

## LABOUR SYSTEM IN INDIA

Raj BIRBAL\*

SUMMARY: I. *Introduction*. II. *Indian Economy. In Past*. III. *Economic Reforms in India. Background*. IV. *Economic Reforms. Salient Features*. V. *Role of Growth in Employment Generation*. VI. *Constitution of India and Labour*. VII. *Kind of Employment*. VIII. *India and International Labour Organization*. IX. *Women and Child Labour*. X. *Labour Legislation*. XI. *Conclusions*.

### I. INTRODUCTION

India is a federal republic and covers the great part of South Asia. Constitutionally, India is a “Sovereign secular democratic republic”. India is a sub-continent of vast diversity in its culture and traditions, languages and beliefs. India is a vast country and the people in different languages in various dialects. India has a population of over a billion and is the second largest in the world, next to China. India is rich in culture, tradition and every type of art. At one time it was having problem of poverty and lack of education. The time has changed. The Indian Industries which were mainly set up in the post independence era by and large grew during the pre 1990 period because of a protected economy and protected market. These industries in the later half of 1990 were all of a sudden exposed to both domestic and international competition and were compelled to reorganize the resources by reengineering in all the functional areas of management including to shed their fat by downsizing or rightsizing their workforce through various methods.

\* Senior Advocate, Supreme Court of India. President National Labour Law Association.

In the last two decades or so we have been witnessing the emergence of a borderless world in the economic sense of the term, which is known to be a consequence of the policies of globalization. During 1980s and 1990s, the advanced world followed economic policies and encouraged intensification of internal and external competition in product as well services spheres, resulting in globalization of markets. Beginning with the economic reforms of British Prime Minister Margaret Thatcher in 1979, nearly the whole world is now following the policies of globalization in some or the other form, giving way to the emergence of the new economy. We can witness a comparatively free flow of international capital across nations as a natural outcome of the globalization philosophy.

## II. INDIAN ECONOMY. IN PAST

In past so many years the development of Indian industry has been marked by controls and directions exercised as per the statistic philosophy. There were severe restrictions imposed by the Indian Government on import of goods, foreign direct investment, as well as technology. Considerable emphasis was given on self-sufficient and indigenization. The public sector was expected to be taken to commanding heights so as to be a role model for employers in the private sector. In 1980s economic deregulation of the Indian economy began though somewhat half-heartedly. Correctly, open liberalization was adopted in July 1991 through its new economic policy. This policy was adopted with a view to improving the position of foreign exchange reserves by boosting exports and to reap the benefits of globalization. In 1980s and 1990s debt and deficit crises of the Indian Government became very acute and the World Bank and the IMF put conditions for granting financial assistance, which mainly related to making the economy more efficient. It was proclaimed that liberalization would make the national economy more efficient leading to, among others, increased exports and better economic health including better foreign exchange reserves. It was also expected to result to more efficacious allocation of capital in various sector of the economy.

In past several factors have contributed to India business remaining much below world class. These include: lack of aspiration to be world class, lack of vision, lack of professionalism, lack of process sensitivity, sense of collective paralysis, lack of cost consciousness, little respect for

time, among others. Most enlightened employers were aware of these limitations. They also realized a greater need to tackle the problem of outdated technology, excessive workforce, inadequacy of skills, and lack of concern for customer satisfaction, and unsatisfactory levels of productivity. Tackling these problems necessitated reorienting management systems and process apart from bringing about attitudinal changes. Vigorous downsizing of the excessive workforce became the order of the day both with the public and the private sectors. Several organization devised voluntary retirement schemes to facilitate the reform process.

### III. ECONOMIC REFORMS IN INDIA. BACKGROUND

There is a major effect of globalisation in India. Though other countries opened their economies in the 80s, and China in 1978, India continued with its protective policies till 1990. In July 1991 it embarked on the new economic policy and started making efforts to integrate the Indian economy with the world economy. Thus, the year 1991 has come to be regarded as a landmark.

During 1980s, India had a fairly good economic performance. But towards the last years of the decade, and particularly in 1990-91, Indian economy entered an unprecedented liquidity crisis. This was due to the combined effect of many factors. The Gulf war in January 1991 resulted in rising oil prices and there was a virtual stoppage of remittances from Indian workers in the Gulf. As a result of these factors, India's credit rating in international markets fell considerably. In these markets, there was an erosion of confidence in the strength of India's economy. As a result, India found it difficult to raise funds in the international markets. What was more, there was an outflow of the deposits of Non-resident Indians from Indian banks. India was on the verge of default on external payment liabilities. It had to borrow from the IMF under the standby arrangements, and also borrow from the Bank of England by mortgaging the gold reserves of the country. Emergency measures had to be taken to restrict imports. Under these circumstances, it was felt that there was no alternative but to undertake drastic economic reforms and subsequently from time to time. In the year 2001, India completed a decade of a policy of liberalization and now the Government is at the stage of a second generation of reforms.

#### IV. ECONOMIC REFORMS. SALIENT FEATURES

The broad features of the economic in India, as per a study are:

- a) The Government opened major sectors of the economy which were so far reserved for the public sector to the private sector *e.g.* telephone, power, infrastructure, defence, on exploration etcetera.
- b) Foreign investment was invited in all these sectors. Except agriculture and plantations, all sectors are today, open for foreign investments. The ceiling on foreign equity investment in corporate bodies at 40% was removed foreign equity investment up to 51% to 75% and in some cases even 100% foreign equity investment was allowed. Even in the trade, real estate and services sectors, foreign investment is now allowed. Foreign financial institutions are now allowed to invest in Indian Companies.
- c) All restrictions on the entry of the private sector into the field of infrastructure and strategic industries were removed. Industrial licensing was done away with. There is free pricing of shares, and there are no location restrictions.
- d) There is more freedom for financial institutions. They are free to charge any rate of interest depending upon the creditworthiness of a borrower, and they are also free to fix interest rates on fixed deposits. The concept of PLR (Prime Lending Rate) has been introduced in bank borrowing.
- e) By change of system more funds have been made available by the Reserve Bank of India to the banks. Banks can also approach capital markets for raising funds.
- f) In order to provide adequate infrastructure, private capital and foreign investments have been allowed in such areas as construction of roads, ports, airports, telephone services, etcetera.
- g) The Government wants to reduce its investment in the public sector enterprises, and efforts are, therefore, being made for disinvestments in this sector.
- h) Import restrictions have been reduced. In fact, from April 2001, all quantity restrictions on imports have been removed. At the same time the rates of customs tariffs have been reduced over the last few years. India signed the WTO Agreement in 1994, and has accepted the commitment to liberalise its trade regime under this agreement.

- i) Subsidies are being cut, tax rates are being reduced and the entire fiscal system is being streamlined.
- j) The office of the Controller of Capital Issues stands abolished and there is a free pricing of shares.

The Prime Minister of India announced to the nation that the government is committed to create ten crore employment opportunities over a period of seven years. The Planning Commission was entrusted with the responsibility of giving shape to this vision. The Planning Commission set up a Task Force on Employment Opportunities under the chairmanship of Montek S. Ahluwalia (Member Planning Commission) which submitted its Report in July 2001. The Employment policy in future focus not just on creating new employment opportunities in quantitative terms, but also on improving the quality of employment. There is a strong preference for employment opportunities. Some of the main recommendations made by the Task Force are:

- Accelerating the rate of growth of GDP, particular emphasis on sectors likely to ensure the spread of income to the low-income segments of the labour force.
- Pursuing appropriate sectoral policies in individual sectors which are particularly important for employment generation. These sector level policies must be broadly consistent with the overall objective of accelerating GDP growth.
- Implementing focused social programmes for creating additional employment and enhancing income generation from existing activities aimed at helping vulnerable groups that may not be sufficiently benefited by the more general growth promoting growth.
- Pursuing suitable policies for education and skill development, which would upgrade the quality of the labour force and make it capable for supporting a growth process which generates high quality jobs.
- Ensuring that the policy and legal environment governing the labour market encourages labour absorption especially in the organized sector.

## V. ROLE OF GROWTH IN EMPLOYMENT GENERATION

A central message of report of the Planning Commission is that the aggregate employment problem in the country cannot be solved except through a process of accelerated growth which would create additional demand for labour and also provide the increase in labour productively needed to achieve the much needed improvement in employment quality. Acceleration to 9% growth brings about a significant improvement in the employment situation, with a marked tightening of the labour market. In India growth rates of GDP between 8% and 9% are expected in future. East Asia achieved 8% growth over a long period. Most of these countries typically had investment rates around 35% with China's investment rates being even higher. However, the contemporary consensus is that investment rates in these countries were perhaps unnecessarily high, with evidence of wasteful investment projects. Even if the investment is not actually wasteful, it can certainly be argued that these countries invested heavily in the creation of infrastructure assets in excess of their immediate requirements. There are other examples of fast growing countries such as Chile, which have achieved rapid growth with much lower average levels of investment needed over the next ten years if India wants to see a significant improvement in the employment situation. A shift from 6.5% growth to 8% growth generates an additional employment of 14.5 million in the year 2012.

## VI. CONSTITUTION OF INDIA AND LABOUR

India has written Constitution, magnificent in its conception of basic human rights of equality before the law and of equal protection of the laws within the territory of India (Article 14 and 15). It prohibits discrimination on the grounds of religion, race, caste, sex or place of birth. Article 19 ensures all fundamental rights to its citizens including the right to form any associations or unions and the freedom to practice any profession or to carry on any occupation, trade or business. According to Article 21, no person shall be deprived of his life or liberty except according to the procedure established by law. Life has been understood as including livelihood. Article 23 prohibits traffic in human beings and other forms of forced labour. Employment of children below the mini-

imum wages would be considered to be forced labour and Article 24 prohibits employment of children below the age of 14 in any factory or mine or in any other hazardous employments. Part IV of the Constitution deals with the Directive Principles of State Policy, which is an essential and unique feature of this basic Statute. It enjoins the state to bring about a social order in which justice-social, economic and political shall conform all the institutions of national life. It desires the State to work for an egalitarian society where there is equal opportunity for all, to work and to a livelihood, where social justice prevails. The principles clearly indicate what the functions of the State should be and many things, which could not have been considered as State functions earlier, would certainly come within the legitimate scope of State duties.

Article 43 provides that the State shall endeavor to secure, by suitable legislation or economic organization, or in any other way, to all workers, agricultural, industrial or otherwise, work causing a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, that the state shall endeavor to promote cottage industries on an individual or co-operative basis in rural areas, and make provisions for securing just and humane conditions of work and for maternity relief. Also by art 43A, the state shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organizations engaged in any industry.

## VII. KIND OF EMPLOYMENT

Employment in India falls into two distinct categories viz:

- 1) Employment under the State;
- 2) Employment in the private sector.

### 1. *Employment under the State*

The employment under the State falls under three distinct categories. The first category is of public servants, and these are the judicial, civil, military and the paramilitary services. These services perform the sovereign functions of the State, namely, the judicial and civil administration, the defense, the police and the para-military services. The second cate-

gory consists employees of the Public Sector Corporation. These corporations are set up to facilitate the performance of the socio-economic activities expected to be undertaken by the state government in furtherance of the various socio-economic objectives spelt out in Part IV of the Constitution. Lastly, there are the government companies and societies specially set up for the production of goods and services again in the furtherance of the aforementioned objectives. All the services referred to in the first category are manned by regular government servants at different levels and perform traditional governmental functions, classified either as public servants or civil servants. Their services are cadre-based with specific terms and conditions of service. Their services are based on status not on contract and their services cannot be terminated except according to procedure prescribed under the Constitution. The employees in the second and third categories are primarily carrying on the functions associated with industry and commerce, and no employees falling under managerial categories would be considered to be workmen under the Industrial Disputes Act 1947.

## *2. Employment in private sector*

If the employees in this category are covered by the definition of the word “workman” under the Industrial Disputes Act 1947, and the establishment they are working in is an industry under that Act, they would be workmen within the meaning of that Act. A public servant or a civil servant in that first category has total security of employment and for any arbitrary action taken against him in violation of the service rules applicable, he has access to an appropriate forum for remedy at whatever level his employment is. Similarly, an employee in the second category, even an officer or a supervisor, who is not a workman, has recourse to a constitutional court for remedy against any arbitrary action of the state.

The employees of the first category i.e. Government and the Governmental employees have the protection of law to the effect that their services cannot be terminated by the employer without just a reasonable cause. The termination may be due to grounds like retrenchment on being surplus, on proved serious misconduct, retirement on reaching the age of superannuation, etcetera. Their salary and emoluments are fixed by the Government through periodical Wage Commissions. These em-



ployees on being not satisfied with the employer's action of termination of service, none granting of promotion, etcetera, is subject to challenge before the court of law.

The other category, Non Governmental private organizations is sub-divided in two sub-categories i.e. persons who are workmen who are doing clerical, manual, technical and operators duties. This category has full protection of labour laws. Termination of their services cannot be done without due procedure of law. In certain cases even the prior permission of the Government or of the Industrial Tribunal may be required to terminate the services. While retrenching the services of the employees, they are required to be provided monetary compensation depending upon the length of service on the last drawn salary, apart from of law "first come last go". The services of these classes cannot be dismissed for misconduct unless a detailed in-house enquiry is conducted known as departmental enquiry by the employer. Before the enquiry, the employee is served with a charge-sheet specifying the charge. During enquiry, the burden is on the employer to prove the charges by leading evidence of its witnesses who are subject to cross-examination by the workman. The workman is also entitled to lead his evidence in defense. The service conditions of the workmen cannot be changed without prior notice and subject to his consent or permission of the Industrial Tribunal. A very large labour force is in is in this category. They have the protection through labour legislations like the Industrial Disputes Act, 1947, Shops & Establishments Act, etcetera.

Another class of work force is executives i.e. Managers and Senior Managers and very Senior Managers of big and reputed Companies. Their relationship with the employer is purely contractual. They are given very high salaries and perquisites. They have the burden behind the development of the Company and Gross Domestic Product of India. Their continuance in the organization and emoluments depends on their results and output. They do not have the protection of law and their services are terminable by notice from either side. The purpose behind the same is that the Company should have the free hand in deciding its top executives the brand of the Company and the policy makers which is necessary for the growth and development of the Company. While a workman has recourse to a tribunal, a supervisor or an officer has no remedy beyond his contractual terms, and even where they are breached, his relief is only remedy or recourse for damages and not for reinstatement.

### VIII. INDIA AND INTERNATIONAL LABOUR ORGANIZATION

The International Labour Organisation (ILO) was established with the adoption of the Constitution of the ILO by the Paris Peace Conference of 1919. The total number of members of this organization at that time was 42 including India. At present the Organization has a total membership of 174 states. The first International Labour Conference was held in Washington D. C., in 1919. With the formal dissolution of the league of Nations the ILO entered into formal relationship with the United Nations after getting the approval of International Labour Conference 1946 and General Assembly of the United Nations in 1946. ILO office has been in India, for over 75 years. The Area Office started functioning in New Delhi in November 1928. The Bangkok Regional Office of ILO, of which the Delhi Area Office is now a part, came much later, the Delhi Area Office is twice as old as the Bangkok Regional Office. There is similarity of approach between what is contained in the Constitution of India and the Constitution of the International Labour Organisation, supplemented by the Declaration of Philadelphia. The 91st Session of International Labour Conference was held at Geneva in June, 2003. A delegation led by Union Labour Minister attended the Conference.

ILO and India have an enduring and active relationship which has been marked by close and dynamic co-operation over the years. India is a regular member of almost all the standing Tripartite Industrial and Analogous Committee which assist the Governing Body. These Committees deal with some of the important industrial sectors. India has actively supported and participated in ILO's Technical Co-operation Programmes. ILO's technical co-operation in India covers various fields of relevance to Indian Labour such as employment, occupational safety & health, improvement of working conditions, upgradation of training facilities, management consultancy development, small enterprise programmes for women and the urban poor, family welfare programmes, vocational hi-tech training, workers' education, etcetera. ILO's technical assistance is also provided to India in conducting feasibility studies, design of projects and in the organization and implementation of training programmes and workshops where ILO experts function as resource persons. Under the new Active Partnership Policy of the ILO collaboration between the ILO and India is supported by technical inputs from the multi-disciplinary teams in New Delhi and Bangkok as well as by technical departments at ILO Head-

quarters. During the year, technical specialists provided advisory services in international labour standards, labour statistics and also discussed areas of possible collaboration in the future. The Government, together with Workers' & Employers' Organisation, worked closely with the ILO in identifying the major country objectives for the ensuing years. India also provides technical manpower for ILO activities. Several national experts were awarded contracts for undertaking studies in various fields.

### IX. WOMEN AND CHILD LABOUR

Women and Children, who represent 67.7 percent of the country's total population, constitute the most important target groups in the present day context of developmental planning. A task force on Women and Children has been constituted to review the existing legislation and the Government Schemes for improving the asset base of women to improve their social status. Participation of women in socio-economic activities is a common practice in the developed as well as the developing countries of the world. Women are known to work on farms, roads and building and construction, and of late in factories manufacturing garments and electronic assembly plants. Skilled women workers also have been working in traditional village industries either as self employed or as paid workers. In hill areas, search for forest products including fuel engages a fairly large number of women. The majority of women work in the unorganized sector for low wages.

There are about 14 principal labour laws under which protection is extended as women. Special employment programmes are being implemented by the Government. Child Labour though undesirable persists in various employments on account of Social economic and Compulsions. Bulk of the child labour is engaged in rural areas in agriculture and allied employments. According to 2001 census there were 1.25 crore working children in the age group of 5-14 as compared as the total child population of 25.2 crore of which 1.07 crore working children are in the age group of 10-14. The estimated number of working children in the country was 10.4 million according to the Estimates, which has now, become an important work force for present and future. The Government is committed to the goal of elimination of child labour. Considering the magni-

tude and the nature of the problem, a gradual and sequential approach has been adopted to withdraw and rehabilitate children beginning with those working in hazardous occupations and processes. The Child Labour (Prohibition & Regulation) Act, seeks to prohibit employment of children below 14 years in hazardous occupations and processes and also regulates the working conditions of children in other employments.

## X. LABOUR LEGISLATION

Labour Legislation denotes a body of laws dealing with employment and non-employment, wages, working conditions, industrial relations, social security, labour welfare, etcetera, for working class. The objective of Labour Legislation is two fold, viz:

- 1) To improve the service conditions of industrial labour so as to provide for them the ordinary amenities of life and by that process and;
- 2) To bring about industrial peace which could in its turn accelerate productive activity of the country resulting in its prosperity.

Some of the important Labour Legislations are as under:

### 1. *The Apprentices Act, 1961*

The Act seeks to provide for regulation and control of the training of apprentices and connected matters. The main provisions of the Act relate to the obligations of the employer for training and carry out his obligations under the contract of apprenticeship relating to the payment of stipend to the apprentice at not less than the minimum rate as laid down under the Apprenticeship Rules and also responsible for the health, safety and welfare of the apprentices.

### 2. *The Child Labour (Prohibition and Regulation) Act, 1986*

The main object of the Act is to prohibit the engagement of children (who have not completed fourteenth year of age) in certain employments and to regulate the conditions of work of children in certain other employments. The Act envisages that no child shall be employed or permit-

ted to work in any of the occupations set forth in part the Schedule to the Act. Through a Notification the working conditions of children have been regulated in all employments, which are not prohibited under the Child Labour (Prohibition & Regulation) Act, 1986 Through later Notification, the Schedule has been substantially enlarged to add six more occupations and 33 processes bringing the total to 13 occupations and 57 processes respectively. Section 5 of the Act provides for the constitution of a Child Labour Technical Advisory Committee to advise the Central Government for the purpose of addition of occupations and processes to the Schedule of the Act.

### *3. The Contract Labour (Regulation and Abolition) Act, 1970*

The Act aims at regulating the employment of contract labour in certain establishments. It also provides for the abolition of contract labour in certain circumstances. The Act applies to every establishment in which 20 or more workmen are employed or were employed on any day in the preceding 12 months as contract labour and to every contractor who employed or had employed for such a period 20 or more workmen. The appropriate government can extend the applicability of the Act to any establishment or contractor employing less than 20 workmen. In the State of Gujarat, the Act has been extended to principal employers employing 10 or more contract labourers and contractors employing 10 or more employees. Besides providing for the registration of establishments of the principal employer employing contract labour and the licensing of contractors, the Act also provides for facilities which the employer should provide relating to health and welfare of contract labourers, such as canteens, rest rooms, first-aid facilities, drinking water and other essential facilities. It also provides that if the contractor fails to do so, then the principal employer shall be responsible to provide them; he may, however, recover expenses incurred in this regard from the contractor. Every contractor and even sub-contractor should obtain a licence before undertaking any work through contract labour. The responsibility of wage payment is that of the contractor. However, it is the duty of every principal employer or his representative to ensure that wages due to the contract labour are distributed in the manner prescribed by the Act. Under the Rules (Central) made under the Act, wages are to be paid without any deductions except those permitted under the Act.

#### 4. *The Employees' Provident Fund and Misc. Provisions Act, 1952*

The Act is one of the important social security laws in India. This law is a social legislation which is designed to insure workmen against old age and infirmity. Three schemes have been framed under this law; the provident fund scheme, the family pension scheme, and the deposit-linked insurance scheme—all for employees of factories and other establishments to whom this enactment applies—. The Act applies to any factory relating to any industry specified in Schedule to the Act and in which 20 or more persons are employed, and also to other establishments employing 20 or more persons which may be specified by the Central Government by a notification in this regard. The Act applies to all those employees whose monthly pay (which is defined to include basic wage plus DA, cash value of food concessions, if any, plus retaining allowance, if any) does not exceed Rs.6500/-. The Family Pension Scheme has been replaced by the Employees Pension Scheme, 1995.

#### 5. *The Employees' State Insurance Act, 1948*

The Act is a pioneering measure in the field of social insurance in the country. It was enacted to provide for certain benefits to employees in case of sickness, maternity, and employment injury and to make provisions for certain other related matters. The Act extends to the whole of India except the State of Sikkim and applies to all factories, other than seasonal factories, run with power and employing 20 or more persons. The appropriate Governments, are, however, authorized to extend it partially or wholly to any establishment or class of establishments—industrial, commercial, agricultural or otherwise. It covers persons employed directly or indirectly as also the clerical staff but does not apply to members of the Armed Forces or to persons whose remuneration in the aggregate exceeds Rs. 7,500/- a month. The wage ceiling for coverage under ESI Scheme is Rs.7500/-. The Act has also been extended to new classes of establishments, viz, power using factories employing 10 or more workers and non power using factories employing 20 or more workers, shops, theatres, cinemas, hotels-restaurants, motor transport undertakings and newspaper establishments employing 20 or more persons in a number of States. The Act is being implemented area-wise in a phased manner. The ESIC Scheme is operated in 678 centers situated in 29 States/Union Territories.

### 6. *The Equal Remuneration Act, 1976*

The main object of this Act is to provide for the payment of equal remuneration to men and women workers and for the prevention of discrimination on the ground of sex, against women in the matter of employment and for matters connected therewith or incidental thereto. The Act extends to the whole of India. Under this Act, no employer shall pay to any worker, employed by him in an establishment or employment, remuneration, whether payable in cash or in kind at rates less favourable than those at which remuneration is paid by him to the workers of the opposite sex in such establishment or employment for performing the same work or work of similar nature. "Same work or work of a similar nature" has been defined as work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions, by a man or a woman and the differences, if any, between the skill, effort and responsibility required of a man and those required of a woman are not of practical importance in relation to the terms and conditions of employment. In case, before the commencement of this Act, the remuneration for men and women were being paid differently, then the higher (in cases where there were two rates) or the highest (in cases where there were more than two rates) of such rates would be the rate at which remuneration would be payable, on and from such commencement, to such men and women workers as may be prescribed. No discrimination is to be made while recruiting men and women workers for the same or a similar nature of work except where the employment of women in such work is prohibited or restricted by or under any law for the time being.

### 7. *The Factories Act, 1948*

The main objective of the Act is to ensure adequate safety measures and to promote health and welfare of the workers employed in factories. It also seeks to prevent haphazard growth of factories. The Act extends to the whole of India and applies to all establishments carrying out manufacturing process and employing 10 or more workers where power is used and to establishments carrying out manufacturing process and employing 20 or more workers where power is not used. The State Governments are, however, empowered to apply the provisions of the Act to any

premises, irrespective of the employment therein, where manufacturing process is carried on except where the work is done by the worker solely with the help of the members of his family. For the purpose of enforcement of various provisions of the Act, the State Governments appoint persons with the prescribed qualifications as Inspectors/Certifying Surgeons in respect of the local limits assigned to each of them.

#### 8. *The Industrial Disputes Act, 1947*

It is important Act dealing with the rights of workers and protection of their service conditions. It provides machinery for settlement and adjudication of industrial dispute between the workers and management of Industries. The Act does not confer substantive rights on workmen, except in cases of lay off, retrenchment, closure and transfer. This law provides a conciliation-adjudication-arbitration model of collective as well as individual disputes resolution. The frame work and actual working of the adjudicatory bodies under the IDA have been discussed in Chapters 5 and 6. Section 33C of the IDA was added in the IDA in 1964 to lay down a procedure for recovery by a workman of money due from his employer. The provision of this section, therefore, is in the nature of an executive provision. This section also provides for the computation and determination of the amount of benefit to which the workman is entitled. It applies to monetary as well as non-monetary benefits. Sub-section (1) of Section 33C provides the procedure for the recovery of any money due under a settlement or an award or under the provisions of Chapter V-A or V-B of the Act. It is the main Labour Act of the Country.

#### 9. *The Maternity Benefit Act, 1961*

The Act regulates the employment of women workers in certain establishments for certain period before and after child birth, and provides for maternity and certain other benefits for them. The maximum period for which the maternity benefit is available to any woman worker is 12 weeks of which not less than six weeks shall precede the date of her expected delivery. In addition, a medical bonus of Rs.250 is also payable if no pre-natal confinement and post-natal care is provided by the employer free of charge. Section 6 of the Act contains provisions for



claiming the payment of maternity benefit. The Act lays down that the amount of maternity benefit for the period preceding the date of expected delivery is payable in advance on production of proof by the woman that she is pregnant. In the case of miscarriage, a woman is entitled to leave with wages at the rate of maternity benefit for a period of six weeks immediately following the day of her miscarriage. In case of illness arising out of pregnancy, delivery, premature birth of a child or miscarriage, in addition to the period of absence specified above, the woman is entitled to leave with wages at the rate of maternity benefit for a maximum period of one month. These benefits are available to the women workers irrespective of the number of births. The Act declares that any dismissal or discharge of a woman during her maternity leave except on grounds of prescribed gross misconduct is an unlawful act. If such a dismissal or discharge takes place, the inspector appointed under the Act may pass such orders as are just and proper.

#### 10. *The Minimum Wages Act, 1948*

The main purpose of the Act is to protect labourers from exploitation in those industries or localities where the wages are likely to be very low by reason of the unorganized nature of labour or want of proper arrangements for effective regulation of wages. The Act provides for fixation of minimum wages in those employments which are covered under the Schedule to the Act. Interestingly, the capacity of the enterprise to pay minimum wages is an irrelevant consideration. The government fixes the minimum rates of wages payable to workers.

#### 11. *The Payment of Bonus Act, 1965*

The main object of the Act is to provide payment of bonus to employees of the establishments which are covered by the Act. The Act is applicable to every factory or establishment in which 20 or more persons are or were employed in an accounting year. New establishments are exempted from payment of bonus for five accounting years. For receiving bonus, an employee is defined as one drawing a salary or wage not exceeding Rs.2,500 and doing any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work. For calculation of

bonus, where the salary or wage of an employee exceeds Rs.2,500 per month, the bonus payable to such employee shall be calculated as if his salary or wage were Rs.2,500 per month. Section 36 of the Act empowers the appropriate government to exempt an establishment or a class of establishments from the operation of the Act, if it is of the opinion that it is not in the public interest to apply all or any of the provisions of the Act. Therefore, the employees of such exempted establishments will not be entitled to any bonus under the Act, and will have no claim for it.

### 12. *The Payment of Gratuity Act, 1972*

Gratuity is payable to every employee. The payment becomes due on superannuation or retirement or resignation, subject to completion of continuous service of not less than five years. Gratuity is also payable in case of termination of service due to death or disablement, and there is no condition of service in these two contingencies. For every completed year of service on part thereof in excess of six months, the employees, other than the seasonal employees, are entitled to gratuity at the rate of 15 days wages based on the rate of wages last drawn. Employees of seasonal establishments get gratuity at the rate of seven days wages for each season. For the purpose of the Act, the term wages includes basic wage and dearness allowance but no bonus, house rent allowance or any other allowance. An employee may lose the whole or part of his gratuity if his services are terminated for riotous or disorderly behaviour or any act of violence; or for offence involving moral turpitude.

### 13. *The Workmen's Compensation Act, 1923*

The main object of the Act is to provide for the payment of compensation to workmen and their dependents in case of injury by accident, including certain occupational diseases. Compensation under the Act is payable only in relation to those injuries which result from accidents arising out of and in the course of employment and result in partial or total disablement or death. The Act is administered by the respective state governments/union territory administration. The state government is empowered to appoint any person as a commissioner for workmen's compensation by notification in the official gazette. A workmen's compensation

commissioner performs administrative as well as quasi-judicial functions under the Act.

#### 14. *The Industrial Employment (Standing Orders) Act, 1946*

The Act defines with sufficient precision the conditions of employment for information of workmen. The Act applies to the whole of India. It was initially made applicable to only those industrial units/undertakings/establishments wherein 100 or more workers were employed on any day of the preceding 12 months. The Act empowers the appropriate Government to extend the provisions to establishments employing less than 100 workers after giving not less than two months notice, of its intention to do so in the official gazette. The main objective of the Act, besides maintaining harmonious relationship between the employers and the employees, are to regulate the conditions of recruitment, discharge, disciplinary action, leave, holidays, etcetera, of the workers employed in industrial establishments. The Act amended in 1982 also provides for a payment of subsistence allowance to the workmen who are kept under suspension pending domestic enquiry.

#### 15. *The Shops and Commercial Establishments Act (Central and State Acts)*

The working conditions of the employees working in shops and commercial establishments in India are governed largely by the Acts passed by the various State Governments and Rules framed thereunder. These Acts and Rules which are amended from time to time in the light of the practical experience in their implementation regulate, *inter alia*, the daily and weekly hours of work, payment of wages, overtime, holidays with pay, annual leave, employment of children and young persons, etcetera. Subject to certain exceptions these acts apply in the first instance to shops and commercial establishments, restaurants, hotels and places of amusement in certain notified urban areas. The State Governments are, empowered to extend the application of the Act to such other areas or to such categories of undertakings in such areas, as they may consider necessary. Certain types of employees such as those employed in a confidential capacity or whose work is of intermittent nature are excluded

from the scope of the Act. Central Act known as the Weekly Holidays Act, 1942, provides for the grant of weekly holidays to persons employed in Shops and Commercial establishments, etcetera.

## XI. CONCLUSIONS

2005 to 2015 is going to be the growth stage wherein Indian Industry wants to not only feel good but shine and outperform. The personnel professionals have a positive role to play to ensure that the organization builds a committed workforce wherein employees enjoy the work and performs well. Though the employed workforce in the organized sector is only 7% but they have a lot of voice and are not prepared to accept amendments in labour laws which are likely to make them lose the benefits they enjoyed during the protected economy of India.

With the changed economic scenario, the Supreme Court of India, the Government of India and the Legislation is moving towards encouragement of production and productivity. The maintenance of discipline and encouraging employer-employee relationship is given priority for quality output. Concerted efforts are made that the labour laws are harmonized in such a manner that on one hand there is maximum utilization of labour force and the working days to increase production and productivity and on the other hand there is social security and protection of jobs of the employees. The efforts are also made for generating more jobs especially in the field of power, telecommunication, roads, railways, tourism and other infrastructure. Presently India is having a finest team to handle and to accelerate the booming Indian economy with Mr. Man Mohan Singh as Prime Minister, Mr. P.C. Chidambaram as Finance Minister and Mr. Montek Singh as Dy. Chairman of Planning Commission.

The huge population of India is no more the burden but is a potential asset. India is known all over the world as center of Information Technology. Youth of India is working long hours day and night as compared to youth of Europe and USA. Educated Indian is comfortable with English language and keen to learn popular languages of the world including German, French, Spanish, Chinese and Japanese. These two factors give upper edge to the economy of the country. Indian Government has opened its doors for receiving technology and equity participation from all over the world.