



THE LEGAL FRAMEWORK OF HUMAN RESOURCE MANAGEMENT

Shradhanjali Sahu
MBA, LLM

ABSTRACT:

The American Society for training and development identified nine human resource areas namely Training and Development, Organization and Development, Organization /Job design, Human resources planning, Selection & Staffing, Personnel Research and information system, Compensation /Benefits, Employee Assistance and Union/Labor relation

Different Labour laws are framed to regulate HR functions of an organization which are mentioned as follows:



✎ Staffing:

- The Child Labour (Prohibition and Regulation) Act, 1986
- The Employment Exchange (Compulsory Notification of Vacancies) Act, 1959
- The Apprentice Act, 1961
- The Contract Labour (Regulation and Abolition) Act, 1970
- Bonded Labour System (Abolition) Act, 1976

✎ Compensation and rewards:

- The Payment of Wages Act, 1936
- The Minimum Wages Act, 1948
- The Payment of Bonus Act, 1965
- The Equal Remuneration Act, 1976

✎ Employee Maintenance:

- The Factories Act, 1948
- The Mines Act, 1952
- The Employees' Provident Funds and Miscellaneous Provisions Act, 1959
- The Employees' State Insurance Act, 1948
- Payment of Gratuity Act, 1972
- The Workmen's Compensation Act, 1923
- The Maternity Benefits Act, 1961

Employee Relations:

- The Trade Unions Act, 1926
- The Industrial Disputes Act, 1947
- The Industrial Employment (Standing Orders Act), 1946
- The Sales Promotions Employees (conditions of service) Act, 1976

HR Professionals should have knowledge of all laws that affect Human Resource Management. He has to deal with compliance issues relating to employee benefit and compensation, health and safety, leave entitlements, discrimination and sexual harassments, confidentiality and employee labour rights. HR should design and implement internal guidelines after considering the legal requirements. He must be aware of standard practices and procedures in the event and employee files a law suit. It is the duty of the HR to proactively review and update internal policies to ensure workplace compliance.

KEYWORDS: Legal Framework, HRM, Industrial Relations, Workplace, Compliance.

INTRODUCTION

Human Resource Management is a body of knowledge and a set of practices that define the nature of work and regulate the employment relationship (Braton and Gold, 1999). Rapid Industrialization gave birth to class conflict between management and labour because of absence of workers ownerships over the mean of production. Concentration of economic power in the hands of industrialist motivated workers to realise the significance of freedom of association and collective bargaining to protect their rights. On the other hand employer suppressed the demands of workers. Strikes lockout go slow tactics, absenteeism are some of the reflections of labour unrest which require proper diagnosis for creating conditions for industrial peace.

The American Society for training and development identified nine human resource areas:

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| 1 Training and Development | 2 Organization and Development |
| 3 Organization/Job design | 4 Human resources planning |
| 5 Selection and Staffing | 6 Personnel Research and information system |
| 7 Compensation/Benefits | 8 Employee Assistance |
| 9 Union/Labor relation | |

However, the main role of a human resource manager is to maintain harmonious industrial relationship.

Scope of industrial set up has given birth to the capitalist economy which divided the industrial society into two groups of labour and capitalists. The interests of these two groups will not be common and creates industrial disputes. Hence, the necessity of law arises to resolve the dispute between workers and the capitalist. HR professionals have to tackle several legal issues and do thorough research into the legal aspects of HR. Certain legal issues in human resource relate to confidentiality, verification, adhering to special company strategies, pursue workplace policies on different health issues, protect labour rights of the workers and assess the organizational law affecting employees. Causes of industrial disputes may be classified into four groups as follows :—

1. Economic Causes :—

(a) Wages (b) Bonus (c) Dearness allowance (d) High industrial profits (e) working conditions and working hours (f) Modernization and automation of plant and machinery (g) Demand for their facilities.

2. Managerial Causes :—

(a) Denial of recognition to trade union (b) Defective recruitment policy (c) Irregular layoff and retrenchment (d) Defiance of agreements and codes (e) Defective leadership (f) Weak trade union.

3. Miscellaneous Cause :—

(a) Sympathetic Strike

(b) Police atrocities etc.

Whenever on industrial dispute occurs both management and worker try to pressurize each other. The management may resort to strikes, gheroa, picketing.

HR departments obviously have to contend with legal issues. In the face of an evolving social landscape there is greater pressure to adhere to the letter of the law. There is often complaints related to discrimination. Professionals should be aware of discrimination against marital and family status, veteran status, disability and other potential discrimination, landmines around the workplace. Another legal issue is harassment. In the wake of social movements such as #MeToo, sexual harassment in the workplace is under a microscope. Thus, employers and HR personnel can't appear to be ignoring such matters.

The same goes for other kinds of harassment in the workplace. If there is any kind of power imbalance or bullying going on, this opens up the possibility of a lawsuit. Very often, equal pay laws are not followed by the organizations. Gaps exist based on gender, religion, caste etc. If HR personnel construct policies that impact equal pay even before hiring takes place, remuneration gaps can be prevented. HR personnel should avoid questions regarding previous salary histories so that prior discrimination will not be carried over into the existing workplace.

The Central Government has formulated a lot of legislations to protect the interest of the workers and also to provide them better working environment. The following is the list of various acts, which govern the function of labour relations:

- (i) Industrial Relations Law: These laws are mostly related to conflict resolution and regulating the relationship between employer and employees. Some of the prominent laws among them are the Trade Unions Act, 1926; the Industrial Disputes Act, 1947; and the Industrial Employment (Standing Orders) Act, 1948.
- (ii) Social Security Legislations: These laws try to provide security of employment, income and health for the individuals of small means. The State gives security to its citizens as a condition of human existence. Every Welfare State, within its economic capacity, should endeavour to provide for unemployment benefits, maternity benefits, family allowances, old age grants, death grants, industrial injury benefits, nationalized health services, and adventitious aids to the weaker sections of the society. Some of the social security laws prevalent in India are the Workmen's Compensation Act, 1923; the Employees' State Insurance Act, 1948; the Maternity Benefits Act, 1961; the Employees' Provident Fund Act, 1952; and the Payment of Gratuity Act, 1972.

Over and above, there are a host of legislations and measures like Bonus Act, Minimum Wages Act, Factories Act, Employment of Children Act etc., focusing towards healthy factory conditions, better working conditions, maintenance of a tolerable standard of life, and so on.

Some Enactments related to Human Resource Management in India are—

🔗 Workmen's Compensation Act, 1924

The act came into force on 1st July, 1924. Its aim was to provide compensation to a workman incapacitated by an injury from accident. This act is applicable to all workers. The Employer is liable to pay the compensation to the person or the dependent in case of death, personal injury, resulting into disablement or occupational diseases caused to a workman during the course of employment. It also includes the time period of coming and returning from office. Employer is not liable if the mishap occurs due to drug addiction or alcohol willful disobedience of rules, removal of safety devices by the worker.

🔗 The Factories Act, 1948

Factory has been defined to include all industrial establishments employing 10 or more workmen where power is used and 20 or more workmen in all other types of industrial establishments. State government can extend the provisions of this Act to any establishment, irrespective of the criteria

mentioned above. Contract labour also can be included to compute the number of employees, as per the amendment in 1976. The act deals with the basic minimum facility relating to health, welfare and safety of workers at a considerable magnitude. The Act is applicable to all the premises where 10 or more persons are working with the aid of power or 20 or more workers are/were working without the aid of power on any day of the preceding 12 months.

✎ The Payment of Gratuity Act, 1972

The Act is applicable to every factory, oil field, plantation, port, railways, company, shop, establishments or educational institutions employing 10 or more persons. It covers all the employees, irrespective of salary. An employee is eligible for the gratuity after serving the organizational for 5 years of service, except in case of death or disablement. The employees are entitled to the gratuity at the right of 15 days wage for every completed year of service, whereas in case of seasonal industries it is at the rate of 7 days wage for every completed year of service. The gratuity is calculated taking into account the last salary drawn.

✎ The Payment of Wages Act, 1936

The objective of this Act is to regulate the payment of wages of certain classes of employed persons. The Act tries to protect the workers from irregular payment of wages and abrupt deductions by the management. The Act is applicable to all factories, industries, transport services engaged in carrying passengers or goods or both by road for hire or for reward, air transport services, docks, inland vessels, mines, quarries or oil fields, plantations, workshops etc. it covers employees drawing average wage upto Rs 6500 per month.

✎ The Trade Union Act, 1926

This Act provides for the formation, registration of the trade unions, and immunities available to the union leaders while involving themselves with the union activities of a registered trade union. The Act provides the procedure for registration of the trade union and the rights and liabilities of the registered trade union. Any seven members can form a trade union. However, there should be at least 10 per cent or 100 of the workmen, whichever is less, engaged or employed in the establishment in which the union is proposed to be formed. The major benefit of registering the trade union is the immunity from criminal and civil suits. An office bearer of a registered trade union is not liable to punishment under sub-section 120(B) of IPC (dealing with criminal conspiracy) for signing any agreement with the members. But the agreement must not be designed to commit an offence. There will be also immunity from civil suits for any act done in furtherance of a trade dispute to which members are a party. Any person on attaining the age of 16 years can be a member of the union and can be an office bearer after attaining the age of 18 years. The number of outsiders who can be the office bearers of the union is restricted to the 25% of the total. The Act also has a provision to create a political fund which can be spent for promoting the political interests of the members.

✎ The Industrial Disputes Act, 1947

This Act was enacted to provide a basic legal framework for dealing with industrial disputes and their settlement. It also aims at improving the working conditions of the industrial workforce, including peace and harmony at work. The objective of this Act is to prevent and settle industrial disputes for maintaining industrial peace.

✎ Minimum Wages Act, 1948

The Act provides for the fixation of minimum wages in certain employment. The appropriate government fixes the minimum wages for different industries and reviews it at an interval not exceeding 5 years. The minimum wages can be fixed based on time, work or piece work at piece rate.

✎ The Payment of Bonus Act, 1965

The objective of the Act is to maintain peace and harmony between labour and capital by allowing the employees to share the prosperity of the establishment reflected by the profits and by the contributions made by capital management and labour. Bonus is a boon or a gift over and above what is nominally due as remuneration. The objective is to meet the gap between present wage and living wage. It's a statutory liability of the employer of every establishment covered by the Act to pay bonus. The Act covers profit bonus only, but does not govern customary or contractual bonus. The Act is applicable to every factory wherein the 10 or more persons are employed with the aid of power and every establishment in which 20 or more persons are employed without the aid of power on any day of the accounting year.

✎ The Child Labor (Prohibition & Regulation) Act, 1986

The Act prohibits the employment of child labour in certain specific occupations. Child means a person who has not completed 14 years of age. The establishments covered under the Act includes a shop, commercial establishment, workshop, firm, residential hostel, restaurant, eating house, theatre, or other places of public amusement or entertainment. The working hours, for the children should not exceed three hours, with a rest interval of one hour.

✎ Maternity Benefit Act, 1961

The woman worker can get maternity benefit if she has worked for minimum 80 days prior to the date of her expected delivery. The woman employee is eligible to get 12 weeks leave with pay as well as non-cash benefits. 10 weeks before expected delivery the woman employee can request the employer for light work for a month.

SUGGESTION

HR Professionals should have knowledge of all laws that affect Human Resource Management. He has to deal with compliance issues relating to employee benefit and compensation, health and safety, leave entitlements, discrimination and sexual harassments, confidentiality and employee labour rights. HR should design and implement internal guidelines after considering the legal requirements. He must be aware of standard practices and procedures in the event and employee files a law suit. It is the duty of the HR to proactively review and update internal policies to ensure workplace compliance.

CONCLUSION

Labour laws are very important for proper human resource management. It prevents industrial disputes and protects the rights of workers. Non-compliance of labour laws may result in penalization and imprisonment. The notion of Legal literacy is based on the principle that every individual must be aware of their rights and obligations. The maxim '*ignorantia juris non-excusat*' or '*ignorance of the law is no excuse*' implies that the Court presumes that every party is aware of the law and hence cannot claim ignorance of the law as a defence to escape liability. However, law does not preach rightism (*adhikarvad*) as against the gospel of Holy Gita; "*Kamayeva Adhikarastema Phaleshu Kadachana*" (Action is the right, reward is not thy concern).

With the growing discoveries, inventions and scientific advancement new industrial and labour problems likely to occur, the law being a flexible instrument of social order has to develop new mechanism to deal affectively with the problems in sight in times ahead. The old labour laws may be unsuited. The state has to contemplate ways and means to safeguard interests of the working community. At present, the government are giving a serious thought to a proposal to amend the payment of Wages Act and the Compensation Act to put an end to all types of unethical practices. The government had drawn up plans to bring about integration of various social security schemes with a view to cutting down administrative expenditure and increasing their coverage. It attaches great importance to the organisation of landless workers the absence of which is the root cause of most of

their problems and a major handicap for the government in the enforcement of protective laws and schemes for their welfare.

The Change in economic policy in 1990, LPG (*Liberalisation, Privatisation and Globalisation*) brought a tremendous change in the working of business houses. State interventions became less, private and multinationals emerged. In this modern era of LPG, trade unions are facing enormous challenges, not in terms of bargaining potential but at the level of existence itself. Labour is the wealth of the country it should not be wasted at all in strikes and lockouts. There should be mutual adjustment between the labour and capital. The state has always been and it must intervene to curb unfair labour practices and maintain a balance of interests of labour and capital class.

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MBA, LLM