

LAWS RELATED TO JOB SECURITY IN INDIA

Author: Prateek Goyal, V year of B.B.A.,LL.B. from Fairfield Institute Of Management & Technology, New Delhi

ABSTRACT

This paper speaks with Laws related to job security in India. It focuses on employee's fear of losing their jobs, constitutional rights regarding this issue and constitutional remedies and procedures for the same. Moreover, it will throw light upon laws related to job security in the Indian constitution. It will interpret the consternation of employees based on job insecurity and termination of employees due to age factors. Causes of employee termination and psychological effects on employees are also discussed. It mainly includes provisions of the Industrial disputes Act 1947, Employees Provident Funds and Miscellaneous Provisions Act, 1952, Factories Act 1948 and Maternity Benefits Act 1961. Right in the beginning, it discusses the meaning of employee and a worker. Then comes the terms and conditions of employment and issues regarding it. Then there comes the protection of employees against discrimination and wrongful termination of employees and types of wrongful termination. It also includes sexual harassment at the workplace and provisions regarding it. Furthermore, it will include a detailed understanding regarding steps taken after the employee is terminated, issuance of the termination notice, Court practices and procedures for the same, pregnant female rights and benefits and impact of COVID-19 pandemic in the employment. People in India begin working for companies or engaging in activities associated with any business entity without being aware of their rights. Employees are unaware of their rights and benefits at work. Employees are sometimes guided by the human resources department in some companies, but this is not always the case. So this paper discusses the rights and benefits that employees have if they are terminated.

Keywords: Consternation, Insecurity, Maternity, Discrimination, Termination

INTRODUCTION

Employees are under a lot of stress these days. They are unable to work to their full potential and with all of their energy. The fear of losing their jobs is the fundamental cause of this. When they arrive at work, they are constantly afraid that if they do not contribute to the end outcomes, they will suffer the consequences. This is reasonable, but not for those people who work extremely hard and are responsible for the company's profits. Such personnel have

made no mistakes and have given their all to the company, but they have been laid off or forced to resign as a result. Employees' emotions are sometimes exploited by such companies, who push them to either resign or continue working for a poor pay package. This practice of dismissing employees or workers from a company without providing proper reasons or notice has been going on for a long time, but in the COVID-19 pandemic, such exploitation has become more common.

Causes Of firing of employees The primary reason for firing could be an employee's incompetence at work, which is perfectly acceptable. But nowadays, companies fire employees for no reason, and if they are asked why, they either don't give a reason or simply say that the company can't afford more workers.

- **Psychological Effect on Employees**

When the employees complete a company's major project or work, they simply fire them or pressurize them to resign or work on a low pay scale. Employee morale suffers as a result of their inability to work in an environment that does not accept them and does not recognize their efforts. Such employees are forced to resign from the company and the company wins in this situation. Such a Hiring and Firing policy is good for the contractual workers but not for the permanent workers.

- **Constitution of India**

The draft Code on Social Security 2019 defines a gig worker as "a person who performs work or participates in a work arrangement and earns from such activities outside of a traditional employer-employee relationship".¹ The Indian constitution guarantees equal rights to all employees, yet due to the constitution's rigour, some companies try to twist the regulations and look for loopholes.

¹ Website:- Employment Security in India, Paycheck, (last modified on 02-04-2021), <https://paycheck.in/labour-law-india/employment-security>

MEANING OF WORKER AND EMPLOYEE

According to **Section 2(i)** of Factories Act, 1948, worker means a person employed, directly or by or through any agency including a contractor with or without the knowledge of the principal employer, whether for remuneration or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process but does not include any member of the armed forces of the Union.²

Section 2(f) of the Employees Provident Fund and Miscellaneous Provisions Act states that: “employee” means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets, his wages directly or indirectly from the employer, and includes any person:

1. Employed by or through a contractor in or in connection with the work of the establishment;
2. Engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), or under the standing orders of the establishment.³

WRONGFUL TERMINATION

Wrongful termination means when an employee is fired without any valid reason or for any illegal reasons. When there is a breach of contract of the employment then it is called the wrong termination. In this situation, the employer usually does not give any reason for termination. They just order the employee to either give a resignation or just work on a low pay scale. It is also called wrongful discharge or wrongful dismissal.

Types of Wrongful Termination:

- **BREACH OF CONTRACT OF EMPLOYMENT**

If an employer or firm violates the terms of an employee's employment contract, it is considered a breach of contract by the law. They do this when their company is engaging in criminal activity and they don't want their employees to know about it.

² Indian kanoon:- Section 2(i) in The factories Act,1948, <https://indiankanoon.org/doc/527913/>

³ Bare Act:- The Employees Provident Fund And Miscellaneous Provisions Act, 1952
https://www.epfindia.gov.in/site_docs/PDFs/Downloads_PDFs/EPFAct1952.pdf

- **TERMINATION DUE TO DISCRIMINATION**

Wrongful termination due to discrimination is also a common occurrence. Employees are discriminated against in most firms based on caste, sex, colour, race, nationality, religion, or even age. Unfairness can be observed in fair wages. Favouritism is also seen in the bigger companies.

- **TERMINATION DUE TO AGE FACTOR**

The most significant factor impeding employees is their age. As a result of the COVID-19 pandemic, most employers have begun terminating employees over the age of 50 for no apparent reason. These corporations do so solely to save money, which is completely unfair to employees who are saving for retirement and are in their prime years of employment.

- **ENGAGE IN AN ILLEGAL ACT**

In some cases, employers compel their workers to take part in unlawful activities or to conduct labour that violates their employment contracts with them. Employees have no choice but to resign in these situations. One can tell they are aware of the repercussions of their actions if they engage in them. When they are caught, these companies disown their staff.

WHAT TO DO NEXT AFTER TERMINATION?

It is critical to acknowledge the employee's rights upon termination. Employees should always double-check their job letter with human resource management because it contains every detail of the contract. If the company has not yet provided an employment letter or proper documentation, request it as soon as feasible. The employee should always question the human resources department if he has the right to sue the company or the employer if he is unlawfully terminated. Even if the employee has signed a resignation letter, the human resource department will not refuse any fired person the knowledge to address questions concerning the termination procedure, benefits, and clarification of any dues, if any.

Moreover, the company must also provide termination notice if the employee has not committed any wrongdoing, is terminated at the employer's discretion, or is fired. Employees who have worked for the company for at least one year are entitled to at least one month's notice or a wage instead of notice under the Industrial Dispute Act of 1947, generally known as Notice Retrenchment. Employees should also get retrenchment compensation, which is 15

days of average pay for each year of continuous employment that exceeds six months, in addition to any other benefits.

In addition, if an employee is treated unfairly, demoted, or fired for no reason, he or she can write an appeal to the company or the employer after consulting with the Human Resources department. However, the main issue here is that employees frequently write dreadful appeal letters that are devoid of facts. So, if an employee is writing an appeal letter, he should always use a proper business format and a polite tone. Keep in mind that an appeal may be your last chance to tell your side of the story. The appeal letter should always be factual and concise, stating what is genuinely anticipated from the organization and point out any flaws that may exist.

SEXUAL HARASSMENT IN THE OFFICES

Sexual harassment at work includes inappropriate touching of women's bodies, sexual comments, body shaming, abuse, and unwanted sexual approaches. It's shocking that in the 21st century, with India on the verge of becoming one of the world's most educated countries, some people still aren't educated enough to respect all of their fellow citizens. In the fiscal year 2019-2020, sexual harassment cases grew by 14%, according to reports. Work from home policies resulted in a drop in this percentage in the following fiscal year, 2020-2021. The drop in sexual harassment complaints can be attributed to the COVID-19 pandemic, to put it mildly. But, there have been 150 reports of sexual harassment despite the COVID-19 pandemic. These are the incidents that have been reported. Many incidents may go unreported because of pressure from company executives or threats from the abuser.

Hence, there is the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 so that women can be secured from sexual harassment. The accused can also be charged with three years imprisonment for indulging in such a heinous crime.

According to Section 2(n) of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 "sexual harassment" includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:

1. Physical contact and advances; or
2. A demand or request for sexual favours; or
3. Making sexually coloured remarks; or

4. Showing pornography; or
5. Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.⁴

COURTS AND TRIBUNALS

Disputes and complaints affecting employment are dealt with by the conciliation officers and the conciliation board by the Industrial Disputes Act. The Labour Courts, as well as Inquiry Courts and National Tribunals, also address worker concerns. Conciliation officers are there to resolve the disputes regarding employment retrenchment issues, wrongful termination and any violation of contract thereon. According to the Second and Third Schedules of the Industrial Act, conflicts relating to rights and interests are settled by trade unions before the labour court and industrial tribunals. Usually, employees or workmen are not required to pay any fees to the courts to file a claim.

MATERNITY BENEFIT ACT, 1961

Maternity Benefits Acts contain provisions and benefits for female employees both during and after pregnancy. This act provides no rights to pregnant male employees and is only applicable to pregnant women. According to this act, pregnant female employees are entitled to 26 weeks of paid leave for the first child and another 26 weeks for the second child. However, for the third child, a 12-week paid leave period is provided. If there is a pair of twins, 26 weeks of paid leave is given, and if there is a chance of a third child from a twins mother, 12 weeks of paid leave is given. It is fairly clear, and every benefit related to the pregnant mother is mentioned in this act so that no company or business entity can refuse or violate such pregnant women's rights.

CONCLUSION

The COVID-19 pandemic has impacted everything in the workplace. Many businesses are laying off people and closing down as a result of losses, but some profitable businesses still are laying off workers for no apparent reason. The truth is, they've gone with a hiring-and-firing philosophy that works well for contract workers but is ineffective for long-term employees. Employee morale takes a serious hit in this scenario, and that is the most important concern. Many workers have attempted suicide since there are no jobs available.

⁴ Bare Act:- The Employees Provident Funds And Miscellaneous Provisions Act, 1952
https://www.epfindia.gov.in/site_docs/PDFs/Downloads_PDFs/EPFAct1952.pdf

As aforementioned, the primary cause is a dearth of employment options. To achieve their goals, the company's bosses must understand and motivate the workers. To keep employees interested in their professions and giving their best to the organization, employers and supervisors might offer incentives and bonuses to their employees. Furthermore, employees had to go through a gruelling hiring process before they were finally hired for a position. These are the trials, not the games. Employers must know this before letting go of workers like this. Many businesses now terminate employees based on their age. They only do this to save the company money and to fill the resulting vacancy they hire someone younger. As a result, no experienced or qualified individual is promoted to a higher level of the organization or to a partner title, which is unfair. In addition, the corporation should take action and establish a team dedicated to helping women who are subjected to sexual harassment on the job. Every company should have cameras installed in every part of their offices, so that if sexual harassment occurs, the video evidence may be utilized to prosecute the perpetrator. Before employing any worker, the corporation must also fully disclose every action taken against a person who conducts or engages in such horrific behaviour to all employees or simply mention it in their terms and conditions. Finally, every firm must understand that earnings are only possible due to the hard work of their employees or workers. Employees and bosses are mutually accountable for the company's success. Employees, on the other hand, deserve some respect and expect a quiet and cheerful work atmosphere. Otherwise, the day will come when every Indian would be seeking jobs in other countries, and there will be no workers left in India. Every citizen of the country has the right to know their rights if they are unlawfully dismissed, and they can sue anyone or any corporate entity who violates their rights.