CHAPTER 3
THEORETICAL FRAMEWORK OF LABOUR LEGISLATIONS
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3.1 INTRODUCTION

In recent times, India’s economy has started witnessing high rates of growth. In 2015–16 the Gross Domestic Product (GDP) growth rate has reached to 7.6%. In year 2012–13, the value was 5.6%.\textsuperscript{131} India being the world’s second most populous nation has a labour force of over 500 million people at present as noted in the India Fact file released by the Central Intelligence Agency in its website.\textsuperscript{132} Overall, the labour force increased from around 337 million in 1991 to around 488 million in 2013 - an expansion of 151 million in labour force in roughly 22 years.\textsuperscript{133} With such humongous size, it is clearly evident that the Labour force occupies an important place in the path towards economic growth.\textsuperscript{134} Nevertheless, the challenge to ensure that economic growth translates into better labour market conditions still continues to remain.

Under the Indian constitution, Labour comes under the concurrent list which means that both the Central Government and the respective State Government has powers to enact and enforce legislations on these. Consequently, this has put in place a plethora of Central Government and State Government legislations related to various Labour related aspects like Wages, Employment terms and conditions, Industrial relations, Social security etc. However, the residual law-making powers remains vested with the Centre.

The present day Central Government under the honorable leadership of Prime Minister Shri Narendra Modi has been practicing an agenda which is more a kind of pro-reform type. Since this government has taken over charge in May 2014, the overall trend has been found to be focused towards simplifying the labour regulations. The Ministry of Labour and Employment, Government of India has recently intimated that its primary target is to first focus on reforms towards employee welfare and benefits.\textsuperscript{135}
3.2 INTRODUCTION TO LABOUR LEGISLATIONS

Labour legislations which is also sometimes referred as Employment legislations is the set administrative rulings and enactments which addresses the privileges of and limitations on employees and their organizations. As such, the Labour legislations arbitrate many facets of the relationship between trade unions, organisations and the employees. In other words, Labour legislations define the rights, responsibilities and obligations of employees, various union members, designators and employers in a workplace.136

Generally, labour legislations covers

a. Industrial relations – Authenticity of the unions, Employee and Employer relations, Collective bargaining between various entities in the trade related to labour, Unethical and unfair labour practices;
b. Workplace hygiene, Employee health and safety;
c. Standards of Employment maintained including holidays, Annual paid leave, Working and Rest hours, unfair suspensions and dismissals, Minimum wages, layoff and Strikes procedures and Severance pay.

There are two wider groupings of labour legislations. First are the Collective labour legislations deals with the tripartite relationship between Employer, Employee and the Union. Second is the Individual labour legislations that deals with individual employees' rights and obligations while at work.

The labour movement that has been prevailing at various stages in the history of the nations has been instrumental in bringing in existence of the present day labour legislations that protect rights of the labour. Labour rights have been vital to the societal and economic progress since the industrial revolution.

3.3 HISTORY AND PURPOSE OF LABOUR LEGISLATIONS

Labour legislations came in to existence due to the aspirations of the workers for having better work conditions, the right to organize, and the concurrent demands of
employers to limit the rights of employees in many organizations so as to keep labour expenses low. Employers’ expenditure can rise due to employees forming unions to demand increased wages, or by legislations demanding requirements involving high costs, such as health, safety or equal opportunities conditions. Employees’ organizations such as trade unions many a times surpass pure industrial disputes and may step into political arena which some employers may find as hindrance because once the trade unions gets politically influenced, the political parties may try to use the trade union members to its advantage. The condition of labour legislations at any given time is therefore both the product of, and a component of, conflicts between different interests in the organizations and the society as a whole.

International Labour Organization (ILO) was one of the preliminary organisations that were formed at the international arena to deal with the labour problems. The ILO was convened as an agency of the League of Nations in subsequent to the Treaty of Versailles, which brought World War I to an end. Reconstruction work post-war and the protection of labour unions drew the consideration of many nations during and immediately after the end of World War I. In Great Britain, the Whitley Commission, a subcommittee of the Reconstruction Commission, gave its recommendation in its July 1918 Final Report that “Industrial Councils” is to be convened throughout the world. The British Labour Party had declared its own Reconstruction programme in the document titled Labour and the New Social Order. The third Inter-Allied Labour and Socialist Conference (representing delegates from United Kingdom, France, Italy and Belgium) was conferred in February 1918 which issued its report supporting the creation of an international labour rights body which marked an end to secret diplomacy and other targets. In December 1918, the American Federation of Labour (AFL) stated its own characteristically non-political draft, which requested for the achievement of various incremental improvements through the collective bargaining process.

As the war came to an end, two conflicting visions for the post-war world emerged. The first one was given by the International Federation of Trade Unions (IFTU), which convened a meeting in Berne in July 1919 to consider the future of the
International Federation of Trade Unions (IFTU) and the various proposals which had been made in the previous few years. The International Federation of Trade Unions (IFTU) had also proposed to include delegates from the Central Powers as equivalents. Samuel Gompers, then president of the American Federation of Labour (AFL) shunned the meeting since he was against the idea of treating the delegates from the Central Powers as equivalents since he wanted the delegates from the Central Powers in a subservient role as an admittance of guilt for their nations' role in the bringing about the World War I. As a substitute, Gompers favored a meeting in Paris which had only an agenda to consider President Woodrow Wilson's Fourteen Points as a platform. Despite the boycott of Samuel Gompers, then president of the American Federation of Labour (AFL), the Berne meeting of the International Federation of Trade Unions (IFTU) went ahead as scheduled. In its concluding report, the Berne Conference necessitated a termination to Wage Labour and the Formation of Socialism. The Berne meeting of the International Federation of Trade Unions (IFTU) had also notified that if these terminations could not be immediately achieved, then an international body attached to the League of Nations should be enacted so as to enforce legislation to protect employees and their trade unions.

The United Kingdom had also proposed an establishment of a parliament at an international arena to enact labour legislations which each member of the parliament would be required to implement. Each nation participating in the parliament would have two delegates representing it, one representing the labour force of that nation and the other delegate representing the management of the organisations in that nation. The international labour body shall aim to collect the labour issues statistics and enforce the newly formed international legislations by the parliament. Samuel Gompers, then president of the American Federation of Labour (AFL) was philosophically opposing the concept of an international parliament since he believed that the international standards might reduce few of the protections that are being achieved in the United States. Hence, Samuel Gompers, then president of the American Federation of Labour (AFL) proposed that the International Labour Parliament to play the role only in making recommendations, and that implementation and enforcement is to be left up to the League of Nations. Though
there was a vigorous opposition from the United Kingdom for the above recommendation, the proposal given by Samuel Gompers, then president of the American Federation of Labour (AFL) was adopted. Altogether, the Americans made 10 proposals. Out of those, 3 were adopted without change. Those three were that the Labour should not be considered or treated as a Commodity; that all employees had the right to receive a Wage sufficient enough to keep their living on expenses and that the Women employees should receive equal pay for equal work. Other proposals made by the Americans were regarding the protection of the freedom of Speech, freedom of Assembly, freedom of Press and freedom of Association. These proposals were amended to include only Freedom of Association. Also, there was a proposed prohibition on the global shipment of goods made by children below the age of 16 has been amended to prohibit shipment of goods made by children below the age of 14. Other proposal that was considered is regarding the requirement of an eight-hour work day which has been amended to require the eight-hour work day or the 40-hour work week (this was considered to be an exception for those countries where productivity was less). Other than these, four American proposals were altogether rejected. Meanwhile, representatives from other nations proposed three further clauses, which were all adopted. Those three clauses were that there should be one or more days in a week that has to be given compulsorily off for weekly rest, that there should be equality of legislations for foreign workers and there shall be a regular and frequent inspection of factory conditions by the qualified personnel from the governing body.

The International Commission issued its finalized report on 4th March 1919 and the Peace Conference adopted the finalized report without making any amendment on 11th April 1919. The report became Part XIII of the Treaty of Versailles. The Treaty of Versailles was one of the peace treaties at the end of World War I. It ended the state of war between Germany and the Allied Powers. It was signed on 28th June 1919.

The first annual conference of the newly formed Parliament (also referred to as the International Labour Conference, or ILC) inaugurated on 29th October 1919 in
Washington DC and adopted the 1st Six International Labour Conventions. These International Labour Conventions dealt with Hours of Work and Rest in an industry, dealt with the issues of unemployment, dealt with the protection to be given to women during maternity, dealt with the risks involved during the night work for women and risk mitigation procedures to be undertaken, dealt with the minimum age of the workforce and finally dealt with the risks involved during the night work for young persons in industry and risk mitigation procedures to be undertaken. The prominent French socialist Albert Thomas has been appointed as its first Director General. In 1946, the International Labour Organization (ILO) became a member of the United Nations system after the demise of the League.

Labour legislations that have been adapted for tackling the economic and social challenges of the present day working conditions play three vital roles

a. it creates a legal framework that result in productive employee and constructive employee and employer relationships, and therefore a productive economy

b. it establishes a framework within which employers, employees and their representatives can interact with regard to issues that are related to work, serves as an prime platform for accomplishing harmonious industrial relations having workplace democracy as basis

c. it establishes a constant and Clear reminder and guarantee of fundamental principles and rights at work. This has received broad social acceptance and creates the processes through which these principles and rights can be implemented and enforced.

But experience indicates that the labour legislation can only fulfill its roles effectively if it is responsive to the conditions on the labour market and the needs of all the parties that are involved. The best and the most effective way to ensure that these needs and conditions are taken fully into consideration is that is to closely involve those concerned in the formulation of the legislation by having a social dialogue process. The involvement of stakeholders in this way shall go a long run in
developing a wider basis of support for labour legislation and in facilitating the
application of the same within and further to the formal structured sectors of the
economy.

3.4 EVOLUTION OF LABOUR LEGISLATIONS AND SOCIAL
SECURITY IN INDIA

In India, the legislations related to labour and employment is also referred as
Industrial legislations. The basis of labour legislation in India is interlinked with the
history of British imperialism. The industrial/labour legislations enacted and enforced
by the Englishmen were mainly aimed to safeguard the interests of then employers
belonging to the United Kingdom. Contemplations of the British governmental
economy were obviously paramount in formation some of these early legislations of
those times. At that part of history, the Indian textile goods gave a tough competition
to British textiles in the global export market. The Indian Factories Act came into
existence during those times. The British had strategically formulated the Indian
Factories Act in such a manner that if it has to be properly complied with, it would
result in increased expenditure to the Indian organisations and shall make India
labour costlier. This would have a large impact on the cost of the Indian textile goods
in the export market giving the Indian organisations a large negative impact. The
Factories Act was first introduced in India in the year 1883 due to the force imparted
on the British parliament by the textile industry tycoons of Manchester and
Lancashire. This way, India received the first stipulation of Eight hours of work per
day, the complete abolition of child labour and the prohibition of women and young
workers in night work and the establishment of overtime wages for work beyond the
stipulated time of 8 hours. Whilst the impact of these steps were clearly welfaristic
(for the welfare of the textile industrial tycoons of the Manchester and Lancashire),
the true motivation was undoubtedly protectionist (to protect the rights of the
employees).

The preliminary Indian legal framework to regulate the association between employer
and his employees was the Trade Dispute Act, 1929 (Act 7 of 1929). In this act, the
necessary provisions were made for restoring the right to Strike and the right to Lockout but there was no machinery provided to take care of Disputes.

In India, the legislation that originally formed during the colonial era underwent phenomenal alterations in the post-colonial era due to the fact that the independent India called for a clear partnership between Employee and the Employers. The subjects of this partnership was undoubtedly accepted in a tripartite conference held in the month of December in the year 1947 (after the Indian independence from the British was won) in which it was accepted that Employee force would be given a fair wage and fair conditions to work and in return Employers would receive the fullest cooperation of Employee workforce for uninterrupted production and higher productivity. This step was a part of the strategy for countrywide economic development and also it was agreed that all concerned would follow a truce period of 3 years free from any strikes or lockouts to achieve the goal. Ultimately, as the result, Industrial Disputes Act came into force on 01st of April 1947 repealing the Trade Disputes Act 1929 and this act has since remained on legal framework of this nation.

Coming to the present day Indian context, the history of Labour Legislations and Social Security can be divided into two phases. The first being the history of Labour Legislations and Social Security in colonial India and the second being the history of Labour Legislations and Social Security in independent India.

During the colonial period, if it is considered back to the period of pre-1919, that is the Pre-World War I period, then Government of India started realizing the importance to have Labour Legislations and Social Security benefits to be given to the working class or working population of the entire population with the establishment of Cotton mills in Bombay in 1851 which marked the beginning of the growth of the factory system in India. Soon after, the establishment of Jute mills in Bengal in 1855 also formed a great part to this. The working conditions that were prevailing in these factories during those times were majorly inhuman. The working hours were excessive and the rest hours given to the employees was very minimal. The provisions for safety were almost negligible. Employee welfare, holidays, paid leave and medical
care were forbidden items to talk about by the working class of that period. When the Industrialists had to face problems to their basic existence with the increased number of accidents in the industries and factories that resulted in a fear and psychosis among the employees had led to civic unrest among the working class population. At this instant, the industrialists felt that there should be some way to tackle the issues by giving some sort of sops or privileges to be given to the working class. These thoughts and events ultimately resulted in the enactment of the Fatal Accidents Act 1855 on the model of English Fatal Accidents Act 1846. This act like others had its own limitations and boundaries. Provisions of the Act were very much inadequate. Further, the rate of compensation was very much inadequate and uncertain and also the Act did not allow certain dependents like brothers, sisters to claim compensation.

The Post World War I of the colonial period (that is the period between 1919 and 1941) accounts for major noteworthy inclusions and amendments in the history of Labour legislations and Social security in the Colonial India. World War I had a huge impact on the attitude of Government and society towards labour. With the termination of hostilities, the world turned to peace and reconstruction phase which also gave birth to the establishment of ILO. ILO adopted a total of 17 conventions related to Labour legislations and Social security which later increased to 28. Out of all those conventions, the convention no.102 concerning the Minimum Standard of Social security was found to be very much significant. It played as a wide-ranging instrument that covered almost each and every branch of Social Security provided to Minimum Standards in respect of benefits offered in large number of exigencies like sickness, unemployment, old age, death, employment injury etc. India has however ratified only the following five conventions viz.

1. Workmen's Compensation (Accident) Convention 1925 (No.17)
2. Workmen's Compensation (Occupational Disease) Convention 1925 (No.18)
3. Workmen's Compensation (Occupational Disease) Convention (revised) 1934 (No.42)
4. Equality of treatment (Accident) Convention 1925 (No.19)
5. Equality of treatment (social security) Convention was ratified later in 1962
This period from 1920 in the history of working class employees is worth noting due to the evolution of one more important concept in India called Trade Unionism. By the way of Trade Unionism, the employees began to start organising themselves for addressing to their grievances in a larger platform. Not only in India, but also in several other countries, the agitations launched during 1920 which had led India to the ratification of the Workmen's Compensation Act, 1923. Though this Act was passed on March 1923, the act came into force only with effect from July 1924. The prime object of the act was to "eliminate the hardships experienced by the workmen during an unfortunate situation under the common system, by providing prompt payment of benefits regardless of fault and with minimal legal formality." After the enactment of the Workmen's Compensation Act in 1923, the Indian Government enacted the Provident Funds Act in the year 1925. This act was made primarily applicable to Railways and Industrial establishments belonging to the Government.

While during the same period post World War I and before the end of colonization in India, in the year 1929 the Government of Bombay implemented the Maternity Benefit Act. This act was then implemented by the Central Provinces in 1930. On receiving the suggestions and recommendation of the Royal Commission on Labour, the Government of Ajmer in Merwar implemented the Maternity Benefit Act in 1934, the Government of Delhi implemented the Maternity Benefit Act in 1937, the Government of Madras implemented the Maternity Benefit Act in 1938 and the Government of United Province implemented the Maternity Benefit Act in 1938. In addition to these provincial legislations which were implemented in general for the employees in any industry, other Central legislations that were passed during the period were for the Mining industry employees with the enactments of Mines Maternity Benefits Act 1941. These acts provided for the payment of Maternity benefit to the women employed in Mines. Another act titled the Employers Liability Act was enacted in 1938 aiming at abrogating the doctrine of common employment and assumed risk.
If we look at the recommendations of the Royal Commission on Labour based out of its enquiry in 1929, which studied the working conditions of Mining industrial Labour, the concern for the welfare of the workers given by the organisations and provisions against old age, it can be understood that the Industrial life tends to break down the joint family system prevailing in the society. The workers, who, at the beginning of their mining industrial career, own a plot of land, are often unable to retain possession over the time. With the passage of the years the connection with the village becomes loosened and the workers in the mines are unable to save out of their low earning against old age. Those who stay in intimate touch with the life of the workers could witness something of their misery in which they pass their old age. This clearly marks the necessity for making some provisions against protection during old age. A few employers of other industries like Railways administration and Government departments have made provisions for some of their workers, either by means of incorporating a Provident Fund (PF) or by instituting a system of Pension.

It is pointed out in this report that it is not humanly possible to make provision for meeting every contingency in the life of the worker, but the importance of those contingencies that are majorly confronted in the life of employees are all taken into account. They feel it is obligatory to recommend that until such time, it is found practically to institute either general scheme of old age pension or Provident Funds for industrial workers, Government should, wherever possible, encourage employers by financial grants or other means to inaugurate schemes of this nature for their employees.

The Royal Commission on Labour also dealt with payment of gratuity to Railway employees. In its report, it observed that the limitation which is placed upon the grant of gratuity to an employee on retirement or resignation after 15 years qualifying service should be modified to permit the employees’ voluntary withdrawal from service. Moreover it should be included that it can be availed without any qualification except that of adequate previous notice of his intention.
The third phase of development of Labour legislation and Social Security moment in colonial India started from 1942, with the third Labour Ministers' Conference. India being the vast in size with regards to geographical area as well as population, could not afford to ignore the development of Labour legislation and Social Security plans in other countries. The Beveridge Report\textsuperscript{140} of British Social Insurance and Allied Services in England, Wagnur-Murray, Diongal Bill in USA and Marsh plan (Report on social security) in Canada have compelled colonial Indian Government to shake up its lethargic approach and come out with some meaningful legislative measures for Labour welfare and Social security.

In the Beveridge Committee Report (1942), Social Security was defined as Freedom from Wants. Though this can be considered as the original meaning of the term, the actual emphasis in the industrial context was more in tune with the contingency oriented approach. Social Security in the industrial context can be defined as a term that denotes the process of securing a part of regular earnings, for using during such times when such earnings were disrupted due to contingencies such as unemployment, sickness, death of the earning member of the family or accident. It also included the provisions made for retirement through age, against loss of support from the breadwinner due to death and meeting of exceptional expenditures such as those connected with birth, marriage and death. However, in actual implementation, social security provision was restricted to only three measures, viz., Children’s allowances, Comprehensive health and rehabilitation services, and Maintenance of employment, which implied avoidance of mass unemployment.

\section{3.5 LABOUR POLICY OF INDIA AND ITS HIGHLIGHTS}

Labour policy in India has evolved as response to specific needs of the situation to suit necessities of planned economic development and societal justice. Labour policy in India has mainly objectives of two fold, namely maintaining industrial peace and Promoting the welfare of labour. By way of these two main objectives, the Labour policy in India aims in following –

\begin{itemize}
  \item[a.] Creating measures to attract public and private investment.
  \item[b.] Creating new jobs
\end{itemize}
c. Introducing new Social security schemes for workers in the unorganized sector.
d. Issuance of Social security cards for workers.
e. Unified and beneficial management of funds of Welfare Boards.
f. Reprioritization of allocation of funds to benefit vulnerable workers.
g. Maintain better Employee-Employer relationships.
h. Long term settlements based on productivity.
i. Vital industries and establishments declared as ‘public utilities’.
j. Industrial Relations committees to be introduced in more and more sectors.
k. Labour Legislations reforms to be kept in tune with the times. Empowered body of experts to be instated to suggest required changes.
l. Statutory amendments for expediting and streamlining the mechanism of Labour Judiciary.
m. Amendments to Industrial Disputes Act to be kept in tune with the times.
n. To enable efficient functioning of Labour Department.
o. More sectors to be brought under the purview of Minimum Wages Act.
p. Child labour prohibition act to be aggressively enforced.
q. Modern medical facilities to be made available for workers.
r. Rehabilitation packages to be made available for displaced workers.
s. Restructuring in functioning of employment exchanges to be done.
   Computerization and updating of data base to be undertaken.
t. Revamping of curriculum and course content in industrial training to be done.
u. Joint cell of labour department and industries department to study changes in legislations and rules and advise Labour ministry for any and all changes as required keeping Labour policy to be in tune with time.

3.6 LABOUR LEGISLATIONS IN INDIA AND CONSTITUTIONAL PROVISIONS WITH REGARD TO LABOUR LEGISLATIONS

The legislations can be categorized as follows

a. Labour legislations enacted by the Central Government of India, where the Central Government has the sole responsibility for enforcement.
b. Labour legislations enacted by Central Government and enforced both by Central and State Governments.

c. Labour legislations enacted by Central Government and enforced by the State Governments.

d. Labour legislations enacted and enforced by the various State Governments which apply to respective States.

The Indian Constitution provides elaborate provisions for the rights of its citizens and also puts down the Directive Principles of State Policy which set an aim to which the activities of the state are to be guided. These Directive Principles provide

a. for securing the health and hygiene of employees, men and women;

b. that the tender age of children are not abused;

c. that citizens are not being compelled by their economic conditions, the necessity to enter avocations unsuited to their age or strength;

d. just and humane conditions of work shall be provided for the employees and maternity relief are provided for women employees; and

e. that the Government shall take necessary steps, by way of ratifying suitable legislation or in any other way, to secure the involvement of employee in the management of undertakings, establishments or other organisations engaged in any industry.

The term ‘labour’ in general context means productive work especially physical work done for wages. Labour legislations which is also sometimes referred as employment legislations is the body of legislations, administrative rulings, and precedents which address the legal rights of, and restrictions on, working people and their organizations. There are two broad categories of labour legislations viz. the collective labour legislations that relate to the tripartite relationship between employee, employer and union and the individual labour legislations concerning to employees' rights at work.

In Indian context, the legislations relating to labour and employment is mainly known under the broad category of "Industrial Legislations". The prevailing societal and economic conditions of the nation have been largely persuasive in shaping the Indian
labour legislation, which regulate various facets of work such as the number of hours of work and rest, wages, social security and facilities provided.

The labour legislations of independent India derive their origin, inspiration and strength partly from the views expressed by important nationalist leaders during the days of national freedom struggle, partly from the debates of the Constituent Assembly and partly from the provisions of the Constitution and the International Conventions and Recommendations. The Labour Legislations were also influenced by important human rights and the conventions and standards that have emerged from the United Nations. Some of the important ones out of these include right to work of one’s choice, provide right against discrimination, abolishment of child labour, providing just and humane conditions of work, provision of protection of wages, redress of grievances, right to organize and form trade unions, collective bargaining and participation in management. The labour legislations have also been expressively influenced by the negotiations of the various Sessions of the Indian Labour Conference and the International Labour Conference.

Labour legislations and Social Security measures have also been enacted and modified by considering the recommendations and reports of the various National Committees and Commissions. Few of them are First National Commission on Labour (1969) under the Chairmanship of Justice Gajendra Gadkar, National Commission on Rural Labour (1991), Second National Commission on Labour (2002) under the Chairmanship of Shri Ravindra Varma etc. and judicial verdicts on labour related issues particularly relating to minimum wages, bonded labour, child labour, contract labour etc.

Under the Indian Constitution, Labour is a subject in the concurrent list where both the Central and State Governments are competent to enact and enforce legislations. Consequently, a large number of labour legislations have been ratified catering to various aspects of labour namely, safety, occupational health, training of apprentices, employment, fixation, review and revision of minimum wages, mode of payment of wages to the employees, payment of compensation to workmen who suffer injuries as
a result of accidents or causing death or disablement of all kinds of labour including contractual labour, female labour etc., the resolution and arbitration of industrial disputes, provision of social security such as Provident fund, Employees’ state insurance, gratuity, provision for payment of bonus, regulating the working conditions of certain specific categories of workmen such as plantation labour, beedi workers etc.

3.7 **CLASSIFICATION OF LABOUR LEGISLATIONS IN INDIA**

There are several legislations related to Labour in India and they can be broadly classified under two major categories –

a. Classification based on Enacting and Enforcing authorities

b. Classification based on aspects that are covered by the act

**Classification based on Enacting and Enforcing authorities**

1. Labour legislations those are enacted by the Central Government and can be enforced by Central Government only.

2. Labour legislations those are enacted by Central Government but can be enforced both by Central and State Governments.

3. Labour legislations those are enacted by Central Government but enforced by the State Governments.

4. Labour legislations those are enacted and enforced by the various State Governments which apply to respective States (Only the laws pertaining to Andhra Pradesh state is enlisted in this chapter).

i. **Labour legislations enacted by the Central Government, where the Central Government has the sole responsibility for enforcement**

   1. Employees’ Provident Fund and Miscellaneous Provisions Act, 1952
   3. Employees’ State Insurance Act, 1948
   4. Mines Act, 1952
Labour Welfare Fund Act, 1976

ii. **Labour legislations enacted by Central Government and enforced both by Central and State Governments**
1. Industrial Disputes Act, 1947
5. Building and Other Constructions Workers’ (Regulation of Employment and Conditions of Service) Act, 1996.
7. Minimum Wages Act, 1948
9. Labour Legislations (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988
10. Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.
11. Maternity Benefit Act, 1961
12. Payment of Bonus Act, 1965
13. Payment of Wages Act, 1936
14. Payment of Gratuity Act, 1972
15. Apprentices Act, 1961
17. Unorganized Workers Social Security Act, 2008
18. Working Journalists Fixation of Rates of Wages Act, 1958
19. Merchant Shipping Act, 1958
20. Sales Promotion Employees Act, 1976
22. Dock Workers (Regulation of Employment) Act, 1948
23. Dangerous Machines (Regulation) Act, 1983
24. Private Security Agencies (Regulation) Act, 2005

iii. **Labour legislations enacted by Central Government and enforced by the State Governments**

1. Factories Act, 1948
2. Employers’ Liability Act, 1938
3. Personal Injuries (Compensation Insurance) Act, 1963
5. Plantation Labour Act, 1951
7. Sales Promotion Employees (Conditions of Service) Act, 1976
8. Weekly Holidays Act, 1942
9. Trade Unions Act, 1926
10. Working Journalists and Other Newspapers Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955
11. Employment Exchange (Compulsory Notification of Vacancies) Act, 1959
12. Workmen’s Compensation Act, 1923
13. Children (Pledging of Labour) Act 1938
14. Beedi and Cigar Workers (Conditions of Employment) Act, 1966

iv. **Labour legislations enacted and enforced by the various State Governments which apply to respective States (Only the laws pertaining to Andhra Pradesh state is enlisted in this chapter)**

1. Andhra Pradesh Muttah, Jattu, Hamali & Other Manual Workers Act, 1976
2. Andhra Pradesh Shops & Establishments Act, 1988
4. Andhra Pradesh Industrial Establishments (National Festival & Other Holidays) Act, 1974

Classification based on aspects that are covered by the act

1. Legislations related to Industrial Relations
2. Legislations related to Wages
3. Legislations related to Working Hours, Conditions of Service and Employment
4. Legislations related to Equality and Empowerment of Women
5. Legislations related to Deprived and Disadvantaged Sections of the Society
6. Legislations related to Social Security

i. Legislations related to Industrial Relations
1. Industrial Employment Standing Order Act, 1946.
2. Trade Unions Act, 1926

ii. Legislations related to Wages
1. Payment of Wages Act, 1936
3. Minimum Wages Act, 1948
4. Working Journalists Fixation of Rates of Wages Act, 1958

iii. Legislations related to Working Hours, Conditions of Service and Employment
5. Motor Transport Workers Act, 1961
10. Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.
13. Dangerous Machines (Regulation) Act, 1983
14. 2.6Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981
15. Dock Workers (Regulation of Employment) (Inapplicability to Major Ports) Act, 1997
16. Dock Workers (Regulation of Employment) Act, 1948
17. Industrial Employment (Standing Orders) Act, 1946
19. Plantation Labour Act, 1951
21. Private Security Agencies (Regulation) Act, 2005

iv. **Legislations related to Equality and Empowerment of Women such as**

1. Maternity Benefit Act, 1961

v. **Legislations related to Deprived and Disadvantaged Sections of the Society** –

2. Children (Pledging of Labour) Act, 1933
3. Child Labour (Prohibition & Regulation) Act, 1986
vi. Legislations related to Social Security such as

1. Workmen’s Compensation Act, 1923.
5. Beedi Workers Welfare Cess Act, 1976
10. Fatal Accidents Act, 1855
13. Personal Injuries (Compensation Insurance) Act, 1963

3.8 AMENDMENT PROPOSALS AT VARIOUS STAGES OF CONSIDERATION / ACTS AMENDED RECENTLY

Factories Act Amendment Bill (2016)\textsuperscript{142}

The Factories Act, 1948 ("Factories Act") primarily regulates the quality of employment provided in the Factories to the employees in order to ensure that workers in factories enjoy a safe and healthy work environment. The Lok Sabha of the Indian Parliament passed the Factories Act Amendment Bill on 11\textsuperscript{th} August 2016 which primarily aims to increase the overtime limit of factory workers from 50 hours to 100 hours in a quarter. Further, the bill proposes to rise the overtime working hours for factories with “unique” workload from 75 hours to 115 hours in a quarter. Also it
is also stated that the Central government or State governments may increase this overtime limit to 125 hours in a quarter in the purview of public interest. The main reason behind this is the demand from industries to enable to carry out the work on urgent basis. Significantly, the bill empowers the Central government now to make exempting rules and orders with regards to the overtime hours in a quarter to ensure uniformity. Presently, this power is vested with state governments only to pass exempting orders related to the overtime hours. The Centre has also empowered itself through this bill to amend rules under the Factories Act on matters related to working terms and working conditions of the workers in any factory and create separate rules regarding fixed working hours and rest periods among others for persons who are been employed in urgent repair work. The Bill is still to be cleared in the Rajya Sabha. The point to be noted is that there is already a pending bill regarding the Factories act that was incepted in the year 2014 which is more comprehensive than that of the 2016 one. The Union government had opined that it didn’t table the detailed amendments to the Factories Bill which were introduced in the Lok Sabha in 2014 since consideration and passing of the detailed Bill may take more time in Parliament, the 2016 Bill amending only two Clauses were introduced to facilitate ease of doing business so as to enhance employment opportunities. The amendments sought in this Factories Bill (2016) are majorly reformative and aim at unlocking the hidden productivity in the manufacturing sector. After implementation, they shall empower employers with a chance to obtain increased efficiency by providing greater flexibility in managing their employee force.

**Maternity Benefit Amendment Bill (2016)**

The Maternity Benefit Act 1961 (“MB Act”) regulates the employment of women employees in factories, industries, mines and shops or establishments. It majorly focuses regarding the employment of women during their Maternity period. It regulates the employment of women during certain periods before and after childbirth and also provides for post-delivery care and other benefits related to women. The Maternity Benefit (Amendment) Bill, 2016 (“MB Bill”) to amend / modify the MB Act was passed in the Rajya Sabha on 11 August 2016. The bill was finally passed by the Lok Sabha on February 9, 2017, month after the Rajya Sabha approved the bill.
The passing of this bill now makes India third on the list of countries with maximum period of maternity leave. Canada and Norway are the countries that are ahead in the list where the maternity leave is 50 weeks and 44 weeks respectively. This Bill is an amendment to the Maternity Benefit Act, 1961, which protects the employment of women and entitles her to full-paid absence from work to take care for her child.

The important takeaways from the landmark Bill are as follows –

Paid maternity leave of 26 weeks (up from 12 weeks) has been allotted for Women working in the organised sector. This will apply to all establishments employing 10 or more people and the entitlement will be for only up to first two children. For third child, the entitlement will be for only 12 weeks. This is an indirect measure to discourage having more than two children for population control. For the mothers adopting an infant below the age of three months and for the mothers who uses her egg to have a surrogate child also knows as Commissioning mothers (defined as a biological mother), the bill provides maternity leave of 12 weeks from the date the child is being handed over to the adoptive or commissioning mother. The bill makes it compulsory for every organization or establishment with more than 50 women employees to provide creche facilities to be within a stipulated distance from the workplace. It is also provisioned that the woman will be allowed for four number of visits to the creche during a work day in which the interval for rest is included. The Bill also gives a provision under which an employer can permit a woman to work from home after the period of maternity leave, for a duration that is mutually decided by the employer and the woman, if work nature assigned to her permits her to do so.

The amendments are mainly focused to ensure that maximum possible maternal care is given to the women employees during the full bloom period which might make it possible for more women to join the workforce in organised sector.

The Workmen’s Compensation Act, 1923\(^{144}\) has been amended with effect on 18\(^{th}\) January 2010 to, inter-alia increase the wage ceiling limit from Rs.4,000/- to Rs.8,000/- per month for the purpose of calculating compensation; enhance the compensation for death, disablement, funeral expenses; allow reimbursement of the actual medical expenses on treatment of injuries caused during work without any
ceiling; make compensation gender neutral; dispose cases of compensation within a period of three months from the date of reference.

The Employees’ State Insurance Act, 1944 has been amended with effect from 01st June 2010 in order to improve the quality of service provided under the schemes, to enable provision of good health care to workers in the unorganized sector through ESI infrastructure.

The Plantations Labour Act, 1951 has been amended with effect from 01st June 2010. The main emphasis given through the amendment was to provide better safety and occupational health care to workers employed in Plantations industry.

The Industrial Disputes Act, 1947 has been amended with effect from 15th September 2010. The main emphasis was given to better describe the term ‘Appropriate Government’ which has been defined under section 2(a) of the Act, to increase the existing wage ceiling from Rs.1,600/- to Rs.10,000/- per month, to bring the workmen working in supervising capacity into the coverage of the act, to give direct reach to the workman to the Labour Court or its Tribunal during disputes arising, to widen the scope of qualifications of Presiding Officers of the Labour Courts or its Tribunals, to establish better Grievance Redressal Machinery, to empower the Labour Court or its Tribunals to execute awards.

The Payment of Gratuity Act, 1972 was amended through notification dated 31.12.2009 to cover teachers in educational institutions with effect from 4th April 1997 and to enhance the ceiling on gratuity from Rs.3.5 lakh to Rs.10 lakh with effect from 24th May 2010.

**Protection against dismissal**

When it comes to protection against unwarranted dismissal of an employee, the controlling legislation would be the Industries Disputes Act and also specific provisions of the Industrial Employment Standing Orders Act. It is primal to be noted that the Indian labour legislation does not encourage a ‘hire and fire’ policy. Each and
every dismissal that has been undertaken on the grounds of misconduct must follow a proper documented procedure which requires for an enquiry to be held. Moreover, the employee should be given a justifiable opportunity to be heard in the process of the enquiry. The courts and appellate have been stressing the importance of the enquiry, right to cross-examine and all aspects thereof. In reality, in whichever cases, there has been evidence that the enquiry has been falsified, prejudiced or has followed unlawful measures, the courts have reinstating the employee to his post without any hesitation.

The employee can challenge the decision of an employer before an Industrial Tribunal. If not satisfied with the proceedings, he can further challenge before the High Court and Supreme Court as well. Courts may grant reinstatement with back wages or compensation in lieu of reinstatement as measures of relief. For example, in one of the instances when reinstatement is not possible, the cited reason was stated as Loss of confidence in the relationship.149

In one of the judgment by the Supreme Court, it has been cited that the loss of confidence in the employee through his conduct, such as habitual dishonesty, can be considered as enough ground for dismissal150. There have been examples where, thefts and misappropriations are also considered to be valid grounds for a dismissal of an employee.151 It is also vital to note that illegal industrial actions such as ‘go slow’ might also can qualify for being valid grounds for a dismissal.152

The Industrial Disputes Act lays down a procedure to be followed, whenever an establishment has to be shut down,. In those establishments, where there are 100 (one hundred) or more workmen are employed, Government approval will be required for closure of the establishment. The term “Workmen” in this context excludes persons employed in mainly managerial or administrative capacity or supervisory capacity and drawing wages of more than INR 10,000.
**Statutory employment protection rights (such as notice entitlements, whistleblowing, holiday, parental and maternity leave, etc.)**

The Maternity Bill had sought to introduce various modifications in terms of raise in the tenure of maternity benefit, including the adoptive and commissioning mothers under the purview of Maternity Benefits Act, provision of crèche facilities, promoting work from home policy, and the like.

The Employee’s State Insurance Act is another welfare legislation focused at providing insurance in case of sickness, maternity and employment injury. The Central Government has been actively proposing an amendment to be introduced for the Employee’s State Insurance Act to enable it to provide employees with the option of subscribing to a health insurance product provided by an organization recognised by the Insurance Regulatory and Development Authority in India. The amendments would also permit an employee with a one-time opportunity to move back to the Employee’s State Insurance Scheme after he chooses to move to a health insurance product.

The Employee’s Provident Fund Act is a welfare legislation which makes it mandatory for all the employers to make arrangements for a provident fund for their employees earning wages up to INR 15,000 (Indian Rupees Fifteen thousand). The Labour and Employment Ministry of the Government of India had announced that it is considering a proposal to reduce the minimum limit of no. of employees in an organization for coming under the coverage under the Employee’s Provident Fund Act from 20 (twenty) employees to 10 (ten) employees.

The Payment of Gratuity Act, 1972 provides to the employees for a gratuity payment in case of retirement or resignation, superannuation or disability (due to accident or disease) of an employee in case of his death or after the employee has served for a minimum of certain years as stipulated in the Act. It is under proposal from the Central Government to modify the minimum number of years from 5 (five) years to 3 (three) years to be required to complete in the organization so as to be eligible for...
gratuity payments. Moreover, it would also permit employees who are changing their employment to carry forward their benefits accumulated in their Gratuity accounts to the next employer.

**Whistle-blower**

As on today’s date, there are no legislations yet to cover the protection of whistle-blowers employed in the organisations of the private sector. The public sector organisations including the Government companies and departments are being regulated by the Whistle-blower Protection Act, 2014. It is under proposal to widen the coverage of this Act so as to cover the private establishments as well.

**Worker consultation, trade union and industrial action**

The major features of the industrial relations have been regulated by the Industrial Disputes Act and the Trade Unions Act. The Industrial Disputes Act provides a wider interpretation of the term ‘industry’ which dilutes the focus of the term from the profit motive and implies stress more on the nature of the work involved in the organisation. The Industrial Disputes Act deals with the provisions for retrenchment and the lay-off of workers. The act also provides a detailed dispute resolving procedures that involves both conciliatory form of resolution and adversarial form of resolution. The Industrial Disputes Act further covers the legal as well as unlawful strikes and lockouts. While the law empowers the employees a basic right to form an association and belong to the group, this right doesn’t extend to include a right to strike.\(^{153}\) Thus, it is to be noted that the right to strike is regulated by the provisions of the Industrial Disputes Act as well as the Trade Unions Act. The lawfulness of strikes may be considered taking into account the circumstances surrounding the entire incident.\(^{154}\)

In cases where the service conditions such as hours of work and rest intervals, wages, leaves with wages and holidays, etc., are being changed, the Industrial Disputes Act mandates that the sufficient prior notice shall be given to the workers likely to be affected by the change. The Fourth Schedule of this Act details the list of items which when changed shall require prior notification.
The labour laws are always drafted for the benefits of both the employees as well as employer. It always focuses to strike a balance in the relationship between the employers and employees. New amendments are made to further the benefits to employees. However in certain amendments to the acts and proposed bills to amend the acts might have certain clauses and changes which might witness criticism from various circles. One of an example is that the Maternity Benefit Bill would benefit the women employees in an organised sector only but the unorganised sector remains untouched. There are many women working in unorganized sectors who work as a farmer, casual workers, self-employed etc. In India, most of the women employees are been employed as contractual worker who are not even considered under the labour law. Owing to the steep rise in the nuclear family trend, a new concept of Paternity leave has also getting importance in India at present but it is yet to come under purview of any legislation. No legislation has been made to govern the same. However, few companies such as Flipkart etc. and start-up companies provide paternity leaves as well. Undoubtedly, Labour legislation has been changing to provide the benefits to the employees to the maximum extent.