

## LEGAL ALERT

# Rising tide of Labour Reforms in India

By Sunil Kumar



There is in India today a rising tide of expectancy that government, both federal and state, are set to push through major initiatives for making changes in labour laws. There is a realisation that labour reforms have a key role to play in improving the ease of doing business in India. The Prime Minister himself has taken the lead in discussing the Industrial Relations Bill at a national labour forum, and the Chief Ministers of the States of Madhya Pradesh, Gujarat and Maharashtra have come in the forefront to promote the proposed amendments. The new government is actively and aggressively discussing, drafting and engaging with labour groups to address their concerns.

Simultaneously, the governments of Madhya Pradesh, Gujarat and Maharashtra have moved bills in the Legislative Assemblies of their states. In Madhya Pradesh the following key amendments to the law have been proposed:-

### **Madhya Pradesh:**

The government of Madhya Pradesh has initiated far reaching reforms in several labour related legislations principally with a view to easing the compliance and operational exemption of

manufacturers from the application of labour laws.

- Companies in Madhya Pradesh that employ up to 300 people will be allowed to retrench workers or shut shop without government approval (the current provision is for those employing up to 100 workers.)
- Employers will have to give a higher compensation package and workers will get a three months' notice and at least three months' salary in the event of retrenchment.
- In case of dispute, a worker will have to approach the conciliation officer within three years of getting retrenched.
- Workers will be entitled to benefit of earned leave after 6 months service (presently 8 months), which could be availed of in the same calendar year.
- Overtime hours in a quarter will be raised from 75 hours to 125 hours.
- Women can work in night shifts at factories from 8 pm to 6 am in the morning; subject to the state government making necessary provision for their security.
- The process for registration and grant of licenses has been expedited under several legislation, eg, under the Contract Labour Act, Building and Other Construction Workers Act, and Motor Transport Workers Act. If an application is not disposed within 30 days it will be deemed registered or approved license.
- Industrial and Commercial Establishment will not be required to maintain multiple registers.

They will be allowed to file a single return and maintain a single register.

### **Gujarat:**

Similarly, Government of Gujarat has passed a labour law bill on the following points:-

- When an employee has a fatal injury which occurred at work place the victim may apply under the Employees Compensation Act 1923, before the Employees Compensation Commission within 90 days from the date of accident. Where the employees and his dependent fails to bring such application within 90 days, the nominated government officer will apply on his behalf.
- Where any Shops and Commercial Establishment or factory employs 20 or more employees, it shall make the payment of minimum wages through bank account. This amendment will bring transparency in paying minimum wages.
- According to the Building and Other Construction Workers Act, 1996, the definition of worker is limited to the supervisory workers who receive wages of Rs 1600 per month only. By reason thereof many of the supervisors are excluded from the applicability of the Act. Therefore the bill suggests increasing up to three times of the minimum wages for skilled workers.
- Under the proposed law, a workman gets only a year to make an application against his dismissal, discharge, etc, for raising an “industrial dispute” to the labour court or tribunal, which was hitherto three years.
- By the amendments, certain offences where penal provisions attract 3 months imprisonment, such offences have been made compoundable, which means settlement of a violation of the law by paying a compounding fee instead of being jailed.

- Amending the Industrial Dispute Act, the government has fixed compounding amount for an employer up to maximum of Rs 21,000 and for labourer the amount ranges from Rs 150 to Rs 3,000.
- For workers going on strike without informing Labour Commissioner, the compounding amount begins at Rs 150 per day, not exceeding Rs 3,000.
- While the option of filing a criminal case is always open, out-of-court settlement and compounding scheme come into picture only if both the parties are agreeable to the same.

The bill passed by the Gujarat Assembly is now awaiting the approval of the President of India before it becomes effective. State Legislations require the President of India’s approval as labour law is a subject in the Concurrent list (both Federal and State Assemblies can legislate) of the Constitution and the State amendments must be approved by the President.

### **Maharashtra:**

The Government of Maharashtra is also in the process of making changes in the existing legislations relating to labour, and the amendments are designed to improve the operational capability of business and manufacturing units to provide them with greater flexibility in compliance with labour laws. Of course, the changes will go through the process of legislation in the State Assembly and obtaining Presidential approval, as all state amendments are required to do under the Constitution of India

- The government has proposed an overtime of 115 hours from the present 75 hours for workers in small-scale industrial units.
- After Factories Act is amended, the units operating without electricity would be considered a factory if they employ 40

workers, and units operating with electricity would be treated as a factory if they employ 20 workers. The old limits were 20 and 10 workers respectively. This will exempt the smaller units from the application of the Factories Act.

- The amendments aim to exclude more than 14,300 units from the purview of the Factories Act, 1948, and pave the way for women to work in night shifts.
- Among the notable changes, factories employing up to 300 workers can be closed without government permission, compared with the earlier floor of 100 employees.

### Federal Legislation

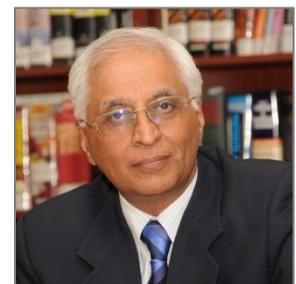
Labour reforms are also on the radar of the Union Government in India and a comprehensive Industrial Relation Bill is currently being debated by the government and has been unveiled to the labour interest groups and unions as part of the democratic process of consultation and transparency. The Union Government is also motivated by the object of easing retrenchment provisions and to tighten the requirements for forming Trade Unions. Some of the key provisions to be amended are as follows:-

1. Factories employing less than 300 workers can be shut down without prior government approval.
2. Retrenched workers should be paid an average salary of 45 days, instead of the 15 days at present.
3. Unions can be formed only if 10 % of the employees or 100 workers, whichever is less, support the proposal. Currently, seven members can form unions.
4. Units employing less than 40 people to be exempted from 14 labour laws as a move to give smaller units freedom from compliance with the rigors of the law. The definition of a factory is being revised by raising the threshold of minimum workers from 20 to 40

for units operating without power and from 10 to 20 for units operating with power. The micro, small and medium enterprises employing up to 40 workers will be extended the relaxation under the purview of amended law.

5. Restriction on night shifts by women will be removed to allow women to work after 8 pm subject to provision of security by the employer.
6. To dispense with the need to keep documentary records and registers and to replace them with electronic records by employers.

However, sensing the angst among labour groups, the Prime Minister recently assured a public forum of labour unions that the amendments would be carried through only after building up a consensus among the workers groups and Trade Unions. What is more significant is that the Union Government is openly engaging with pressure groups and hopeful of moving ahead in the chosen direction in a transparent and determined manner assuring them that labour reforms are being fine-tuned for making doing business in India an easier experience and not necessarily directed against labour. The reform process is slowly but surely moving ahead and this time with the buy in of all stake holders.



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