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# **CRITICAL STUDY ON DOCTRINE OF HIRE AND FIRE IN INDIAN LABOUR LAW**

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## **INTRODUCTION**

There are three primary types of employees, as defined by Indian labour and employment laws:

Public sector employees and those working for government-controlled corporations. Private sector personnel and Public Sector Undertakings (PSUs). The Indian Constitution governs the laws and policies regulating the employment of public servants.

Government employees so benefit from tenure protection, statutory service claims, and automatic yearly wage increases. Employees in the public sector are subject to their own service norms, which are either based on statutory instructions or have statutory force in the case of statutory organisations. Employees in the corporate sector can be further classified into two groups: managerial personnel and workmen.

There are no legal requirements for their employment, hence in the case of management and The terms of employment for supervisory staff and employees are defined by their individual employment contracts, and their services may be terminated in accordance with those contracts.

It's crucial to understand your rights as an employee in any company. Many people join businesses unaware of the laws governing hiring and firing, which leads to many employers abusing their workers. While these instances are rare in the public sector, they are common in the private sector. This essay focuses on the laws in India that were created to guard employees from such abuse.

Employees may be covered by the legislation regardless of whether they are employed full-time, directly, or on a temporary basis. There are currently no particular rules in India that might specify a process or way for employing staff in the private sector.

Employers may hire people on a permanent or contract basis. They may do so by posting job openings in newspapers, via recruiting agencies, posting positions online, or using personal

networks.

There are three primary kinds of workers recognised by Indian labour and employment laws: those employed by the government, those working for public sector undertakings (PSUs), and those employed by the private sector. The Indian Constitution covers the rules and policies regulating the employment of government personnel. Therefore, tenure protection, statutory provider disputes, and automatic yearly profit increases are all benefits enjoyed by government employees. Employees in the public sector are subject to their own carrier policies, which are either based on statutory instructions or have statutory effect in the case of statutory corporations. Personnel in the corporate sector can be divided into two sizable classes: control group employees and workmen.

## **LABOUR LAWS AND SOCIAL JUSTICE**

The Supreme Court has really continuously passed legislation keeping in view Indian labour regulations.

Since the promulgation of the Constitution. Despite the fact that industrial law is always changing, the Supreme Court had a pioneering role in developing first principles that are so sound that they are still substantially upheld today.

In terms of the social and economic framework of society, social justice refers to the equitable adjustment of the numerous interests involved. Its ultimate goal is industry peace and tries to do so by creating harmony in labour relations on an ethical and financial basis. Social fairness is therefore a goal of industry peace. Social justice is therefore a labour-related application. The Supreme Court made this observation in *J.K. Cotton Spinning & Weaving Mills v. Labour Appellate Tribunal*<sup>1</sup>. The theory of social justice has been highlighted as a result of the growth of industrial law over the past ten years and several decisions by this court addressing industrial issues. The idea of social justice is not constrictive, biassed, or petty. Its scope is extensive. Its foundation is the fundamental concept of socioeconomic equality, and its goal is to help eliminate socioeconomic inequalities. However, while dealing with industrial issues, it takes a practical and pragmatic approach rather than taking a dogmatic stance or giving in mindlessly to abstract ideas. As a result, it makes an effort to find a resolution to the employees' conflicting claims.

A solution that is just and equitable to all sides with the goal of promoting harmony and good relations between labour and capital.

The ultimate goal of industrial adjudication is to support the expansion and development of

the national economy, and it is with this goal in mind that industrial adjudication is used to resolve labour conflicts. Contracts are not the foundation of social fairness. In actuality, it restricts the independence of contract. The days of hiring and firing employees are long gone, and the Industrial Court has the authority to become involved if it can be shown that the employment contract has to be changed for social justice reasons. In reality, the Industrial Courts have incredibly broad powers that no civil court has. We cannot lose sight of the restrictions on our freedom. While we shouldn't lose sight of our societal objectives, if we don't handle our challenges pragmatically, our mission might be compromised. The Industrial Courts must thus find a balance between the opposing demands of the company and the employee in order to uphold social fairness. The employee's right to social justice must be balanced with the employer's fundamental right to operate his business. The former relates to the area of our Constitution's essential rights, while the latter does so in relation to the Directive Principles. The ultimate goal is to maintain calm in the industrial sector so that output may rise and the country's economy can expand.

## **LEGAL REQUIREMENTS FOR HIRING EMPLOYEES**

When we talk about the kind of Agreement There are no predetermined legal criteria as to the established method of an employment agreement, with the exception of some State-specific rules that require an employer to produce a letter outlining specified areas of employment. The standard procedure is for the employer to send an appointment letter outlining the rules and regulations laid down for work, which the employee then signs, or for the employer and employee to enter into a formal agreement on a bilateral basis. An employment contract may be made orally. According to the Indian Contract Act of 1872, the acceptance of such a contract must be unconditional and absolute, and it must be conveyed in a customary and reasonable manner.

However, it is advised to have a documented work contract to prevent disagreements later on. Often there used to be no employment agreement signed by the company and employee for blue-collar workers; instead, appointment letters were sent out. However, creating formal employment agreements with the employees is becoming more and more typical.

## **Mandatory Conditions**

### **Trial Phase**

For either white-collar or blue-collar employees, there is no legal necessity to offer a trial or probationary term of employment. Despite the foregoing, the initial period of probation for **Blue-collar workers:** They may be three months based on the application of the Industrial Employment Standing Orders Act, 1948. In actuality, corporations do have probationary periods and may extend them if necessary, either in the employee handbook/company policy or in the letter of appointment.

**Working Hours for White-Collar Personnel:** The rules of the employment agreement often regulate an employee's work hours. These employment contracts must adhere to the Shops and Establishments Acts passed by specific Indian states.

If an employee is working from an office inside the premises of a plant, the Factories Act of 1948). As a result, circumstances like working hours may vary from one state to another and based on the type of establishment. Overtime requirements may also alter depending on the Shops and Establishments Acts, etc., as appropriate. For example, the Bombay Shops and Establishments Act also known as BSEA act of 1948 specifies that the maximum hours of work in stores, commercial establishments, residential hotels, restaurants, eating establishments, theatres, or other places of public amusement or entertainment are 9 hours per day and 48 hours per week.

**Blue-Collar Workers :** The hours of labour for blue-collar workers in non-manufacturing firms shall be determined in stores and other establishment approved by the state.

### **The Factories Act of 1948**

It states that an adult worker in manufacturing companies may be compelled to work for a maximum of nine hours per day and forty-eight hours per week, excluding overtime, and ten hours per day and sixty hours per week, including overtime. A total of 50 hours can be worked in overtime in any one quarter. A youngster or teenager is not permitted to labour for more than 412 hours every day.

**White-collar workers:** The employer and employee mutually agree on the employee's salary, and this provision is a key component of the employment contract. Employees in India are entitled to double the regular rate of pay for overtime.

**Blue-Collar Workers:** Under the Minimum Wages Act of 1948, the Central or State Government sets the minimum wages that must be paid to employees and evaluates those minimum wages every five years. For instance, the minimum rates of daily pay may range from (or more), depending on the location of operation: Employees at enterprises with 20 or more employees are entitled to bonus payments based on profits, output, or productivity under the Payment of Bonus Act of 1965. The Payment of Wages Act of 1936 establishes a deadline for companies to pay out wages to their employees and protects employees against unauthorised deductions.

### **Vacations and Rest Periods**

Those in white collar jobs: The holidays issued by the appropriate State typically control the holiday entitlement, depending on where a person is employed. An employee would typically be eligible to State holidays, required weekly holidays (such as Sundays), and national holidays (such as Independence Day, Republic Day, etc.).

Additionally, depending on the state's Shops and Establishments Acts or the Factories Act, employees must be entitled to paid leave for a specific number of days. The Factories Act or Shops and Establishments Acts, as relevant, also specify rest intervals. For instance, the Bombay Shops and Establishments Act of 1948 mandates that every store and commercial institution must stay closed on at least one day of the 5 hours of work, followed by a break of no less than an hour, and no more than three hours of overtime.

**Blue-Collar Workers:** The vacations and rest periods for blue-collar workers in non-manufacturing businesses shall be controlled by the State-specific Shops and Establishments Act (and, depending on its application, the Industrial Employment Standing Orders Act, 1948). The Factories Act of 1948 establishes an pension plan for blue-collar workers employed in industrial facilities.

No one will be obliged to work for more than ten days straight without a holiday, according to provisions on compensating holidays and mandated weekly holidays. Additionally, this law mandates rest breaks . A maximum of five hours of labour is followed by a half-hour of paid yearly leave. According to the Weekly Holidays Act of 1942, blue-collar workers who work in stores, restaurants, and theatres are entitled to a weekly holiday without having their pay reduced or withheld.

### **Age Minimum/Maximum**

Those in white collar jobs: In several trades, the age requirement for work is 15, regardless of the institution. However, in reality, those who are deemed qualified for such jobs must be at least 20 years old. Blue-Collar Workers: Children under the age of 14 are legally prohibited from working in the blue-collar sector. To work in several trades, teenagers between the ages of 15 and 18 need a certificate of fitness. The legal limit age for white collar or blue-collar workers, depending on what the company specifies.

Illness/Disability Employees, whether they work in white collar or blue collar positions, are entitled to paid sick leave, the length of which varies from sector to sector or state to state.

White-collar workers also have the option of receiving paid sick leave in accordance with the terms of their employment contract, the Shops and Establishment Act, or the Factories Act, depending on whether they work in a factory or a commercial establishment and which option is more advantageous to them. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act of 1995 promotes employment for people with certain disabilities.

### **Place of Employment/Mobility**

The employee and the employer(white collar or blue collar employee) agrees upon the common grounds regarding the mobility and the workplace location, such mutual agreement can be either verbal or in terms of employment agreement.

### **Various Agreements**

The many types of employment agreements may be divided into:

Employment contracts with a set term that end on a specific date or after the conclusion of a project.

Full-time employment agreements: These have mandatory provisions affecting full-time employees.

## **Arrangements for Apprenticeship**

The Apprentices Act of 1961 covers the provisions that must be included in an apprenticeship contract as well as the training of apprentices. As apprentices are categorised under the law as trade apprentices, graduate and technical apprentices, and technician (vocational) apprentices, this legislation applies to both blue-collar and white-collar workers. Secrecy/Confidentiality A clause relating to privacy and secrecy is included in almost all employment contracts in India. A confidentiality breach might be cause for firing.

## **FIRING THE WORKER**

### Termination Procedures for the Agreement

Those in White Collar Jobs: The conditions of the employment agreement will control the process for terminating employment. This clause must follow each state's Shops and Establishment Act. According to the Shops and Establishment Acts, the employee must be provided a written notice of the change or be paid in its place. For instance, the Bombay Shops and Establishment Act mandates that employees who have been continuously employed for at least three months must provide at least 14 days' written notice, while those who have been continuously employed for at least a year must provide 30 days' written notice, or pay wages in lieu of notice.

Blue-Collar Workers: According to the Industrial Disputes Act of 1947, no employee who has worked for less than one year (240 days in a year) may be fired without providing one or three months' notice (depending on whether the establishment employs up to 100 or more of these workers), payment in lieu of notice, and compensation. Additionally, depending on whether the institution has fewer than 100, 100, or more than 100 such employees, there may be a necessity to inform the appropriate government authorities or to acquire prior government permission.

### **Instant Termination**

White-Collar Workers: The conditions of the employment contract will apply to their dismissal. White-collar workers' employment may be terminated abruptly for serious disciplinary violations if the appointment letter, employment contract, or corporate policy do not forbid it. Before such a termination without notice, some state statutes may call for an investigation.

### **Resignation with Cause**

Those in White Collar Jobs: According to the legislation, if an employer wants to fire an employee, he must provide the employee written notice or pay the employee's wage in its place. These provisions are listed in the employment contract, but even if specific details are not addressed, the employer may nevertheless adhere to the law.

Employees in Blue Collar Jobs: The Industrial Disputes Act 1947, according to a law passed in 1947, an employee who has worked continuously for at least a year cannot be fired without giving one month's notice or receiving cash in place of notice.

### **Age-Related Termination of Employment**

According to the Employees' Pension Scheme of 1995, which applies to both white-collar and blue-collar government employees, superannuation or retirement benefits will be provided to an employee once they reach the age of 58. The retirement age for both kind =s of workers employed in the private sector is determined by corporate policy rather than by the legislation as allowed by the employment contract, in the event of force majeure

Blue-Collar Workers No employee may be fired without cause. According to the Industrial Disputes Act of 1947, every employee who has been in continuous service for at least a year and is terminated for reasons other than financial difficulties, losses, the expiration of a lease, or a licence is entitled to compensation up to three months' average wage.

### **Termination by Agreement of the Parties**

Any white-collar or blue-collar employee's employment may be ended at any moment by mutual consent between the employer and employee (in writing or verbally).

## **MAINTAINING THE RELATIONSHIP WITH THE EMPLOYER**

Alterations to the contract

Assume that the employer may modify the employment agreement of both white-collar and blue-collar employees, provided such modifications are not unilateral or unlawful. Otherwise, the employer may modify the terms of the contract with the employee's proper approval. Depending on the type of job a blue-collar employee is doing, the employer and employee

will either enter into an employment agreement or an appointment letter.

Change in Business Ownership White-Collar Workers: The employment, firing, or retention of personnel is governed by corporate policy and the agreement between the new and old companies in the event that a firm changes ownership (a business division is transferred from one company to another). However, transfer would need the approval of an employee.

#### The Blue-Collar Workforce

Every employee who has worked for the company for at least a year continuously is eligible to receive one month's notice and 15 days' average pay as severance compensation in the event that the company changes ownership, unless the contract stipulates otherwise. When a certain change in the ownership of the business and the conditions laid down for the employee has not been interrupted, are no less favourable than those that apply to him before the ownership change, The previous employer may dismiss the employee under such circumstances.

### **Social Security payments**

Employees in both white-collar and blue-collar jobs are eligible for social security benefits including gratuities and provident funds. Employees' Provident Fund Scheme, 1952 (EPF), Employees' Pension Scheme, 1995 (EPS), and Employees' Deposit Linked Insurance Scheme, 1976 (EDLIS) benefits, the Employees' Provident Funds and Miscellaneous Provisions Act of 1952 requires both the employer and employee to contribute 12% of the basic wages, dearness allowance, and retaining allowance, (if any), to the Employee's Provident Fund Scheme.

### **Mishaps at Work**

White-Collar Workers: If an accident or death occurs at work while a worker is doing their tasks and if the employer is at fault, they are responsible for compensating the victim.

Blue-Collar Workers Accidents at work for blue collar workers in specific occupations are covered by the Employee's Compensation Act of 1923. According to the Act, if an accident occurred while an employee was on the job or if the employer failed to keep the equipment in proper working order, they would be responsible for compensating the employee for their injuries.

**No compensation will be due from the employer.**

if the worker did not adhere to the safety procedures outlined by the employer or if the accident happened while they were inebriated. In the event that an employee passes away while doing his or her job obligations, the company is obligated to make a payment to the person's dependents. Certain employees may also be covered under the Employees State Insurance Act of 1946 in specific businesses. This law also offers some employee categories benefits in the event of workplace accidents (mostly bluecollar employees). The Employee's Compensation Act of 1923 does not apply to certain employees who are covered by this Act, however.

**CONCLUSION**

I would want to draw the following conclusion: Every sector (public sector and private sector) for the protection and welfare of many types of workers (permanent, contractual, and part-time), but very few people are aware of its correct application to prevent employer exploitation. Many employees sign the contract agreement or bond without reading it or understanding its legal implications and terms. Workers join trade unions, which provide them a sense of security, to prevent the abuse of laws. However, it is important to educate workers about the rules and rights that apply to them. Employers wouldn't terminate workers needlessly if workers and employees were aware of the regulations governing termination.

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