

Recent Reforms in Labour Laws

Introduction:

In the era of globalization, there is a dire need for welfare of labour and flexibility of the firms to grow in sync with the market conditions for better industrial relations which in turn would lead to the growth of the sector. For the past many years it has been complained that labour laws in India are mostly pro-employee and this rigidity has led to adverse results and poor performance of this sector. Flexibility in Indian labour law is one of the key essentials for the industrial sector to compete in the international market.

Recently, India has seen a spate of Labour reforms that has come up as a respite for both employers and employees. The Govt has come up with major amendments with regard to important legislations such as Factories Act, 1948; Apprentice Act, 1961; Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988 and a number of amendments to the Employees' Provident Funds Scheme ("EPF Scheme") and the Employees' Pension Scheme ("Pension Scheme") under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 ("EPF Act"). Apart from this, the The Ministry of Labour and Employment has come up with various other reforms such as,

- Inspection schemes to simplify business regulations and for bringing in transparency in labour inspections;
- Universal Account Number (UAN) for portability of PF account numbers and
- single unified Web Portal for Online Registration of units, reporting of inspections, submissions of Annual Returns and Redressal of Grievances.
- Small Factories Bill(Regulation of Employment and conditions of service bill) , 2014 has also been introduced to bring all industries with less than 40 workers under one legislation making compliance easier.

The Factories (Amendment) Bill, 2014

The Factories (Amendment) Bill, 2014, proposes to include new definitions and amend a few existing definitions. The amended definitions include: (i) Hazardous Process; (ii) Manufacturing Process; (iii) Occupier; and (iv) Prescribed. The new definitions include: (i) Hazardous Substance, and (ii) disability. The Bill grants the Central government power to make Rules regarding some of the matters where only the State Govt. had power to make rules under the Act. The Bill promotes gender equality by removing the restrictions of women working (i) on certain machines in motion, (ii) near cotton-openers, and (iii) between 7:00 PM and 6:00 AM. The bill further empowers the State Government to allow women to work

during night hours in a factory or group of factories if: (i) there are adequate safeguards for safety, health and comfort of women (including night crèches, ladies' toilets and transportation from the factory to their residence), and (ii) it has held due consultations with and obtained the consent of the women workers, the employer and the representative organisations of the employers and workers. Sufficient attention has been given towards health safety and welfare of the workers by introducing provisions for: (i) supply of personal protective equipments and clothing to workers exposed to hazards, and (ii) rules regarding hazardous processes. The bill also stresses on provisions for drinking water, canteen, shelter rooms and lunch rooms. Further, the provisions regarding workers to qualify to be entitled to paid leaves has been reduced from 240 to 90 days

The Bill also seeks to increase the maximum number of overtime hours allowed to a worker from 50 to 100 hours a quarter and in some cases from 75 to 115 hours a quarter which is extendable up to 125 hours if the State Govt. feels that it is necessary in public interest. Further, the bill raises the penalties for several offences under the Act. The Bill seeks to permit the central or state government to prescribe the authorised officers and the amount, for compounding of the certain offences before commencement of the prosecution.

Universal Account Number (UAN)

The Employees' P F Organisation has launched new Universal Account Number (UAN) that will be generated for each of the PF contributing members by EPFO. This will give the following facilities to the members such as:

- Personalized member log-in
- Down-loadable UAN cards, member passbooks etc.
- Portability of PF Account number across different employments by linking the old accounts of the member with the UAN

Shram Suvidha

In order to ensure simplification of formats, ease of compliance, transparency in inspections and speedy redressal of grievances the Ministry of Labour & Employment has developed and come up with a single unified Web Portal for Online Registration of units, reporting of inspections, submissions of Annual Returns and Redressal of Grievances. This will enhance convenience of reporting, ease in compliance, transparency in Labour Inspection and also provide an effective Grievance Redressal System. As of now the Ministry has selected the Chief Labour Commissioner (Central) organization, the Employees State Insurance Corporation (ESIC), Employees Provident Fund Organisation (EPFO) and Directorate General of Mines Safety (DGMS) covering 16 Labour Laws. The State Governments are expected to join this Unified Single Web Portal subsequently. This

integrated portal will operate through common Unique Labour Identification Number (Shram Pehchan Sankhya) for each Establishment. The employers will be allotted **Labour Identification Number (LIN)** after registration on web portal. The enforcement agency will upload the data of inspection on the web portal which will be updated periodically. This will make compliance easier and provide for filing of single harmonized annual return by the employers.

Small Factories Bill(Regulation of Employment and conditions of service bill), 2014

A new Small Factories Bill(Regulation of Employment and conditions of service bill), 2014, proposes to exempt industries with less than 40 workers from 14 labour laws, including Factories Act, Industrial Disputes Act and the Minimum Wages Act etc. The bill seeks to ease the procedure of registration and closure of small factories. According to the bill a small factory can be registered through an electronic or written application within 60 days of its commencement. After registration, the factory will get a labour identification number (LIN) which will help it file a single labour law compliance form online. This has replaced 16 forms that factory owners had to fill online.

Inspection Scheme

The Ministry of Labour and Employment has developed a revised Inspection scheme to simplify business regulations and for bringing in transparency in labour inspections. It thus takes away the discretionary power of the inspector through transparency and accountability. A Central Analysis and Intelligence Unit (CAIU) for collecting and analysing field level data for a transparent and accountable labour inspection system would be set up by each enforcement agency under Ministry of Labour & Employment. The cases forwarded through Central Analysis & Intelligence Unit (CAIU) of these organisations will be based on data and evidence. The inspections under this scheme will be mandatory and optional on the basis of the criteria indicated by each organisation. The optional inspections also would be generated through computer using pre-decided number tables taking into account the priorities of the organisation. The inspection report must be uploaded by the inspector within three days of the inspection.

Grounds Expanded For Challenge Of Domestic Awards

The Hon'ble Supreme Court of India in the decision of *Oil and Natural Gas Corporation Limited V Western Geco International Limited* [2014 (10) SCALE 328] (Western Geco Judgment) has widened the ground for challenge of domestic awards under Section 34(2)(b)(ii) of the Arbitration and Conciliation Act, 1996 (Arbitration Act).

The Supreme Court had earlier widened the scope of challenge of the award in *ONGC Ltd. v. Saw Pipes Ltd.* [AIR 2003 SC 2629] (Saw Pipes Judgment) under the phrase “public policy”. The Saw Pipes Judgment whilst interpreting the phrase “public policy” expanded it and added the grounds under “public policy” (i) fundamental policy of Indian law (ii) the interest of India and (iii) justice or morality and (iv) patently illegal.

The Supreme Court in the Western Geco Judgment whilst interpreting Section 34(2)(b)(ii) of the Arbitration Act and the Saw Pipes Judgment has stated that the phrase “public policy of India” has to be given a wider meaning as the concept of public policy connotes some matters which concerns public good and public interest.

As per the Western Geco Judgment the term public policy would include the “fundamental policy of Indian law” and three principles are added under this heading:-

- **Judicial Approach:** Every Court, Tribunal or quasi judicial not to act in an arbitrary, capricious or whimsical manner. Judicial approach ensures that the authority acts bona fide and deals with the subject in a fair, reasonable and objective manner and the decision is not actuated by any extraneous consideration.
- **Principles of Natural Justice:** The court/ authority deciding the matter must apply its mind to the attendant facts and circumstances while taking a view one way or other.
- **Wednesbury’s principle of reasonableness:** Decisions that fall short of standards of reasonableness are open to challenge to court.

The Western Geco judgment has expanded the scope of challenging the domestic award. Upholding the decision of the Saw Pipes Judgment, the Supreme Court has further added three other grounds of challenge. This will lead to a larger interference of the Courts while deciding the application made under Section 34 of the Arbitration Act and may perhaps delay the enforcement of award, which in any case is a challenge in the present scenario.

News 10 @ a glance

Small Factories Bill (Regulation of Employment and conditions of service bill), 2014

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conditions of service bill) 2014, proposes to exempt industries with less than 40 workers from 14 labour laws, including Factories Act, Industrial Disputes Act and the Minimum Wages Act etc. The bill seeks to ease the procedure of registration and closure of small factories. According to the bill a small factory can be registered through an electronic or written application within 60 days of its commencement. After registration, the factory will get a Labour Identification Number (LIN) which will help it file a single labour law compliance form online. This has replaced 16 forms that factory owners had to fill online. If implemented, it will regulate the service condition of the employees working in the small factories. This initiative will make the filing process much simpler with fewer complexities leading towards ease of business.

Revised Inspection Scheme for Transparent and Accountable Labour Inspection System

A new revised Inspection Scheme has been developed by Ministry of Labour and Employment in order to simplify business regulations and for bringing in transparency in labour inspections. This will take away the discretionary power of the inspector to inspect at his whims and fancies thereby facilitating transparency and accountability. Ministry of Labour & Employment will setup Central Analysis and Intelligence Unit

(CAIU) which will collect and analyse field level data for a transparent and accountable labour inspection system. The inspection report must be uploaded by the inspector within 72 hours of the inspection.

Unique ID and Single Window to ease labour law compliance

In order to ensure simplification of formats, the Ministry of Labour & Employment has developed a single unified Web Portal for Online Registration of units, reporting of inspections, submissions of Annual Returns and Redressal of Grievances. The State Governments are expected to join this Unified Single Web Portal. This integrated portal will operate through common Unique Labour Identification Number (Shram Pehchan Sankhya) for each Establishment. The employers will be allotted Labour Identification Number (LIN) after registration on web portal. The enforcement agency will upload the data of inspection on the web portal to be updated periodically. This will make compliance easier and provide for filing of single annual return by the employers.

Portability of Provident Fund Account number

The Employees' Provident Fund Organisation has launched new Universal Account Number (UAN) that will be generated for each of

the Provident Fund contributing members by EPFO. This will facilitate personalized member log-in, downloadable UAN Cards, member passbooks etc along with portability of Provident Fund Account number across different employments.

Clarification with regard to Trust/Trustee as a partner in the Limited Liability Partnerships (LLP). [Notification dated October 14, 2014]

The Ministry of Corporate Affairs (MCA) has clarified that a trustee, being a body corporate representing a trust in the case of "Real Estate Investment Trust" (REIT) or "infrastructure Investment Trust" (InvITs) or such other trusts setup under the regulations prescribed under the Securities & Exchange Board of India Act, 1992, is not barred to hold partnership in a Limited Liability Partnership in its name without the addition of a statement that it is a trustee.

Rule 10 A to be inserted in the Companies (Audit and Auditors) Rules, 2014 [Notification dated October 14, 2014]

The Ministry of Corporate Affairs (MCA) has added Rule 10-A to the Companies (Audit and Auditors) Rules, 2014 which requires auditor's report to provide details about companies internal financial controls along with their effectiveness in annual statements for the financial

year commencing on or after
1.04.2015.

**Right of persons other than
retiring directors to stand for
directorship – Refund of deposit
under section 160 of the
Companies Act, 2013 in certain
case [Notification dated:
14.10.2014**

The Ministry of Corporate Affairs (MCA) has provided clarifications for companies with charitable objects providing that the board of directors of such companies will decide if the amount of deposit of rupees one lakh under section 160(1) of the Companies Act, 2013, made by or on behalf of the persons failing to secure more than twenty five percent of valid votes is to be forfeited or refunded.

**Gunmala Sales Pvt. Ltd. Vs. Anu
Mehta and Others (Criminal
Appeal No. 2228/2014) Supreme
Court Of India.(17.10.2014)**

The Supreme Court in its recent judgment has observed that directors involved in the day-to-day running of a company can be made liable for a bounced cheque. It is settled law that a specific averment in the complaint that he/she is in charge of and is responsible to the company's business is sufficient to maintain the complaint under Section 138 of the Negotiable Instrument Act, 1881.

Donation to Swach Bharat Kosh

**and Clean Ganga Fund part of
CSR expenditure now****[Notification dated: 24.10.2014]**

Ministry of Corporate Affairs has amended Schedule VII of the Companies Act 2013 read with section 135 of the Companies Act 2013 which provides companies to be part of Corporate Social Responsibility. The new amendment includes donations towards Swach Bharat Kosh and Clean Ganga Fund expenditure as an initiative. This initiative might solve the problem of funding to certain extent required for such ambitious projects.

**FDI norms in Construction
Development Sector relaxed**

The Union Cabinet approved the amendment of Foreign Direct Investment (FDI) policy in the 'Construction Development Sector'. The amendment provides for minimum area to be developed under the projects, FDI reduced to US\$ 5 million from US\$ 10 million. It provides easy exit routes to investors. In case of completed projects 100% FDI under the automatic route is allowed for operation and management of townships, malls/shopping complexes and business centres. This would facilitate investment from abroad within India which is much required for a developing economy like India. It would certainly boost our economy let alone the infrastructural changes.