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ICSI-NIRC

NEWSLETTER

Insight



**Labour Laws
Compliances and Audit**

THE REGIONAL COUNCIL

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Regional Director	CS SONIA BAIJAL



Motto

सत्यं वद। धर्मं चर।
इष्टकारं कुरु। तृप्तये। शोभते। ह्यु। कुरु। श्रेयः।

Vision

"To be a global leader in promoting
good corporate governance"

Mission

"To develop high calibre professionals
facilitating good corporate governance"

Published by :

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of NIRC-ICSI
- CSBF

NIRC-ICSI NEWSLETTER

- ◆ NIRC-ICSI Newsletter is generally published every month.
- ◆ Articles on subjects of interest to Company Secretaries are welcome.
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- ◆ The write-ups of this issue are also available on the website of the NIRC-ICSI.



“Seeds of faith are always within us; sometimes it takes a crisis to nourish and encourage their growth.”

- Susan L. Taylor

Dear Professional Companions,

With rapid recognition of growing pandemic of COVID-19, the integrated and timely approach of Indian Government to encourage social distancing has continued to benefit the country. The countrymen tirelessly engaged in serving during these hard times deserve to be thanked.

With the ease and comfort that this home-stay comes up with, there arises a need to seek out and embrace the unfamiliar lifestyle in this sedentary state. It is therefore necessary for all of us to stay motivated to be able to adapt to new ways of living to achieve our personal, professional and societal goals.

Where on one hand, sociality and physical contact are absent; our Institute has been able to continue walking on the path towards and into the hearts of our various stakeholders.

I pay my sincere thanks to the entire NIRC Team of all Regional Council Members, Chapter Chairpersons, Managing Committee Members of Chapters and Officials of Northern Region for playing a key role in an electronic ambit of sharing, participating and keeping in touch with the stakeholders to fulfil their requirements which are also our own top-most priorities.

Noteworthy initiatives have been taken by our team that have served in the welfare of our stakeholders and in winning their trust and co-operation.

I am really pleased to inform that one of our initiatives of the Master Classes on important topics like Independent Directors, Labour laws, Security laws, FEMA etc. has proven to be engaging and helping large number of members attending on daily basis for enhancement of their skills and knowledge.

Friends, this time the NIRC of ICSI is presenting the monthly newsletter on the theme of- “Labour Laws Compliances and Audit”, one of the most captivating topics in business world, that has helped in establishing beneficial working environment for the entire workforce of our country and contributed in their betterment.

We should treat workers as assets of an organisation because they impact on its future results. Safeguarding these assets therefore casts upon employers a big responsibility to take care of their workers’ needs and acknowledge their contribution in the organisation. It is with this intent to guide and assist the employers in how to keep workers happy, the concept of Labour Laws was brought up many years ago.

From the Chairman

"Happy Labour does the endeavour!"

Labour Law is a social security mechanism originating from Union as well as Concurrent List under Indian Constitution, containing both Central and State legislations like Factories Act 1948, Industrial Disputes Act 1947, Child Labour (Prohibition And Regulation) Act 1986, Employees Compensation Act 1923, Maternity Benefit Act 1961, Wages Code 2019, etc. These well intentioned labour laws broadly provide the provisions related to minimum wages, work insurance, standing orders, resolution of disputes between workmen and employers and workmen inter-se, recognition to collective bargaining like trade unions and many more. The objectives of these laws are to protect the rights and interests of employees, avoidance of their exploitation and seek overall industrial peace and amity.

Understanding the letter of Labour Laws and working in its true spirit command an organisation to not only engage in statutory compliances like filing returns, maintaining statutory deposits and records but also acknowledging the contribution of workers and awarding them with timely wages, incentives and other facilities for their living and personal growth and to provide them protection in working environment against harmful effects to their health, safety and morality.

I believe, exploring the ambit of labour laws, we, the Company Secretaries having command over legal, interpretational, managing and executable skills of law, are blessed with opportunities to provide the organisations their whole-hearted support and cooperation in obeying the labour laws for upliftment of workers' interests and achievement of organisational goals.

I feel Labour laws have opened many doors for Company Secretaries in rendering wide range of services like advisory, drafting, supervisory etc. A Practising Companies Secretary can also possibly remark his presence in conducting Labour Laws Audit and help an organisation to avoid rigorous penal actions and embrace good corporate governance that will support in creating a "corporate in compliance" environment in the country.

I also feel honoured to share with all of you that our Hon'ble

Minister of State for Labour and Employment (Independent Charge) Shri Santosh Kumar Gangwar Ji addressed our members in the 4 Days Online Master Class on Labour Laws organised by NIRC of ICSI and encouraged our members. This indeed on one hand is a moment of proud for all of us as the member of this prestigious institution and on the other hand there is huge responsibility on all of us to ensure and encourage the compliance of labour laws in the organisations we are associated with.

Friends, during this continuing pandemic situation when the whole world is experiencing a sharp deterioration in economic performance and the situation is adversely affecting almost everyone, we need to stand united with our young members. Looking at the existing situation, Northern Region has announced its first online campus placement and I urge our senior members and mentors to guide, inspire and encourage our young members in order to enable them to start their professional journey. I also appeal the senior members to spread the word about the online campus placement which provides an excellent opportunity to, both the organization as well as for the member, to meet and explore the possibility of fulfilling each other's requirement.

Hope you have a joyful journey reading this newsletter that will enhance your knowledge!

I look forward to your valuable suggestions and feedback. Feel free to interact with me at chairman.nirc@icsi.edu.

Wishing all of you a good health! Stay Safe, Stay Healthy, and take care.

With warm regards



CS Suresh Pandey
Chairman-NIRC of ICSI
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NORTHERN
INDIA
REGIONAL
COUNCIL

Dear Professional Colleagues,

Kind Attention – Job Recruiters! – An appeal to support young members and fresher CS

Sub: NIRC-ICSI 1st Online Campus Placement

Greetings and Best Wishes from NIRC of ICSI !!

We are pleased to inform you that Northern India Regional Council (NIRC) of the Institute of Company Secretaries of India (ICSI) is organizing NIRC-ICSI 1st Online Campus Placement for members in June, 2020 through Weblink.

The Online Campus Placement for members is a unique initiative of NIRC which provides an excellent opportunity to, both the organization as well as for the member, to meet and explore the possibility of fulfilling each other's requirement while sitting at home.

As you may kindly be aware that a CS Professional can support in Secretarial Department, Finance Department, Legal Department, HR Department, Excise Department, Commercial Department, Purchase Department, Admin Department, Secretarial Firm, Law Firm or any other work related to Company Secretary. We request you to use your good office to support young members and fresher CS by creating new employment opportunities for them.

We wish to inform that after receiving the information of Vacancy in your esteemed organization through the below link, we will share the details of CS members interested in your organization. Further, we will share the link to your office for conducting of online interviews with the candidates. **There is no fee for participation in the said Online Campus Placement.**

<https://forms.gle/LQvxmRw9Uycu1fbP9>

We look forward for your support to young CS members.

Regards,

CS Suresh Pandey
Chairman
NIRC-ICSI
Mob.9968300649

4 DAYS ONLINE MASTER CLASSES ON LABOUR LAWS FROM 4TH MAY, 2020 TO 7TH MAY, 2020



Shri Santosh Kumar Gangwar, Hon'ble Minister of State for Labour and Employment (Independent Charge) addressing the participants on 6th May, 2020.



Address by CS Ashish Garg, President, ICSI



Address by CS Suresh Pandey, Chairman, NIRC



Screen View of session on 6th May, 2020: CS Ashish Garg, CS Suresh Pandey, Shri Santosh Kumar Gangwar, NIRC, Shri Anil Bhat, Advocate, LEX n CRAFT, CS Sonia Bajjal, Regional Director, Northern Region-ICSI and CS Vimal Gupta, Vice Chairman, NIRC.

WEBINAR ON TRANSFORMING CHALLENGES INTO OPPROTUNITIES ON 16TH MAY, 2020



Shri Amogh Lila Prabhu, Vice President, ISKON Temple, Dwarka addressing the participants.



Address by CS Ashish Garg



Address by CS Nagendra D. Rao, Vice President, ICSI



Address by CS Suresh Pandey



Screen View: CS Suresh Pandey, CS Ashish Garg, CS Nagendra D. Rao and Shri Amogh Lila Prabhu.

ICSI-IICA JOINT ONLINE MASTER CLASS ON BOARD EFFECTIVENESS & INDEPENDENT DIRECTOR DATABANK ON 18TH APRIL, 2020



Dr. Niraj Gupta, Head – School of Corporate Governance & Public Policy and Nodal Officer - IICA–MCA ID Databank, CS Suresh Pandey, alongwith Mr. Anil Sharma, Former Independent Director, UCO Bank addressing the participants.

ONLINE MASTER CLASS ON “DIFFERENT DYNAMICS OF FUND RAISING, AN IN-DEPTH ANALYSIS...” ON 23RD APRIL 2020



CS Harsih Kumar, Partner, L & L Partners addressing the participants. Also seen CS Suresh Pandey.

4 DAYS ONLINE MASTER CLASS ON FEMA FROM 25TH APRIL, 2020 TO 28TH APRIL, 2020

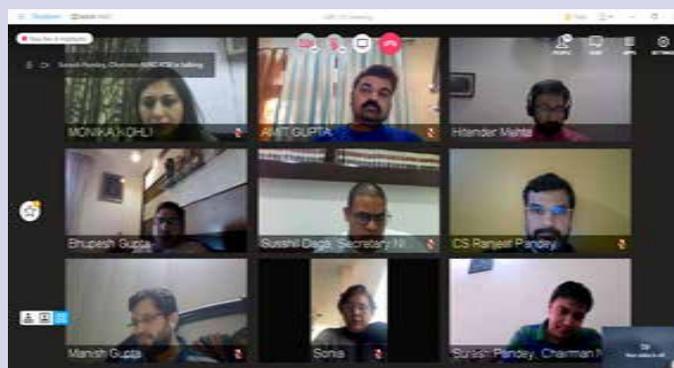


CS Atul Mittal, Former Council Member, ICSI & Past Chairman, NIRC-ICSI and Partner-Deloitte Haskins & Sells addressing the participants.



Also seen CS Suresh Pandey, G S Sarin, Immediate Past Chairman, NIRC and CS Himanshu Harbola, Regional Council Member, NIRC-ICSI

GLIMPSES OF MEETING OF REGIONAL COUNCIL HELD ON 27TH APRIL, 2020 THROUGH VIDEO CONFERENCE



4 DAYS ONLINE MASTER CLASSES ON LABOUR LAWS FROM 4TH MAY, 2020 TO 7TH MAY, 2020

DAY 1 : 4.05.2020



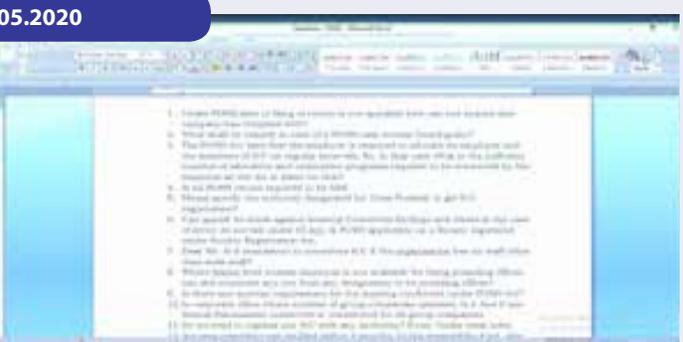
Shri Anupam Malik, Former Additional Labour Commissioner, Labour Department, Government of Haryana addressing the participants. Also seen CS G S Sarin and CS Suresh Pandey.

DAY 2 : 5.05.2020



Ms. Raavi Birbal, Advocate, Supreme Court of India addressing the participants. Also seen CS Suresh Pandey and CS Devender Suhag, Treasurer, NIRC-ICSI.

DAY 3 : 6.05.2020



Shri Anil Bhat, Advocate, LEX n CRAFT addressing the participants. View of Q&A session.

DAY 4 : 7.05.2020



Shri T K A Padmanabhan Advocate and Founder Attorney, Padmanabhan Associates addressing the participants. Also seen CS Susshil Daga, Secretary, NIRC and CS Suresh Pandey.

4 DAYS ONLINE MASTER CLASSES ON SECURITIES LAWS FROM 11TH MAY, 2020 TO 14TH MAY, 2020

DAY 1 : 11.05.2020



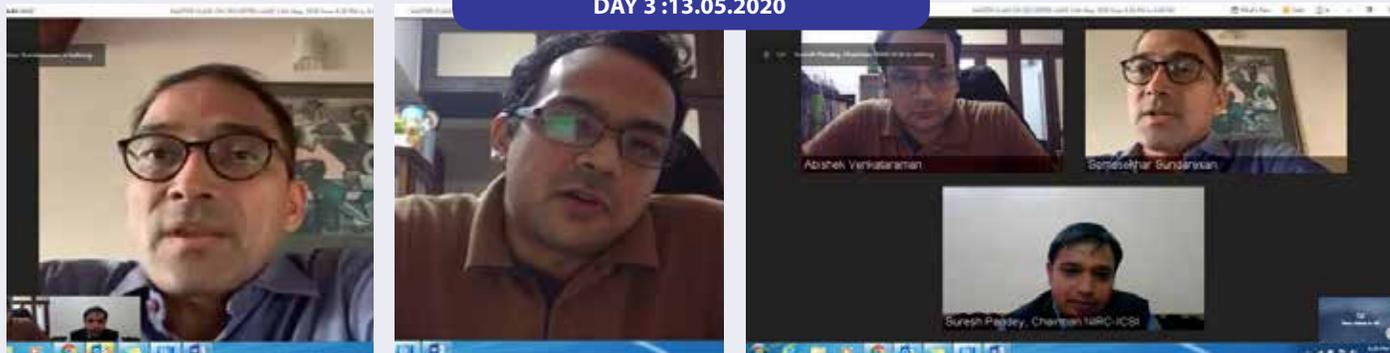
Mr. Prashant Saran, Former Whole Time Member, SEBI And Mr. J N Gupta, Former Executive Director, SEBI & Founder and Managing Director of Stakeholders Empowerment Services addressing the participants. Also seen CS Suresh Pandey and CS Himanshu Harbola.

DAY 2 : 12.05.2020



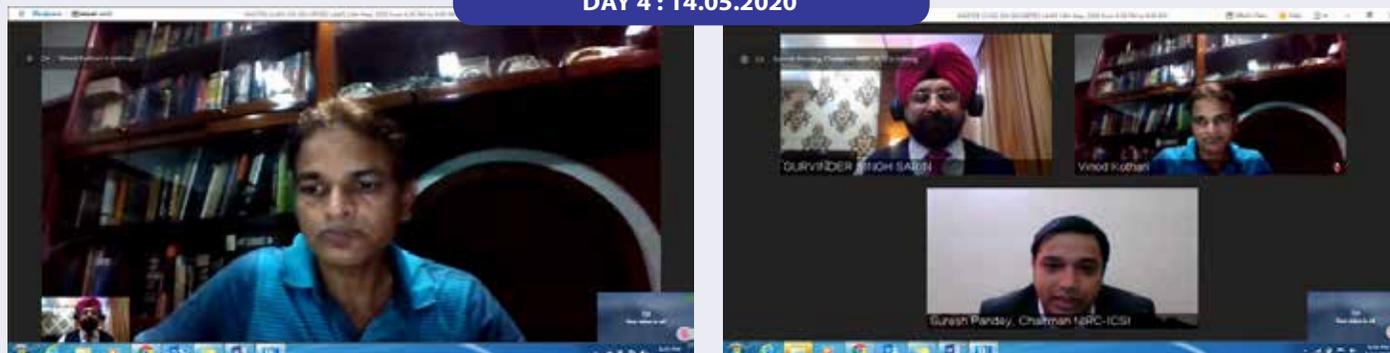
Mr. Khushro Bulsara, Chief General Manager - Listing Compliance, BSE, CS Ashok Singh, Assistant General Manager, BSE and Mr. Abhijit Pai, Deputy General Manager, BSE addressing the participants. Also seen CS Suresh Pandey.

DAY 3 : 13.05.2020



Mr. Somasekhar Sundaresan and Mr. Abishek Venkataraman, Legal Counsels addressing the participants. Also seen CS Suresh Pandey.

DAY 4 : 14.05.2020



CS Vinod Kothari, Director, Vinod Kothari Consultants addressing the participants. Also seen CS G S Sarin and CS Suresh Pandey.

WEBINAR ON IMPACT OF ECONOMIC RELIEF PACKAGE AND ATMA-NIRBHAR BHARAT ABHIYAN (SELF-RELIANT INDIA MISSION) ON 19TH MAY, 2020

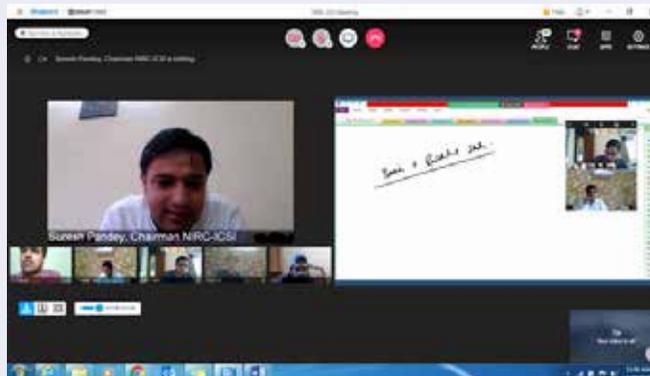


Shri Gopal Krishna Agarwal, National Spokesperson, Bharatiya Janata Party (Economic Affairs) addressing the participants.



Screen View: CS Nitin Hotchandani, Chairperson, Jaipur Chapter of ICSI-NIRC, CS Amit Gupta, Regional Council Member, NIRC, Shri Gopal Krishna Agarwal and CS Suresh Pandey.

GLIMPSES OF CRASH COURSE IN TAX LAWS FOR EXECUTIVE AND PROFESSIONAL PROGRAMME STUDENTS



A screenshot of a Zoom meeting. The main window shows a whiteboard titled "ADVANCED TAX LAWS" with a flowchart on "Partnership Firms". The flowchart is as follows:

```

    graph TD
      A[Partnership Firms] --> B[Partnership Firms]
      B --> C[Event held in India]
      B --> D[Event of India]
      C --> E[SR is not]
      C --> F[SR is changed]
      D --> G[Pos = Location of SR]
      E --> H[Pos = Location of SR]
      F --> I[Pos = Place where Event is held]
      G --> J[Pos = Location of SR]
      I --> K[Pos = Place where Event is held]
  
```

The whiteboard also has a title "Partnership Firms" and a sub-heading "Pos". The Zoom interface at the bottom shows various controls and the system tray with the date 5/23/2020.

FEEDBACK RECEIVED FROM MEMBERS ON MASTER CLASSES ORGANIZED BY NIRC-ICSI

Dear Sir,
today webinar on master class on labour laws was very excellent. so please try to arrange more session like this on gst.
Thank you and kind regards,

Dear Sir,
I really want to say that it's a great n happy to be a part of the master class of fema and now on labour law.
Speaker are soo rich in their field and it's a great to be a part of learning.
Thanks to you sir for this initiative.
I want to say that institute also have to do some other master class on other feild of RERA, IBBI and NCLT.
Again thanks for this master class

Dear Chairman,
thanks a lot for initiating such a good webinars which apart from keeping us motivated, increasing our knowledge thanks a lot

Dear Chairman Sir,
and The whole team of NIRC
GREETINGS OF THE DAY
Sir, this is a very good initiative taken by NIRC to conduct the webinar instead of a physical seminar.
This is a very cheapest way to learning the new thing. And also convenient to us.
Sir all the webinar and faculty of the same was too good.
Sir I request you to please keep going on this way my support is always with you.
Thanks and Regards

Dear Sir,
I really appreciate that NIRC is conducting this online Master class on FEMA, as it will certainly help members looking to expand their domain in FEMA.
The faculty opted for this theme is also very apt and the allocation of good duration of time to these classes also allows to deep dive into topics.
Introduction of these programmes at a bigger level enabling participation of more members willing to attend, shall be highly appreciated.
Thankyou

Dear Sir,
Greetings of the Day!!!
I'm really thankful to whole NIRC team for conducting webinar on this topic. It will really helpful for the members like me in managing day to day compliance issues pertaining to Labour Laws.
I also request NIRC to conduct a Master Series like this on the matter of "Drafting and Negotiating of Commercial Contracts" as Company Secretaries who are in whole time employment are very much expected to have expertise on Contract Management issues.
Thank you so much again for taking such a nice knowledge enhancement initiative for members.
Thanks and Regards

Dear Mr. Pandey,
At the outset, I would like to congratulate you and your team on the excellent work done during the lockdown.
I have been a part of the labour law master class for the past three days and could not help but give my feedback on the excellent quality of the speakers.
The session by Mr Anil Bhat was par excellence and highly informative and engaging.
I, congratulate you and your team once again.
I am actually proud that we the members of the Northern region have such an efficient Regional team.
Keep up the good work.

Dear Sir,
Thank you for such a great seminar and faculty of master class on topic fema.
I really appreciate the efforts of nirc for organising such an event.
Kindly organise more seminars on topics like IBC and gst.

Dear Mr. Suresh,
Thanks for organizing a very well master class on labour laws. The choice of faculty is excellent. The presence of a central minister added further to happenings.
The way you address is also excellent. All the best to you for the future. Next series of webinars could be on MSMEs.
With best wishes.

Dear Sir,
I am very thankful to ICSI and specially you for organised master class on labour law. These kind of webinar are valuable for members of ICSI.
It request you that please organise webinar on Security Law.

Respected Suresh Sir,
I am very thankful on the great initiative on 4 days masterclass on FEMA undertaken by NIRC of ICSI under the leadership of respected chairman of NIRC i.e. Shri Suresh Pandey sir.
The masterclass conducted under the guidance of Shri Atul Mittal sir is very lucrative and knowledgeable.
It was very rightly said by respected chairman of NIRC during the initiation of Day 2 of masterclass on FEMA that lock down may stop movement of people from one place to another but it cannot stop sharing of knowledge.
Congratulations again and please arrange to provide these kind of masterclass after completion of FEMA

Sir,
thank u for wonderful session on labour law.

इस वैश्विक बीमारी कोरोना के कारण संपूर्ण विश्व एक नकारात्मक विचार से जुझ रहा है, लेकिन इस नकारात्मक माहौल में भी ICSI सकारात्मक पहल करते हुये तरह तरह के webinar ले कर आरहा हैं।
इसी क्रम में अब NIRC भी आपके नेतृत्व में अपने सदस्यों के PCH पूरे करवाने का बीडा उठा चुका है, 26 अप्रैल से पहले जब भी master class का नाम आता था तो मन में पीडा होती थी क्योंकि NIRC से 250 KM दुर बैठ कर 4 दिन की CLASS लेना काफी मुश्किल होता था, ऐसे में सुदूर शहरों और गांवों में बैठे सदस्यों के लिए अपने PCH पूरे करना एक बड़ी चुनौती होती थी।
लेकिन आपके प्रयास से ये सफल हो पाया हैं, मेरे पास आपके ओर NIRC Council के इन प्रयासों की प्रशंसा के लिए शब्द कम पड़ रहे हैं, इस covid 19 के बाद भी मैं आपसे निवेदन करूंगा की ऐसे online classes हमेशा चालु रखे और इन class के लिए NIRC के दुरुस्त सदस्यों के लिए ही रखे ताकि हमे हमारे PCH पुरा करने और अपने Knowledge को update रखने में सहायता मिलती रहे।
साथ ही इस दिशा में आपके प्रथम और सफल प्रयास की मैं सराहना करता हूं।
साथ ही आपके द्वारा NIRC Research Paper writing के बारे में भी आपके प्रयास की सराहना करता हूं, इसका भी रिजल्ट आप जल्दी announce करेंगे ऐसी मे आशा करता हूं।
आगे भी आप ऐसे प्रयास जारी रखे और जब भी कोई PCH प्रोग्राम की घोषणा करें तो अवश्य विचार करे कि दूरस्थ स्थानों पर बैठे आपके सदस्य तक ये pch कैसे पहुँचे जिसका साधन हमे इस covid 19 ने दे दिया हैं।
आगे भी यूँ ही आपके सहयोग मिलने की आशा के साथ।

Recent Initiatives taken by NIRC

RECENT INITIATIVES TAKEN BY NIRC

Dear Friends,

I am pleased to enlist the recent initiatives for your kind information and ready reference:-

JOINT ONLINE MASTER CLASS OF ICSI-NIRC-IICA

A Joint Online Master Class of ICSI-NIRC with the Indian Institute of Corporate Affairs (IICA) was organized on 18th April, 2020 on the topic Board Effectiveness & Independent Director Databank. Dr. Niraj Gupta, Head – School of Corporate Governance & Public Policy and Nodal Officer - IICA–MCA ID Databank & Mr. Anil Sharma, Former Independent Director, UCO Bank were the Guest Speakers on the occasion.

ONLINE MASTER CLASS ON DIFFERENT DYNAMICS OF FUND RAISING

A Master Class of ICSI-NIRC was organized on the topic Different Dynamics of Fund Raising, An In-Depth Analysis.... on 23rd April, 2020. CS Harsih Kumar, Partner, L&L Partners was the Guest Speaker on the occasion.

ICSI-NIRC AS ASSOCIATE PARTNER IN WEBINAR ORGANIZED BY PHD CHAMBER OF COMMERCE AND INDUSTRY

A Webinar was organized by Indirect Taxes Committee of PHD Chamber of Commerce and Industry on the topic 'Analyses & Issues in Place of Supply and Exports & Import of Goods & Services and Some Important Issues' on 24th April, 2020. Your Institute (Northern Region) was Associate Partner in the webinar. Chairman, NIRC addressed on the webinar.

4 DAYS ONLINE MASTER CLASS ON FEMA (4TH EDITION, YEAR 2020)

4 Days Online Master Class on FEMA was organized by ICSI-NIRC from 25th April, 2020 to 28th April, 2020. CS Atul Mittal, Former Council Member, ICSI & Past Chairman, NIRC-ICSI and Partner-Deloitte Haskins & Sells was Guest Speaker. He covered the topics which includes Foreign Direct Investments & Overseas Direct Investments, External Commercial Borrowings (ECB) & Imports, Export & Liberalised Remittance Scheme (LRS), Compounding under FEMA & Late Submission Fees, etc.. The Master Class

was attended by members across the country, although being Northern Region, PCH could not be granted to members who joined from other Regions. As a good gesture, NIRC refunded the participation fees received from members of other Region.

4 DAYS ONLINE MASTER CLASSES ON LABOUR LAWS (5TH EDITION, YEAR 2020)

4 Days Online Master Class on Labour Laws was organized by ICSI-NIRC from 4th May, 2020 to 7th May, 2020. Shri Santosh Kumar Gangwar, Hon'ble Minister of State for Labour and Employment (Independent Charge) was the Chief Guest of the Master Class. He addressed around 3000 members including participants from out of India on 6th May, 2020. CS Ashish Garg, President, ICSI and CS Suresh Pandey addressed during the session. Shri Anupam Malik, Former Additional Labour Commissioner, Labour Department, Government of Haryana, Ms. Raavi Birbal, Advocate Supreme Court of India, Shri Anil Bhat, Advocate LEX n CRAFT and Shri T K A Padmanabhan, Advocate and Founder Attorney, Padmanabhan Associates were the Guest Speakers at Master Class. The Program witnessed rich deliberations and extensive exchange of thoughts. The participants were given opportunity to raise their queries and the eminent speakers tried to resolve the maximum queries in the given time slot. The Master Class was well appreciated by the participants.

4 DAYS ONLINE MASTER CLASSES ON SECURITIES LAWS (6TH EDITION, YEAR 2020)

4 Days Online Master Class on Securities Laws was organized by ICSI-NIRC from 11th May, 2020 to 14th May, 2020. Mr. Prashant Saran, Former Whole Time Member, SEBI, Mr. J N Gupta, Former Executive Director, SEBI & Founder and Managing Director of Stakeholders Empowerment Services, Mr. Khushro Bulsara, Chief General Manager - Listing Compliance, BSE, CS Ashok Singh, Assistant General Manager, BSE, Mr. Abhijit Pai, Deputy General Manager, BSE, Mr. Somasekhar Sundaresan, Legal Counsel, Mr. Abishek Venkataraman, Legal Counsel and CS Vinod Kothari, Director, Vinod Kothari Consultants were the Guest Speakers at Master Class. The Master Class was attended by around 2000 members. The Master Class extensively covered the Overview of Capital Markets and

Recent Initiatives

its Governance, SEBI Listing Obligations and Disclosure Requirements Regulations, SEBI Prohibition of Insider Trading Regulations & SEBI Takeover Regulations.

WEBINAR ON IMPACT OF ECONOMIC RELIEF PACKAGE AND ATMA-NIRBHAR BHARAT ABHIYAN (SELF-RELIANT INDIA MISSION)

Webinar on Impact of Economic Relief Package and Atma-Nirbhar Bharat Abhiyan (Self-Reliant India Mission) was organized by ICSI-NIRC on 19th May, 2020. Shri Gopal Krishna Agarwal, National Spokesperson, Bharatiya Janata Party (Economic Affairs) was the Guest Speaker on the occasion. The webinar was attended by around 400 members. Many questions were ably responded by the learned speaker.

UPDATION OF PROGRAM CREDIT HOURS (PCH)

The purpose of organizing back to back Master Classes/ Webinars by NIRC-ICSI is Professional Development of members, knowledge enhancement and providing an opportunity for the completion of mandatory credit hours for the block year ending March 31, 2020 (extended upto 30/06/2020). We have tried to continuously updating the program credit hours of the members who had attended the programs organized by NIRC-ICSI. We are pleased to share that as on date, PCH of all the Programs organized by NIRC of ICSI are updated. For any query/issue relating to PCH related to NIRC programmes in your account, please write to arun.rawat@icsi.edu. For updation of PCH of Programs organized by HO, please mark your queries to Dte. Of Professional Development, ICSI at dheeraj.gupta@icsi.edu .

MEETING OF REGIONAL COUNCIL OF NIRC-ICSI

The 246th meeting of the Regional Council of NIRC-ICSI held on Monday, the 27th April, 2020, at 03.00 pm through online mode using video conferencing. The Regional Council discussed on various Representations which needs to be placed before the competent authorities, administrative and issues relating to Professional Development of members.

MEETING WITH CHAPTER CHAIRPERSON OF NIRC-ICSI

A meeting of Chairman, NIRC with Chapter Chairperson of NIRC-ICSI held on 3rd May, 2020 through video conferencing to understand and appreciate their issues and challenges, particularly during Pandemic situation.

The Chairpersons from the Region, shared their ideas/grievances and also informed about the various activities undergoing in their jurisdiction.

ONLINE CRASH COURSE FOR PROFESSIONAL PROGRAMME STUDENTS

With a view to support students of Professional Programme for ensuing CS Examinations, NIRC has organized online Crash Course for Professional Programme students. The feedback is covered elsewhere in this issue.

ONLINE CLASSES ON DAILY BASIS

Despite the lockdown there is no stoppage in arranging the OTC Classes for the students registered for coaching at NIRC. To cover the syllabus of students, we are continuously organizing the Online Classes for the registered students of OTC at NIRC for Foundation & Executive Programme.

NIRC-ICSI 1ST ONLINE CAMPUS PLACEMENT

We have initiated the 1st Online Campus Placement for members in June, 2020 through Weblink. The Online Campus Placement for members is a unique initiative of NIRC which provides an excellent opportunity to, both the organization as well as for the member, to meet and explore the possibility of fulfilling each other's requirement while sitting at home. The main purpose of Online Campus Placement is to make sure that the members should get to know the job opportunities available. An appeal is made to Job Recruiters to support our young members in this hour of need.

Friends, let me assure you that your feedback and participation is always welcome and is truly valued, as it is only your feedback that will help us to improve further and emerge as ICSI brand. I look forward for your valuable suggestions and feedback. Feel free to interact with me at chairman.nirc@icsi.edu

Looking forward for your invaluable support.

I am just a phone call away!

Yours own,
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ARTICLES ON THEME

**LABOUR LAWS
COMPLIANCES
AND AUDIT**

CORONA VIRUS VS. ECONOMIC CRISIS : SYSTEMATIZED EMPLOYMENT LAWS



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Latest vexed question posed in today's economic scenario is which one is more fearful : risk of Corona virus or living in economic crisis ? Response may not be Corona for everyone and all times Nor do many have privilege of work from home. Adopting Buddha's middle path in framing of laws as well as Chankayas's theory of better circulation of capital as blood circulation in body is need of the hour for saving depleting economy .

Employee costs, salaries, statutory and other fringe benefits constitute a large part employer's expenditure. Organizations have been juggling between various plan of actions inter alia job / pay cuts, employee optimizations, re-alignments etc. Indian economy has several kinds of organizations ranging like multinationals, continentals, blue chips, conglomerate, government, PSUs, large/ medium/ small scales, manufacturing factories, shops, establishments, construction hospitals, universities, constituted by Act of parliament, intergovernmental, etc. etc. List is limitless. It also has varied kinds of employees /engagement such as workman, non workman, casual, daily wagers, temporary, contract labour, outsourced, fixed term, blue, pink, white, gold collars, government servants, consultants etc. Once size does not fit. There is no straitjacket formulae or strategy that may be applied to all situations and entities uniformly.

In a situation of pandemic coupled with boundless population, there needs to be harmonious applicability of various enactments vis a vis labour/ employment, taxation, tariffs etc by legislature, executive and courts. At the same time appropriate knowledge as well as steps by companies and employees may save both from expensive litigations, confer frugal solutions with long term stable structures apart from avoiding well known inspector raj.

Lord Krishna said there should be harmony by all. In companies where there are severe losses mutual agreements between employers and employees could be an appropriate solution for the current pandemic. Rigidity by any party may lead to colossal losses either at an individual level for the employee or for the entity as a whole.

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PERTINENT PRINCIPLES CONCERNING DOWNSIZING, REALIGNING, TERMINATIONS, PAY CUTS AND SIMILAR ISSUES ARE :

- ◆ Under the Indian labour laws, pre-dominant nature of duties determines category of employee as to whether he is a "workman" as defined under Section 2(s) of Industrial Disputes Act, 1947 (ID Act) or not. Under the provisions of ID Act one gets several protections inter alia pertaining to his termination. "Non-workman" category of employees are those whose ending of contract and other similar issues are not covered by ID Act. "Workman" level employees are the ones doing technical, mechanical, clerical, skilled, unskilled and similar stereotyped etc. nature of work. For reduction in pay or any other change in employment conditions of workman level employee, Section 9 -A of ID Act gets attracted which inter alia requires issuance of notice to workers / union. To avoid cumbersome procedures companies may even resort to entering into a bipartite or tripartite settlement under Section 12 and / or 18 of ID Act with the workers. This will avoid litigations to a very large extent. Management may convince employees about difficult situations. While in normal course workers / union are hesitant and become militant upon such requests, however, during pandemic they too are conscious of circumstances. Counselling about lengthy, costly litigations with ultimately no benefit, non availability of jobs may aide in persuading. They may also be made conscious of the fact that some of the state governments are already pondering upon liberalizing labour laws and inflexibility may lead them to a bigger loss. It may be mentioned wages cannot be reduced less than minimum wages. Companies having no effect of pandemic or lesser affect or facing just a temporary phase may not resort to bold strategies of pay cuts and/ or employee reductions. Else rather than cost saving, it may result into expensive litigations thereby adding to far more expenditure, disharmony/ discord by workers thereby deteriorating businesses apart from loosing trained work force. Sometimes taking mis-advantage such situations lead to interference by greedy unions in the long run leading to extortionists costs. One middle path solution is if need is quite urgent, less amount be reduced
- ◆ Where pay cuts is not the solution and work has come to a severely long term halt/scatting reduction/ almost nil, managements generally ponder upon possibilities of retrenchment of some workers. If issue persists then even closure of units/ departments/ branches may also have to be resorted to by the managements. Though this is done in rarest of rare cases, where there is no option is left. Some even try to lay off workers for a brief while before resorting to retrenchment or closure. Industry laying off is required to pay compensation equivalent to 50 % of the wages

for stipulated time period. Retrenchment and closure compliance includes fifteen days wages for each completed year of service apart from notice pay as well as intimation / permission from Government. Amount of notice pay (one month or three months) for retrenchment / closure and intimation or permission from government incase of lay off/ retrenchment/ closure depends on number of employees as well as kind of organization. Principle of last come first go is to be followed i. e. junior most workman to be retrenched first and senior most last.

Mass terminations can result in exorbitant and lengthy litigations. Therefore, actions should be taken only after considering various factors such as : number of on-roll / of-roll (contract labour / outsourced), causal, temporary, fixed term employees, years of service, CTC structures, location of units, some important clauses such as: probation, retirement, retirement age etc. To avoid litigations generally companies enter into golden hand shakes / VRS i. e. voluntary resignation / retirement schemes, which is an advisable solution, that is if only there is absolutely nil possibility of restarting productions.

- ◆ With respect to non workman employees or the white collar employees, reductions are easier to be done as they are not covered by ID Act. These employees are governed by their respective contract of employment. It is advisable to take written consent incase of pay reduction. According to Specific Relief Act a contract of personal service cannot be enforced. Maximum they can sue for damages, compensation. Since white collar employees have fear of termination generally taking consent from them is not so tedious. However, incase company is not running into losses, or same are negligible, reductions for these categories may also be avoided. Just as white collar employee cannot forced to be kept in job, employer too cannot force him to work. Pandemic is a temporary problem. But loosing a high performing white collar employee may be like loosing a valuable asset forever. Ofcourse, if there is non performance, especially during this period where performance is must, appropriate reductions be done.
- ◆ Another category of employees are the contract labour i. e. the outsourced employees. This is a huge chunk in the Indian work structure. A major percentage of the work force of India is through third party vendors. These employees are governed by Contract Labour Regulation and Abolition Act 1970 (CLRA). Such employees work through third parties nomenclature as contractor / vendor / outsourced agency etc. As per Section 21 of the CLRA, it is the duty of principal employer to see that monthly wages are distributed to these workers. Any shortfall becomes liability of the principal employer which can be recovered from the vendor. There are different ways to handle this segment. Several issues need to be seen, such as since how many years the contractor/s has been engaged for, were the workers same or changing in different years, time period since workers are working, hours of work, power of appointment, disciplinary measures, control and supervision, responsibility of statutory benefits etc. Basically the nature of arrangement between principal employer and contractor needs to be examined. If arrangement is genuine termination of contract may be looked into if the possibility and / or repercussions of litigations are not too high. However, practically in most of the

cases situation is not that simple especially where several workers are engaged through this mode. These terminations can result in costly litigation for years together. Therefore for this category also schemes are framed for easy terminations/ parting ways, inter alia considering abovesaid factors.

- ◆ Another category of employees are the contractual /fixed term. Often terms contractual and contract labour are confused. Contract labour are the ones employed through third party. Whereas contractual/ fixed term are ones employed for fixed duration or project ortime period. This is a peculiar kind of employment wherein retrenchment compliance is not required even in the case of "workman" level employee. These employees can be terminated as soon as the contract ends or even before of the contractual terms so provide. It is generally advisable not to hire these employees for many years that make terms of the contract look artificial i. e. camouflage to flout provisions.
- ◆ Further there are casual, daily wagers, temporary workers, etc. For terminating such employees incase they have completed 240 days of continous service in an year, same procedure is required to be followed as required for regular workers covered by ID Act.
- ◆ Incase there is a misconduct, workman level employee can be terminated after conducting enquiry which includes issuance of chargesheet, enquiry, show cause. For a non workman employees these procedures may be avoided, unless facts of case involves moral turptitude, financial bungling and the company wants to make termination letter punitive.
- ◆ It may be mentioned employees not coming on duty during lockdown period by industries that were allowed to function, resulted in severe losses even to such industries. Termination in such cases has been recommended, unless case of the employee was of genuine illness or situation such as sealing of building, etc in which circumstances medical certificates etc must be examined. However several instances were noticed where ingnuine reasons were given for the sake of enjoying paid corona holiday. In such cases stringent pay cuts including terminations have been suggested. Infact one of the reasons for poor economic condition of India are such termities.
- ◆ For knowledge sake it may be informed that termination of government servant without following procedure can be





challenged under Article 226 of Constitution of India by applying for a writ of Mandamus and Certiorari. For punitive termination of government servant Article 311 of Constitution of India which inter alia provides for complying with principles of natural justice prior to termination is required. Non-performance, corruption etc by employees under this category enjoying salary from public taxes must be taken care of, especially in current circumstances by issuance of memos, warnings, chargesheet, enquiry, show cause and even strict actions, if need be. Needless, genuine employees should not be made scapegoats.

- ◆ Apart from above, salary restructuring may be done by companies. An appropriate structure may reduce taxes for employees as well as reduce costs on some of the statutory benefits for the firms. Ofcourse restructuring shouldn't be too subterfuge that it starts violating Provident Fund, ESI, gratuity laws. CTC may also be redesigned.
- ◆ Most of the companies are unaware of the fact that even if basic wages, dearness allowance goes beyond Rs. 15,000/-, Provident Fund may still be restricted to an amount of Rs, 15,000/- (except in the case of expat employees). There are Judgments of various courts in this regard as well as supported by Employees Provident Fund scheme, 1952 framed under Employees Provident Fund and Miscellaneous Provisions Act, 1952.
- ◆ Companies paying employees without any work sitting at home, may deduct allowances linked to duty such as uniform, conveyance, washing, etc.

ANY OF THE ABOVE STEPS MUST BE TAKEN UNDER LEGAL GUIDANCE. APART FROM ABOVE FOLLOWING MAY BE CONSIDERED BY THE GOVERNMENT:

- ◆ Step of premature withdrawal of Provident Fund (PF) taken by the government is much appreciated. However, the offer of depositing PF contribution of employee and employer share wherein salary limit is Rs. 15, 000/- in organizations which have employees upto limit of hundred, as well as reduction of PF share to 10% has scope for refinement. This provision will make a difference of roughly just above a few hundred/ thousands in the hand of individual employee/s. PF costs for mid size and bigish companies runs into several crores. Considering pandemic is rare, in the larger interest of economy, the government may ponder upon the fact that even if about 3-5 months of PF is not deposited irrespective of salary ceiling or the percentage of deposition is substantially reduced (like

50% reduction), same will make a bearable impact on individual employees and will make large savings for business needs. Since PF is a 12% (now 10% for time being) share by employer and equivalent share by an employee, incase an employee so wants, he may continue to deposit his complete share, as already clarified by the Government. Such amendmens may not be carried out for companies where there are profits.

- ◆ International Workers Provident Fund where there is no limit of deposition upon 15, 000/-captures a huge amount of funds of companies, since salaries of such employees are running into several lacs, even crores. It is suggested to mute employers share provision for at least 3 months.
- ◆ Companies may also be given rebate w. r. t. mandatory bonus. Minimum specified percentage i.e. 8. 33% as per Payment of Bonus Act, 1965 (maybe mentioned Code on Wages 2019 date of enforcement is not yet notified) may be reduced for this year. Business houses with nil profit and/or losses be given a complete exemptionfor this year. Corporates generating high profits, ofcourse, be kept out of such relaxations.
- ◆ Corporates should be given the benefit of lesser tariff charges of electricity, water, coal, costs etc.
- ◆ Wage boards are operating in various industries providing heavy pay structures. Depending on the situation ahead, same may also need a review.
- ◆ While there are enough laws for employees in organized sectors protection of professionals, hawkers, independent vendors, etc. be also not lost sight of. Suggestions may include easier tax liabilities and regimes. Government should come up with even more liberal tax regimes for the employers in these circumstances. Sanitizer, masks, soaps, etc. are companies from where more taxes may be generated, however, with sealing on the price of products.
- ◆ Thousand of crores are lying in coffers of statutory authorities in the name of Cess for Building and Construction workers, unclaimed labour welfare fund under heads of unclaimed bonus, wages, unclaimed Provident Fund, etc. This crisis is "the time" to utilize said resources and distribute among deplorable ones.

COVID 19 is an economic swelling for India and also for the rest of the world. There has already been a spurting effect even on the tourism, hospitality sector etc. The Centre for Asia Pacific Aviation has assessed that the Indian aviation industry will post losses worth nearly about \$4 billion this year. The automobile industry which was a key indicator of a country's economic growth has also been forced to just hit the brakes. Manufacturing, retail restaurants, cinema, sports, almost everything has come to a standstill. Domestic demand for petrol, diesel, jet fuel and shipping fuel have all substantially reduced. It is incumbent that interest of industries as well as employees both are looked into.

Nevertheless, disaster could even prove a blessing in disguise for India since nations losing faith in China. Balanced laws as well as liberalized, uncomplicated tax regimes apart from others factors can attract sizeable investments. Time for some serious decisions.



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LABOUR LAW COMPLIANCES - WAY OF MULTIFARIOUS MILEAGE

“A man is not paid for having a head and hands, but for using them.”

- Elbert Hubbard

The labour welfare and increasing productivity are the prime objectives concerning social and economic policy of the Government. Economic development means not only creation of jobs but also working conditions in which one can work in freedom, safety and dignity. In the direction to improve life of labour force of country, protection and safeguarding the interest of workers, promotion of welfare and providing social security to the labour force by implementation of various Labour Laws, which regulate the terms and conditions of service and employment of workers.

IMPORTANCE OF LABOUR LAW COMPLIANCE

The scope of compliance is very vast and under various labour laws the organization has to produce records of compliance as evidence. Also, if your organization has failed to comply with the provisions of various labour laws, there are penal provisions prescribed under the laws.

Labour laws contain rights of the labour, so after complying with the provision of laws the employer can protect the different rights of employees. Labour laws essentially provide the protection of workmen benefit which they get while they are in the employment as well as after retirement or superannuation.

EASE OF COMPLIANCE RULES

On Feb. 21, 2017, the Ministry of Labour and Employment, has issued the Ease of Compliance to Maintain Registers under various Specified Labour Laws Rules, 2017 (Ease of Compliance Rules). The Ease of Compliance Rules have come into force with effect from the date of their notification in the Official Gazette.

Ease of Compliance Rules enable an organisation to maintain 5 types of combined registers under the following labour laws –

- ◆ Building and Other Construction Workers (Regulation of

Employment and Conditions of Service) Act, 1996 Contract Labour (Regulation and Abolition) Act, 1970 Equal Remuneration Act, 1976 Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 Mines Act, 1952 Minimum Wages Act, 1948 Payment of Wages Act, 1936 Sales Promotion Employees (Conditions of Service) Act, 1976 Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 The five types of combined registers required to be maintained under the Specified Labour Laws, include:

- ◆ Employee register.
- ◆ Wage register.
- ◆ Register of loan / Recoveries.
- ◆ Attendance registers.
- ◆ Register of rest days / Leave account of employees / Leave with wages.

Pursuant to the Ease of Compliance Rules, the relevant Central rules enacted have been amended to replace existing forms of registers with the combined registers notified under the said rules. Consequently,



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Article

now the requirement of maintaining various types of registers has been reduced to the combined registers under the Ease of Compliance Rules.

The employer can also maintain these above mentioned registers in electronic form. It is a very good step, the Ministry has developed a software for these registers to enable maintaining such registers in digital form. The software has been uploaded on the '**Shram Suvidha Portal**' of the Ministry to enable establishments to download such software for free.

LABOUR LAW CONSULTANCY

Labour Law Consultancy is important because it ensures an easy path for the organization to accomplish its goal. The business should have a clear idea about the applicable laws and regulations.

Labour Law Consultant means a person who consults or represents an organization, an employer or employer organization, labour organization or collective bargaining activities of the employees. He is the expert of labour law compliances with the wide exposure and practical knowledge of said subject matter.

IMPORTANCE

- ◆ With the changing conditions of the market, the requirement of employer and employee relationship has changed. Because of this, industry demands new services that will help to answer the challenges.
- ◆ Employers are directly concerned with their labour. Labour laws impose certain obligations on them towards them. The consultant helps them to make understand about their duties, responsibilities and accountabilities.
- ◆ The labour law establishes sense of equality and obliges organization to provide chances to the potential employees without creating difference on the basis of race, caste, gender and religion etc.
- ◆ Labour laws falls under the concurrent list of the Constitution of India, that is why, Central and State Government both have power and jurisdiction to make the said laws.

LABOUR LAW COMPLIANCES FOR STARTUPS IN INDIA

Because of Start-up storm gripping the nation and the tremendous potential that it has, the Ministry of Labour and Employment has issued an advisory to the States/Union Territories/Central Labour Enforcement Agencies for a compliance mechanism based on self-certification and various regulations under different types of Labour Laws. It is the move to adhere startup culture in India and incentivizing the entrepreneurs in setting up new start-up ventures.

SELF CERTIFICATION

Startups shall be allowed to self-certify with **9 Labour and Environment Laws through the Mobile App**. No inspections will be conducted for a **period of 3 years**. Startups can be inspected for the violation of labour laws if complaint is received in writing and

approved by at least one level senior to the inspecting officer.

The Startups may self-certify compliance in respect of following Labour Laws:

1. The Industrial Disputes Act, 1947;
2. The Trade Unions Act, 1926;
3. The Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996;
4. The Industrial Employment (Standing Orders) Act, 1946;
5. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979;
6. The Payment of Gratuity Act, 1972;
8. The Contract Labour (Regulation and Abolition) Act, 1970;
9. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952;
10. The Employees' State Insurance Act, 1948.

Note – Self Certification is facility for the first year only, for the subsequent years the startup has to furnish only compliance returns.

RESPONSIBILITY OF THE EMPLOYERS UNDER THE SITUATION OF COVID-19

1. To provide a safe work areas and useful resources for working from home.
2. To reimburse the reasonable expenses which are incurred by employees while working from home such as Internet expenses, etc.
3. To ensure the safety, health and welfare of the employees.
4. To provide information, supervision and training regarding safety and health to the employees.
5. To put plans in place for emergencies.

LABOUR AUDIT

It is a detailed check of the policies, procedures and standards of the company in respect of labour, compliances and non-compliances of the labour laws.



PROCESS OF LABOUR AUDIT

1. Firstly, you should understand the business and nature of the organization, location of workplace and industry.
2. Understand the structure of manpower, number of human resources (on roll and outsourced), their roles and duties.
3. Ascertain the applicable Labour Laws, Rules, Regulations (both Central and State)
4. To make the list of relevant authorities and compliances.
5. Verify the present compliance level under the various laws.

Benefits of Labour Audit to various stakeholders

1. It enhances the morale and social security of the employees.
2. It helps in maintaining the sense of belongingness between employers and employees.
3. It ensures timely payment of wages, remuneration and other statutory amount of the employees such as – pension, gratuity, provident fund, etc.

4. The positive outcome of the audit enhances the reputation of the employer in the industry.
5. Audit eliminates the penalties, damages, compensation that can be imposed by the government on the organization.
6. Labour Audit will ensure compliance of historical defaults committed by the organization under various labour laws.
7. It reduces the burden of the government because audit will be conducted by an independent professional such as – Company Secretary in Practice.
8. It ensures higher productivity and lower absenteeism.
9. It helps in preventing lockout, retrenchment, strikes etc.
10. Co-operation and good understanding improves labour relations and this is indispensable for the good corporate governance.

LET'S TAKE A LOOK FROM THE BIRD'S EYE ON COMPLIANCE CHECKLIST

During Every Month/ Year	Name of the Act	Event	Form No.
Within 15 Days of commencement/ completion of each contract	Contract Labour (Regulation & Abolition) Act, 1970	Return/Notice within 15 days of commencement/ completion of each contract by the Principal employer	Form VI-B
Within 15 Days of commencement/completion of contract work	Contract Labour (Regulation & Abolition) Act, 1970	Notice of commencement/ completion of contract work by the Contractor within 15 days	Form VI-A
February 15	Building and Other Construction Workers (Regulation of Employment and Condition of Services) Act & the Rules, 1966	Annual Return in duplicate.	Form XXV
Within 30 Days from due dates	Employment Exchanges (CNV) Act, 1959 & Rules	Quarterly Return for respective quarter	Form ER-1
Within 30 Days from due dates	Employment Exchanges (CNV) Act, 1959 & Rules	Biennial return within 30 days of the due date as notified in the official gazette	ER-II
Within 30 Days of applicability of the Act & any change	Payment of Gratuity Rules	Notice of applicability of the Act & any change	Form A or B
Jan. 15	Factories Act, 1948	Annual Returns	Form as prescribed in State Rules
Jan. 21	Maternity Benefit Act, 1961	Annual returns & details of payment ending 31st Dec	Forms L, M, N, & O
Jan. 31	Employees' State Insurance Act, 1948	Annual information about factory/ establishment covered	Form 01A
Feb. 1	Minimum Wages Act, 1948	Annual Return	Form – III
July 15 & January 15	Factories Act, 1948	Half Yearly Return	Form as prescribed in State Rules
Dec. 30	Payment of Bonus Act, 1965 & Rules	Annual Return, within 30 days after the expiry of 8 months from the close of the accounting year	Form D
Jan. 31	Sexual Harassment of Women at Workplace (P,P&R) Act, 2013	Annual Return, in such form and at such time as may be prescribed	As may be prescribed

LABOUR LAWS COMPLIANCES AND AUDIT



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Today, the issue of “**Labour Laws Compliances and Audit**” is being pronounced at such a scale that it needs some serious deliberations by one and all. It is moreover well known to each and everyone that the merits of Labour Laws Compliances and Audit have made the same to write this article.

At the outset, the issue of “**Labour Laws Compliances and Audit**” is being discussed at length among the people from all walks of life. It is due to the apparent fact that the above matter has been experienced by our society, our economy, and others in a desired manner for the several yester years.

For Instance, Labour Laws Compliances are the mandatory rules and regulations which the corporate sectors have to follow. These are a set of rules, regulations, conditions and guidelines set for the employment of a particular employee. As per Article 246 of Constitution of India, the power to make law's have been distributed among Centre and State Governments via three lists namely Union list, State list and Concurrent list. Under the Constitution of India, Labour is a subject matter in the Concurrent List and, therefore, both the Central and the State governments are competent to enact legislations subject to certain matters being reserved for the Centre. Under Concurrent List, **Entry No. 22** of the Seventh Schedule of the Constitution of India dealing with Trade unions; industrial and labour disputes; **Entry No. 23** dealing with Social security and social insurance; employment and unemployment and **Entry No. 24** dealing with Welfare of labour including conditions of work, employers' liability, workmen's compensation, invalidity & old age pensions and maternity benefits. Hence, the labour laws derive their origin, authority and strength from the provisions of the Constitution of India.

There are various Acts implemented to regulate the Industries,

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establishments, employees, workers etc. in a corporate sector like Factories Act, 1948, ESI Act, 1948, Employees' Compensation Act, 1923 are focused to the regulation of the employment of the women and children in factories, just and humane conditions of work, protection of health and compensation for injuries sustained during work. Minimum Wages Act, 1948 and the Payment of Wages Act, 1936 regulate wage payment. Payment of Bonus Act, 1965 seeks to bridge the gap between the minimum wage and the living wage. Some of the glimpses of labour laws compliances are as under:

1. Law of welfare & Working Condition:
 - a. The Factories Act, 1948;
 - b. The Contract Labour (Regulation and Abolition) Act, 1970;
 - c. The Mines Act, 1952; etc.
2. Law of Industrial Relations:
 - a. Industrial Disputes Act, 1947;
 - b. The Plantation Labour Act, 1951;
 - c. Indian Trade Union Act, 1926; etc.
3. Law of Wages:
 - a. The Minimum Wages Act, 1948;
 - b. The Payment of Wages Act, 1936;
 - c. The Payment of Bonus Act, 1965;
 - d. The Equal Remuneration Act, 1976; etc.
4. Social Security Legislations:
 - a. The Employees' State insurance Act, 1948;
 - b. The Employees' Provident Funds & Miscellaneous Provisions Act, 1952; The Employee's Compensation Act, 1923;
 - c. The sexual harassment of women at workplace (Prevention, Prohibition and Redressal) Act, 2013; etc.

The Labour Laws (Exemption from Furnishing Returns and Maintaining

Registers by Certain Establishments) Act, 1988 provides for the exemption of employers in relation to establishments employing a small number of persons from furnishing returns and maintaining registers under certain labour laws. Small establishments were exempted from furnishing returns and maintaining registers under certain enactments mentioned in the first Schedule to the Act and instead they are required to furnish returns and maintain registers in the forms set out in the Second Schedule to this Act.

Now, let's look over the detailed concept of some of the major labour law compliances:-

1. THE FACTORIES ACT, 1948

- This Act extends to the whole of India with effect from the 01st day of April, 1949.
- It applies to factories as defined under the Act. Applicable to all factories using power and employing 10 or more workers, and if not using power, employing 20 or more workers on any day of the preceding 12 months.
- The Factory license is applied online in most states (including Haryana). Renewal is also done online & is required to be generally done by 31st December.
- The Total number of hours of work in a week - shall not exceed 60 and Maximum 9 hours of daily work with minimum 30 minutes of rest interval in every 5 hours to be provided.
- The Annual Return in (Form 21) is to be filed before 15th January of every year and half yearly return in (Form 22) is to be filed before 15th July & 15th January respectively of each year.
- The occupier of the factory is required to take the prior approval from the State Government or the Chief Inspector in writing for the site on which factory is to be situated at least 15 days before he begins to use the premise as a factory. The notice shall contain the following details:-
 - ◆ Name and address of the occupier
 - ◆ Name and situation of the factory
 - ◆ Name and address of the owner of the premises
 - ◆ Address to which communication relating to the factory may be sent
 - ◆ Total rated horsepower installed or to be installed
 - ◆ Name of the manager of the factory
 - ◆ Number of workers likely to be employed in the factory
 - ◆ Average number of workers per day employed during the last 12 months in case if Factory is in existence on the date of commencement of this Act
 - ◆ Other particulars which may be prescribed
 - ◆ There are several Measures to be taken by factories like Health, Safety and Welfare measures divided into Chapter III, IV & V of the Factories Act, 1948 respectively.

2. THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

- ◆ This Act extends to the whole of India.
- ◆ This Act is applicable in case there is an "aggrieved women" who alleges to have been subjected to an act of sexual



harassment (whether employed in that workplace or not).

- ◆ The Act provides for two kinds of complaints mechanisms via Committee formation:

(i) **Internal Complaints Committee (ICC)** {an employer to set up an 'Internal Complaints Committee' ("ICC") at each office or branch, of an organization employing **10 or more employees**, to hear and redress grievances pertaining to sexual harassment} &

(ii) **Local Complaints Committee (LCC)**. {At the district level, the Government is required to set up a 'Local Complaints Committee' ("LCC") to investigate and redress complaints of sexual harassment from the unorganized sector or from establishments where the ICC has not been constituted on account of the establishment having **less than 10 employees** or if the complaint is against the employer}.

- ◆ The Internal Committee or the Local Committee, as the case may be, shall in each **calendar year** prepare, in such form and at such time as may be prescribed, an **annual report** and submit the same to the employer and the District Officer.

3. THE EMPLOYEES' STATE INSURANCE ("ESI") ACT, 1948.

- ◆ This Act extends to the whole of India. Applicable to all factories and establishments other than seasonal factories (in which 10 or more workers are employed) but as per decision dated 06.07.2018 by the Hon'ble Supreme Court, the ESI Act is not applicable on Construction sector.
- ◆ Section 38 of the ESI Act, 1948 makes compulsory that subject to the provisions of the Act all the employees in factories or establishments to which this Act applies shall be insured in the manner provided by this Act. Such insured persons shall pay contributions towards Insurance Fund through their employers who will also pay their own contribution.
- ◆ As per Section 40 read with Rule 51 of ESI Rules, 1950, the amount of contribution for a wage period shall be in respect of —
 - (a) employer's contribution, a sum (rounded to the next higher rupee) equal to four and three fourth percent of

the wages payable to an employee; and

(b) employee's contribution, a sum (rounded to the next higher rupee) equal to one and three fourth percent of the wages payable to an employee.

- ◆ The Return of contribution is to be filed in Form-5; Register of employees to be maintained in Form-6. Every employer shall keep a record in Form-11 with appropriate particulars of any accident causing personal injury to an employee.
- ◆ Every employer shall send a report in Form-12 to the appropriate branch office and to the insurance medical officer of the insured person immediately if the injury is serious and in other case, within 48 hrs after the receipt of notice.
- ◆ The Chapter V of the ESI Act, 1948 provides the benefits of the Insured person under this Act.

4. THE MINIMUM WAGES ACT, 1948.

- ◆ The Minimum Wages Act was passed in the year 1948 and it came into force on 15th March, 1948. This Act extends to the whole of India.
- ◆ This Act mandates the fixing minimum rates of wages in scheduled employments.
- ◆ The number of hours which shall constitute a normal working day, shall be -
- ◆ (a) in the case of an adult – 9 hours; (b) in the case of a child – 4 & 1/2 hours.
- ◆ The Minimum wages fixed as per latest notification by Haryana & Delhi Government*are as under:

❖ **Delhi Government**

S. No.	Category of Worker	Minimum Wage Rate per-month (Amount in Rupees)	Minimum Wage Rate per-day (Amount in Rupees)
1	Unskilled	14000.00	468.00
2	Semi-skilled class- A	15400.00	520.00
3	Skilled class- A	16962.00	546.00

❖ **Haryana Government**

S. No.	Category of Worker	Minimum Wage Rate per-month (Amount in Rupees)	Minimum Wage Rate per-day (Amount in Rupees)
1	Unskilled	7600.00	292.31
2	Semi-skilled class- A	7980.00	306.92
3	Skilled class- A	8797.95	338.38

- ◆ There shall be mandatory registers to be maintained under this Act as Register of overtime, Register of Wages, Register of deduction and Register of fine, etc.
- ◆ The details like Minimum rate of wages, Abstract of Act & Rules, Name & Address of Inspector shall be displayed at main entrance of the establishment & office in English & Hindi in clean & legible condition.
- ◆ Every employer shall send annually a return in Form III.

5. PAYMENT OF WAGES ACT, 1936

- ◆ This Act extends to the whole of India. The main object of the Act is to eliminate all malpractices by laying down the time and mode of payment of wages as well as securing that the workers are paid their wages at regular intervals, without any unauthorised deductions.
- ◆ It regulates payment of wages of certain classes of employed persons. The payment of Wages will be as follows:
 - if less than 1000 workmen are employed- before expiry of 7th day after last day of wage period
 - If more than 1000 workmen are employed- before expiry of 10th day after last day of wage period
- ◆ The Statutory registers are required to be maintained under this Act as Register of wages, Register of fine, Register of damage, Register of deductions & Register of advances.
- ◆ This Act mandatorily required that the Abstract of Act & its Rules shall be displayed at main entrance of the establishment & office in English & Hindi in clean & legible condition.

6. PAYMENT OF BONUS ACT, 1965

- ◆ According to Section 1(2) of the Bonus Act, 1965, this Act extends to the whole of India, and as per Section 1(3) the Bonus Act, 1965 shall apply to (a) every factory (defined in Factories Act, 1948); and (b) every other establishment in which 20 or more persons are employed on any day during an accounting year.



- ◆ Every employee shall be entitled under this Act to be paid by his employer in an accounting year, BONUS, in accordance with the provisions of this Act, provided he has worked in the establishment for not less than 30 working days in that year.
- ◆ As per Payment of Bonus Amendment Act, 2015, eligibility limit was enhanced from Rs 10,000/- per month to Rs 21,000/- per month & Calculation ceiling from Rs. 3,500/- to Rs. 7,000/- per month (with retrospective effect from 1st April, 2014)

7. THE EMPLOYEES' PROVIDENT FUNDS & MISCELLANEOUS PROVISIONS ACT, 1952

- ◆ This Act extends to the whole of India except Jammu & Kashmir.
- ◆ According to Section 1(3) of the Act, subject to the provisions of Section 16, the Act applies:
 - (a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which **20 or more persons are employed**; and
 - (b) to any other establishment employing **20 or more persons** or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf:
 - (c) But any establishment employing even **less than 20 persons** can be covered voluntarily u/s 1(4) of the Act
- ◆ Under this Act, an equal contribution of 12% (10% in certain cases) of Wages (Basic wages, dearness allowance and retaining allowance, if any) is required to be paid by employer and employee (whether employed by directly or through contractor itself). However, employees can voluntarily opt to contribute more than 12% of their wages in Provident Fund Account but needs to be provided in writing.
- ◆ In case the employer has made default in transferring of the accumulated amount, he is required to pay damages as follows:
 - If period of default is less than 2 months: 5 % of arrears per annum
 - If period of default is 2 - 4 months: 10 % of arrears per annum
 - If period of default is 4 - 6 months: 15 % of arrears per annum
 - If period of default is more than 6 months: 25 % of arrears per annum
- ◆ After the facility of online mode, there will be no required to submit paper and returns in form 5/10/12A/3A or 6A.
- ◆ Salary for PF calculation should not be less than the 'Minimum Wages' – as per directions issued by Central Provident Fund Commissioner to all Regional Provident Fund Commissioners (to be checked particularly in case of 'Contract Labour' deployed through Contractors). However, the Principal Employer will be statutorily responsible for default of Contractor, with respect to statutory payments of PF contribution of Contract Labour

(but this is however subject to judicial review).

8. PAYMENT OF GRATUITY ACT, 1972

- Gratuity is a lump sum payment made by the employer as a mark of recognition of the service rendered by the employee when he retires or leaves service. The Payment of Gratuity Act has been amended from time to time to bring it in tune with the prevailing situation. Recently the Act has been amended twice to enhance the ceiling on amount of gratuity from Rs.10 lakh to Rs.20 lakh as well as to widen the scope of the definition of "employee" under section 2 (e) of the Payment of Gratuity Act, 1972.
- The applicability of this Act to an employed person depends upon two factors namely: firstly, the person should be employed in an establishment to whom this act applies and secondly, he should be an "employee" as defined in Section 2(e).
- It is applicable to
 - Every factory, mine, oilfield, plantation, port and Railway Company,
 - Company (As registered under Companies Act, 1956/2013),
 - Shop & Establishment (employing 10 or more persons are employed or were employed on any day preceding 12 months),
 - Other establishments, (employing 10 or more persons)
- The establishment needs to intimate within 30 days in prescribed Form for any change in the name, address of employer or nature of business of such change.
- The payment of Gratuity (15 days salary for every completed year of service) to be payable to an employee after rendering services of 5 his years to an establishment on his:
 - Superannuation,
 - Retirement or resignation,
 - Death or disablement due to accident or disease (completion of continuation of service for 5 years is not necessary) This Act mandatorily required that the Abstract of this Act & its applicable Rules shall be displayed at main entrance of the establishment/company & office in English & Hindi in clean & legible condition.

However, these lists of detailed compliances of several labour laws are not exhaustive but this is inclusive. Audit under labour laws is a new concept, which is necessitated, in direct consequence of its non-compliance in large scale. Even after over six decades of attaining independence, India is still plagued with victimisation; non compliance of labour legislations is still at large. An analysis of these practices reveals that many employers resort to short cut methods to avoid the compliance of labour legislations. There is no system in place for reporting non-compliance of labour legislations by an **independent professional like Company Secretary**. Although, they can mention the non-compliance in their Secretarial Audit Report prepared as per

Article

the Section 204 of Companies Act, 2013. The Labour audit should cover all labour legislations applicable to an Industry/factory or other commercial establishments. There are several benefits of the Labour Audit provided to Labour, Employees, Employers, Government, etc. Illustrative lists of legislations that may be brought under the **ambit of labour's audit** are:

S. No.	Name of legislations	Certificates to Cover
1	Payment of Wages Act, 1936	<ul style="list-style-type: none"> ✓ Annual Certificate provides that the wages were paid in accordance with the Act. ✓ How much number of employees in the establishment governed by the Act. ✓ No deduction from wages has been made other than those authorised under the Act. ✓ Calculation of Wage Period.
2	Payment of Bonus Act, 1965	<ul style="list-style-type: none"> ✓ Determination of Available and Allocable Surplus and correctness of Computation. ✓ Timely payment of bonus. ✓ Bonus is paid to the eligible persons. ✓ Whether the company paid minimum or maximum bonus?
3	Provident Funds and Miscellaneous Provisions Act, 1952	<ul style="list-style-type: none"> ✓ Timely deposit of Employer and Employee's dues with Provident Fund Provisions Act, 1952 Commissioner/ Trust. ✓ Reporting of cases where proceedings under the Act have been initiated against the Directors for recovery of dues. ✓ If the Employer has created its own trust, whether the terms of trust are more beneficial than those provided under the trust? ✓ Whether conditions imposed by PF Commissioner for the creation of Trust are satisfied or not?
4	Payment of Gratuity Act, 1972	<ul style="list-style-type: none"> ✓ Whether liability for gratuity has been provided for in the Accounts maintained or not? ✓ Whether the company has formed any trust that would take care of the liability arising out of gratuity? ✓ Number of claims during the year for the payment of gratuity and time taken for its settlement.

5		<ul style="list-style-type: none"> ✓ Whether the Gratuity has been paid in accordance with the provisions of the Act? ✓ Whether any dispute exists/arises against the company for non payment of gratuity? If so, details thereof.
6	Trade Unions Act, 1926	<ul style="list-style-type: none"> ✓ Number of Registered Trade unions in operation in the factory and its affiliations to any All India Organisations of Trade Unions.
7	Factories Act, 1948	<ul style="list-style-type: none"> ✓ Whether the factory is registered as per Factories Act, 1948? If so, then the registration number of the factory given. ✓ Item of manufactures. ✓ Whether industry is hazardous or not? If so, then steps suggested by appropriate government for safety has been complied with in. ✓ Whether Chapter IV on Safety has been complied with or not. ✓ Whether Chapter V on Welfare has been taken care of. ✓ Whether working hours are in accordance with the provisions of the Act. ✓ Maintenance of proper records of Attendance and Leaves. ✓ Provisions relating to employment of women, young person's etc. are duly complied with.
8	Employees' Compensation Act, 1923	<ul style="list-style-type: none"> ✓ Fatal Accidents are to be reported. ✓ Time taken for payment for compensation. Disputes on settlement of compensation to be reported. ✓ Any case of Occupational Disease reported in the factory or establishment. ✓ Insurance Cover for meeting the liability. ✓ Pending Disputes under the Act and its nature along with a note on liability accepted by the Employer.
9	Minimum Wages Act, 1948	Whether the company is paying the wages in accordance with the provisions of the Act?

CONCLUSION

Hence, consequently it has become the need of the hour for the government & its competent authorities to initiate ambitious plans for its further development to encourage it.

LABOUR LAW COMPLIANCES AND AUDIT



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The landscape of statutes related to labour laws is constantly evolving. Thus, in pursuit of ensuring compliances with various labour regulations, audit under labour laws is necessitated. It's crucial for the businesses to comply with all legal and statutory norms, as applicable from time to time to operate successfully in India. This often involves significant amount of resources, time, and continuous monitoring, in order to be compliant and avoid penalties. Labour audit involves a systematic scrutiny of documents by an independent professional like Company Secretary in Whole Time Practice in order to ensure proper compliance.

For a timely and efficient statutory compliance in an organization, the following aspects must be in place:

- ◆ Maintaining statutory registers and records
- ◆ Unrestricted access to local and regional expertise
- ◆ Expert support during all audits and inspections
- ◆ Following ethical practices
- ◆ Knowledge of timelines for adherence to the rules and regulations

SCOPE OF LABOUR AUDIT:

Audit scope, defined as the amount of time and documents which are involved in an audit. The audit scope, ultimately, establishes the depth of audit performed. The Labour law auditor must incorporate all labour legislations applicable to an Industry or any other commercial establishment, wherein audit is being conducted. In case a particular piece of labour law is not applicable to a specific business, the same should be disclosed distinctly in the report of an Independent Professional. Scope of labour law audit will certainly vary from business to business.

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METHODOLOGY OF CONDUCT OF LABOUR AUDIT

At the commencement of audit, the Independent Professional like Company Secretary in Whole Time Practice should define the scope of his audit. As stated Independent Professional should identify various Central and State Acts and Rules that are applicable to an employer. Based on such identification, he should commence scrutinizing the compliance of provisions of various Acts/Rules.

Before commencement of his audit, a checklist for compliance of each legislation has to be formulated.

The applicability of law depends on the type of organization. Also, there are multiple laws which apply to employer and employee respectively.

THE CODE ON WAGES, 2019

Payment of minimum rate of wages: No employer shall pay to any employee wages less than the minimum rate of wages notified by the appropriate Government.

Wages for overtime work: The employer shall pay employee for every hour or for part of an hour so worked in excess, at the overtime rate which shall not be less than twice the normal rate of wages.

Mode of payment of wages: All wages shall be paid in current coin or currency notes or by cheque or by crediting the wages in the bank account of the employee or by the electronic mode.

TIME LIMIT FOR PAYMENT OF WAGES:

Wages, if on monthly basis, shall be paid before the expiry of the seventh day of the succeeding month.

ELIGIBILITY FOR BONUS:

There shall be paid to every employee by his employer, who has put in at least thirty days work in an accounting year, an annual minimum bonus calculated at the rate of eight and one-third percent of the wages earned by the employee or one hundred rupees, whichever is higher whether or not the employer has any allocable surplus during the previous accounting year. However, the total bonus including the annual minimum bonus shall not exceed twenty percent of the wages earned by the employee in the accounting year.

Payment of bonus out of allocable surplus: The bonus shall be paid out of the allocable surplus which shall be an amount equal to sixty percent in case of a banking company and sixty-seven percent in case of other establishment, of the available surplus

TIME LIMIT FOR PAYMENT OF BONUS:

All amounts payable to an employee by way of bonus under this Code shall be paid by crediting it in the bank account of the employee by his employer within a period of eight months from the close of the accounting year.

THE OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2019 (AS INTRODUCED IN LOK SABHA)

HEALTH AND WORKING CONDITIONS:

The employer shall be responsible to maintain in his establishment such health and working conditions for the employees such as:

- ◆ Adequate and suitable facilities for washing to workers for male and female separately;
- ◆ Bathing places and locker rooms for male, female and transgender employees separately.
- ◆ Place of keeping clothing not worn during working hours and for the drying of wet clothing;
- ◆ Sitting arrangements for all workers obliged to work in a standing position;
- ◆ Adequate standard of canteen or workers thereof in an establishment employing one hundred or more workers including contract labour ordinarily employed;
- ◆ Responsibility of employer for maintaining health and working conditions; Adequate first-aid boxes or cupboards with contents readily accessible during all working hours;
- ◆ Ambulance room in every factory, mine and other construction work wherein more than five hundred workers are ordinarily employed;

- ◆ Central Government may make rules to provide for the facility of crèche having suitable room or rooms for the use of children under the age of six years of the employees at suitable location

HOURS OF WORK AND ANNUAL LEAVE WITH WAGES

Weekly and compensatory holidays: No worker shall be allowed to work in an establishment for more than six days in a week

Notice of periods of work: There shall be displayed and correctly maintained in every establishment a notice of periods of work, showing clearly for every day the periods during which workers may be required to work

Maintenance of registers and records and filing of returns: An employer of an establishment shall maintain register, electronically or otherwise, containing such particulars of workers; work performed by them; number of hours of work constituting normal working hours in a day; day of rest allowed in every period of seven days etc.

And file such return electronically or otherwise to the Inspector-cum-Facilitator.

THE CODE ON SOCIAL SECURITY, 2019:

Employees Provident Fund: Employer shall make a contribution to the Fund which shall be twelve percent of the wages for the time being payable to each of the employees or such percentage of the wages as may be notified by the Central Government and the employee's contribution therein shall be equal to the contribution payable by the employer.

Employees Pension Fund: The employer's contribution under the employees pension scheme shall be not exceeding eight and one-third percent of the wages.

Payment of Gratuity: The employer shall pay gratuity at the rate of fifteen days' wages to an employee who has rendered continuous service for not less than five years (except for termination of the employment of any employee due to death or disablement or happening of any such event) for every completed year of service or part thereof in excess of six months.

MATERNITY BENEFIT:

No employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy.

No woman shall work in any establishment during the six weeks immediately following the day of her delivery, miscarriage or



medical termination of pregnancy.

Every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of her delivery, and any period immediately following that day.

No woman shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than eighty days in the twelve months immediately preceding the date of her expected date of her delivery.

Every woman entitled to maternity benefit shall also be entitled to receive from her employer a medical bonus of three thousand five hundred rupees or as such amount as may be notified, if no pre-natal confinement and post-natal care is provided for by the employer free of charge.

Every establishment having fifty employees or such number of employees as may be prescribed by Central Government shall have the facility of crèche within such distance. Provided that the employer shall allow four visits a day to the crèche by the woman, which shall also include the intervals of rest allowed to her.

EMPLOYEE COMPENSATION:

Reporting of Accident, Injury, Death and Occupational Diseases shall be made within a period of twenty four hours of the occurrence of such accident or the occupational disease comes within the knowledge of the employer. Provided that any fatal accident shall be reported immediately.

Employer's liability for compensation: If personal injury is caused to an employee by accident or an occupational disease listed in the Third Schedule arising out of and in the course of his employment, his employer shall be liable to pay compensation.

Compensation in case of death of or injury in plantation: If death or injury is caused to any worker or a member of his family as a result of the collapse of a house provided by the employer in a plantation, and

the collapse is not solely and directly attributable to a fault on the part of any occupant of the house or to a natural calamity, the employer shall be liable to pay compensation.

Amount of compensation: where death results from the injury, an amount equal to fifty per cent of the monthly wages of the deceased employee multiplied by the relevant factor.

Where permanent total disablement results from the injury, an amount equal to sixty percent of the monthly wages of the injured employee multiplied by the relevant factor. Where temporary disablement, whether total or partial, results from the injury, a half-monthly payment of the sum equivalent to twenty-five percent of monthly wages of the employee.

E- KRANTI:

The Ministry of Labour & Employment has come up with a unique E-governance service called "E-kranti" which aims to make government services accessible to the common man in his locality, through Common Service Delivery outlets and ensure efficiency, transparency and reliability at affordable costs. For the purpose of E-governance the ministry has also developed a unified Web Portal called "Shram Suvidha Portal". This portal integrates four major Organizations under the Ministry of Labour. The objective of Portal is to consolidate information of Labour Inspection and its enforcement. It will lead to transparency and accountability in inspections. The Unified Shram Suvidha Portal is developed to facilitate reporting of Inspections, and submission of Returns. The Portal has been envisaged as a single point of contact between employer, employee and enforcement agencies bringing in transparency in their day-to-day interactions.

CONCLUSION

With rapid globalization and cut throat competition in the manufacturing processes, the global manufacturing scenario has become immensely competitive.

"Keeping the social security and welfare aspects of workmen better and intact, we are working in the direction of bringing reforms in various labour laws with objective of ease of doing business in new future," Minister Santosh Gangwar told PTI.



Considering the change in employment pattern and the current scenario of employment in India, Labour Audit ensures a thorough check of the company's policies and procedures with the goal of preventing prosecutions or lawsuits.

Labour audit does not only protect the interest of the stakeholders but also leads towards better governance and value creation for the organization.

WORKING FROM HOME DURING COVID-19 – A WORKPLACE TO PROVIDE HEALTHY ENVIRONMENT AS PER THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT (THE POSH ACT), 2013



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COVID-19, a strongest pandemic has caused disruption of Economy, be it business or life, and to address the pandemic, Government has announced national wide lockdown to stop the spread of virus. Ministry of Corporate

Affairs has strongly advised corporate to implement “Working from Home” (WFH) policy considering Social Distancing is essential. But our Economy and Business cannot stop. Be it Employer or Employee, all are working from Homes at their convenience.

Even WFH is not as easy as it sounds. One of my friends called me during lockdown and informed about how she is getting unwelcome random messages, videos and calls from her one of colleagues even during lockdown. Feeling irritated, when she didn’t pick one of his calls that was unknowingly related to Professional work, her complaint was reached to the senior that she is not working or responding to calls during lockdown and it is affecting the working of the team. This strikes me, that with an increase in Domestic Violence cases and child abuse cases these times, there are cases of Sexual Harassment too.

I wrote an article on Sexual Harassment during Lockdown times and was responded with “Arey jab koi kisi se mil hi nahi raha, to harassment kaisa”? It raises further questions whether only touching and physical presence is necessary to consider a case under Sexual Harassment? We must understand that apart from good physical health, it is the mental health too which needs to be taken care of. Some acts may not hit your physical appearance, but it impacts mentally in such a way that a person starts underperforming his obligations.

WHETHER WFH IMPLIES THERE CAN BE NO ACTS OF SEXUAL HARASSMENT?

No, every **Unwelcome** act like unnecessary repeatedly phone calls, unnecessary video conferencing, appearing in indecent attire during video conferences, calling after office hours, sending indecent messages, threats to Employment if not responding to calls etc., at the workplace are the circumstantial factors of sexual harassment. Every act which is unwelcoming verbal, visual or physical conduct of sexual nature which affects working conditions or creates a hostile work environment, which lets the employee underperform is an act of Sexual Harassment. WFH is a need of time but working under the safety environment is a necessity too. Therefore, it can be said that there are acts of emotional visual Sexual Harassment during these times.

Even if all the employees are working from home, it is the duty to maintain the same decency and professionalism at all the times while working. Needless to say that even, the Rajasthan High Court expressed severe displeasure after a lawyer appeared in a vest during a video conference in court proceedings in lockdown times. It was clearly

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communicated that lawyers were supposed to appear in proper attire before the judges.

WHETHER WFH IS CONSIDERED AS WORKPLACE AS DEFINED IN THE POSH ACT?

Yes, as per the Act, Workplace is any place visited by the employee arising out of or during the course of employment including transportation by the employer for undertaking such journey. WFH is out of contractual obligations between an employer and Employee. It is the sitting area of an employee that has changed and not the accountability to discharge the responsibilities as assigned. An employee working from WFH is considered to be a place used by an employee arising out of or during the course of employment.

WHETHER WFH ESCAPES THE LIABILITY OF EMPLOYERS OBLIGATION UNDER SEXUAL HARASSMENT DURING LOCKDOWN?

Employers obligation to provide a safe working environment devoid of sexual harassment to their employees at the Workplace. Employers have to take preventive and remedial measures to make the work environment safe for employee, failing which they will be punished. If any aggrieved employee is approaching to Internal Complaint committee or to Employer with any complaint of any act of circumstantial Sexual Harassment, the same should be dealt in the same way as it would have been dealt in the running premises of office.

WHETHER ALL PROVISIONS OF POSH ACT ARE APPLICABLE DURING COVID-19 LOCKDOWN TIMES?

With no exception, all the provisions of the PoSH Act are applicable in the same way as they would have been applicable on any establishment as if Lockdown had not been announced. Proper care should be taken to implement the policies, enquiries into complaints and provide suitable interim reliefs and final order etc., to provide a healthy working environment to its employees.

Even Supreme Court announced that Improper handling of Sexual Harassment Complaint impinges upon the Fundamental Right to Life and Dignity.

Therefore, it can be said that it is the duty of Employer to take measures in implementation of PoSH during lockdown in any establishment.

LOCKDOWN | COVID-19 | STAY HOME | STAY SAFE

CONCLUSION

Though the PoSH Act, particularly mentions about the safety and protection of Women, but one should believe in Gender Neutral Policy. Instead of Women, the word “Employee” for Men and Women both is mentioned. As the Act does not bar the inclusion of Safety and Protection of Men too.



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LABOUR LAWS COMPLIANCES AND AUDIT



INTRODUCTION

In India, Labours play a vital role for development of economy. The term "Labour" is a subject in "Concurrent List" under Constitution of India where both Central and State Government have power to enact legislation. Entry no 55, 61 and 65 of Union List and Entry no 22, 23 and 24 of Concurrent List provide for constitutional status of labour jurisdiction.

Labour laws apply to almost all industrial and commercial establishments, since they belong to safeguarding the rights of employees and workers employed in industrial and commercial establishments. Employee count is the basic parameter to assess the applicability of labour laws. Broadly, labour laws are categorized in following four categories:-

1. Employment Condition
2. Industrial Relations
3. Remuneration
4. Social Security Benefits

LEGISLATION GOVERNING COMPLIANCES OF LABOUR LAWS

Every assessee to whom tax audit is applicable u/s 44AB of Income Tax Act, 1961 has to compulsorily comply with the statutory and tax law compliances. Tax Auditors are required to report the details of

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contribution towards Provident Fund and Employee State Insurance, due date of its deposit under prescribed statute and actual date of deposits.

Companies Act 2013, does not provide for Labour Law Compliance and Audit, however Section 134(5), Section 204 and Section 205 indirectly clarify the requirement of Labour Law Compliance and Audit.

Section 134(5)(f) –Director Responsibility Statement :- "Directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively."

Section 204(1) Secretarial Audit and Rule 9 of the Companies (Appointment and Remuneration Personnel) Rules, 2014 provide that

Secretarial Audit, inter-alia, includes **reporting of compliance of all applicable laws** to companies.

Section 205(1) Duties of Company Secretary:- To report to the Board about compliance with the provisions of this Act, the rules made there under and **other laws applicable to company**.

LABOUR LAW COMPLIANCES AND AUDIT

It is always recommended to get the insights of the business before performing any compliance activity by interviewing with concerned department.

Following must be the key areas of discussion to determine the applicability of Labour and Industrial law on the establishment:-

1. Nature of Business
2. Number of offices and branch
3. Number of employees (permanent and contractual both)
4. Status of registrations (if obtained)

PRELIMINARY STEPS:-

1. Identify the laws applicable to company/establishment based on nature of industry and number of employees.

Below table provides an example for applicability of laws based on number of employees:-

Name of the Act	Threshold/No of Workmen
1. Shops and Commercial Establishments Act, 1958	1 or more (immediate basis)
2. Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996	10 or more contractual workmen (Section 7- Registration within 60 days)
3. Contract Labour (Regulation and Abolition) Act, 1970	20/50 or more contractual workmen (50 in case of Haryana)
4. Minimum Wages Act, 1948	1 or more (State wage rate will apply as defined in latest minimum wages notification)
5. Payment of wages Act, 1936	1 or more (covers the workers getting wages below than INR 24,000)
6. Employees Provident Fund and Miscellaneous Provisions Act, 1952	20 or more persons employed
7. Employees' State Insurance Act, 1948	10 or more persons employed
8. Child Labour (Prohibition and Regulation) Act, 1986	1 or more (No registration needed)
9. Labour Welfare Fund Act	Number varies from state to state.
10. National & Festival Holiday Act, 1963	1 or more person employed
11. Payment of Bonus, 1965	20 or more persons employed

◆ Industry based compliance includes

- Factories Act, 1948
- Plantation Labour Act, 1951
- Mines Act, 1952

- Dock Workers (Safety, Health and Welfare) Act, 1986

These are the names of few acts, in total there more than 50 different labour laws but one has to be wise while selecting appropriate acts to determine the applicability on company.

2. Prepare the checklist, based on discussions for coverage of applicable laws.
3. After preparation of checklist, one has to start the compliances under labour laws.

Following key areas must be covered while doing compliances and audit under labour law:-

1. Whether valid registration or license has been obtained. All dues to employees and workers are paid within timeline which include: Monthly Wages (Equal or higher than minimum wages)
 - Bonus Payment
 - Leave Allowances
 - Gratuity (in case of left out employee)
 - Overtime Payment
2. Check whether leave benefit is entitled to eligible employees (Leaves such as Sick Leave, Casual Leave, Earned Leave, Festival Holidays and Maternity Leave)
3. Whether safety and security of employees are ensured (Medical Facility, First Aid Box, etc.)
4. Whether display requirements under the act have been complied.
5. Whether contribution under laws such as ESI, EPF, Labour Welfare Fund and Profession tax have been made on or before due date.
6. Check whether all required registers and records are maintained as prescribed under the laws.

7. Whether periodic returns are filed timely. Based on your review, any short coming and/or observation must be discussed with the management and their statements on corrective action plan should be recorded within expected timeline.

You may further categorized your observation into High/Medium/Low based on financial/operational risk and penalties that may impose for non-compliances.



CONSTITUTIONAL OUTLOOK OF LABOUR LAWS



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INTRODUCTION:

The Indian labour legislation owes its existence with the admittance of the British Raj or British Colonialism. The conceptions of British political economy were naturally preponderant in casting or shaping some of these early laws. It can be said that labour legislations in India grew with the growth of industrialization in 18th century. At that time period, India was not only a great agricultural country but a great manufacturing country too. Asian and European markets were mainly fed by the looms supplied by India. But the British Government as a matter of policy discouraged both these sectors in order to encourage the rising manufacturing of England. Their policy was to make Indian people grow only raw materials. The British oppression in India continued for some time, which led to the growth of Indian nationalism.

In 20th century, the national movement took a new turn and there was a common demand for Indian goods. A non-cooperative movement which is known as "**Swadeshi Movement**" was started which urged upon the people to use goods made in India and to boycott foreign goods. The non-cooperative movement synchronized with periods of economic crisis gave impetus to industrialization. Not only that, growth of Indian private sector owes much to these popular movements. An attempt was made to put forward a theory of economic development and planning suited to conditions of our country. After 30th century, planning was accepted by the national movement as its economic ideology. Thus planned industrialization became our main goal. In

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India, the plantation industry in Assam was the first to attract the legislative. A number of Acts were passed from 1863 century onwards to regulate the recruitments. The Factories Act, was passed in 1881 and the Mines Act in 1901. But the most important Act that was passed to protect the interest of the workers was the Workmen's Compensation Act, 1923 (now the Employee's Compensation Act, 1923).

But it is to be noted that most of the labour legislations enacted prior to India's Independence were related only to the organized sectors. The post-independence enactments of important legislations in the areas of employee security, social security, labour standard and welfare of organized as well as unorganized sector derive their origin partly from the vision of independence of India's leaders and partly from the provisions of the Indian Constitution. These

laws were also influenced by important human rights conventions and their recommendations that have emerged from the United Nations. These includes social security, right to work of one's choice, right against discrimination and exploitation, prohibition of child labour, abolition of contractual labour, abolition of bonded labour, equal remuneration, just and humane conditions of work, service conditions for migrant workers, and livelihood rights. With all these objectives or goal, our labour laws have also been significantly

influenced by the deliberations of various sessions of the International and National Labour Conference and also of the recommendations of the various National Committees and Commissions e.g. the FNCL, 1969; the NCSEW, 1988; the NCRL, 1987; the NCRL, 1991 and the NCRL, 2002.

After independence, several labour legislations have been passed and amended at several times. The case in point is the Central labour legislations for migrant labour working in an unorganized sector. These laws, which protect the rights of migrant workers and regulate the conditions of work in the unorganized sector fall into three groups. The first group applies generally to unorganized sector. The second group of laws applies to certain group of workers in the unorganized sector and the scope of application is restricted by the nature of employment, or size of employment. The third group of laws apply mainly to the organized sector workers or enterprises employing ten or more workers, but in certain cases, or by relaxing the employment criterion these laws can apply to some sections of workers in the unorganized

sector. But before the detailed discussion on the provisions of these laws, it is incumbent to understand the basic principles of these labour legislations.

THREE S PRINCIPLES

Social Justice

Social justice implies two things: firstly, equitable distribution of profits and other benefits of employment between owner and workers. Secondly, providing protection to the workers against harmful effects to their health, safety and morality. In the beginning, the position of a worker was that of a daily wage-earner, which means he was paid only for the days he actually worked. A workman was expected to accept all the hazards connected with his work as incidental to his employment. Until the passing of Employee's Compensation Act 1923, no compensation was paid in case of an accident taking place in the course of employment. However, the Employee's Compensation Act, 1923 guarantees to workmen compensation for any injury caused by an accident arising out of and in the course of employment. The Payment of Wages Act, 1936 and the Minimum Wages Act, 1948 are a few other legislations based on the principle of social justice. These legislations fix the hours of work, make provisions for payment of over-time, safety, health and welfare of labour. Labour welfare in our country has a special significance for our constitution provides for the promotion of welfare of people, for humane conditions of work and cultural opportunities.

According to Justice P. N. Bhagwati (the 17th Chief Justice of India), the concept of 'social justice' does not emanate from the fanciful notions of any particular adjudication but must be founded on a more solid foundation. In the opinion of Justice P. B. Gajendragadkar (the 7th Chief Justice of India), the concept of social and economic justice is a living concept of

revolutionary import. It gives sustenance to the rule of law and meaning and significance to the idea of welfare state. Thus, this concept of social justice has become an integral part of labour laws. It is founded on the basis idea of socio-economic equality and its aim is to assist the removal of socio-economic disparities and inequalities. It is not narrow or limited to a particular branch of legislation or adjudication although it is more prominent and conspicuous in labour legislation and adjudication. Its

sweep is comprehensive and is founded on the basic ideal of socio-economic equality and its aims at assisting the removal of socio-economic disparities and inequalities of birth and status and endeavors to resolve the competing claims especially between the employers and workers by finding a just, fair and equitable solution to their human relation's problem so that peace, harmony and co-operation of the highest order prevails amongst them which may further the growth and progress of nations.

Social Equity

Any legislation which is based on social justice prescribes a definite standard for adoption in future. Such standard is fixed after taking into account the past and present circumstances. Once a standard is so fixed by legislation it remains in force until it is changed or modified by another legislation passed in conformity with the legislative procedure. No discretion is given to change such law to the authority administering such law. However, where it is felt that the law should be flexible and should be changed as the circumstances and conditions change, the law empowers the Government to make such changes. This is generally done by giving the Government rule making power under the provisions of the Act. When power under the Act is given to the Government the rules may be modified to suit the changed conditions. Such legislation is said to be based on social equity.

Social Security

The quest for social security and freedom from want and distress has been the consistent urge of man since ages. This urge has assumed several forms according to the needs of the people and their level of social consciousness, the advancement of technology and the peace of economic development. Social security envisages that the members of a community shall be protected by collective action against social risks causing hardship and privation to individuals whose private resources can seldom be adequate to meet them.

INTERNATIONAL LABOUR ORGANISATION ARTICLE 14

Equality before the law which is interpreted in labor laws as "Equal pay for Equal work". It does not mean that article 14 is absolute. There are a few exceptions in it regarding labour laws such as physical ability, unskilled and skilled labours shall receive payment according to their merit. The concept of equality does not mean absolute equality among human beings which is physically not possible to achieve. It is a concept implying absence of any special privilege by reason of birth, creed or the like in favour of any individual and also the equal subject of all individuals and classes to the ordinary law of the land. As Dr. Jennings puts it: "Equality before the law means that among equals the law should be equal and should be equally administered, that like should be treated alike. The right to sue and be sued, to prosecute and be prosecuted for the same kind of action should be same for all citizens of full age and understanding without distinctions of race, religion, wealth, social status or political influence". It only means that all persons under similar circumstances shall be treated alike both in the privileges conferred and liabilities imposed by the



laws. Equal law should be applied to all in the same situation, and there should be no discrimination between one person and another. As regards the subject-matter of the legislation their position is the same.

ARTICLE 19 (1) (C)

Constitution guarantees citizens to form a union or association. The Trade Union Act, 1926 works through this Article of the Constitution. It allows workers to form trade unions. Trade Unions provide the power to raise voice against atrocities done to the workers. Unionization brings power to the labourers. Trade Unions discuss various labour-related problems with the employers, they conduct strikes, etc.

This Article speaks about the Fundamental right of citizen to form an associations and unions. Under clause (4) of Article 19, however, the State may by law impose reasonable restrictions on this right in the interest of public order or morality or the sovereignty and integrity of India. The right of association pre-supposes organization or permanent relationship between its members in matters of common concern. It thus includes the right to form companies, societies, partnership, trade union, and political parties. The right guaranteed is not merely the right to form association but also to continue with the association as such. The freedom to form association implies also the freedom to form or not to form, to join or not to join, an association or union.

ARTICLE 21

The sweep of the right to life, conferred by Article 21 is wide and far reaching. 'Life' means something more than mere animal existence. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because; no person

can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only deny the life of its effective content



and meaningfulness but it would make life impossible to live. There is thus a close nexus between life and the means of livelihood and as such that, which alone makes it possible to live.

ARTICLE 23

The Constitution prohibits traffic in human being and beggar and other similar forms of forced labour. The second part of this Article declares that any contravention of this provision shall be an offence punishable in accordance with law. Clause (2) however permits the State to impose compulsory services for public purposes provided that in making so it shall not make any discrimination on grounds only of religion, race, caste or class or any of them. 'Traffic in human beings' means selling and buying men and women like goods and includes immoral traffic in women and children for immoral or other purposes. Though slavery is not expressly mentioned in Article 23, it is included in the expression 'traffic in human being'. Under Article 35 of the Constitution, Parliament is authorized to make laws for punishing acts prohibited by this Article. In pursuance of this Article, Parliament has passed the Suppression of Immoral Traffic in Women and Girls Act, 1956 for punishing acts which result in traffic in human beings. Article 23 protects the individual not only against the State but also private citizens. It imposes a positive obligation on the State to take steps to abolish evils of "traffic in human beings" and beggar and other similar forms of forced labour wherever they are found. Article 23 prohibits the system of 'bonded labour' because it is a form of forced labour within the meaning of this Article. "Beggar" means involuntary work without payment. What is prohibited by this clause is the making of a person to render service where he was lawfully entitled not to work or to receive remuneration of the services rendered by him. This clause, therefore, does not prohibit forced labour as a punishment for a criminal offence. The protection is not confined to beggar only but also to "other forms of forced labour". It means to compel a person to work against his will. The Constitution of India was drafted in such a way as to ensure that all workers, men and women were equally protected by the law.

ARTICLE 24

Constitution prohibits all forms of child labor. Nobody can employ a child under the age of 14 to work. Child labor was a massive problem of our country in the earlier times and it still is happening but at a lower scale. The penalization of article 24 is severe.

ARTICLE 39

It contains certain principles of policy to be followed by the State. The State shall, in particular, direct its policy towards securing that the citizen, men and women equally, have the right to an adequate means of livelihood. The ownership and control of the material resources of the community are so distributed as to serve the common good and operation of the

economic system does not result in the concentration of wealth and means of production to the common detriment. There is equal pay for equal work for both men and women and the health and strength of workers, men and women, and the tender age of



children are not abused and that citizens are not forced by economic necessity to enter vocations unsuited to their age or strength and children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

ARTICLE 41

“The State shall within the limits of its economic capacity and development, make effective provision, for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want”. The principle enshrined in Article 41 read with Article 45 provides that it is not only necessary but also desirable for the performance of the State’s ultimate duty and responsibility, to provide education to all citizens. It has been held that Article 29 and 30 relating to Culture and Educational Rights should be read in the backdrop of Article 41 and 45. Right to work, to education, etc. in Article 41, is expressly subjected to economic capacity and development of the State. Therefore, person left unemployed under any scheme, cannot claim regularization of their employment, when that scheme comes to an end or the money for it, is exhausted. Right to work has been deliberately kept, by the Founding Fathers, in Directive Principles and hence made unenforceable because, they, in their wisdom, realized that while it was their wish that everyone should be given employment, but the ground realities of our country could not be overlooked.

ARTICLE 42

Article 42 requires that “State shall make provisions for securing just and human conditions of work and for maternity relief”. This Article exhibits the concern of the framers of the constitution for the welfare of the workers. The court may not enforce the Directive Principle as such. But, they must interpret laws so as to further and not hinder the goals set out in the Directive Principles. It has been held in *P. Shivaswamy v. State of Andhra Pradesh*, that Rs. 738/- paid per family as financial assistance to the repatriated bonded labourers, set free from bonds, were inadequate and not in conformity with Article 42 which required the state to make provisions for just and human conditions of work. In *M.C. of Delhi v. Female Workers (Muster Roll)*, 26 the Maternity Relief has been extended to women (muster roll) employees, working on daily wages.

ARTICLE 43

This article sets out the ideals to which our Social Welfare state has to approximate in an attempt to ameliorate the living conditions of the workers. Article 43 has been held to furnish the principle by which unfair labour practice can be judged. It is not possible to lay down an exhaustive test of unfair labour practice, but it can be said that unfair

labour practice violates the principles of Article 43 and other Articles referring to decent wages and living condition for women and which practice, if permitted to become normal, would lead to industrial strife. The compulsory closure of the industrial concern on National and Festival holidays has been justified under Article 43 so as to enable the workers to fully enjoy their leisure and participate in social and cultural activities. The “living wage” is to be distinguished from “minimum” and “fair wage” while “living wage” is such wage that enables the male earner to provide for himself and his family not merely the bare necessities but a measure of frugal comforts, “minimum wage” on the other hand, is just sufficient to cover the bare needs of a workman and his family. Minimum wage is to be fixed in an industry irrespective of its capacity to pay. A “fair wage” stands between “living wage” and “minimum wage”. It has been held that though our constitutional aim, as laid down in Article 43, is “living wage” for workers, in actual practice, our general wage structure has at best reached to the lower level of “fair wage”.

CONCLUSION

Regular employment at a living wage is the dream and the first demand of the poor in our country. The demand of right to employment calls for an adequate legal system for providing employment guarantee whereby the Government can be legally bound to provide work to all those who are able bodied. This would enable people not only to feed themselves and their families, but also to achieve a minimum standard of living with human dignity. The guarantee of gainful employment holds the promise of eventually leading to the fulfilment of other basic rights to food, health, education, and most importantly, right to life. This is not a utopian idea, indeed well incorporated in the Constitution, the supreme law of the country. A guarantee implies not merely an opportunity or even a right, but also assured and secure possession of what is guaranteed. The initiative should project the view that the right to employment must be backed by the full commitment and determination of the government. Affirmation and commitment to this principle does not mean that government should or could employ every job seeker. What it does mean is that government has the obligation and it also has the power to formulate and modify its policies to make the economic system meet the objective of full employment. If implemented well, the national-level Employment Guarantee Programme will go a long way in upholding the right to employment for the poorest who cannot find work but have labour. It will bring in greater security and confidence into their lives, and also serve to strengthen their bargaining power. The duty of the State does not end only with the enactment of laws. Mere declaration of right is of no use unless a suitable mechanism has been set up to realize it. Successful implementation of any system for upholding the human rights and dignity largely depends on the cooperation of all those who are involved and concerned with it. Let us also participate to make the right to work an evocative reality.

IBC INTERPLAY WITH LABOUR LAWS TO PROTECT WORKMEN AND EMPLOYEES INTEREST



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This article aims to cover the provisions related to the rights of employees under the Insolvency and Bankruptcy Code to recover their unpaid wages, provident fund, gratuity, EPFO and salaries from the corporate debtor and bring out a depiction about how it acts a boon for them with the help of judicial pronouncements.

THE PERSPECTIVE

India as a welfare state has enacted various labour laws in order to ensure the protection and promotion of the social and economic status of workers and the elimination of their exploitation. Under the Indian constitution, trade union, labour and industrial disputes are included in the concurrent list, where both the central and state governments are competent to enact legislation, with certain matters reserved for the central government. In addition to these, the preamble of the constitution has secured social, economic and political justice, equality of status and opportunity.

Advent of Insolvency and Bankruptcy Code 2016 (hereinafter referred to as "IBC") has arrayed a new horizon for Employee and workmen working in Companies in India. Employees and workmen are among the strongest pillars of the economy. Hence, adequate safeguards are required to protect helpless employees in situations of insolvency and bankruptcy of their employers. Also, concentrating on the need to recuperate jobs of employees-the so called human and social capital, from an unviable to a viable enterprise, becomes indispensable.

Employees are now empowered to claim their dues in fast track

manner through National Company Law Tribunal (NCLT). The elegance of this law is that the exceptions are specifically laid down in law, in order to protect the interest of organisation, as well as the principle of equity. This IBC has also marked a crucial provision whereby corporate working in India must be more diligent and follow regulation as violation could be catastrophic. From Employee perspective, the provisions under IBC is prudent savior; and from Corporate perspective it is caution note. Law proposed fast track recovery of undisputed dues from defaulters Corporate and further employees will be first in line to get their share from liquidation of assets of such defaulters Corporate. Under IBC, employees and workmen are considered as the operational creditors. If a Company fails to pay salaries and/or other payable dues to its employees or workmen and the total payable amount is more than INR 1 lakh (now increased to Rs One Crore by IBC Amendment Act, 2020), then the employees can file the application against the Company with the NCLT for initiation of the process of recovery. Organisations entering any merger and acquisition should conduct additional due diligence on this matter in order to avoid any disguised impact. In wake of widespread job losses and these series of rulings, the introduction of sale of a company as a going concern in liquidation, was primarily motivated by the objective of keeping employment.

WHO CAN FILE CLAIM?

The IBC differentiated between two categories of persons: workmen and employees. For insolvency process, both employees and workmen qualify as operational creditors (OCs). Since the term employee is not defined under the IBC, a general definition of employee has been referred to. An employee can be said to be a person who is hired by the employer to perform a particular job or specific labour of the employer. The employee is entitled to a specific wage or salary and performs the work under the control or regulation of the employer.

Section 3 (36) of the IBC mentions that the term Workmen shall have the same meaning as provided under the Industrial Disputes Act, 1947 which under its section 2(s) defines a workman as 'a person who is employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work, for hire or reward, terms of employment be express or implied and includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of dispute.

The IBC provides that all the "employees and workmen" must be considered within the meaning of the Operational creditors as defined under Section 5 (20) of the IBC, means a person to whom an operational

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Article

debt is owed and includes any person to whom such debt has been legally assigned or transferred.

As per section 5(21) of the IBC 'Operational Debt' means a claim in respect of the provision of goods or services including employment or debt in respect of the repayment of the dues arising under any law for the time being in force and payable to central government or any state government or any local authority.

The workmen and employee whose past payments are due comes under the definition of operational creditor. For clear understanding a general interpretation may be that, an employee is a person who has been hired by the employer to perform a particular job or specific labour of the employer. So the essential criteria that are being looked upon here may be:

- I. There is a specific wage or salary.
- II. The work being done is under control of the employer or is being regulated by him.
- III. There is an existing implied or written contract in relation to this work being carried out and the employer and the employee have consented to the same.

Provided that there is prima facie exception that if there is any suit pending in the other court, then the application cannot be filed under the NCLT or if the amount of operational debt is disputed, then also the application cannot be admitted.

RANKING OF EMPLOYEE AND WORKMAN IN WATERFALL MECHANISM OF IBC

Section 53 of the Code contains provisions for priority of payment of debts from the proceeds of sale of liquidation assets. It reads that notwithstanding anything to the contrary in any law for the time being in force, while distributing the assets, the order of priority as mentioned in section 53 has to be followed. Sub-section (1) clause (b) mentions that the

Workmen's dues for the period of 24 months preceding the liquidation commencement date shall be treated equally with the debts owed to secured creditors. Clause (c) provides priority to wages and unpaid dues owed to employees other than workmen for the period of 12 months preceding the liquidation commencement date over the dues unpaid to Central or State Governments and unsecured debts.

Unless the first category is paid in full, the second or subsequent category does not get any amount if the assets of the bankrupt company are insufficient to meet them. The claims as specified in the same category or rank take it *pari passu*.

The existence of dues to workmen or employees may be proved by them, individually or collectively on the basis of –

- (a) record available with an information utility, if any; or
- (b) other relevant documents, including –
 - (i) a proof of employment such as contract of employment for the period for which such workman or employee is claiming dues;

- (ii) evidence of notice demanding payment of unpaid dues and any documentary or other proof that payment has not been made; or
- (iii) an order of a court or tribunal that has adjudicated upon the non-payment of dues, if any.

IMPORTANCE OF JUDICIAL PRONOUNCEMENT IN PROTECTING THEIR RIGHTS

For the matters relating to insolvency and liquidation proceeding against companies, the National Company Law Tribunal (NCLT), the National Company Law Appellate Tribunal (NCLAT) and the Supreme court are the competent judicial bodies under the Code.

The following orders clearly reflect the role that Adjudicating Authorities (AA) have played over the three years of existence of the Code empowering employees and workmen under the Code. There have been some recent court decisions under the IBC that deal with the interpretation of labour legislation.

Precision Fasteners Ltd. v. EPFO, Thane; EPFO, Vapi; EPFO Vashi in ARC (India) Ltd. v. Precision Fasteners Ltd

In this case, NCLT Mumbai held that any amount due to the workmen/ employees from the provident fund/ ion fund or gratuity will not be included within the purview of liquidation asset. It was further clarified by NCLT that provident fund dues are excluded from the liquidation assets enabling the workmen/ employees to realise their savings as well as the Employer's contributions as a part of their fundamental right to life while the right of the creditors is merely a property right. Provident Fund payable was held to be deemed assets of employee/workmen.

JK JUTE MILL MAZDOOR MORCHA V JUGGILAL KAMALPAT JUTE MILLS COMPANY LTD

In this case Supreme Court upheld the insolvency application filed under section 9 of the code by a registered trade union considering it to be an operational creditor for the purposes of the code.

The National Company Law Tribunal (NCLT), while adjudicating the application filed by the trade union on behalf of nearly 3000 workers of the debtor, had held that the trade union was not covered as an operational creditor and had dismissed the insolvency application. In the appellate proceedings, the NCLAT had also dismissed the trade union's application by stating that each worker could file an individual application before the NCLT.

The Supreme Court, after studying various provisions of the Trade Unions Act, 1926 (act), observed that a trade union being an entity established under the provisions of the act would fall under the definition of a person under section 3(23) of the code.

Further, Rule 6, Form 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, also recognizes that claims can be made not only in an individual capacity but also conjointly.

Also, a trade union that is recognized under section 8 of the act can sue or be sued in its name. The Supreme Court relied on the judgment of the division bench of Bombay High Court in the case of Sanjay Sadanand Varrier v Power Horse India Pvt. Ltd., where a winding-up petition by a

trade union under section 434 read with 439 of the Companies Act, 1956, was held to be maintainable. On the basis of these observations, the Supreme Court was of the view that filing individual petitions would be burdensome as each worker would, therefore, have to pay insolvency resolution process costs, costs of the interim resolution professional, costs of appointing valuers, and so on. It observed that since a trade union is formed for the purpose of regulating the relations between employees and their employer, it can surely maintain a petition as an operational creditor under the code. On the basis of this, the Supreme Court remitted the petition to the NCLAT to decide the matter on its merits.

ALCHEMIST ASSET RECONSTRUCTION CO LTD VS MOSER BAER INDIA LIMITED

In above case, an application was filed by the workers of the debtor in liquidation, praying for a direction to the liquidator to exclude the amount that is due towards their provident fund, gratuity fund and pension fund from the waterfall mechanism provided for under section 53 of the code. The liquidator was of the view that as per explanation II to section 53 of the code, "workmen's dues" have the same meaning as that assigned to it under section 326 of the Companies Act, 2013, and therefore gratuity shall be included for the purposes of section 53 of the code.

The NCLT observed that "liquidation estate" as defined under section 36 of the code clarifies in unequivocal terms that all sums due to any employee from the provident fund, pension fund and gratuity fund are not to be included in the expression "liquidation estate".

Edelweiss Asset Reconstruction Company Ltd. v. Bharati Defence and Infrastructure Ltd

NCLT rejected the resolution plan providing for right-sizing of employees, without mentioning the approximate number of employees to be terminated or to be retained, without complying with labour laws, and held not to be permissible under law. The extract from the order reads;

' The resolution applicant wants all powers to decide the fate of employees/ workmen/ consultants of the company and further seeks exemption from complying with the applicable laws and immunity from any claims from the employees/ workmen/ consultants so terminated.

We are of the strong opinion that it would be inappropriate to approve such a plan, which contravenes the law and which is prejudicial and causing injustice to the existing employees/workers/consultants.'

REID AND TAYLOR

In the matter of Reid and Taylor, the Mumbai bench of the NCLT accepted a proposal by an unregistered union of the premium apparel brand to take over the firm thereby obstructing liquidation. The company had around 1,200 employees and has a plant in Mysuru, which was running at under 30 percent of its installed capacity and thus incurring cash losses. Accepting the interest of the employees to take over the company and thus stall liquidation which the creditors want, NCLT noted that '...liquidation will get only a meagre value, the creditors will be most affected and the workmen will be losing their livelihood...' NCLT ordered for liquidation as going concern.

CONCLUSION

Workmen and employees both are included in IBC hence, it is indispensable for Corporate to have appropriate pay-out policies and adequate systems in place. Corporate needs to ensure that appropriate measures are in place to avoid misuse by the employees as well.

IBC is a great measure in the corporate arena to empower the employees and workmen and mitigate their losses in adverse situations like insolvency and bankruptcy of their employers.

It is an effective tool for preventing the loss of livelihood of the affected employees and workmen and safeguarding them from a financial calamity.

IBC is a socially beneficial legislation and a great measure in the corporate arena to empower the employees and workmen and mitigate their losses in adverse situations like insolvency or liquidation of companies.

IBC provides the workmen and employees of the companies with an opportunity to recover their unpaid dues from the Corporate Debtor, by approaching the NCLT in a systematic and time-bound manner. Within a strict time-limit to resolve or liquidate the Corporate Debtor, the Code is an effective mean to reform debtor behavior in India. It empowers employees with the right to initiate insolvency proceedings against the Corporate Debtor as Operational Creditors and places them in a higher priority during the payment of the unpaid debts from the liquidation of assets of the liquidating company

In wake of widespread job losses and these series of rulings, the introduction of sale of a company as a going concern in liquidation, was primarily motivated by the objective of keeping employment potential and economic activities intact. The amendments to the IBBI (Liquidation Process) Regulations, 2016 (Liquidation Regulations), introduced on July 29, 2019 by incorporating regulation 32A of the Liquidation Regulations, made it explicitly possible for the liquidator to transfer a company in liquidation as a going concern.



LABOUR LAW COMPLIANCE AND AUDIT



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VINAY KUMAR

INTRODUCTION:

Under the Constitution of India, Labour is a subject in the Concurrent List and, therefore, both the Central and State governments are competent to enact legislations subject to certain matters being reserved for the Central Government under union list. India in the last few decades has seen huge development of business and economic growth and the most valuable major contribution has been made by our Labour force. Roughly 50% of our population comprises of the total labour force in the country majority of which is engaged in the unorganized sector. After being second largest populated country of the world, this work force has become gigantic. For the purpose of safeguarding the interest of these people, central and state government often introduce various acts, rules and regulations. Compliance of labour laws is basically the set of terms or conditions of employment framed under the central laws as well as under the state laws which an organization is required to comply with and is primarily focused on safeguarding the protection of these rights of employees. There are Labour Laws on Industrial Relations like Trade Union Act 1926, Industrial Employment (Standing Orders) Act 1946, Industrial Disputes Act 1947, Social Security & Welfare Laws like Employees' State Insurance Act 1948, Employees' Provident Funds & Miscellaneous Provisions Act 1952, Employee's Compensation Act 1923, Maternity Benefit Act 1961 Payment of Gratuity Act 1972, Sexual Harassment at Workplace (Prohibition, Prevention and Redressal) Act, 2013 and Labour Laws on Occupational Safety, Health & Working Conditions like Factories Act 1948, etc. apart from some more acts like Minimum Wages Act 1948, Payment of Bonus Act, Payment of Wages Act

1936, etc. For the purpose of securing interest of labour class workers, Indian government has introduced and amended various Labour Laws for different purposes which include Industrial law compliance, Wages, working hours, conditions of service and employment, Equity and Empowerment of Women, Prohibitive Labour Laws, Employment and Training, social security and others in the form of terms and conditions of employment. Labour Laws in India are primarily focused on safeguarding the protection of the rights of employees providing them working atmosphere at work place. Every Act has its implications as well as it imposes responsibility of implementation and compliance of labour laws on employer.

DUTIES OF EMPLOYERS UNDER LABOUR LAWS

For the purpose of carrying out business with not only profitability but sustainability, employers are required to meet statutory compliance requirements and if they fail to do so, they will be liable for punitive action in accordance with respective act or regulation from the concerned authorities. Therefore it is the duty of employer employing employees to introduce the terms and conditions of various labour laws as may applicable to them in their HR Policy or in their appointment letters to provide all the benefits as Central or State government is intended to provide which includes minimum wages, working hours, safety at work place, retirement benefits, special protection to women and many others.

Abiding to Labor Law compliances is essential for every big and small company to keep their businesses safe and secured from any legal entangles.

INITIATIVES BY MINISTRIES UNDER COVID-19

Under this pandemic catastrophic situation of Covid-19, Ministry of Labour and Employment of Government of India has issued various Advisories and Notifications for empowerment and benefits of the Labour and employees. The ministry issued advisory dated 19/03/2020 in which it had issued direction of preventive measures to be taken by employers and employees at work place to prevent transmission, reduce the impact of the outbreak and support control measures. This direction was issued on the basis of advisories issued by Ministry of Health and Family Welfare. With the Advisory Number M-11011/08/2020-Media Dated 20/03/2020, the Ministry has advised the employer of Public or Private establishments not to terminate their employees, particularly casual or contractual workers from their jobs



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or reduce their wages. If any worker takes leave, he shall be deemed to be on duty without any consequential deduction in wages for that period. Further, if place of employment is to be made non-operational due to Covid-19 employee of such unit will be deemed to be on duty. Because termination of employees from their job or reduction of wages in this scenario would further deepen the crises which will not only weaken the financial condition of the employee but will also hamper their moral to combat their fight with this epidemic.

ADVANTAGES OF COMPLYING WITH LABOUR LAWS

Abiding the labour laws is beneficial for Employer, as this increases productivity in view of lower absenteeism in the enterprise, increases profit of enterprise, employer's status increases in society, increases recognition in view of regulatory authority. Strict compliance of all labour legislation reduces or even eliminates penalties/ damages/ fines that may be imposed by the Regulatory authority. To improve the labour relations, a strong communication and understanding of the workers as to their behavior, requirements is a must. Therefore, the congenial atmosphere is indispensable for good corporate governance. For employees the compliance of labour laws is beneficial as it increases their Social Security as well as secure timely payment of wages, gratuity, bonus, overtime, compensation, etc. of the workers which will in turn result in lower absenteeism in the organization and inculcating sense of belongingness towards their employer. The compliance of labour laws is beneficial for the Governments as their revenues will rise phenomenally (Center or State as the case may be) by way of filing fees and other charges. India's image before the International Labour Organization will improve as a country with negligible non-compliance of labour legislation. With the increase in compliance, it will lead to lesser visits from the statutory authorities for checking their records etc. The due diligences can be done by an Independent Professional like Company Secretary in Whole Time Practice as Secretarial auditor or for the purposes of audits required during the business by the clients of the business houses.

SCOPE OF LABOUR AUDIT UNDER COMPANIES (AUDITOR'S REPORT) ORDER, 2015 (CARO)

Audit is a process of assessment of activities by an independent professional. The labour Laws do not contain the provision of audit but it is advisable for companies to appoint an independent professional like practicing company secretary to conduct audit for not only checking the non-compliance of labour laws as applicable to the company being an "employer" but also to suggest the corrective actions as may be required to be taken for avoiding any unwarranted legal actions by the respective authorities for violation of any of the labour laws. However, in terms of power conferred under s 143(11) of the Companies Act,

2013, the Central Government has issued the Companies (Auditor's Report) Order, 2015 (CARO), which came into force on 10th April, 2015. Clause (vii) (a) of Paragraph 3 duly amended with CARO, 2020 dated 25.02.2020 provides that:

THE AUDITOR'S REPORT ON THE ACCOUNTS OF A COMPANY TO WHICH CARO, 2020 APPLIES SHALL INTER ALIA INCLUDE A STATEMENT ON THE FOLLOWING MATTERS

- i. whether the company is regular in depositing undisputed statutory dues including Goods and Services Tax, provident fund, employees' state insurance, income-tax, sales-tax, service tax, duty of customs, duty of excise, value added tax, cess and any other statutory dues to the appropriate authorities and if not, the extent of the arrears of outstanding statutory dues as on the last day of the financial year concerned for a period of more than six months from the date they became payable.
- ii. If above mentioned undisputed dues are not deposited on account of any dispute, then the amounts involved and the forum where dispute is pending shall be mentioned (a mere representation to the concerned Department shall not be treated as a dispute)

If such non-payment of dues is on account of any dispute, then the amount involved and for the forum where the dispute is pending should also be mentioned.

As we already discussed the labour laws of central government or state government do not contain any specific provision for audit but with the help of contents of

auditor's report specified in CARO, 2020 we can derive that audit of labour laws have been made applicable to certain companies specified under Section 1(2) of CARO, 2020. Therefore, the companies should make a monthly, quarterly, half-yearly and yearly check list for compliance of the various requirements under the provisions of each of the labour law on its own which will help them for any type of audits as may be required by any outside authority or by any statutory authority. In many cases, specially the Export Oriented Units, there is a requirement of buyers audit which is just to check the compliances made by the company with which they are dealing with for adoption of all safety and welfare measures as are required under different statutes. The audit process strives to provide all the benefits to employer, employee and regulatory authority for the purpose of which all the acts, rules and regulations are enacted. The compliance of laws and audit process leads to better governance and value creation and provides overall sustainability for the business.

In nutshell, it is always desirable for any business to have a team of professionals as per their requirement to comply with the labour laws as are applicable to that particular kind of business which will create an image as one of the best employer with whom the people would like to get associated. At the same time, the Governments shall also make labour reforms to provide flexibility to the businesses to deal with the labour in order to get the best output in proportion of their expenditure made on labour.

CONCEPT OF THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) (POSH) ACT, 2013 AND ITS COMPLIANCES



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AN INTRODUCTION

This Act provides protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for related matters.

Sexual harassment results in violation of the fundamental rights of a woman to equality under articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment.

Case law: Vishaka and others v State of Rajasthan

In 1997, the Supreme Court laid down guidelines (popularly known as Vishaka Guidelines) in this case, pending formal legislation, for dealing with sexual harassment of women at the workplace. This is the judgement of the Supreme Court of India. The PoSH Act has proven to be a positive enhancement of the Vishaka guidelines.

MEANING OF SEXUAL HARRASMENT

“Sexual Harassment” includes the following unwelcomed sexually determined behaviour (whether directly or by implication) namely:—

Physical contact and advances, a demand or request for sexual favours, sexually coloured remarks, showing pornography or any other unwelcome physical, verbal/ non-verbal conduct of sexual nature. It also covers the implied or explicit promise of preferential/ detrimental treatment in her employment, implied or explicit threat about her present or future employment status, interference with her work or creating an intimidating or offensive or hostile work environment for her, humiliating treatment likely to affect her health or safety.

HOW TO MAKE COMPLAINT

Any aggrieved woman may make a complaint of sexual harassment at workplace in writing, to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident:

APPLICABILITY

(i) any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society;

- (ii) any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service;
- (iii) hospitals, nursing homes; any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto; a dwelling place or a house;
- (iv) Any place visited by the employee arising out of or during the course of employment including transportation by the employer for undertaking such journey.

COMPLIANCES REQUIRED UNDER THE POSHACT

SUBJECT	COMPLIANCES REQUIRED
Internal Complaints Committee	<p>The law provides that every employer with 10 or more employees must constitute an Internal Complaints Committee (ICC) within the organization to handle complaints of Sexual Harassment. If offices/ administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices.</p> <p>Constitution:</p> <p>Following members to be nominated by the employer:-</p> <ul style="list-style-type: none"> (a) Presiding Officer (who shall be a woman employed at a senior level but if not available then nominate from other offices/ administrative units of the workplace but if still not available, then nominate from any other workplace of the same employer or other department or organisation) (b) Minimum two Members from amongst employees committed to the cause of women/ experienced in social work/ legal knowledge; (c) One member from amongst NGO/ associations committed to the cause of women/ person familiar with sexual harassment related issues <p>Provided that at least one-half of the total Members so nominated shall be women</p>

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Local Committee	<p>Every District Officer shall constitute in the district concerned, a committee to be known as the Local Committee to receive complaints of sexual harassment from establishments where the Internal Committee has not been constituted due to having less than ten workers or if the complaint is against the employer himself.</p> <p>Constitution:</p> <p>Following members nominated by the District Officer:—</p> <p>(a) a Chairperson (from amongst the eminent women in the field of social work/ committed to cause of women);</p> <p>(b) One Member (from amongst the women working in block/ taluka/tehsil/ward/municipality in the district);</p> <p>(c) Two Members (at least one woman, to be nominated from amongst NGO/ associations committed to the cause of women /person familiar with the issues relating to sexual harassment)</p> <p>Provided that at least one of the nominees should, preferably, have a background in law or legal knowledge and at least one nominee shall be a woman belonging to the Scheduled Castes/ Scheduled Tribes/ Other Backward Classes/ minority community</p> <p>(d) the concerned officer dealing with the social welfare/ women & child development in the district, shall be a member ex officio.</p>
Manner Of Inquiry By Internal/ Local Committee	<p>Conciliation</p> <p>The Internal Committee/ Local Committee, may, before initiating an inquiry and at the request of the aggrieved woman take steps to settle the matter between her and the respondent through conciliation but no monetary settlement shall be made as a basis of conciliation. After settlement is arrived, no further inquiry shall be conducted by the Internal Committee/ Local Committee.</p> <p>Where settlement has been arrived the Internal Committee/ Local Committee, as the case may be, shall record the settlement and forward it to employer/ District Officer to take action as specified in the recommendation and also provide the copies of settlement to the aggrieved woman and the respondent.</p>

	<p>Where the aggrieved woman informs the Internal Committee/ Local Committee, as the case may be, that the settlement arrived has not been complied with by the respondent, the Internal/ Local Committee shall make an inquiry into the complaint or, as the case may be, forward the complaint to the police.</p> <p>Inquiry into complaint-</p> <p>Subject to the provisions of conciliation, the Internal Committee/ Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance to the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker.</p> <p>The Local Committee shall, if prima facie case exist, forward the complaint to the police, within 7 days for registering the case under section 509 and any other relevant provisions, if any applicable, of the Indian Penal Code.</p> <p>Provided that if both the parties are employees, then, during the inquiry, opportunity of being heard shall be given to both the parties and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.</p> <p>For the purpose of making an inquiry, the Internal Committee/ Local Committee, as the case may be, shall have the same powers as are vested in a civil court the Code of Civil Procedure, 1908.</p> <p>The inquiry shall be completed within a period of 90 days.</p>
District Officer to designate one nodal officer	<p>District Officer shall designate 1 nodal officer in every block, taluka and tehsil in rural/ tribal area & ward/ municipality in urban area, to receive complaints & forward the same to concerned Local Committee within a period of 7 days.</p>



Duties Of Employer	<ul style="list-style-type: none"> (a) provide a safe working environment at the workplace with shall include safety from the persons coming into contact at the workplace, (b) display the penal consequences of sexual harassments at any conspicuous place in the workplace and the order constituting, the Internal Committee, (c) organise workshops and awareness programmes at regular intervals for sensitising the employees with the provisions of the PoSH Act, (d) provide necessary facilities to the Internal/ Local Committee for dealing with the complaint and conducting an inquiry, (e) assist in securing the attendance of respondent and witnesses before the Internal Committee or the Local Committee, (f) make information available to the Internal/ Local Committee, as it may require having regard to the complaint made (g) provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code or any other law (h) cause to initiate action, under the Indian Penal Code or any other law, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place, (i) treat sexual harassment as a misconduct and initiate action (j) monitor the timely submission of reports by the Internal Committee
Committee to submit annual report	<ul style="list-style-type: none"> (1) The Internal/ Local Committee, as the case may be shall prepare an annual report in each calendar year and submit it to the employer and District Officer. (2) Contents of annual report:- number of sexual harassment complaints received in a year, the number of complaints disposed off in a year, cases pending for more than 90 days, number of workshops or awareness programmes carried out, nature of action taken by employer/ District officer (3) The District Officer shall forward a brief report on the annual reports so received to the State Government.

PoSH Policy	Formulation and wide dissemination of an internal PoSH policy for the prevention and redressal of sexual harassment at workplaces is required to be made by the employer.
Board Report of Companies	Board Report under Companies Act, 2013 shall contain a statement that the company has complied with provisions relating to the constitution of Internal Complaints Committee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal)

IMPACT OF POSH

A feeling of insecurity leads to an environment which is full of fear in the women and creates a lack of confidence in them, low job satisfaction, decrease in productivity, more absence from work due to unreasonable excuses which ultimately results in the organization losing its valuable employees along with a declining workplace culture.

By the introduction of PoSH Act at the workplace, women will feel secure and safe at the workplace, without any fear of being harassed by anyone. They will not tend to run away from their duties due to any fear. They will feel higher job satisfaction and hence they will give higher productivity, will not hesitate to collaborate among employees, Improvement in workplace culture will get improve, Trust and respect for colleagues will be maintained.

By implementation of the Act, more women are raising their voice against the wrong done to them, that also, without any fear and any embarrassment of reveal of their identity as the Act provides for the provisions for non- disclosure of the identity, address of the aggrieved woman, respondent and witnesses, and any information relating to conciliation and inquiry proceedings, recommendations of the Internal/ Local Committee, as the case may be, and the action taken by the employer or the District Officer shall also not be published, communicated or made known to the public, press and media in any manner.

The Act comprehensively includes the safety of 'external' women also, visiting the workplace and covers 'verbal' sexual harassment as well which fulfils the object of safety of all women under the PoSH Act.





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LABOUR LAW COMPLIANCE AND AUDIT

INTRODUCTION

LABOUR LAW COMPLIANCE IN INDIA is basically set of terms or condition of employment... There are Central laws, as well as there are state laws which a business is required to comply with. Labour Law Compliance in India is primarily focused on safeguarding the rights of employees.



“IT MAY BE POSSIBLE TO PUNISH EMPLOYEES INTO COMPLIANCE, BUT WE CANNOT PUNISH THEM INTO COMMITMENT AND COMMITMENT IS WHAT TODAY’S ORGANISATION REQUIRES”

India has seen a huge development of business and economic growth in the recent times. For carrying out business, corporations are required to meet statutory compliance requirements. There are many laws and Acts that a corporate is required to follow. If a corporation fails to comply with such laws, then it may lead towards punitive action from the concerned authorities.

Labour Law compliance regulates companies, workers as well as trade unions for securing the rights of the workers and labourers at large. However, labour law compliance in India is imposed by the State as well as the Central Government. Abiding to Labor Laws is essential for every big and small company to keep their businesses safe and secured from any legal trouble.

Globalisation in new economy has paved way for open business and everything is measured and looked from the angle of global standards and best of best in the form of world class. This has led to lot of quality systems in technology, supply chain, banking, and finance and also in Human resource management. Talent can move anywhere and people are also mobile. To have continuous flow of business in smooth way, many approvals, certifications and compliances have become need of the hour and these are subject to various and continuous audits by internal and external agencies.

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VALUE – BASED APPROACH TO COMPLIANCE:

The companies in India must carry out statutory compliance under various Labour Laws. The range of labour compliance is not restricted to filing returns and maintaining statutory deposits and records by means of the company. For any legal trial, these records shall be produced as evidence under various statutes. Also, if the business or company in any case fails to make the industrial law compliance, there are strict penalties specified by the law.

Indian Labour Law contains various acts consisting of every possible aspect for the protection of labour rights. The application of the law relies on the type of firm. Also, there are many laws which are applicable to employer as well as employee respectively.

APPLICABILITY AND IMPLEMENTATION:

Every employer or an occupier has to be aware of the applicability of various laws for every establishment. Whether certain laws are applicable or not? If applicable, what is the minimum requirement of workers and to what extent? Under the applicability, what practices are to be followed and records to be maintained? In India, most labour laws are based on the number of employees in the establishment. Hence, the applicability is important.

Once the coverage and applicability is known, implementation becomes very easy and mandatory. When the number reaches to certain levels, it will go without saying. On an average, in India, normally for any establishment, there are about 14 to 16 labour laws applicable. They are;

REGULATORY LAWS:

- Factories Act, 1948
- The Contract Labour (Regulation and Abolition) Act, 1970
- The Motor Transport Workers Act, 1961
- The Punjab Shops And Commercial Establishments Act, 1958
- Industrial Employment (Sanding Orders) Act, 1946

INDUSTRIAL RELATIONS:

- Industrial Disputes Act, 1947
- Trade Union Act, 1926

SOCIAL SECURITY LEGISLATIONS (CODE)

- ◆ The Employees’ Provident Fund And Miscellaneous Provisions Act, 1952
- ◆ The Employee State Insurance Act, 1948
- ◆ The Payment of Gratuity Act, 1972
- ◆ The Employee’s Compensation Act, 1923. The Maternity Benefit Act, 1961
- ◆ The Equal Remuneration Act, 1976

COVID -19

INDUSTRIAL DISPUTE ACT,1947

RETRENCHMENT OF EMPLOYEE/LABOUR



RELEVANT ISSUES UNDER INDUSTRIAL DISPUTES ACT

COVID-19 is severe acute respiratory disease caused due to infection from the novel corona virus which originated from Wuhan province in China and has now turned into a global pandemic. Within three months from its first instance, COVID-19 has spread across the globe and has already started causing severe economic repercussions. Indian businesses have also been severely affected due to the COVID-19.

Taking question from how COVID-19 has taken turns in other countries and social distancing being the only effective way to control this disease, the Government of India has decided to implement a nationwide lockdown in India for three weeks effective from March 24, 2020. On the basis of advisories issued by the Government of India, all state governments and union territories have implemented lockdowns respectively. It is obvious that the Lockdown will come at its own economic consequences in India, the Indian business are also experiencing unprecedented issues including employee related issues. In this note we endeavor to provide our understanding of some common issues arising out of COVID-19 which may help the employers in taking a concerned approach in dealing with their employee related matter.

RETRENCHMENT/ TERMINATION

The option of retrenchment/termination is available to the employers but the same will be treated as termination for convenience and all the necessary

processes like notice period, intimation to government authorities, payment of retrenchment compensation, payment of gratuity, Leave encashment, etc. will need to be completed. Further, there are also many government advisories against termination of employees due to COVID-19. We recommend that retrenchment/ termination should be considered as an option of last resort.

CATEGORY WISE COMPLIANCE OF RETRENCHMENT

REGULAR: completion of 240 days of continuous service CASUAL/ TEMPORARY: completion of 240 days PROBATIONER: no requirement

CONTRACTUAL: NO REQUIREMENT

OUTSOURCED: ensure vendor does it – Courts can see NATURE OF ARRANGEMENT- sham or genuine COMPLIANCE FOR RETRENCHMENT AND CLOSURE

- ◆ RETRENCHMENT COMPENSATION : 15 days wages each completed year of service
- ◆ NOTICE/NOTICE PAY : one month/ 3 months
- ◆ GOVERNMENT: Intimation/Permission- depending upon number of workers
- ◆ Last Come First Go

POSSIBLE SOLUTION FOR RETRENCHMENT & CLOSURE

VRS/ GOLDEN HANDSHAKE- retrenchment , gratuity. Compensation after negotiation

RESIGNATION TRANSFER

Retrenchment Compliance Outsourced Workers- Through Vendor

WORK FROM HOME

While the concept of work from home is not new in Indian businesses, the Indian employment statutes are silent about the work from home concept. There is no statutory definition or any specific guidelines that may regulate the said concept. Accordingly, there is a flexibility available with the employers to allow or not allow their employee work from home and they specify their own guidelines for the same. However, the statutory provisions relating to working hours, overtime payment etc. shall continue to apply as if the employee has been working from the office premises.

Due to the nature of COVID-19 and to promote social distancing, various state governments and central government have time to time issued various advisories for promoting work from home. As of the implementation of lockdown in India (effective March 24, 2020), all commercial and industrial establishments which are not engaged in providing essential services, have to be closed. However, the closure due to the said lockdown does not necessarily mean that employers are required to close all of their operations and are free to implement work from home wherever possible. Requiring employee to perform their work from home will also not trigger any overtime payments as the closure of offices does not mean declaration of a holiday. As an exception to lockdown, industrial establishment which requires some physical presence of workers/ employees to maintain its continuity, such establishments can continue to operate after taking appropriate permissions from the local administrative authorities.

LEAVE MANAGEMENT

As a result of the lockdown implemented by state governments on the advisory of Government of India, many employers have implemented work from home to the extent possible, but there are various establishments or the nature of work performed by an employee, where work from home is not possible.

Under the current circumstances where the lockdowns have been implemented and commercial and industrial establishments are closed

pursuant to government orders, the absence of employees from work cannot be adjusted towards paid or un-paid leaves. However, if the establishments are voluntarily closed in absence of specific orders from government, the employers and employees can mutually agree on adjustment of paid and un-paid leaves. Availing leave on a particular day is an employee's prerogative, and they cannot be forced to utilise their leave. Most organisations are therefore examining the possibility of work from home as a preventive measure. In past few days we have noticed that a few organisations have implemented some schemes where employees are provided an option to go on un-paid leaves but considering the implementation of lockdown such scheme may get effected.

In case an employee is infected or requires sickness leave otherwise, the prescribed number of sickness leaves under the applicable law vary from 7 (seven) days to 12 (twelve) days depending on the location of the concerned establishment. Some states like Karnataka have required the employers to provide a longer duration of sickness leave (up to 28 days) to employees who have contracted COVID-19. If the sickness continues beyond such number of days, other leaves like casual leaves or earned leaves can be utilised for the same. In the event of prolonged illness, employees can be provided unpaid leaves for the required duration. Further, establishments covered under ESI Act, longer duration of sickness leave is possible.

If an employee is required to administer self-quarantine as a consequence of discharging his official functions, such employees should be provided with paid leaves for the same. However, if the employee is required to do the same due to his personal actions, they can be required to utilise their outstanding leaves for the same.



LAY - OFFS

Lay off is defined in the Industrial Disputes Act of India which means the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery or natural calamity or for any other connected reason to give employment to a workman. During lay-off, the workman continues to be in the employment of the employer but at a reduced pay. Eligible workman category employees can claim compensation at up to 50% of basic salary and dearness allowances for lay-off. If the lay-off continues for a duration of 45 days or more, the employer can proceed for retrenchment. The compensation paid for lay-off is

adjustable with the compensation payable for retrenchment.

The processes for lay-off shall differ from one establishment to other depending on number of workmen employed and nature of activity undertaken. For a non-workman category employees the conditions of lay-offs will need to be mutually agreed.

REDUCTION IN PAY

There is no specific provision which deals with reduction of pay. This has to be agreed mutually between the employer and employees. Taking in account the situation arising because of COVID-19 in certain industries (like Aviation and Tourism) the employer and employees have agreed on a standardized pay cut across the board. In this regard if the employer is looking at implementing pay-cuts the same should be applied universally, without any discrimination and specially not in form of a punishment to any specific employee.

COMPENSATION TO INFECTED EMPLOYEES

Employers (in India) are obligated to pay compensation to employees who are injured (which includes partial or permanent disablement) or die due to accidents arising out of or in the course of employment. Accordingly, if it can be demonstrated that COVID-19 infection was contracted in the course of employment and it arose out of employment, the employer shall be legally obligated to pay compensation to impacted employees. The obligation to pay compensation would also depend on other factors like the State of employment, the nature of the employee's work, and the circumstances in which the injury/death/infection was caused. Accordingly, each case has to be evaluated based on the facts of each case.

GOVERNMENT ADVISORIES

The employers should not terminate their employees, particularly casual or contractual employees or reduce their wages. If any employee takes leave(s), he/she should be deemed to be on duty without any consequential deduction in wages and

if the place of employment is non-operational, the employees would deemed to be on duty.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

ISSUES IN COMPLIANCE OF LABOUR LAWS :

- ◆ Globalised Markets And Competition.
- ◆ The Changing Ways of Conducting Business.
- ◆ Rapid Change in Technologies.
- ◆ Mobility of Labour.
- ◆ Need For Flexibility of Organisations
- ◆ Need To Cater to clients Located in Different Time Zones of The World.
- ◆ Social And Cultural Change Due to so Many Changes.
- ◆ Laws Must Conform to The Need of Changing Times.
- ◆ How To Conform To The Requirements Of Social Clause Of The WTO Without Harm To The Industry

BE A BUSINESS MANAGER AND NOT JUST ANOTHER BRICKS IN THE WALL

CHANGE YOUR MIND SET

TRADITIONAL MIND SET	REALITY TODAY
BUSINESS = Battlefield	BUSINESS IS AN ECOSYSTEM
CORPORATION = Machine	CORPORATION IS A COMMUNITY
MANAGEMENT= Control	MANAGEMENT IS SERVICE
EMPLOYEE= Child	EMPLOYEE IS A PEER
MOTIVATION= FEAR	MOTIVATION WITH FEAR

- ◆ Charge sheet
- ◆ Reply to charge sheet
- ◆ Detailed enquiry including complete opportunity of evidence and cross examination
- ◆ Enquiry Report
- ◆ Disciplinary Action
- ◆ Appeal / Review in case there is provision

LABOUR LAW COMPLIANCE MANAGEMENT

For Employers

- ◆ Identification of all labour law legislations applicable to the company.
- ◆ Review of present system, practices and level of compliance governing the business segment.
- ◆ Evaluate, analyse and assess the compliance program to make the company totally compliant with the applicable laws.
- ◆ Produce a comprehensive audit report and gap analysis including risk analysis.
- ◆ Implementation of an effective compliance system – provide required guidance and necessary facilities, provide options and recommendations to diminish or eliminate the risk wherever possible in the areas of legal obligations.



- ◆ Suggestions for regular monitoring, self-audits and reporting system as part of MIS
- ◆ Inspect all the documents related to labour law compliance such as License, provident fund, ESIC, professional tax, Minimum wages Act, etc. (additionally for Contractors/ Vendors)

LABOUR AUDIT

Audit under Labour Legislations is an effective tool for compliance management of labour legislations. It helps to detect non-compliance of various labour laws applicable to an organisation and to take corrective measures. Objectives of labour audit is to protect the interests of all the stakeholders. This leads to better Governance and value creation for the organisation and to avoid any unwarranted legal actions against the organisation and its management.

Labour Audit is a process of fact finding. It is a continuous process. The Labour Audit will ensure a win-win situation for all interested persons. Initially, the Employers may frown at the idea of such Audits, but with passage of time, the compulsion of labour audit will infuse self-regulation amongst certain employers.

Audit under labour laws is a new concept, which is necessitated, in direct consequence of its non-compliance in large scale. Even after over six decades of attaining independence, India is still plagued with victimisation, non compliance of labour legislations is still at large. An analysis of these practices reveals that many employers resort to short cut methods to avoid the compliance of labour legislations. There is no system in place for reporting non-compliance of labour legislations by an independent professional like Company Secretary. Workers in India report many cases relating to non-compliance of labour legislation by employers.

METHODOLOGY FOR CONDUCTING LABOUR AUDIT:

At the commencement of audit, the Independent Professional like Company Secretary in Whole Time Practice should define the scope of his audit. The scope will certainly differ from employer to employer.

As stated Independent Professional like Company Secretary in Whole Time Practice should identify various Central and State Acts and Rules that are applicable to an employer. Based on such identification, he should commence scrutinising the compliance of provisions of various Acts/Rules. It will be in the fitness of things that the Report is drafted in the same manner as PCS do for Compliance Certificate under the provisions of the Company

Law. Checklist for compliance of each legislation has to be formulated before commencement of his Audit.

BENEFITS OF LABOUR AUDIT

Benefits to the Labour

- (a) Introduction of Labour Audit will boost the morale of the workers to a large extent.
- (b) It will increase their Social Security.
- (c) It will inculcate on workers a sense of belongingness towards their employer.
- (d) It will secure timely payment of wages, gratuity, bonus, overtime, compensation etc. of the workers.
- (e) Timely payment of entitlements will reduce absenteeism in the organisation.

Benefits to Employer

- (a) Increased productivity in view of lower absenteeism in the enterprise. Higher the productivity, higher will be the profit.
- (b) Status in the Society for the employer will increase, in view of the recognition that may be bestowed on them by the Government.
- (c) Strict compliance of all labour legislation will be ensured by each of the employers, which in turn, will reduce or even eliminate penalties / damages / fines that may be imposed by the Government.
- (e) Co-operation of and understanding with the workers will improve labour relations. The congenial atmosphere is indispensable for good corporate governance.

Benefits to the Government

- (a) Reduction in the number of field staff for inspection of Industries/ Factories/ Commercial Establishments as most of their work will be done by an Independent Professional like Company Secretary in Whole Time Practice.
- (b) Compulsory Labour Audit will ensure compliance of past defaults.
- (c) In case the Government seeks to introduce filing fees for Compliance Report under Labour Legislation, the revenue of the

Appropriate Government will rise phenomenally.

- (d) India's image before the International Labour Organisation will improve as a country with negligible non-compliance of labour legislation.

To Fulfil -SA 8000 Standards

No Child Labour

No Forced Labour. Health and Safety

Freedom of Association and Right to collective Bargaining

Discrimination Discipline

Working Hours

Compensation

CONCLUSION

To conclude, non compliance will only put positions like occupier, director into problems and they have to face the music of judiciary, cases, prosecutions, imprisonment, fine, personal accountability, etc. and have to waste time and energy in facing these issues. In the process, relationship may also get affected with the authorities and may be with employees and union.

Thus, every prudent employer should always look at the positive side of compliance thereby making all the stake holders happy and achieve the goals of the organization and can concentrate on strategic issues as priority.

Establishment should also ensure that respective dues to the employees are paid on time and the welfare is taken care of in reasonable good manner. This amounts to mental peace and respect from all the concerned! Country needs such situations!

“Survey Janahaa Sukheeno Bhavantu (Let all people be happy-Upanishad)”

Such legislations ultimately ensure right way of happiness to stakeholders.

Finally, one must keep in mind and know that Compliance cost is cheaper than Litigation Cost.

It is Better to manage the law before it manages you.

Comply and be safe.



CAN EMPLOYEES BE PAID LESS DURING LOCKDOWN?



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After the outbreak of COVID-19 when the country-wide lockdowns were announced and all the business, industries and establishments were bound to shut down their operations except the essential services, the questions which came across the mind of every employee were, "How they will survive in these tough times?, Will their employer support? Will they be paid during lockdown? OR "NO WORK, NO PAY" principle will be adopted?" To worsen the condition, when the lockdown was extended, with the beginning of the second inning of lockdown it had a deep impact and no one remained untouched and everything came to a halt disrupting the whole economy during lockdown. The life threatening question was, "Whether after lockdown, shall we be able to join back the office or we would be handed over the pink slip?"

On one hand, employees were worried about their salaries, jobs and on the other hand, employers were in dilemma whether to pay or not, whether to downsize or not, as the environment for business (despite all the efforts by the Government right from relaxing statutory compliances to allowing moratorium period for repayment of debts) was not conducive with either negligible or no profit despite being humane, they needed money to pay off their workforce and money cycle or flow of money was disrupted.

While the country was coming to terms with the nation-wide lockdown, a huge exodus of migrant laborers trying to go to their hometowns started taking place. Such a mass efflux of laborers increased the risk of spreading the virus which prompted the Central Government through Ministry of Home Affairs to issue an order on 29th March, 2020 in exercise of its power under Section 10 (2) (I) of the Disaster Management Act, 2005 directing the states and union territories to ensure adequate arrangements of temporary shelter and provision of food for migrant workers who had already moved out / got stranded in such states and union territories amongst other directions.

In view of the prevailing lockdown imposed by various states, Ministry of Labour and Employment issued an advisory on 20th March 2020 appealing to all employers' associations not to terminate their employees or cut wages of its workers in view of the lockdown. The advisory also stated that all employers of public/private establishments are advised to extend their cooperation by not terminating their

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employees, particularly casual/contractual workers or reduce their wages. It further stated that if any place of employment is to be made non-operational due to COVID-19, the employees of such unit will be deemed to be on duty.

Further, it stated that the "no work no pay" judicial principle cannot be invoked in the present circumstances as neither the employers offer work nor the workers are able even if willing to report for work. So the employers cannot deduct wages for absences due to national lockdown.

WHAT IS THE LEGAL MEANING AND IMPLICATION OF THE ORDER?

Order of 29th March, 2020 was issued by the Home Secretary, the Ministry of Home Affairs and the Government of India, in exercise of the power conferred under Section 10(2)(1) of the Disaster Management Act, 2005. This Order is binding upon all the concerned parties. The Section 10(2) (1) of the Disaster Management Act, empowers the National Executive Committee to lay down direction to the Ministries or departments of the government of India and State authorities, for preparing disaster management plans. Section 51 describes the punishment for any obstruction or non-compliance of any such directions passed under this Act. Section 72 creates an overriding effect, regardless of anything contained in any other law that may be inconsistent with the orders under the Disaster Management Act for the time being in force. The said order under the Disaster Management Act cannot be set aside until any High Court of any State or the Supreme Court modifies it or sets it aside.

CAN THE WAGES BE DEDUCTED OR REDUCED?

The Orders issued by the Central Government dated 20.03.2020 and 29.03.2020 pertaining to lockdown and payment of wages should be mandatorily followed. These must be continued to follow if there is any further extension or revision of the Government Order till the expiry of the same.

The orders invoked the extraordinary powers vested with the Executive committee and the Disaster management bodies under Sections 10 and 12 of the Disaster Management Act, 2005. These sections provide blanket powers to the Committee to take any measure as deemed necessary to either prevent or contain a disaster.

The non-observance of the advisory to pay salary during the lock down period may result in filing of complaints by the aggrieved workmen before the authorities.

Furthermore, an employee could be denied wages only when he was absent from work or when he was on strike and, therefore, all employees, including contract workmen, were entitled to full wages lastly drawn by them during the period of lockdown.

CAN THE EMPLOYER COMPEL AN EMPLOYEE TO EXHAUST HIS/HER ANNUAL LEAVE?

In general, annual leave is a statutory entitlement to be availed at the employee's discretion and as per terms of company policy. It cannot be forced upon the employees, hence ideally speaking, leaves during lockdown can't be adjusted against accrued leaves of the employees.

CAN EMPLOYEES BE SENT ON LEAVE WITHOUT PAY?

Companies cannot force employees to take leave without pay amid the lockdown imposed by the government to control the spread of COVID-19.

Whether the employer can reduce/downsize the workforce on account of business slowdown due to lockdown pursuant to COVID-19?

The Central Government has issued advisories and orders stating that even if place of business has become non-operational due to COVID-19, its employees shall be deemed to be on duty and the employer should not terminate any employees. The government advisories/orders further directs that the employee should be paid full remunerations without deduction.

In this regard, state governments such as those of Gujarat, Haryana, Karnataka, Telangana, have issued advisories/orders asking employers to refrain from terminating or reducing the wages of their employees.

The State of Uttar Pradesh has issued a Notification dated 20th March, 2020 stating that the employees/workers, working in factories/shops/ establishment which are closed temporarily vide order passed by the State Government or District Magistrate shall be provided holidays with wages by the employer for the period of temporary closure.

It is, therefore, advisable that before taking any action for reduction of the workforce during the lockdown, the employer must check the advisories/ orders/ notifications issued by the State where its business is situated or where the employer has its establishment. In a case where no such advisories/orders are issued, reduction or downsizing can be done subject to the policies of the employer, terms and conditions of the employment agreement/contract and complying with the due process of law.

DOES THE DISASTER MANAGEMENT ACT OVERRIDE THE INDUSTRIAL DISPUTES ACT?

Order of 29th March, 2020 directing the payment of wages during the Pandemic has been issued under the provisions of the Disaster Management Act. Section 72 of the Disaster Management Act is a non-obstante clause giving overriding powers to the Government in the time of a disaster, and specifying that "The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act". It will thus override the sections of the Industrial Disputes Act, 1947

EMPLOYERS'DILEMMA

There is an issue of employers' obligation to pay wages during the COVID-19 lockdown period. An overwhelming majority of the industries, shops and establishments have taken a holistic view and have hence been empathetic to the plight of their workforce.

The basic idea about our recommendations is that the industry should also not be forced when the situation is beyond their control. The law has to be reasonable. It is for the government to step in and extend a helping hand for the industries

Causing financial hardship to industrial establishments: The government cannot be permitted to cause financial hardship to industrial establishments by compelling them to pay "Wages" without getting any work done from the employees during the lockdown period. Specifically when the employers are on the same boat struggling hard for survival due to mounting losses.

Establishments will be forced into insolvency: If the notifications are implemented for entire lockdown period, many MSME establishments would be forced into insolvency and loss of control of business as they will be compelled to pay for manpower during the shutdown without receiving any substantial revenue from their customers, thereby hampering the right of the petitioner under Article 19(1)(g).

Many establishments failing to bear the financial burden and hardship may have to close their businesses. The very notifications issued for the benefit of the workers might end up adversely impacting those workers who would be rendered unemployed.

WAY FORWARD

The intentions of the government appear to be noble. The need of the hour is a dedicated framework in the form of monetary subsidies similar to the ones declared by governments across the globe. The employers are finding ways for generation of revenue for sustenance and governments are also finding ways to create a balance between revenue generations with least impact on people.

Madhya Pradesh and Uttar Pradesh have decided to stay labour laws in the name of reviving the economy under the cover of the COVID-19 pandemic. Uttar Pradesh government has decided to dilute certain labour laws in the state for the period of next three years, while Madhya Pradesh proposed a series of changes including the need to maintain official records for the purpose of inspection.

The Ordinance passed by the Uttar Pradesh government stated that government has cleared the 'Uttar Pradesh Temporary Exemption from Certain Labour Laws Ordinance, 2020' to exempt all establishments, factories and businesses from the purview of all labour laws except the Building and Construction Workers Act, Bonded Labour Act, women and children welfare Act and certain sections of the Workmen Compensation Act.

All the other labour laws stand suspended for 1000 days (one thousand days). Laws pertaining to trade unions, contract workers, industrial disputes, occupational safety, health and working conditions of workers have been put on hold.

The Minimum Wages Act, the Equal Remuneration Act, the Trade Unions Act, the Industrial Employment (Standing Orders) Act, the Industrial Disputes Act, the Factories Act, the Contract Labour Act, the Inter-State Migrant Workmen Act, the Employees' Provident Funds and Miscellaneous Provisions Act, the Employees' State Insurance Act and the Unorganized Workers' Social Security Act will remain suspended.

The proposed amendments in the labour laws will allow companies not to follow required safety standards related to the health, safety and working conditions of employees. New units set up in Madhya Pradesh will be exempted from the necessary provisions of cleanliness, disposal of waste, ventilation, lighting, drinking water, urinals, canteens, restrooms, crèches, working hours, wages during the leave period, and the need for the manager of the factory to send notice to authorities in case any worker contracts occupational diseases

COVID-19 OUTBREAK: LABOUR LAWS MEASURES



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INTRODUCTION

India is on high alert as the number of confirmed novel coronavirus (**COVID-19**) cases in the country has escalated to 66,040 (as of 09th May 2020). The Disaster Management Act, 2005 provides the administrative framework to take measures to deal with disasters such as earthquake, flood or fire and not a disease like Covid-19, thus to apply provisions of this act, on 14th March 2020, the Home Ministry declared the Coronavirus outbreak as “notified disaster”. Section 10(2)(1) of the Disaster Management Act, 2005 (**DMA**) has been invoked, giving wide powers to the Ministry of Health and Welfare to enhance preparedness and containment of the virus. Various State Governments have also classified COVID-19 as an ‘epidemic disease’ under the Epidemic Disease Act, 1897 (**EDA**), giving local administration authority to impose various containment measures, such as quarantine, closures and surveillance.



Complete or Partial Lockdown is one of the preventive measures taken by the Government in various states based on number of cases. The International Labour Organization (ILO) says that Lockdown measures will worsen poverty and vulnerabilities among the world’s two billion informal economy workers. ILO estimates that, assuming a situation without any alternative income sources, lost labour income will result in an increase in relative poverty for informal workers and their families.

In the back drop of lockdown due to Covid-19, India is facing labour related issues like loss of employment, non-payment of wages/non-payment of wages for lockdown days and shortages of rations for their survival which necessitates issuance of numerous advisories and regulations on matters of travel, employment and healthcare by the Central and several State governments and amendments in Labour laws and Labour related schemes.

LABOUR LAWS MEASURES

- The Ministry of Labour & Employment, Government of India advised on 20th March, 2020, that all public and private establishments are to refrain from terminating the services of their employees particularly casual or contractual workers or reducing

their wages. If any employee is on duty or deemed on duty (leaves by any worker due to lockdown or non-operational premises due to covid-19), he will be eligible for wages without any deduction or reduced wages. All Principal Employer/Employers are requested to implement advisory in its letter and spirit vide No. ND-95(Covid-19)/2020-RLC, dated 01/04/2020.

- The Ministry of Labour & Employment has issued directions/ advisories related with hygiene and sanitation to be followed at workplace in order to prevent the spread of COVID-19 to all workers organisations and employers organisations and to ensure implementation of various advisories issued by Ministry of Health and Family Welfare (MoH&FW) and Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training.
- The Ministry of Labour & Employment had extended the last date for filing of the Unified Annual Return for the year 2019 under 8 laws and 10 central rules to 30th April, 2020 (previously to be filed from 1st January to 1st February 2020). The notification further stated that authorities are not to take any legal action for non-filing of Annual Returns for the year 2019 against the establishments.
- The Ministry of Labour & Employment has extended the last date for submission of returns, notices and other forms required under Mines Act, 1952 and related rules and regulations, and due for submission in the month of March and April, 2020 for 1 month from the respective due dates.

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- The Employees' State Insurance Corporation (ESIC), through its communication dated 16th March, 2020, has extended the dates of ESI contribution for the months of February and March, 2020 can be filed and paid up to 15th April, 2020 and 15th May, 2020, respectively.
- Organisation of Chief Labour Commissioner (Central) mentioned in its status report about extension of the validity of licenses granted under the Contract Labour (R&A) Act, 1970 and the Inter-State Migrant Workmen (Regulation Of Employment And Conditions of Service) Act, 1979 up to 31st May, 2020 for those licenses whose renewal falls in the months of March, April & May 2020, however notification is awaited.
- Ministry of Home Affairs issued consolidated revised guidelines on the measures to be taken by ministries/Departments of Government of India, State/UT Governments and State/UT authorities for containment of COVID-19 in the country vide order dated 15th April 2020, these guidelines include ensuring hygiene, sanitization at workplace and maintaining social distancing and other preventive measures. Non adherence of guidelines by Employer is punishable offence under Disaster Management Act, 2005 and Indian Penal Code, 1860.
- The Central Govt. announced Pradhan Mantri Garib Kalyan Yojana Package to help the poor fight the COVID-19 pandemic. The Government of India will directly contribute entire employer's contribution (on behalf of companies) (12% of wages) and entire employee's contribution (on behalf of employees of those companies) (12% of wages) totalling 24% of the monthly wages, in the Employee Provident Fund Accounts (UAN), for the next three months, for establishments with employment strength up to 100 employees. (90% or more of such employees should be drawing monthly wages less than Rs.15000/-).
- All EPFO (Employees Provident Fund Organisation) members (employees) can withdraw amount as COVID-19 advance, up to 75 percent of their total EPFO fund or an amount equivalent to three months of their basic wages and dearness allowance, whichever is lower. The amount withdrawn from EPFO shall be non-refundable, and the employees do not need to return the same to their EPFO account.
- Employees' Provident Fund Organisation vide its communication No.C-I/Misc./2019-20/Vol.II/Part/9 dated 15.04.2020, extended due date for filing of Electronic Challan Cum Return (ECR) to the Employers of those establishments, which have disbursed the wage for March, 2020 to their Employees, for wage month March, 2020 on or before 15th May, 2020 duly certifying disbursement of wages.

CONCLUSION

Pandemic disease hampers growth of many establishments and even makes its survival very difficult. Nowadays, conflict with the employer is between moral and survival of establishment. As this is a very difficult time for individual and establishment, keeping in mind hardship of workers and employees and paying capacity of the establishment, employer shall pay wages to the possible extent. This practical difficulty must be faced based on nature of the industry and effect of Covid-19 on that industry (like Closure of restaurant business whereas growth of sanitizer manufacturing establishments), size of the establishment, Number of Employees or worker, amount of salary or wages drawn. In order to protect establishment, employers in the organised sector can ask its employees or some employees to go on short-term leave without pay, temporary retrenchment and lay-off after following the procedure mentioned in the law and offer Voluntary Retirement Scheme. As ultimately survival of establishment is also very important and its closure will result in huge unemployment. But in India, around 90% of the workers are in the unorganised sector and do not come under the purview of the labour laws related to social security.

Existing International Labour Standards provide a strong foundation on which to build key immediate responses to the COVID-19 crisis. These immediate responses are aligned with the overall ILO policy framework for coping with the COVID-19 pandemic in the world of work. The framework has four interconnected pillars: Pillar 1 – Stimulating the economy and employment, Pillar 2 – Supporting enterprises, jobs and incomes, Pillar 3 – Protecting workers in the workplace, and Pillar 4 – Relying on social dialogue for solutions.

LABOUR LAWS AND RECENT REFORMS



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INTRODUCTION

It is a widespread misconception that employee has no or very minimal rights as compared to that of employer. There are laws that ensure that employees are not treated as slaves. There are certain welfare measures introduced that ensure that employees can enjoy a reasonable standard of living both in employment and after retirement.

Audit under the Labour Law is a thorough check of the company's policies and procedures with the goal of preventing prosecutions or lawsuits. Labour law audit helps to identify non-compliances of employment laws appropriate to a business and the audit helps business professionals to avoid any unwarranted legal actions.

SIGNIFICANCE OF LABOUR

A nation's development is significantly depended on its labour force. By the term "nation's development" we mean the GDP of a nation. Gross domestic product (GDP) is the monetary value of all the finished goods and services produced within a country in a specific time period.

These laws are framed to protect the basic financial pay of the labourers, health conditions while working, provision of compensatory benefits in case of injury to labourers, and such other conditions.

Elements of Labour Law

The basic subject matter of labour law can be considered under nine broad heads: employment; individual employment relationships; wages and remuneration; conditions of work; health, safety, and welfare; social security; trade unions and industrial relations; the administration of labour law; and special provisions for particular occupational or other groups.

Benefits of Labour Audit

- It will increase their Social Security.
- It will secure timely payment of wages, gratuity, bonus, overtime, compensation, etc. of the workers.
- Also, timely payment of entitlements will reduce absenteeism in the organisation.



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- It will inculcate in workers a sense of belonging towards their employer.
- Increased productivity in view of lower absenteeism in the enterprise. Higher the productivity, higher will be the profit.
- Status in the Society for the employer will increase, in view of the recognition that may be bestowed on them by the Government.
- Strict compliance of all labour legislations will be ensured by each of the employers, which in turn, will reduce or even eliminate penalties/ damages/fines that may be imposed by the Government.
- To improve the labour relations, co-operation of and understanding with the workers is a must. Therefore, the congenial atmosphere is indispensable for good corporate governance.

RECENT REFORMS

Code On Wages - 2019

The Code on Wages Bill subsumes four acts viz.

- Minimum Wages Act, 1948
- Payment of Wages Act, 1936
- Equal Remuneration Act, 1976
- Payment of Bonus Act, 1965

Definitions

- Employee definition has been amended to include Managers, Supervisors and Administrative persons.
- No discrimination among male, female and transgender employees on the grounds of sex in the matter of wages.
- Disputes to be decided by the authority notified.

Minimum Wages

- The minimum wages for different Scheduled Employments will be abolished. There may be one common minimum wage for all employments which will also include previously not included employments.
- The Central Government shall fix floor wage taking into account minimum living standards of a worker and in this regard, different floor wage may be fixed for different geographical areas. The minimum rates of wages fixed by the Central/State Government shall not be less than the floor wage and if the minimum rates of wages fixed by the Central/State Government earlier is more than the floor wage, then, the Central/State Government shall not reduce such minimum rates of wages fixed by it earlier.

Payment of Wages

- Wages will be deposited in the bank account of the employees, electronically or by cheque. Wages can be paid in cash, up to an amount which will be notified by the appropriate government.
- Payment of wages has been made applicable to all class of establishments and employees. Previously only employees earning less than INR 24,000 per month were covered and establishments defined or notified were covered.

Equal Remuneration

- The Act has been summarized in the code; there are no changes to the provisions.

Payment of Bonus

- Only employees earning monthly salaries below the amount notified by the appropriate Government will be eligible for bonus.
- An employee will be disqualified for bonus if he/she is dismissed from service on conviction of sexual harassment.
- Bonus shall be paid by crediting the sum eligible in the bank account of the employee.
- Bonus linked to productivity has been discontinued. Performance based bonus without ceiling limit has been introduced, rules are yet to be prescribed.

Code on Social Security 2019

Ministry of Labour and Employment has prepared a Preliminary draft of the Code on Social Security & Welfare by amalgamating all existing Labour Laws related to Social Security (Including Employees Provident Fund Act, Employees State Insurance Act, Maternity Benefit Act, Payment of Gratuity Act, Employees Compensation Act, Unorganised Social Security Act and various Welfare Cess / Fund Acts).

KEY CHANGES UNDER THE SOCIAL SECURITY BILL

The Indian government may set up various social security schemes, including a provident fund, a pension fund, and an insurance scheme, for the benefit of workers. The government may also provide:

- sickness, maternity, and other benefits;
- gratuity to workers on completing five years of employment (or fewer than five years in certain cases such as death);
- maternity benefits to female employees;
- payment of tax (cess) by the employer for the purposes of social security and welfare for building and construction workers; and
- compensation to employees and their dependants in the case of occupational injury or disease.

◆ Labour Code On Industrial Relations

The Bill consolidates essential elements of three laws—the Trade Unions Act, 1926, the Industrial Employment (Standing Orders) Act, 1946, and the Industrial Disputes Act, 1947—helping improve ease of doing business.

KEY CHANGES UNDER THE INDUSTRIAL RELATIONS BILL

- Fixed-term employees will get all statutory benefits like social security, wages, etc. at par with the regular employees who are doing work of same or similar nature.
- An industrial establishment will have to contribute an amount equal to 15 days' wages or such other days as may be notified by the central government, to this fund for every worker retrenched.
- Amendment in the definition of "strike" to bring "mass casual leave" within its ambit, while suggesting that a union will be recognised only if it has support of 75 per cent or more workers. Besides, requirement of a notice period of 14 days has been incorporated for strikes and lockouts in any establishment.

◆ Labour Code on Occupational Safety, Health and Working Conditions

The Ministry of Labour and Employment has prepared a preliminary draft on Code on Occupational Safety, Health and Working Conditions, 2018, by amalgamating 13 labour laws relating to safety and health standards, health and working conditions, welfare provisions for the employees and leave and hours of work. Some important labour laws among the 13 include: The Factories Act, 1948; The Mines Act, 1952; Sales Promotion Employees (Condition of Service) Act, 1976; Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996; The Contract Labour (Regulation and Abolition) Act, 1970; The Inter-State Migrant workmen (Regulation of Employment and Conditions of Service) Act, 1979.

KEY CHANGES UNDER THE OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS BILL

- A National Occupational Safety and Health Advisory Board in place of multiple committees at present.
- One registration, one license and one tax return instead of multiple registrations, licenses and returns as required in the existing 13 labour laws.
- Women, after their consent, will be permitted to work beyond 7 pm and before 6 am subject to the safety, holidays, working hours or any other condition as prescribed by the state or the central government.

CONCLUSION

The government stressed that there are too many labour laws regulating work and they need to be changed. On the other hand, researchers point out that there are so many labour laws and many of them covering same subject which is sometimes difficult to comply. The regulations and restrictions were hampering the flexibility of firms and many checks and approvals from the government was again a time-consuming process.

Secondly, this article tries to explore the impact of recent proposed labour law reforms on the job creation opportunities. From the above analysis, it is clear that though job creation is one of the objectives behind labour law reforms but the proposed reforms will be able to fulfil the objective is still questionable.

POSH-COMPLIANT – A WAY TO A HARASSMENT-FREE WORKPLACE OR MERE ADHERING COMPLIANCES OF GOVERNMENT NORMS.



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1. Forming Internal Control committee headed by a “female presiding officer”,
2. forming sexual harassment policy,
3. creating awareness about it by training and orientation and,
4. making disclosures regarding compliance with POSH laws and reporting number of sexual harassment complaints received in a year, the number of sexual harassment disposed off in the year and cases pending for more than 90 days in its Annual Report.

The Ministry of Corporate Affairs, through a Notification dated July 31, 2018, amended the Companies (Accounts) Rules 2014, casting higher responsibility on the Board of Directors of a company to ensure compliance under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and the Rules (collectively known as POSH Laws).

By this amendment, it is now mandatory to disclose that the company has implemented the provisions of POSH. Each organization with more than 10 employees is required to form an Internal Complaints Committee headed by a “female presiding officer”, along with the formulation of an internal POSH policy for the prevention and redressal of sexual harassment at workplaces. Orientation and training programmes are also required to be carried out by the organisation.

It is now compulsory for a company to make a statement in the Director’s Report that it has complied with the provisions regarding the constitution of the Internal Complaints Committee (ICC).

ARE YOU TRULY A POSH COMPLIANT?

This amendment is a commendable step in the path of making Harassment Free workplace for women but yet the task of achieving the object of the law is a long and winding road on which the complainant must persevere through successive legal forums of the legal system with all its uncertainties and delays. The experience with this legislation is proving to be no different.

To be POSH compliant, an employer has following mandatory obligations to fulfill in ensuring that working women do not face sexual harassment at the workplace:

Mere forming of Internal Complaints Committees (ICC), forming Sexual Harassment policies or making disclosures in the Annual report don’t live up to the liability imposed on the Employers by the Government. Corporate have to recognise that complaints of sexual harassment cannot be treated as an empty formality, it is a duty to act judicially.

The Internal Complaints Committees (ICC) of corporate must grapple with rival claims, and the dictates of legal processes, for relief the victims of sexual harassment must meet the formidable challenge of adducing evidence, for the accused the right to proclaim his innocence till proven otherwise, for the management the dilemma of compliance and the compulsions of containing the damage to the corporate brand. These are early days but the new legislation is already a battle ground rife with allegations of non-compliance, prejudice of ICC members, violations of procedure, evidence not considered, biased conduct of proceedings, and wrongful reprieve of the accused by the management.

As sexual harassment continues to be a highly complex issue in workplaces across the country, despite the high level of public attention that sexual harassment and the #MeToo movement have garnered in recent years, many employers and HR departments are still not fully equipped to prevent and handle harassment claims that could cost a company in lawsuits, reputational harm, and employee turnover.

Sexual harassment continues to be a significant workplace problem that has moved front and center with continuing prime-time media coverage and the #MeToo movement. It has caused tremendous harm to countless victims – and has hurt companies’ pocketbooks, productivity, and reputations.

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Therefore, compliance of government norms and laws against sexual harassment for just sake of the compliance is not the option for the corporate as it will have severe repercussions of not dealing effectively with sexual harassment as strict stance has been taken against companies by the Courts if they find out that the company was not POSH-compliant, if an aggrieved employee drags the matter to the courts for compensation.

IMPACT OF NON COMPLIANCE WITH POSH LAWS

Non-compliance with POSH can cost an employer a monetary penalty of INR 50,000. On repeated non-compliance, the employer may be penalized with twice the punishment. Non-compliance can also lead to cancellation of license, withdrawal or non-renewal of registration for carrying on business, by the Government or local authority.

There have been many instances where the employers have been charged with monetary penalties more than just Rs.50,000 where the female employees have approached the courts for sexual harassment cases at workplace. Non-compliance with POSH can cost the employer exemplary damages imposed by the courts. This may also harm the reputation of the company and create a hostile work environment. As a matter of fact, lacking POSH compliance can also harm the reputation of the organisation/company. If the matter reaches the court, or even if the female employee complains, the reputation of the company is at stake. It may lead to the organisation being labelled as an "unsafe workplace" for every other employee, thus making it hard not only to hire future employees but also negatively affecting the business of such an organisation.



A GUIDE FOR HARASSMENT FREE WORKPLACE

When it comes to combating harassment, the law puts the onus on employers to create and maintain harassment-free workplaces. So how is that accomplished? First, it is important to acknowledge that creating and maintaining a harassment-free workplace is a continuous, ongoing process. No single act can satisfy an employer's legal duties to its employees. The all-too-common belief that employers have "checked the box" if they provide harassment training is a far cry from the truth. In reality, the law requires employers to "stand guard" every single day.

A holistic anti-harassment plan that engages your workforce and includes multiple elements and tools is your best bet. To be POSH compliant, it is not enough for an employer in ensuring that working women do not face sexual harassment at the workplace, here are methods in addition to mandatory POSH Compliance to ensure that your organization is a Harassment Free workplace:

1. **Clear anti-harassment policy-** Instead of mere adopting a general anti-harassment policy for the sake of legal compliance,

an organization must have a well-written policy in including a clear description of the legal prohibitions against discrimination, harassment, and retaliation in the workplace, and the consequences of violating the policy. A good policy will set out the steps employees should take if they experience harassment themselves, and also tell them what they should do if they see it happening to someone else. Names and contact information of the company's human resource representatives should be provided, as well as other individuals who stand ready to help. It should be clear that the employer will not tolerate harassment, and employees should know exactly what to expect if their own behavior "crosses the line."

2. **Creating awareness about the POSH laws-** Distributing copies of the policy during orientation, posting of Policies on walls is obviously not enough, even when employees confirm their receipt of the policy via signature. The employer shall hold workshops, seminars, and orientations for its employees to ensure proper awareness about the POSH laws and the process for

complaint resolution under the ICC. Management should include a comprehensive review of the policy each time there is formal training, and should additionally review all or parts of the policy, as appropriate, any time the workplace actually experiences an incident. These reviews should be documented as evidence of the efforts taken to assure that all employees are familiar with the policy's substance and have been given frequent opportunities to review it.

3. **Training –** Training of ICC members and employees, is a crucial element, trainings need to define harassment, provide examples, explore the remedies available to victims, and discuss prevention strategies. In addition, trainings should explain how the company will investigate harassment complaints, and clearly specify the protections that will shield complainants and others from retaliation. Annual trainings for everyone will be a good jumping off point, while making sure that all new hires undergo training soon after onboarding to ensure proper awareness about the POSH laws and the process for complaint resolution under the ICC.



4. **Model good behavior from the top-** Leading by example is a tried-and-true leadership technique. Executives and supervisors should model the behavior they expect to see in the workplace. This includes attending harassment trainings and being accountable to the company's anti-harassment plan. When executives and supervisors attend trainings with the company's core employees, the business sends a strong message that everyone is responsible for harassment prevention and no one is "above the law."
5. **Seek feedback-** The best approach is an "open door" policy in which supervisory employees are available to receive complaints at any time, regardless of presentation. A verbal complaint can be committed to writing later, once the investigation is initiated. This also means that the company should be willing to accept anonymous complaints, and should respond appropriately to them as well. Instituting an "open door" policy sends the message that the company welcomes complaints in any form, and that the company is committed to assuring a harassment-free workplace.
6. **Conduct fair and effective investigations-** The investigation should be undertaken without delay, and that the investigator should be a neutral party, free from bias. If the person who would normally investigate has a personal relationship with either party, whether positive or negative, it is wise to have that person step aside and have someone else conduct the investigation to remove any appearance of unfairness. Employers should promptly investigate each and every complaint they receive. Keep in mind that complaints and problems fall on a wide spectrum from mild to serious; so it is not surprising that the response and subsequent investigation will vary greatly as well, from simple to complex but it should be ensured that a fair and effective investigation is conducted.

7. **Mitigate harm-** Harassment causes harm to individuals, to workgroups and to the organization, and mitigation of harm should be the driving force behind all harassment responses. Employers should always act with an eye towards helping the victim first, and repairing any harm the victim may have suffered. This requires the employer to be sympathetic to the victim's needs and wants. If the victim's requests are reasonable, the company should make them a priority when considering next steps.

Mitigation takes many forms: removal of the harasser from the job-site, or job reinstatement, promotion, back pay, or job restructuring for the victim. To repair harm to the organization, sanctions should be applied as required by policy and commensurate with the wrongdoing. This strengthens employees' understanding that they will all be protected from unlawful conduct, and bolsters the integrity of the policy. Lastly, mitigation of harm also means preventing repetition of incidents.

Punishments or Sanctions are necessary to give strength to your policy, and to assure that all of your employees understand that there are consequences for harassing behavior in the workplace. For those who might not naturally be inclined to treat their coworkers with dignity and respect, the "stick" of sanctions is sadly necessary to assure compliance with the policy. Doing so will restore the sanctity of the workplace after a harassment incident.

8. **Audit your policies — are they working?** - Ongoing audits are a necessary, if tedious, fact of life. When auditing your anti-harassment plan, the company needs to periodically assess its efficacy and accuracy. Examine the plan to determine where your company has succeeded and where it has fallen short. What changes to your plan could help it flourish, and what can you learn from the areas in which you have succeeded? What do your employees think of the plan? Gather their feedback on the plan, since you have tasked them with following it. If you have employees that have suffered a harassment incident, ask them to critique the company's response. Be sure to ask any victim of harassment how your response could have been better.

It is vital to prevent sexual harassment in the workplace and effectively handle such complaints which – when not handled properly – can cost a company not only in lawsuits, but also in decreased morale, productivity and higher employee turnover. The above factors must be considered to effectively train for prevention, mitigate risk and develop an effective sexual harassment program within their organizations and can be used to update and strengthen an organisation's harassment-free workplace efforts. Civility in the workplace is an attainable goal and it is worth striving for!

NEO-BONDAGE (SLAVERY OF 21ST CENTURY) AND BRICK KILN WORKERS IN DELHI NCR



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income and publicly disadvantaged section of the society. Though one of the oldest industries in the history of mankind, brick industry in India still remains unorganized and no official authentic data is available regarding its status. The National Commission on Rural Labour estimated that there were about one million workers². Brick Industry is one of the informal/unorganized industries in India. This industry is booming with the expansion of real estate business. It is a labour intensive industry. The industry employs millions of workers. In Delhi NCR, brick making on simply business-related basis had started in the commencement of the nineteenth century.



ABSTRACT

This article focuses at the migrant and non migrant workers in Brick Kilns of the NCR region who often enter into 'neo-bondage' situations (shorter-term bondage, based primarily on economic transactions as opposed to the more complex social and economic dependency manifested in the older forms) wherein the workers receive short terms advance payment and their failure to repay them back, creates a vicious cycle of debt and bondage. Both migrant and non migrant labours specially belonging to unorganised sector are compelled to take money in advance from owners. This advance puts limits on their mobility and forces them to work with minimum wages, it is very difficult to come out from a vicious debt trap until their account settled at the end of yearly closing or person is in a position to repay debt during work session. However the regulators drafted for labours are silent about such transactions in form of cash or kind, made by the employer, and this lacuna boost kiln owner to exploit poor workers who trapped in socio-economic conditions and having lack of awareness which mostly found in rural India.

INTRODUCTION

Brick-making is one of the most ancient industries. The craft is as old as the Indus Valley Civilization (2500 – 1500). Brick kilns in India produce around 300 billion bricks and it is the second largest brick producing country after China¹. According to Indian Brick Manufacturer Association, after including all "small, medium and large brick kilns" there are approximately two lakh brick kilns operating in India which employ more than four million workers. Most of the workers are migrants who belong to economically backward and underdeveloped regions of the country and normally hail from low

DELHI- NATIONAL CAPITAL REGION. (54,984 KM2 AREA COVER 23 DISTRICT OF UTTAR PRADESH, HARYANA, AND RAJASTHAN,)

At present about 4018 brick kilns are in operation in Delhi NCR. According to the report published by the Centre for Science and Environment,³ the number of registered brick kiln units is nearly about 3823 but after including Shamil (Uttar Pradesh) district in NCR the number of brick kiln increased by 195 brick kilns. Four million of labourers are engaged directly

1 Pallab Kanti Ghoshal, Prospects and Problems of Brick Industry, Mittal Publications, 2008, New Delhi, p 3.

*The views expressed are personal views of the author and it should not be taken as views of the NIRC-ICSI.

2 Dr. Parameshwara Naik, Socio-Economic Conditions of Women Workers in Brick Kilns: A Case Study on Davangere District in Karnataka, International Journal of Current Research, Vol. 9, Issue, 08, August, 2017, p 56767.

3 Centre for Science and Environment report, "Make over conversion of brick kiln in Delhi NCR to a clean technology" 2018

Article

or indirectly in this sector. They are mainly surplus agricultural labourer belonging to weaker sections of the society. The requirements of bricks, in the Delhi NCR region are constantly increasing year by year. The brick kiln industries in Delhi NCR are typically unincorporated concerns under owner-management, mostly proprietary or partnership establishments. Bagpat,

Bulandshahr, G.B. Nagar, Jhajjar, Sonipat, Jind, Alwar and Bharatpur are the major brick producing districts of Delhi NCR. In Delhi NCR, the locations of the brick kiln units that are found mainly of three types - linear, cluster and disperse.

District of Uttar Pradesh covered Under NCR	Number of Brick Kilns	District of Haryana covered Under NCR	Number of Brick Kilns	District of Rajasthan covered Under NCR	Number of Brick Kilns
Bagpat	525	Jhajjar	250	Alwar	142
Bulandshahr	408	Sonipat	225	Bharatpur	110
G.B. Nagar	130	Jind	150		
Ghaziabad	313	Palwal	125		
M.Z. Nagar	336	Karnal	110		
Meerut	238	Mahendragarh	110		
Hapur	146	Bhiwani	110		
Shamli	195	Rohtak	94		
		Rewari	90		
		Mewat	85		
		Panipat	80		
		Faridabad	80		
		Gurgaon	101		



Uttar Pradesh: There are total 8 districts of Uttar Pradesh covering under NCR, having an area of 25327 Km² in National Capital Region. There are around 2291 kilns in the NCR district of Uttar Pradesh. The district of Bagpat has the most number of kilns among all district in NCR and 8 districts of Uttar Pradesh in NCR followed by Bulandshahr, Muzaffarnagar, Ghaziabad, Meerut, Shamli, Hapur and Gautambudh Nagar, respectively. The least number of brick kiln in NCR district of Uttar Pradesh goes to Gautam Budh Nagar, having total of 130 brick kiln in the region.

Haryana: There are total 13 district covered under NCR from Haryana State. Haryana has maximum number of districts covered in NCR. As per the data submitted by the brick kiln association, in Haryana, there are around 1610 kilns in the NCR districts of the state. The maximum number of kilns is in Jhajjar district followed by Sonipat, Jind, Palwal, Bhiwadi, Mahendragarh, Karnal, Rohtak, Rewari, Mewat, Faridabad and Panipat respectively.

Rajasthan: Rajasthan state having the least number of districts under NCR. Rajasthan shares only two districts with the NCR — Bharatpur and Alwar⁴. The Alwar district having 142 brick kiln and Bharatpur having 110 brick kiln. The total contribution of brick kilns from Rajasthan is 252 in National Capital Region.

TOTAL LABOUR FORCE PARTICIPATION RATE:

The Indian labour efficiency dropped by 5.52% in December 2019, compared with a growth of 5.80% in the previous year. The country labour force participation rate dropped to 51.81% in December 2019. More than 90 per cent of workforce and about 50 per cent of the national product are accounted for the informal economy⁵. According to an estimate, around 10 per cent of India's population working in the informal sector is fascinated in a situation of bonded labour⁶ or neo⁷-bondage⁸. This arises through a confluence of complex inter-linked factors.

Immediate "triggers" such as health emergencies, religious ceremonies, dowries, food shortages or the sudden loss of a job or an income earner, acute landlessness and high unemployment, may oblige an impoverished worker to seek a loan or advance from kiln owners or labour agent for their daily sustenance by selling their labour. This arrangement limits their mobility to look for other locations

4 Tanya Mathur (ed.), Makeover: Conversion of brick kilns in Delhi-NCR to a cleaner technology (A Status Report), Centre for Science and Environment, 2018, pp 8-9.

5 NSC, Govt. of India, 2012.

6 According to 1956 United Nations Supplementary Convention on the Abolition of Slavery Debt bondage (bonded labour): "The status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined."

7 Neo because the relationship between bosses and workers is less personalized, of shorter duration, more contractual, and monetized.

8 Bondage often begins when a worker takes a loan or salary advance from his or her employer to pay for a large expense.

to work in. It also hinders their negotiating power regarding minimum wages and forces them to work in appalling conditions. A vicious debt trap sucks in these powerless workers, creating a situation known as neo-bondage. 'Neo-bondage' exists in a variety of industries in India's rural and urban areas counting brick kilns, salt pans, stone quarries and construction sites (irrigation canals, dams, road building) etc. As per neo-bondage, a debtor agrees to pay off his debt by offering his services or those of another to work off the debt. However, these conditions alone – the presence of a debt and the pledge of labour or services – are necessary but not sufficient requirements to indicate a situation of debt bondage. The voice of poor migrant labourers being made bonded is now echoing in Delhi. The Human Rights Commission has taken a tough stance on complaints of such poor being held hostage on Ghaziabad brick-kilns and summoned the DM to Delhi and took full information from them. In the case of mortgages on brick-kilns, many workers have also caught the way of the Supreme Court⁹ and the High Court¹⁰. Actually, Loni, Meerut Road, Hapur, Modinagar etc. have a large number of brick-kilns. Workers from Bihar, Madhya Pradesh and Bengal reach these places to work¹¹.

BRICK KILNS: LARGE-SCALE SYSTEMATISED INFORMAL WORK

The Brick-Kiln industry is working with small technology activity having a stick division of labour. The brick kiln industry is the second largest sector after the construction sector, absorbing such a buoyant labour population and a reserve surplus off the land¹². There is little to no compliance with the legislation governing minimum wages. Low wages are particularly prevalent in the brick kiln sector where payment is on a piece rate basis (per brick) rather than a time rate wage. As there are usually no records detailing the number of bricks made or the rate paid per brick, workers usually find out what they have earned (or in many cases still owe) at the end of the season, without being shown any paperwork¹³.

Work in brick kilns demands physical labour that usually exceeds 10 and often more than 12 hours. The moulder who prepares the pit and moulds the brick is paid per thousand bricks. He uses the service of the women and children of the family to mould the mud and to carry the moulded brick to dry in the sun. In Haryana, moulder was paid Rs.600-650 per 1000 bricks which included the payment for his family. The loader loads the bricks into the kiln, which includes carrying the dried brick to the kiln with the help of cart and animals. The stacker arranges the bricks into the kiln and the 'rapaswala' covers it with earth in preparation for the firing receive consolidate salary which is approximate to Rs 12000. The 'nikasi' or unloader was paid Rs. 80 per

1000 bricks, he removes the baked brick from the kiln and stacks them accordingly to the quality of the bricks. The women are engaged in this activity and also clean the kiln after the bricks are removed. The fireman who fire the kiln and watch over it all through the operation, to see that the bricks are properly burnt, are paid Rs.12000 per month¹⁴. Workers are exposed to difficult conditions especially during acme winter and summer months. In addition to being in general unaware of workers' rights, they comprise the lowest level of the hierarchy of power and therefore have no unions or organisations for collective bargaining and to enforce their rights. Instead, they must surrender and carry on returning to brick kilns year after year. Although, new rates of brick paving for laborers working on brick kilns have been fixed¹⁵ but they remain only in papers.

Type of Worker	Nature of Work	Nature of Remuneration
Patheri workers	Make the clay ready. Moulding bricks into the case and Lining them for drying.	Piece work per 1,000 bricks;(broken or imperfect bricks are not considered).
Loader workers	Carrying bricks from the site of (green bricks) production to the kiln for firing	Piecework per 1000 bricks or weekly wage in a few cases
Jalai workers	Firing the bricks in the kiln and maintaining temperature.	Weekly or fortnightly wage
Nikashi workers	Taking out the ready bricks from the kiln with the help of a bullock cart and stack them for sale.	A lump sum amount or piece rate basis for all the work
Middlemen	Recruit labourers by paying them advance and arranging their travel to the kilns	Commission per 1000 bricks per pair or group as the case may be.

INTERNATIONAL LABOUR ORGANIZATION AND CLASSIFICATION OF LABOUR

Bonded labour is "the most ancient and most contemporary form of human servitude"¹⁶. Workers in brick kiln fence usually work for long hours under enormously hazardous surroundings with little or no earnings and find themselves incompetent of opting out of this bargain as they do not have any one-time source of income that could be utilised to pay back the loan and render them free. Employing this clause, five types of bonded labourer were identified: first, bonded labour where there was a trace of traditional social relations; second, bonded labour in agriculture; third, bonded labour that was found in rural and urban unorganised and informal sectors; fourth, child bonded labour and fifth neo-bondage labour¹⁷.

14 Data collected by field survey in Loni (Ghaziabad Distt.) and Sarurpur Kalan (Bagpat Distt.) Of Delhi NCR.

15 The Uttar Pradesh government has fixed the minimum wage rate for Patera workers working on brick kilns. According to this, per thousand brick path will have to be paid at the rate of Rs 483.20. available at <https://www.amarujala.com/uttar-pradesh/meerut/81528404145-meerut-news> assessed on May 05, 2020

16 Siddharth, Kara, 2012. Bonded Labor – Tackling the System of Slavery in South Asia. Columbia University Press.

17 (Srivastava, 2005)



In 1998, the International Labour Organization (ILO) adopted the Declaration on Fundamental Principles and Rights at Work, which commits all member States to respect, promote and realize the elimination of all forms of forced labour, as well as other basic rights at work. Bonded labour is one manifestation of forced labour. It defined neo-bondage as, 'short-term bondage, based primarily on economic transactions as opposed to the more complex social and economic dependency manifested in the older forms. Under this arrangement, workers take short-term loans at exaggerated interest rates and their failure to repay them creates a vicious cycle of debt and bondage. Brick kiln workers came under the third category, that is, bonded labour in the rural and urban unorganised and informal sector. Their numbers are a shocking 40 million¹⁸. Through a survey conducted on migrant brick kiln workers, the ILO has enumerated the reasons behind the ferocious trap kiln work for continually fall into, a situation which is described as 'neo-bondage' situation¹⁹.



INDIAN CONSTITUTION AND LABOUR LAWS

It is the fundamental right of everyone in this country to live with human dignity free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clause (e) and (f) of Article 39 and 41 and 42 and at least, therefore, it must include protection of health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief²⁰. The Indian Constitution under the heading "Right against Exploitation", Part III of the Constitution, one of India's constitutionally proclaimed fundamental rights, prohibited forced labour. As per Article 23(1),²¹

18 (Breman, 2011; Heuze, 2009)

19 (ILO, 2013)

20 *Bandhua Mukti Morcha v. Union of India*, AIR 1984, SC, 802

21 As per Article 23 of the Constitution of India, traffic in human beings, beggar, and other similar forms of forced labour are prohibited and any contravention of this

prohibition of traffic in human beings and forced labour and according to Article 24 prohibition of the employment of children whether as bonded labour or otherwise. Moreover, the Directive Principles directs the State to strive to secure, inter alia:

(a) Just and human conditions of work under Article 42 and (b) to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work and living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities²².

LABOUR LAWS FOR BRICK KILN WORKERS

The Indian labour law regime faces the problem of plenty. There are about 44 Central labour laws and 200 State laws governing labour matters. However field studies has shown that inspite of an abundance of legislations in India, the intricacies of labour laws are more than often used by the rich and the powerful to either hold back welfare measures or else make longer adjudication to the detriment of precarious workers like contract and informal workers who are underprivileged and insecure. Thus many wilful attempts of the contract workers to seek better terms of employment from their employers are found to be lost somewhere in the legal process. Although India has a relevant domestic law in place regarding labour inspections, in practice very few brick kilns are inspected properly to ensure minimum wages, proper keeping of employment records and safe working conditions. Brick kiln are although in the schedule of Minimum Wages Act, 1948 but they are not paid such.

Most of the brick kiln owners In the NCR region expressed their preference for migrants over locals (Contract Labour)²³ not only in terms of harder work for lower wages but because the former were regarded as more reliable and loyal since they did not move to other persons. The first fact is that they did not continuously demand about raising labour cost and they don't complaint about difficulty in living conditions. The

provision shall be an offence punishable in accordance with law.

22 Under Article 43. The State shall endeavour Living wage, etc. for workers.

23 As per the Contract Labour (Regulation & Abolition) Act, 1970 of India, Contract workers are those who are "employed by or through a contractor" (service provider) (Section 2(b)) on temporary basis depending on the availability of work. Thus in the organized sector, a workman is deemed to be a contract worker when s/he is hired in connection with the work or "contract for service" of an establishment through a contractor. Unlike regular workers, contract workers working in brick kiln are hired and fired at will, are cheaper, and are generally unorganized.



second fact is that the brick kiln is a seasonal work and during rainy and winter seasons most of them are closed. During the closing of brick kiln most of the labour got themselves engaged in agriculture activities with the peasant farmers for their survival²⁴. "Contract (agency) Labour can be distinguished from 'direct labour' in terms of employment relationship with the establishment and the method of wage payment".

Outlawing bonded labour in India, a statute was enacted known as the Bonded Labour Abolition Act, 1976, that introduced provisions for the rescue and rehabilitation of bonded labourers and prosecution of the employer. The Act states bonded labour as a service arising out of loan/in-debt/advance." These circumstances in the act represents the relationship between creditor and a debtor where the debtor undertakes to mortgage his services or the services of any of his family members to the lender for a exacting or unspecified duration with or without wages accompanied by denial of alternative avenues of employment, or to deny him freedom of movement. Then the person would be covered under the definition of a bonded labour. Therefore Bonded Labour or 'bandhua mazdoori' was historically linked with rural economies where peasants from economically disadvantaged communities were bounce to work for the landlords.

INTERNATIONAL ORGANIZATION AND BONDED LABOUR

According to the ILO Forced Labour Convention, 1930 (No. 29) forced labour is all work or service for which the worker has not volunteered him- or herself, and which is performed under the threat of a penalty. The 1956 Supplementary Convention Against Slavery defines debt bondage as the combination of a credit and a labour contract in which the value of labour services, as reasonably assessed, is not applied towards the liquidation of the debt (e.g. only interest is repaid by the labour provided, but the principal is never repaid) or if activities are neither defined nor limited (e.g. the labourer is required to work at any time of day or night)²⁵. The United Nations Universal Declaration of Human Rights (UDHR) of 1948 reaffirmed the principle that 'No one shall be held in slavery or servitude' (Article 4). Article 7 of the UDHR states that no one shall be held in slavery or slavery, slavery and slave trade in all its forms shall be prohibited. Article 23 of the UDHR emphasizes on favorable working conditions, non-discrimination, equal pay for equal work and favorable remuneration along with the right to 'free choice

24 Tom Brass, Towards a Comparative Political Economy of Unfree Labour: Case Studies and Debates, Frank Cass Publication, London, 1999, p 97.

25 Smita Premchander, V. Prameela and M. Chidambaranathan, Prevention and Elimination of Bonded Labour: The Potential and Limits of Microfinance-led approaches, International Labour Office, Employment Sector. - Geneva: ILO, 2014, pp 3- 4.

of employment' (Article 23(1)). India is also a party to The International Covenant on Economic, Social and Cultural Rights (ICESCR) whose Article

7 RECOGNIZES FAVORABLE CONDITIONS FOR WORK, FAIR WAGES, HEALTHY AND SAFE CONDITIONS OF WORK.

The preamble of Abolition of Forced Labour Convention (no. 105) of 1957²⁶ provides that all necessary measures shall be taken to prevent compulsory or forced labour from developing into conditions analogous to slavery and that the Supplementary Conventions on the Abolition of Slavery²⁷, the Slave Trade and Institutions and Practice Similar to Slavery 1956 provides for the complete abolition to debt bondage and serfdom. Article 5 of the said convention states that a Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force. The High Commissioner for Human Rights in his Opening Statement to the Working Group on Contemporary Forms of Slavery (WGCF), 23rd SESSION, 18-28 MAY 1998 (Geneva,

18 May 1998) stated that "Slavery and its prohibition is enshrined in international treaties." Despite all this, according to the 2016 Global



Slavery Report by the Walk Free Foundation, India has the highest number of persons living in slavery worldwide²⁸.

PESHGI (ADVANCE) AND INDEBTEDNESS OF BRICK KILN LABOURERS - REMUNERATION OF WORKERS IN BRICK INDUSTRY

Most of brick kiln workforces are from the families that have for generations toiled in brick units in different parts of the Study area and are not aware of their constitutional rights or the wellbeing measures of the State and Central governments. The vicious cycle of debt begins when the rural people voyage to a distant place and finds work in a brick kiln through middlemen known as "Sardar". The employee accepts an advanced amount presented by the middlemen who has not realized that in the procedure he is trading away his freedom. The motive behind the owners giving advances of cash and kind to labour

26 forced in India since 18 May 2000.

27 Slavery Conventions, 1926.

28 With Over 18 Million People, India Tops Global Slavery Index, available at <https://www.ndtv.com/india-news/with-18-35-million-people-india-tops-global-slavery-index-1413891> assessed on May 5, 2020.



and binding them is two-fold. The first is to ensure that there is labour to perform the heavy physical work. Second, the seasonal nature of the work plays a significant role. Such work normally starts in the month of November which coincides with the kharif harvest season in India. During the harvesting season, workers prefer to toil as agricultural labourers, which results in a scarcity of cheap labour for other activities.

By the time he does it is too late, because he is tied to the kiln in perpetual bondage. The amount of advance ranged from Rs. 500 to Rs. 7000 or more which depends upon the advance demanded by the employee. This 'give and take' relationship is deeply entrenched in the brick kiln industry²⁹. Incidentally, the middlemen, who are part of the workforce, play an important role in the disbursement of the advances and weekly wages to the workers. The owners have an inherent interest in giving advances to workers, the main one being the maximum exploitation of workers³⁰. Workers are provided a loan before they start work, immediately going into debt. Then they are trapped in the kiln having to work for an entire season without being paid their wages, not knowing if they have worked off their debt or not. As no records are kept, at the end of the season the brick kiln owner often decides to pay less³¹. Both middlemen and workers believe that the advance arrangement fosters "mutual trust". But the field survey shows that it not only makes workers susceptible to bondage but also pushes them into the swamp of perpetual indebtedness. Article 1(a) of the 1926 Slavery Convention defines slavery as: "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised"³². This debt bondage³³ has been defined by the

29 (Ercelawn, 2004)

30 (Bremen, 1996)

31 Appalling levels of slavery in India's brick kilns, available at <https://www.antislavery.org/report-slavery-india-brick-kilns/> assessed on May 05, 2020.

32 United Nations, 1926. Slavery Convention. Last accessed February 18, 2016.

33 Peonage is a system where labourers are bound in servitude until their debts are paid in full. According to Anti-Slavery International, "A person enters debt bondage when their labour is demanded as a means of repayment of a loan, or of money given in advance.

United Nations as a form of "modern day slavery" and is prohibited by international law³⁴.

CONCLUSION:

Despite the prevention of bonded labour by the Bonded Labour (Abolition) Act, 1976, and prohibition of forced labour by the Indian Constitution (also an offshoot of debt bondage), a system of bonded labour still exists. In India, So-called "neo-bondage" mechanisms have largely replaced the more traditional forms of long-term attachment of labour. Neo-bondage exhibits some striking differences with the bondage of the past. It tends to be time-bound to a season or fixed period, not indefinite as in the past. According to Professor Amartya Sen, "One of the biggest changes in the process of development in many economies involve the replacement of bonded labour and forced work with a system of free labour contract and restricted physical movement". The elimination of current debt bondage and the prevention of new or renewed bondage therefore, require a combination of concerted government action and extensive community involvement. The terms "bonded labour," "indentured servitude," "peonage," and "neo-bondage" are used synonymously but are different forms of servitude and often being used in brick-kiln cases. The problem of Neo-bondage is not a problem in or by itself. It is a part of the larger issue of welfare of the nation as a whole. Different states have enacted different Acts for the brick kiln workers, but no law has been effectively implemented.

The Factories Act states that all workers found at the site of the factory while the production process is in progress are to be considered as employees of the factory, until proven otherwise. In NCR on the guidelines of Punjab brick kilns should be classified as factories. In Punjab, all workers present in the worker/family unit of brick kiln workers are meant to be lawfully considered employees and deserve to be paid individually.

34 It is specifically dealt with by Article 1(a) of the United Nations 1956 Supplementary Convention on the Abolition of Slavery.



UNNATI JANI

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DECODING THE CODE ON WAGES, 2019

Progressive labour laws are integral to the social and economic development of every nation. At present, plethora of labour legislations catering to different aspects of labour are in force. Having multiple labour legislations and their inherent inconsistencies, the administration and compliance of labour laws has become complex & cumbersome and also led to difficulties for workers/employees to identify and take advantage of the benefits granted to them under those legislations. Further, it has also been quite challenging for the Central and State Governments to effectively enforce and monitor such laws.

With the aim to inter-alia consolidate, modernize, simplify the labour laws and thus creating a uniform system of governance to ensure a compliance regime that brings procedural efficiency and administrative transparency, minimize anomalies and contradictions thereby reducing litigation in interpretation of statutes and to widen the social security benefits ensuring last mile reach, the Government pursuant to the recommendations of the 2nd National Commission on Labour has proposed to subsume 44 Central Legislations into 4 Codes viz. Code on Wages; Occupational Safety, Health and Working Conditions; Social Security and Industrial Relations .

THE CODE ON WAGES, 2019

The Code on Wages ("the Code") is the first amongst the above proposed codes, which received the assent of President on 8th August, 2019. The new Code subsumes following enactments:

- ◆ The Payment of Wages Act, 1936;
- ◆ The Minimum Wages Act, 1948;
- ◆ The Payment of Bonus Act, 1965 and
- ◆ The Equal Remuneration Act, 1976

The Code has expanded the definition of "employer" as well as "employee", resulting in a broad based applicability of the law. It is now applicable to all employees irrespective of sector (whether organized or unorganized) and wage ceiling (other than an apprentice engaged under the Apprentices Act, 1961 and any member of the Armed Forces of the Union) employed in any establishments wherein any industry, trade, business, manufacture or occupation is carried on including Government establishments.

Further, the Wage Code provides protection to the provisions of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 and



the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948, or of any scheme made thereunder and specifies that the provisions of the code shall not be deemed to affect the provisions of these Acts.

HIGHLIGHTS OF THE CODE AND MAJOR COMPLIANCES THEREUNDER:

1. Minimum Wages

- No employer shall pay to any employee wages less than the minimum rate of wages notified by the appropriate Government.
- An employee, who works for less than normal working day, shall be entitled to receive full wages, except where an employee fails to work due to his unwillingness and in such other circumstances as prescribed.
- Where an employee does two or more classes of work to each of which a different minimum rate of wages is applicable, the employer shall pay not less than the minimum wage rate for each class of work, proportionate to the time involved.
- The overtime wage rate has been fixed at twice the normal rate of wages for the hours worked in excess of the normal working hours.

2. Payment of Wages

- All wages shall be paid in current coin or currency notes or by cheque or by crediting the wages in the bank account of the employee or by the electronic mode, except for certain specified establishments, wages shall be paid only by cheque

*The views expressed are personal views of the author and it should not be taken as views of the NIRC-ICSI.

or by crediting the wages in his bank account.

- No wage period in respect of any employee shall be more than a month.
- The employer shall comply with the following time limits for payment of wages for respective wage periods:
 - (i) For daily basis, at the end of the shift;
 - (ii) For weekly basis, on the last working day of the week i.e. before the weekly holiday;
 - (iii) For fortnightly basis, before the end of the second day after the end of the fortnight;
 - (iv) For monthly basis, before the expiry of the seventh day of the succeeding month.
 - (v) Where an employee has been—
 - a. removed or dismissed from service; or
 - b. retrenched or has resigned from service, or
 - c. unemployed due to closure of the establishment, the wages payable to him shall be paid within two working days of his removal, dismissal, retrenchment or, as the case may be, his resignation.

3. Deductions from Wages

- The employer shall not make any deductions from the wages of an employee except those as are authorized under the code.
- The total amount of deductions in any wage period shall not exceed 50% of such wages otherwise the excess deductions may be recovered in such manner, as may be prescribed.
- All such deductions and all realisations thereof shall be recorded in a registers may be prescribed.

4. Imposition of fines on the employee

- The employer, with the previous approval of the appropriate government/ prescribed authority, shall exhibit on the premises of the employment, a notice specifying the acts and omissions for which fine may be imposed on any employee.
- The total amount of fine which may be imposed in any one wage-period on any employee shall not exceed an amount equal to 3% of the wages payable to him in respect of that wage-period.
- No fine shall be imposed on any employee who is under the age of 15 years.
- No fine imposed on any employee shall be recovered from him by installments or after the expiry of 90

days from the day on which it was imposed.

- All fines and all realisations thereof shall be recorded in a register as may be prescribed; and all such realisations shall be applied only for the welfare of persons employed as approved by the prescribed authority.

5. Payment of Bonus

- An annual bonus shall be paid to employees of the establishments in which 20 or more persons are employed or were employed on any day during an accounting year, drawing wages not exceeding the notified threshold and who have put in at least 30 days work in an accounting year.
- In cases where the wage of an employee exceeds the notified threshold, the bonus payable shall be calculated as if his wage were such amount, so determined by the appropriate government or the minimum wage fixed by the appropriate government, whichever is higher.
- The amount of minimum bonus has been fixed at rate of 8.33% of the wages earned by the employee or Rs. 100, whichever is higher, whether or not the employer has any allocable surplus during the previous accounting year.
- Bonus shall be paid by crediting it in the bank account of the employee within a period of 8 months from the close of the accounting year.

6. Records, Returns and Notices

- Every employer shall maintain a register containing the details with regard to persons employed, muster roll, wages and such other details in such manner as may be prescribed.
- Every employer shall display a notice at a prominent place of the establishment containing the abstract of this Code, category-wise wage rates of employees, wage period, day or date and time of payment of wages, and the name and





address of the Inspector-cum-Facilitator having jurisdiction.

- Every employer shall issue wage slips to the employees in such manner as may be prescribed.
- The above provisions shall not apply in respect of the employer to the extent he employs not more than 5 persons for agriculture or domestic purpose.

INTRODUCTION OF NEW CONCEPTS UNDER THE CODE

1. **Provisions relating to equal remuneration:** The Wages Code prohibits discrimination 'on grounds of gender', and thus making it gender neutral, allowing a third category of gender i.e. transgender to also be protected from discrimination in matters of payment of wages, recruitment and conditions of employment.
2. **Floor Wages:** The Central Government shall fix floor wage taking into account minimum living standards of a worker and geographical areas. Where existing minimum wages are higher than the floor wages, the same shall be retained. The minimum rates of wages fixed by the appropriate Government shall not be less than the floor wage. The appropriate Government shall review or revise minimum rates of wages at an interval not exceeding 5 years. The minimum wages shall be revised by the appropriate Government in consultation with the **Advisory Board** constituted in accordance with the Code.
3. **Inspector-cum-Facilitator:** With the intent to remove arbitrariness and malpractices in inspection, the appropriate Government may, by notification, appoint Inspector-cum-Facilitators, who shall have dual responsibility of advising employers and workers relating to compliance with the provisions of this Code and also to inspect the establishments as assigned to them. The Code also provides for an Inspection Scheme introducing a **web-based inspection** and calling of information relating to the inspection under this Code electronically.
4. **Penalties on Offences:** The Code provides for varying penalties

depending on the nature of offence, with the maximum penalty being imprisonment for three months along with a fine of up to one lakh rupees.

5. **Compounding of Offences:** The offence not being an offence punishable with imprisonment only or with imprisonment and also with fine have been made compoundable under the code. Such offences may be compounded by a notified Gazetted Officer, for a sum of 50% of the maximum fine provided for such offence in the manner as may be prescribed.

CONCLUSION

With its broad based applicability and uniform definition of wages, the code surely promotes the aim of ease of doing business under the "Make in India" policy of the Government of India. The Code has made it easier for employers to understand and thereby comply with the provisions of law.

Although, consolidation of various statutes is an attempt in the right direction for simplifying existing complexities under labour laws, however, it still has its own limitations. In recent scenarios, a rise in new forms of employment such as work from home, freelancing, flexi time, etc. has been witnessed, which is yet to be addressed and looked at. Further, the Code provides for power to the State Governments to make rules, for carrying out the provisions of the Code. The varying state rules may result in employers complying with multiple statutory requirements across states and in consequence hamper with the aim of simplifying the labour laws and reducing the cost of compliance for employers.

As labour laws continue to evolve, it is imperative for employers, to acquaint themselves with the code and understand the impact it may have on their operations. Further clarity can be sought, once the Government sheds light on the subordinate legislations and rules under the code. The same approach of simplification and ease of compliances is expected from the other codes relating to Occupational Safety, Health and Working Conditions, Social Security and Industrial Relations.

CLOUD KITCHENS ARE THE FUTURE OF THE EATING-OUT INDUSTRY?



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Amidst Covid-19, globally all the restaurants are shut, hotels are making home delivery of their patented and benchmark recipes. Food & Beverage Industry is forced to shift itself to another mode for survival and keeping pace in the current scenario. The pioneer hotels like The Taj Group of Hotels, Oberoi and The Park are constraint to deliver their famous dishes at the footsteps of customers, in the present moment due to Covid-19.

The food ordering market of India is projected to reach \$17 billion by 2023. Keeping in view the economic crisis in the wake of Covid-19, opening a new restaurant or food joint seems to be the difficult task where the annual average setup cost for opening a restaurant in India is approximately 3.05 times than that of a cloud kitchen.

HUGE FUNDSFOCUS

And thus it seems even more feasible and profitable to the existing front face Eating Joints to shift to food supply mode i.e. home delivery of the same tongue-licking food at the footsteps instead of serving them at their place and premises. In this way, Cloud Kitchens are becoming the need of this hour.

The following steps shall help understanding the whole idea of Cloud Kitchen;

Step 1: Orders are received from the customers

Step 2: Kitchen in-charge notes down the order details

Step 3: Food is prepared as per the instructions and order

Step 4: Effective and accurate packing is done of the prepared food

Step 5: Finally, the delivery boy, delivers the packed food parcel to the customer

ADVANTAGES V/S DISADVANTAGES-

Since Cloud Kitchen is the virtual restaurant, the orders are accepted online or through telephone. Hence an integrated food ordering system has to be adopted.

The major points in support to the concept of Cloud Kitchen are-

1. Low Infrastructure Cost- Since dining facility is not provided thus furniture, ambience, cutlery, adequate staff are all taken away in this concept. It saves a huge cost which can very well be utilised in quality of food and faster/no waiting delivery of the mouth-watering food to the customer.
2. Growth Oriented- Cloud Kitchen concept is full of growth prospects. Once the base is set, branches under the same brand can be opened in another States. Anytime if it becomes necessitated and to encash an opportunity Front Face restaurant may be opened with the same brand because customer base is ready.
3. Less Overhead Cost- As briefed above, no ambience, decoration,

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fancy premises, staff- to- serve-customers are required in cloud kitchen concept, the overhead cost is saved many times.

- Innovative approach may work- In case, one wants to expand its chain of cloud kitchen, he may have one big main kitchen supplying semi cooked food to the small kitchens who may directly deliver the food to the customers.

With every plus the minus is always there, the disadvantages or struggle in this concept may be summed up as follows-

- Tough competition because entry and exit is easy.
- Personal App or website to obtain orders
- Dependency on food aggregators like Zomato, Swiggy, UberEats, Food Panda etc.
- No direct interaction with the customers, to receive adequate feedback on services and food.

HOW TO START A CLOUD KITCHEN?

- To have a Kitchen Space- a space with measurement of 200-500 sq ft shall go very well during initial stages.
- Kitchen Equipment- Utensils to cook food, stove, oven, microwave, refrigerator, water filter, etc.
- Chef or the cooking person- The taste of food shall be the ultimate promoter in the long term. Hence the best person should be behind the course of cooking meals.
- Preparation of Menu (dishes) - This part is a first speak up and more than enough to allure customers.
- Multi-cuisine/ seasonal dishes concept - When someone orders outside food, he seeks for the variety and diversity apart from taste.

Thus if sitting at Mumbai, one is able to order Delhi styled Chole Bhature, nothing can be more admirable and flattering than this.

- Licenses and Registration -In order to be saved from legal troubles and having more authentication, license and registration are required with various authorities-

- Registration with FSSAI(Food Safety & Standards Authority

of India) is mandatory in India if one wants to be into Food business. It may be from the period of 1years to 5 years. It adds to the authenticity of food and vendor.

- Fire & Safety License- For businesses where usage of fire shall take place, it is advisable to have fire and human health agreements. Cooking food is all about fire and fireplace. This eliminates the chance of future exertion.
- GST registration is mandatory for any business in India to pay taxes timely.
- Trademark Registration – Any successful venture attracts the rivals and their malpractices as well to disturb and distract. Getting the brand name, logo, word mark registered under trademark authorities is a wise decision to run smoothly.

- Packaging and Presentation- Since dine-in facility is away in cloud kitchen idea, only food quality and the way & mode, it reaches to the customers is of utmost importance. Packing the food on adequate temperature, using spill proof packing boxes, eco-friendly reusable packing is all the convincing factors to be taken care of.

HOW TO GENERATE ORDERS?

Once the kitchen is all set, the chef, the menu, the system is streamlined, the focus has to be on getting food orders. The following methods and measures may be opted out for promotion and introduction of the brand-

- Tying knot with existing Food Aggregators like Zomato, Food Panda, Swiggy etc. since they are well acquainted by the mass.
- Full- on Digital marketing of the brand and venture while entitling the main features.
- Mass SMS and membership launching with fascinating schemes
- Search Engine Optimization
- Preservation of Data base of customers ordered food in past for future purpose
- Synchronization between getting order/preparing food/packaging properly & delivery at the right time within no-waiting zone. This ensures repetition of orders and reputation of the brand.
- Integrated online ordering system is a real must to ensure smoothing of operation without any failure.

Finally, it may be said that cloud kitchen is a commendable food channel alternative, and if one wants to flaunt into with limited resources and investment, he has no better option than this. For sure, it's the future theme of food industry and it is safe and wise to opt for with all the necessary compliances. At present only 13% of the total market size has been tapped by the cloud kitchens which lays down the huge potential for budding entrepreneurs to step into this segment of F&B Industry with flying colours.



THE INSTITUTE OF Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

NORTHERN
INDIA
REGIONAL
COUNCIL

INITIATIVES OF CHAPTERS

AGRA CHAPTER

Agra Chapter has motivated the members to enroll for CSBF as the said scheme is so important for the family members of the professional and appealed to members to donate for the needy people in PM cares fund through the payment channel provided by the ICSI. The Chapter also requested the members to continuously attend the webinars arranged by the ICSI related to profession and life. The Chapter is trying to interact with the office in charges of the school and colleges to promote their students to join CS course. The Chapter is in regular personal interaction with the members of the Agra Chapter to know their health and try to sought out their problems occur due to lockdown. The Chapter also organised 2 Webinar on Theme "Audit Complication and Certification During Lockdown" and "Practical Approach over the Corporate Compliances during Covid-19 Lockdown" and starts 1st Batch of online classes for CSEET.

ALWAR CHAPTER

Alwar Chapter has conducted a webinar for members on 22nd May, 2020 on the Topic - "Recent Amendments in MSME and Glance at CFSS Scheme". The Chapter is also conducting test series for OCT foundation students and sent various information for press release as instructed by the HQ.

BHILWARA CHAPTER

Bhilwara Chapter is continuously encouraging members to contribute in relief fund and sending various updates by mail and whatsapp to students and Members regarding "training, examination, classes etc. The Chapter is continuously following up with Non- CSBF members. The Chapter is also following up with the defaulter members for restoration of membership and appealing all the members and students for taking precautionary measures and follow the government guidelines. Personal contact number has also been provided to all the members and students to encourage them to use online services, module and call/mail personally if required.

CHANDIGARH CHAPTER

The Chandigarh Chapter shows its solidarity and togetherness at these testing times of COVID-19 crisis. We stand united and as a matter of fact, we started an initiative of thanks giving to all who are saving our lives at these testing times. We remain together, inseparable and empathetic during these pandemic syndromes coming our way. Chandigarh Chapter of NIRC of ICSI has started its first ever online classes for CSEET students on 18th April 2020 through SKYPE which are running successfully by our Chapter. The classes are provided free of cost. We have more than 25 (Twenty Five) students in our first batch. Many students are residents of the tricity and certain students are logging in from outside cities like Agra , Baddi, Hyderabad, Bhubaneswar , Ludhiana, Patiala and Bareilly. Chandigarh Chapter of NIRC of ICSI has started the process of publishing its first ever e-Newsletter. The same shall be published soonest.

AJMER CHAPTER

Ajmer Chapter has organised webinar for members on 14th May 2020 on theme "CFSS Scheme and its related FAQ".

AMRITSAR CHAPTER

Amritsar Chapter is regularly following up with Non- CSBF Members and providing information related to the benefits of CSBF. The chapter is also providing all necessary information to the students regarding online coaching, crash course etc.

BAREILLY CHAPTER

Bareilly Chapter organised a webinar on 11th May 2020 on topic "Loans to Directors" for members. The Guest Faculty for the webinar was CS Santosh Pandey and it was attended by about 70 members. On the child portal of Bareilly Chapter announcement regarding ICSI Placement Portal and ICSI e-Vidhya Vahini was placed.

DEHRADUN CHAPTER

Dehradun Chapter has finalised CS Examination Centre. The Chapter has discussed with all Non CSBF Members of Dehradun Chapter over the phone. The chapter also shared Free online Crash Course related information to all students of dehradun. Webinar is to be organized by the chapter for Members of Dehradun Chapter. Dehradun Chapter has discussed with the few faculties for Webinars over the phone, which is to be conducted in the month of May-2020.

GHAZIABAD CHAPTER

Ghaziabad Chapter has invited Articles and Write-ups for its Chapters monthly e-newsletter for April issue. The Chapter has resumed OT Classes by online mode. The Chapter is encouraging Members for contribution towards relief fund. and also encouraging Members to take CSBF Membership of our institute.

GORAKHPUR CHAPTER

The Gorakhpur Chapter has conducted a Webinar on the theme "Atmanirbhar Bharat: Execution & Implementation" on 19th May 2020. The webinar was started with an inspiring address by NIRC Chairman CS Suresh Pandey and the faculty of the same was CS G. S. Sarin, Immediate Past Chairman of NIRC. The Chapter is also sending various information by mail and whatsapp to students and Members regarding various updates. The Chapter is continuously following up with Non- CSBF members and also following up with the defaulter members for restoration of membership. Personal contact number has also been provided to all the members and students for resolving their issues. The Press news related to announcement of contribution towards PM Cares Fund, E-learning concept by ICSI has also been published. The chapter has also asked the Practising Company Secretaries and Members on Job to generate UDIN and e-CSin respectively. Various announcements for the benefit of students and members have been posted on the Chapter's Child Portal.

JAIPUR CHAPTER

Jaipur Chapter has started/launched its e-Newsletter for the month of April, 2020.



JALANDHAR CHAPTER

Under the guidance of The Chairman, Jalandhar Chapter of NIRC of ICSI initiated online classes in the lockdown situation for the benefit of the students. For this, The chapter contacted students of Foundation, Executive and Professional on phone and motivated to join the class. The chapter is also focussing on maximum calling and follow up with the defaulter members to restore the membership.

JAMMU CHAPTER

Jammu Chapter has done 3 E- Career Awareness at Jammu. Executive Module-II OTC class is already running. Executive Module-I OTC class is going to start from 1st week of June 2020. Jammu Chapter has just started CSEET classes with 4 students from 8th May 2020 in collaboration with Pune Chapter. Jammu Chapter is going to organise "Safar – Life Skills" program on 19th May 2020. The Chapter is going to organise "Teacher Conference" Webinar on 25th May at 4 PM. Jammu Chapter will also organise Webinar on "How to write CS exams" in the first week of June 2020.

JODHPUR CHAPTER

Jodhpur Chapter took initiative to send mail to all members of Jodhpur Chapter in related to Research Paper Writing Competition for ICSI members. It also organised Lighting Diya Program for the Members of Jodhpur Chapter on 05th April, 2020 at 9:09 PM (Photo Collage created and mailed to HQ to publish in E-newsletter & Chartered Secretary). The Chapter also sent mail to Members regarding suggestions on themes and sub-themes of National PCS Conference. Jodhpur Chapter is preparing E-newsletter of Jodhpur Chapter for the period of Jan-March, 2020. The Press news related to announcement of contribution towards PM Cares Fund, E-learning concept by ICSI has also been published. A Photo Album has been created by Jodhpur Chapter related to programs and training conducted during Jan-March, 2020.

KANPUR CHAPTER

Kanpur Chapter distributed cooked food 50 packets (Puri Sabji) to the poor and hungry families on Sunday, 5th April, 2020. An Online conference call (meeting) was organised for all members of Managing Committee of Kanpur Chapter. The chapter distributed non-cooked items to the poor families on every Sunday, on 12th April 2020, 19th April 2020, 26th April 2020 & 03rd May 2020. The chapter also circulated press release in local media for postponed the CS Examination June, 2020 and announcement for next dates. Kanpur Chapter has also decided to issue monthly e-newsletter.

KOTA CHAPTER

Kota Chapter is encouraging their members to be a proud member of CSBF by making calls and mails. Kota Chapter is solving the queries of their Students/Members over phone and WhatsApp. The Chapter is requesting the defaulter members for the restoration of membership through calls and mails.

LUCKNOW CHAPTER

Lucknow Chapter organised online Classes for all students at Oral Coaching Classes with the help of our Faculties. The Chapter is providing all assistance over Email & Phone to all students. Lucknow Chapter has also supported the needy persons around at individual levels in terms of Distribution of Food Grains, Masks & other needful as required. Chairman of the chapter along with managing Committee members have assisted at their individual levels.

LUDHIANA CHAPTER

Ludhiana Chapter started connecting with the students of Oral Classes through video conferencing for boosting their morale. The Chairman – Ludhiana Chapter has motivated the students and asked them to share the difficulties they are facing. This was done in view of suggesting the students right approach of facing the difficulties and moving ahead towards their goals, which undoubtedly is becoming a knowledgeable and Professional Company Secretary. Ludhiana Chapter also reached the members under their jurisdiction for encouraging them to take the membership of CSBF, which ultimately is a shield of protection and a symbol of belongingness. The chapter has also asked the Practising Company Secretaries and Members on Job to generate UDIN and e-CSin respectively. Ludhiana Chapter is working on the idea of publishing the e-newsletter, thus, invited the articles for publishing in the newsletter. The chapter also requested the members to send a work from home photograph for making a collage, purporting to inspire the other members to develop the system of working from home, who are yet at the planning stage of the Idea. The chapter is working on the idea of catchphrase "sharing ideas, making Lives".

UDAIPUR

Udaipur Chapter is encouraging members to contribute in relief fund and appeal to all the members and students for taking precautionary measures and follow the government guidelines. Chapter also motivated all the Members to contribute in CSBF. Udaipur Chapter has Conducted Two webinars on 4th May 2020 and 28th May 2020 for Udaipur Chapter Members. The chapter is following up with Defaulter Member for Restoration of Membership. Personal contact numbers have been provided to all the members and students to encourage them to use online services, module and call/mail personally if required. The Chapter is also sending various updates by mails and whatsapp to Members and students regarding webinar, Training, Examination and online classes etc.

NOIDA CHAPTER

Noida Chapter designed and circulated E-Newsletter. The Chapter also empanelled two more hospitals, namely Jaypee & Apollo Hospital. OT classes of Noida Chapter are smoothly running, mostly revision, and syllabus completed for most subjects.

PATIALA CHAPTER

Patiala Chapter provided Information about CSBF to the members of the Patiala Chapter by mail and some members were also called on the phone. The chapter also contacted students for OTC classes.

PRAYAGRAJ CHAPTER

The Chapter is coming with the 1st Edition of E-News letter of Prayagraj Chapter is under compilation of data and figures. The chapter organised its 1st Webinar on 18th May 2020.

VARANASI CHAPTER

Varanasi Chapter is solving the queries of their Students/Members over phone and WhatsApp. Varanasi Chapter is conducting online classes for the Student. The Chapter is also planning to conduct Online webinar for members. The chapter also sanitised complete office area while resuming.

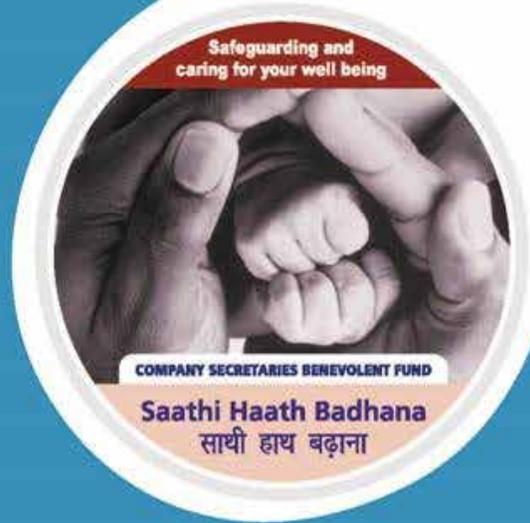


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IN PURSUIT OF PROFESSIONAL EXCELLENCE
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CSBF
COMPANY SECRETARIES
BENEVOLENT FUND



What exactly is CSBF?

The Company Secretaries Benevolent Fund (CSBF) is a Society registered under the Societies Registration Act, 1860 and is recognized under Section 12A of the Income Tax Act, 1961.

The CSBF was established in the year 1976 by the ICSI, for creating a security umbrella for the Company Secretaries and/or their dependent family members in distress.

The amount of ₹ 7,50,000 (in the case of death of a member under the age of 60 years) has been increased to ₹ 10,00,000

The subscription amount is being increased from ₹ 10,000 to ₹ 12,500 soon

Is it the right time to enrol in CSBF?

CSBF is the protection you and your family need to survive the many ups and downs in life, be it a serious illness or a road accident which derails your plans for the future.

Is it a requirement?

Yes, as your dependents need the protection. Your dependents be it your parents, your spouse, or your children will have to bear the brunt of paying off your home/education personal loans and even for managing day-to-day expenses without your contribution.

If you do not want to leave behind such a situation in your absence, enrol in CSBF today.

Advantages of enrolling into CSBF

1

To ensure that your immediate family has some financial support in the event of your unfortunate demise

2

To finance your children's education and other needs

3

To ensure that you have extra resource during serious illness or accident

4

Subscription/Contribution to CSBF qualifies for deduction under Section 80G of the Income Tax Act, 1961

Become a proud Member of CSBF by making a one-time online subscription of ₹ 10,000/- (to be changed soon) through Institute's web portal (www.icsi.edu) along with Form 'A' available at link <https://www.icsi.edu/csbf/home> duly filled and signed.

Decide Now! Decide Wise!

VISION
"To be a global leader in promoting
good corporate governance"

ICSI Motto
सत्यं वर। धर्मं वर। *spread the truth, abide by the law*

MISSION
"To develop high calibre professionals
facilitating good corporate governance"