his workmen for a particular day or days during the continuance of his employment. The right has to be specifically provided for either by Statute or by the contract of service³. This means that in the absence of any terms in the contract of service or in the statutory rules or statutory orders an employer has no right to lay-off a workman without paying his wages⁴. It has been called a temporary discharge of the workman or a temporary suspension of his contract of service. Strictly speaking it is not so. It is merely a fact of temporary unemployment of the workman in the work of the industrial establishment⁵. Whether a lay off at any particular time is proper and legal must depend upon the circumstances of each case.

Workmen not Entitled to Lay-off Compensation in Certain Cases :

1. If he refuse to accept any alternative employment in the same establishment or in any other establishment belonging to the same owner situated in the same town or village within a radius of 5 miles from the establishment to which he belongs;

1. Section 25-C of the Industrial Dispute Act.

2. 1962 (1) LLJ P.382 (S.C.)

3. *The Steel & General Mills Co. Ltd. Addl. Dist. Judge*, 1971 Lab. I.C. 1356 (P&H High Court)

4. *Kanhaiya Lal Gupta v. Ajeet Kumar Dev*, 1967 (II) LLJ 761

5. *H.L. Kumar*, Law Relating to Retrenchment, Lay-Off and Closure, 1982, Pp.265-266.

2. If he does not present himself for work at the establishment at the appointed time;

3. If such laying-off is due to a strike or slowing down of production on the part of workman in another part of the establishment⁶.

Retrenchment Compensation :

The main idea of 'retrenchment' is that termination of the workman's service is by a voluntary act on the part of the employer⁷. A workman may claim the benefit of the provision of Section 25-F, one must prove that he has been in continuous service for not less than one year in that undertaking immediately before the retrenchment. Under Section 25-B a workman who during a period of twelve calendar months has actually worked in an industry for not less than 240 days is to be deemed to have been completed one year's service in the industry. The conditions provided in Section 25-F of the Act are required to be satisfied only in case of Workmen with such continuous service, and not in respect of others⁸. The provisions of Section 25-F of the Act apply in such cases of discharge simpliciter which require that no workman who has been continuous service for not less than one year can be retrenched until he has been given one month's notice in writing or has been paid in lieu of such notice one month's wages has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or

any part thereof in excess of six months⁹. A probationer is also a workman and is entitled to the protection of Section 25-F provided he fulfills the other requirements. A temporary employee is a "workman within the meaning of Section 2(s) of the Act and it does not appear to make a distinction, especially Section 25-F, between a permanent workman and a temporary workman for purposes of retrenchment compensation. It may be pointed out that termination on closure of an undertaking is not retrenchment¹⁰. 'Discharge' even where it is not occasional by a surplus of hands. Will be retrenchment having regard to the breadth of the definition and its annotation in 1977 (1) SCR 586. But it will not be retrenchment when the termination is by way of punishment or for misconduct¹¹. In the same manner, Lay-Off¹², Voluntary retirement¹³ which is not a mere submission of the workman to the termination of service by the management, *i.e.*, which is not a voluntary act of the former¹⁴ retirement of a workman on reaching the age of Superannuation if the contract of employment between the management and the workman concerned contains a stipulation in that behalf, termination of services of a workman on the ground of continued ill-health¹⁵ and in cases where the employee is deemed to have resigned from the ceased to be in service under Standing Orders the question which postulated retrenchment does not arise and thus such employees on termination shall not be entitled to have the benefits of Section 25-F of the Act¹⁶. The staff or labour force may become surplus due to variety of reasons

6. Section 25 of Industrial Disputes, Act, 1947

7. *C.V.A. Hydross and Son v. Joseph Sanjab*, 1967 (I) LLJ 509 (Ker. High Court)

8. *Management of Mahadev Textile Mills, Hubli v. Addl. I.T. Bangalore and another*, 1976 Lab. IC 1984 (Karn. HC).

9. *Hyderabad Construction Co., Ltd., Acetic Acid Plant, Azamabad v. Labour Court, Hyderabad*, 1980 (I) LIN 65, (A.P. High Court—D.B.)

10. *Hariprasad Shukla v. A.D. Divakar*, AIR 1957 SC 121

11. *Gujarat Steel Tubes Ltd. v. G.S.T. Maz., Sabba*, 1980 (40) FLR 152 at 198 (S.C.)

12. *Narsigivij Spng. and Mzg. Co. Ltd. v. Abdul Moboddin*, 1957 (1) LLJ 334 (L.A.T.)

13. *Jaya Jothi and Co. v. Official Liquidator*, 1963 (I) LLJ 739 (Mad. High Court)

14. *Desbikachari v. The Mart*, 1961 (II) LLJ 771 (Mad. High Court)

15. *State of Gujarat v. Labour Court*, 1968 (1) LLJ 148 (Guj. H.C.)

16. *Narsireddy v. The General Manager, APSRTC, Mushirabad, Hyd.*, 1978 Lab. I.C. 1510 (A.P. High Court)

e.g. economy rationalization, reorganization, installation of a new Labour Saving machinery, *etc.* Retrenchment is distinct from 'lay off'. Lay off does not affect the relationship of employer and employee whereas retrenchment brings about complete severance of relationship of an employer and employees¹⁷.

Critical Views on the Scheme of Lay-Off and Retrenchment :

The Lay-Off and retrenchment compensation though they are treated as Social Security benefits for the contingencies of unemployment in special conditions, they cannot be compared with the social security schemes in many points. Social Security schemes aim at providing income protection, the lay-off and retrenchment compensation scheme is essentially one aimed to improve industrial relations. The very fact that the scheme is a part of the Industrial Disputes Act puts in a different focus from the Social Security Schemes. Moreover social Security Schemes provide benefits till the contingency is liquidated. The lay-off and retrenchment compensation schemes make lumpsum payments with no machinery set up for re-employment. The Victim of this contingency is left to defend for himself. For this the employer alone is made responsible. It is noted that the contingency of unemployment resulting into lay-off whether permanently or temporarily arises on account of factors that are largely beyond the control of the employer. Sometimes they may be due to a defective labour policy of Government itself. It is doubtful that these schemes can improve industrial relations --- of course, discourage unwarranted closures and suspension of work. The entire burden of payment of compensation is on the employers and payment becomes difficult when the employers are in real financial difficulties. This scheme can neither curb the incidence of unemployment of the industrial workers nor can it ameliorate conditions of the workers to a great extent.

17. 1957 (1) LLJ 243.

The evidence collected by the National Commission on Labour (1969) showed that the Central Employees' Organization are of the view that since the existing provisions relating to lay off and retrenchment are adequate, there is no justification. For grant of additional financial compensation against the job security hazard resulting from temporary unemployment. This means that unemployment insurance may cause additional burden of cost more than the retrenchment and lay-off compensation. On the other hand, the workers insisted that the scheme should be merged with an all inclusive Social Insurance Scheme covering, *inter alia*, the contingency of unemployment. The Commission felt that the present scheme should be continued during the transitional period and the ultimate objective should be adopting a scheme of unemployment insurance for all employed persons.

The provisions to retrenchment and lay-off compensation give some relief and to prevent hasty retrenchment, certain unsatisfactory features have come to light in the course of their working. A permanent remedy may be in the form of unemployment Insurance. Due to various economic and administrative reasons the unemployment insurance scheme could not be started in India. The lay-off and retrenchment compensation is provided to a limited number of persons for a short duration. But there are persons of able-bodied or skilled or qualified having no guarantee of securing jobs.

The Indian Constitution does not guarantee for 'right to work' but guarantee under Article 21 the right to life. Some time back, the Janata Dal Government has announced for inclusion of the 'right to work' in the Fundamental Rights of the Indian Constitution. The right to life without providing the work to the able-bodied and needy persons is ridiculous. In USSR, there is no unemployment insurance but every citizen has fundamental right to work and it is the States' duty to provide

them with work¹⁸. Therefore, the question of permanent unemployment insurance does not arise. However, a short break in employment owing to retrenchment or shut down of any factory is pensionable. Soviet

Labour Legislation guarantees the right to work and permits the dismissal of a worker by management only with the agreement of factory and local trade union committee and on grounds stipulated by law¹⁹.

HUMAN RIGHTS OF PRISONERS – JUDICIAL RESPONSE

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Introduction

Human rights are based on respect for the dignity and worth of all human beings and seek to ensure freedom from fear and want. The traditional view of Human Rights limits them to civil and political rights. Presently, it emphasizes a comprehensive view of human rights, stressing both the protection and promotion of Human rights.

In the modern days, one of the important topics for discussion is "Human Rights". Across the world, the protection of human rights has attracted much attention. In every society, the recognition and protection of Human Rights is considered as a symbol of welfare to mankind. In International level there is a mandate on the nations to implement conventions relating to human rights. In India, the importance of human rights were recognized in olden days, the respect and the recognition for human rights are considered as the way of life than an obligation.

Human Rights can role at the present moment include economic, social and cultural rights. For example, the Right to Equality includes several economic, social and cultural rights. Human Rights also include a right to a good Government, right to peace, right to education, right to health and right to a clean and healthy environment. Thus, it is seen that Human Rights aim to provide protection against the autocratic powers of the State and to create a suitable environment for the development of an individual.

The right to legal services is the prisoners' fundamental right. Right to speedy trial is also a prisoner's human right. The right to speedy trial is a part of Article 21. Article 21 guarantees certain precious rights to a prisoner taken in custody by the State. The State is under an obligation to respect these rights. In the event of negligence of failure to respect them, the State becomes liable in damages. Every accused has a right to know the reasons of the charge against him, Article 21 and Article 22 provide safeguards to him. They are not only the human right of the accused, but also mandates of the Constitution of India to the State. Every accused has a right to be produced within 24 hours of his arrest. He has also a right of open trial under Section 327 of the Code of Criminal Procedure, 1973.

In India, the idea of rights of prisoners was long suppressed under the colonial rule and has only recently emerged in public discourse. The Constitution of India confers a number of fundamental rights upon citizens. The Indian State is also a signatory to various international instruments of human rights, like the Universal Declaration of Human Rights.

The Indian freedom struggle played a crucial role in initiating the process of identifying certain rights for the prisoners. After independence, the Constitution of India conferred a number of fundamental rights upon citizens. Article 21 of the Constitution guarantees the right of personal

18. Articles 12 and 118 of the Soviet Constitution.

19. *Robert Conquest*, Industrial Workers in the USSR (The Bodley Head Ltd., London, 1967), P.19.