

LABOUR & LIBERTY

CENTRE FOR ADVANCED STUDIES IN LABOUR WELFARE, RAJIV GANDHI
NATIONAL UNIVERSITY OF LAW, PUNJAB



A RELOOK AT THE NEW LABOUR CODE

The government is re-looking at proposed rules under the newly enforced labour codes in an effort to dispel some of the industry's concerns. Out of the four codes, most employers demand a review of the Wage Code and the Social Security Code. Industry bodies representing employers have demanded the government introduce a grandfathering clause for gratuity payment as the new definition of a 'wage' under the codes would significantly enhance the cost per employee. They have also sought some flexibility under the new wage definition. Trade unions, on the other hand, want the government to notify social security for gig workers at the earliest, even if implementation of the codes was taking longer. The unions had also raised apprehensions over the proposed 12-hour a day shift and have been for a long time insisting on implementation of the statutory national floor-level minimum wage at the earliest. The government is keen to ensure that labour codes do not raise financial or compliance burden on the industry without impacting welfare of employees.

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SRI LANKA SET TO REVAMP CHILD LABOUR LAWS

Sri Lanka is set to revamp its child labour laws, by aiming to raising the minimum age for employment to 18 years to stop child labour exploitation, in the aftermath of the death of a 16-year-old child who was employed as a domestic help. Piyal Nishantha, the state minister of women and child development, stated that a Cabinet paper is being prepared to raise the minimum age to 18. The Labour Ministry has also decided to expand the list of jobs considered to be 'hazardous' to children between the ages of 16- 18. The list is to be increased from 52 to 76, the Labour Commissioner Prabath Chandrakeerthi said.

The National Child Protection Authority (NCPA) stated that stringent laws are required to stop exploitation of children for labour. The issue of child labour surfaced after the death of a teenaged girl, who was working as a domestic help in a politician's house.

The girl was admitted to a hospital with burn injuries on July 3 whilst her employment as a domestic help in the house of the leader of All Ceylon People's Congress, Rishad Bathiyudeen, an Opposition ally.

CHALLENGES PERTAINING TO THE EFFECTING OF SERVICE

The 'effecting of service' is an essential step for the initiation of a lawsuit and for the court to assert its jurisdiction over the parties and the

suit. On 26th July 2021 in the recent judgement delivered by the Delhi HC Director General of Works (CPWD) v. Laljeet Yadav and Ors. the following directions to Labour Courts, Authorities and Tribunals which are dealing with disputes between Workmen and Management, including those disputes under the Industrial Disputes Act, 1947, the Employees' Provident Fund & Miscellaneous Provisions Act, 1952, the Payment of Gratuity Act, 1972 etc., relating to suspension, termination etc. were issued:

- Labour Courts, Authorities and Tribunals should include the complete details of the authorized representative of the Management in the cause title/memo of parties, including the mobile number and email address of the Management, in the final awards/orders passed by them.
- Further, it is noticed that the beneficiaries in respect of the awards and orders are the individual Workmen who are represented through Unions in the Labour Courts, Authorities and Tribunals. However, the beneficiaries in respect of the awards and orders are the individual Workmen, whose details are not available except their names. So, it has been directed that when awards and orders are passed by the Labour Courts, Authorities and Tribunals, specific details about the workmen will be added in the cause title which forms part of the orders/awards and/or judgements:

These directions effectuate the following changes-

- Advance copies to be served upon the Management and the Workmen so that they can be represented on the first date when the Court hears the matters.
- Expeditious delivery of notices upon the Management and Workmen, once the petition is entertained by the Court.

ANALYSIS OF ANTI-TRAFFICKING BILL 2021

Existing Anti-Trafficking Law

Currently, the crime of trafficking is covered under Section 370 and 370A of IPC, which came into effect in 2013 through the Criminal Law Amendment Act, 2013. Trafficking for the purpose of commercial sexual exploitation is covered under the Immoral Trafficking (Prevention) Act of 1956. Despite these provisions, the statistics collected by NCRB every year shows an increasing trend of cases of trafficking such as these increased by 14.3% in 2019 as compared to the previous year.

Why do we need the Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021

A previous draft of the bill was passed in the Lok Sabha in 2018 but was never introduced in the Rajya Sabha. While the 2018 bill dealt with trafficking, rescue, protection and rehabilitation of victims, the 2021 bill expands the scope to also include offences taking place outside India.

If passed by Parliament, it will become a landmark in dealing with this complex crime of trafficking. Some of the significant

provisions of the Bill are listed below:

- Cases will be probed by the fully functional and prestigious Agency – NIA. The faster arrest of offenders (most often operating in syndicates and organised criminal groups).
- Stricter punishment to the perpetrator if the victim of trafficking is a child. Aggravated crime to get deservedly stricter punishment.
- Online trafficking: Bill includes a provision that says that physical movement or transportation of the victim is not necessary to define the crime of trafficking.
- The provision of protection homes for immediate protection of victims and rehabilitation homes for long term rehabilitation will help the victims to come out of the trauma and seamlessly assimilate in society later.
- This Bill proposes a proposal for the provision of separate protection and rehabilitation homes for transgenders. This is a great step to erase discriminatory behaviour that this hitherto neglected section of the society is subject to and will cater to their different needs.
- This anti-trafficking bill states that the rehabilitation of victims is not dependent on criminal proceedings and not even on its outcome. The rehabilitation is to begin immediately once the FIR is registered.
- The Bill also provides for immediate relief to the victim within 30 days of the filing of FIR. This immediate relief is that it is over and above the compensation that will be awarded to the victim under the State Victim Compensation Scheme.

- This Bill makes re-tracking an aggravated form of trafficking with higher punishment of not less than 10 years which can go up to life imprisonment and a fine which can be up to Rs 10 lakh.
- Women, children and physically and mentally disabled persons are given extra protection in the law by including them under the provision of “presumption of offences”. This means that when the victims are women, children and physically and mentally disabled persons then the traffickers will be presumed to have committed the crime and during the trial, they have to prove they are innocent.
- To crush crime syndicates in trafficking, the Bill provides for the attachment and forfeiture of property and bank accounts of the accused.
- Proceeds of crime collected and accumulated by traffickers, will be used for the relief and rehabilitation of the victim.

THE ESSENTIAL DEFENCE SERVICES ACT: AN OVERVIEW

The Essential Defence Services Bill 2021 (promulgated as an Act) was introduced by Mr. Rajnath Singh on the 22nd of July, 2021, and was passed by the Lok Sabha and Rajya Sabha on the 3rd and 5th of August, respectively. At the heart of the bill, it seeks to provide for the maintenance of Essential Defence Services so as to secure the security of the nation and the life and property of the public at large.

The Act defines 'Essential Defence' as:

- (i) Any service in any establishment or undertaking dealing with production of goods or equipment required for any purpose connected with defence;
- (ii) Any service in any establishment of, or connected with, the armed forces of the Union or in any other establishment or installation connected with defence;
- (iii) Any service in any section of any establishment connected with defence, on the working of which the safety of such establishment or employee employed therein depends;
- (iv) Any other service, as the Central Government may, by notification in the Official Gazette, declare to be essential defence services, the cessation of work of which would prejudicially affect the—
 - (I) Production of Defence Equipment or goods; or
 - (II) Operation or Maintenance of any industrial establishment or unit engaged in production of goods or equipment required for any purpose connected with defence; or
 - (III) Repair or Maintenance of products connected with defence;

The Act plans on attaining its objective by prohibiting 'strikes' by the body of people engaged in Essential Defence Services. The term strikes bring within its ambit sit-downs, stay-ins, token strikes, sympathetic strikes, and mass casual leave. Further, Refusal to work overtime or acting in a way that results in cessation, retardation, or disruption of work related to the Defence is also prohibited. It

seeks to bring disciplinary action applicable to the person(s) concerning their employment against any individual who:

- (a) Initiates a strike
- (b) Takes part in a strike
- (c) Instigates others to commence, continue or, financially aids such strikes.

The acts falling within the ambit of (a) and (b) are punishable with imprisonment for a term which may extend to one year or with fine which may extend to ten thousand rupees, or with both. While acts under (c), dealing with incitement or instigation are punishable with imprisonment for a term which may extend to two years, or with fine which may extend to fifteen thousand rupees, or with both.

The Essential Defence Services bill also empowers the Centre to prohibit lockouts and layoffs in any industrial establishment which caters to Essential Defence Services. However, the same is only possible if and when the Centre feels that it is in the public interest, or interest of the sovereignty and integrity of India, security of any State, public order, decency, or morality.

The 'Statement of Object and Reasons' section of the Act acknowledges that it had to be approved and enforced hastily. However, the Centre backs its move stating some strong reasons. Indian Ordnance Factories functioning under the Department of Defence Production of the Ministry of Defence form an integrated base for indigenous production of defence hardware and equipment.

Its primary objective has been to create self-reliance in equipping the armed forces. In the past, the govt. decided to convert the Ordnance Factory Board into one or more one hundred percent government-owned corporate entities or entities to be registered under the provisions of the Companies Act 2013 to improve its autonomy, accountability, and efficiency in Ordnance supplies. This decision of the government led to the call for an indefinite strike. All conciliation proceedings initiated by the government failed. As of the 16th of June, the government sought to convert the Ordnance Factory Board into 7 Defence Public Sector Undertakings. Despite all efforts by the government, the Board Members notified the government about the indefinite strike commencing from the 26th of July 2021. In light of the situation on the Northern front of the country, it is of utmost importance that the factories remain active and that there is an uninterrupted supply of ordnance items to the armed forces. Therefore, to achieve this goal the government needs to have some control over such situations to ensure the maintenance of essential defence services in public interest or interest of the sovereignty and integrity of India or security of any State or decency or morality.



**CENTRE FOR ADVANCED STUDIES IN LABOUR WELFARE
RAJIV GANDHI NATIONAL UNIVERSITY OF LAW, PUNJAB**

PATRON-IN-CHIEF

PROF. (DR.) G.S. BAJPAI

PATRON

PROF. (DR.) NARESH KUMAR VATS

FACULTY COORDINATORS

DR. GEETIKA WALIA

MS. SONIKA

STUDENT CONTRIBUTORS

AASTHA SINGH

NAYOLEEKA PURTY

YASHVI AGARWAL

PRATHU DADHICH

S. LAVANYA

TAMANNA GUPTA

