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India: Law & Practice

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Khaitan & Co

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INDIA

Law and Practice

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1. Introduction

1.1 Main Changes in the Past Year

There have been few notable developments on both the regulatory and the case law fronts within the realm of employment and labour law, as summarised below.

Legislative Developments

The Indian securities market regulator, namely the Securities and Exchange Board of India (SEBI), notified the SEBI (Share Based Employee Benefits and Sweat Equity) Regulations 2021, effective 13 August 2021, which has replaced the SEBI (Issue of Sweat Equity) Regulations 2002 and the SEBI (Share Based Employee Benefits) Regulations 2014. The new regulations increase the scope of coverage of employees to bring the employees of group companies or associate companies within the purview of a share-based benefits scheme implemented by a listed company. The new regime also enables switching between different modes of administration of a scheme and allocation of excess monies available to a trust at the time of winding up towards another scheme, subject to shareholder's approval via an ordinary resolution. For a detailed examination of the new framework, please refer to an update on the topic available here.

The government of Haryana brought into effect the Haryana State Employment of Local Candidates Act 2021 (Haryana Law) on 15 January 2022 (an update on the law is available here). The law reserves 75% of the jobs in specified private sector posts for local candidates and has been the subject matter of concern for industries located in the state. Interestingly, this Haryana Law became the focus of constitutional scrutiny as well. After the Punjab and Haryana High Court ordered an interim stay over the implementation of the Haryana Law, the Supreme Court of India set aside the said order and relegated the matter back to the Punjab and Haryana High Court for a careful evaluation of the Haryana Law in an expeditious matter. Unfortunately, the matter has been reserved by the Punjab and Haryana High Court, meaning that no hearings are taking place at the moment.

Case Law Developments

In its recent judgment in the case of Jacob Puliyel v Union of India and Others [Writ Petition (Civil) Number 607 of 2021], the Supreme Court of India held that restrictions imposed on individuals not fully vaccinated against COVID-19 cannot be considered to be constitutional. However, the judgment does not deal with the duty of employers to maintain a safe workplace and mandating employees to be fully vaccinated. The key takeaways from the judgment and an examination of its implications, if any, on private sector employers are available here.

2. Terms of Employment

2.1 Status of Employee

There are two main kinds of classification of employees, one based on the nature of work, and another based on the duration of employment.

Classification Based on Nature of Work

Depending on the predominant nature of the responsibilities, an employee may be classified as, (a) a workman (as defined in the Industrial Disputes Act 1947 (ID Act)), or (b) a managerial employee. To determine whether an employee is a "workman", the actual or primary work performed by the employee is examined. Some cases wherein courts have considered the functions of an employee as being of managerial nature are: looking after the progress of work vis-à-vis quality and timeliness, ensuring compliance, manpower planning, contract management, monitoring costs, mentoring team members,

and involvement in policy-making decisions regarding any aspect of the business or service, conditions of workers/employees and such other similar powers.

The significance of this classification is that persons qualifying as a "workman" are entitled to various statutory protections/entitlements, such as severance compensation and notice (or payment of fixed salary in lieu thereof) in case of termination of employment for reasons other than employee's misconduct and prior notice in case of any adverse change in the conditions of service.

Classification Based on Duration of Work
An employee could be either a permanent employee or a fixed-term employee, depending on the duration of work. For fixed-term employees, the duration is predetermined and limited, often tied to the specific project requirements. For permanent employees, the employment relationship continues until one of the parties terminates it.

The significance of this classification is that there are certain benefits which are linked to the tenure completed by an employee in the organisation (such as gratuity, which is a statutory benefit received by an outgoing employee who has completed four years and 240 days of continuous service). Accordingly, fixed-term employees may not be entitled to such benefits in case the tenure of their employment is shorter (which is commonly the case). That said, the stipulations set out by the central government and certain states under the Industrial Employment (Standing Orders) Act 1946 (the IESO Act) (which applies to large establishments typically engaged in manufacturing operations) allow prorated statutory benefits to fixed-term employees under applicable laws even if they do not fulfil the minimum service period qualifying criterion.

Other Classifications
Other than the above broad classifications, there may be other kinds of classification for very limited purposes. For instance, under the social security regime, namely the Employees' Provident Funds and Miscellaneous Provisions Act 1952, the manner of contributions by employers and employees varies depending on whether an employee is a domestic employee (an employee working in India and holding an Indian passport), or an international worker (expatriate employee).

2.2 Contractual Relationship

In India, employment contracts can be definite (fixed-term) or indefinite (permanent), depending on the purpose/duration of the relationship envisaged by the parties. The distinction between the two kinds of employment is explained in **2.1 Status of the Employee**.

An employer-employee relationship can either be express or implied, written or verbal. However, to avoid any dispute regarding the terms of employment, it is a common practice to execute an employment contract. Only a few Indian states such as Karnataka and Delhi require a commercial establishment (non-manufacturing establishment) to issue written appointment letters to employees, which would set out basic particulars such as wages, designation, nature of duties, etc.

Certain terms that are generally incorporated expressly in an employment contract include nature of work (job description), place of employment, date of commencement of employment, remuneration structure, assignment of intellectual property by the employee to the employer, cessation of employment (including notice period), and restrictive covenants (such as non-solicitation). However, the Indian courts have taken the view that certain terms and conditions of service which are regulated by statute will constitute implied terms of a contract of employ-

ment. Therefore, provisions relating to payment of wages, bonus, gratuity payments and contributions towards employees' provident fund and employees' state insurance can be considered to be implied terms of a contract of employment and need not be recorded in writing. Similarly, an employee's duty to remain faithful in their duties towards the employer and to maintain confidentiality of the employer's proprietary information is considered to be implicit in the employment contract.

2.3 Working Hours

The working hours are primarily governed by the Factories Act 1948 (Factories Act) (for manufacturing establishments) and state-specific shops and establishments statutes (S&E Acts) (for non-manufacturing commercial establishments). For some specialised sectors, working hours are governed by special statutes (such as the Mines Act 1952 for mines, and the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act 1996 for construction work).

The applicable laws provide normal working hours which range mostly from eight to nine hours a day and are typically set at 48 hours a week. Any additional time spent by the employee towards work is subject to an overtime payment, which is twice the ordinary wages payable to the employee. Some statutes also provide weekly/quarterly limits to the number of overtime hours an employee may be required to work. Flexible working arrangements are possible subject to adherence to the above-discussed statutory limits. It may be noted that several laws dealing with work time regulations exempt managerial employees from their purview, and for such employees, the work time requirements are contractually-driven.

The labour laws in India recognise both full-time and part-time employment. Part-time employees are ordinarily entitled to all benefits given to permanent employees. Having said that, there may be some restrictions on part-time employees that employers must be privy to. For instance, the S&E Acts applicable to Maharashtra and Gujarat provide that part-time workers cannot be allowed to work more than five hours in a day.

2.4 Compensation

Minimum Wages

The minimum wage requirements are governed as per various periodic central government as well as state notifications under the Minimum Wages Act 1948, which determine minimum wage rates for three major categories of workers:

- unskilled;
- semi-skilled; and
- skilled.

Statutory Bonus

The Payment of Bonus Act 1965 regulates the amount of statutory bonus payable to employees (earning wages not more than INR21,000 per month) employed in certain establishments based on their profits. The law applies to every establishment employing 20 or more persons and sets out provisions relating to payment of minimum bonus (at the rate of 8.33% of the salary capped at INR7,000 or statutory minimum wages, whichever is higher), and the maximum bonus (at the rate of 20% of the salary capped at INR7,000 or statutory minimum wages, whichever is higher).

Government Intervention in Compensation

Other than the above-mentioned requirements and certain other stipulations around the time and mode of payment of wages, as well as the permissible deductions from wages, there is typically minimal intervention by the government in terms of determination of compensation and increments. These aspects are contractually-

driven but may further be impacted by the presence of a unionised workforce and any collective bargaining agreements entered by them or their representatives.

2.5 Other Terms of Employment

Leave and Holiday Entitlements

- The working conditions of employees, including their leave entitlements, are mostly regulated depending on the nature of the entity by which they are employed.
- If the entity is a factory (engaged in manufacturing activity) covered under the Factories Act, employees who have worked in the factory for 240 days or more in a calendar year must be allowed, in the subsequent calendar year, privilege leave with wages at the rate of one day for every 20 days of work performed (for adults). This leave is additional to the public holidays to which workers are entitled.
- If the entity is a shop or a commercial establishment, the number of days of privilege leave to which employees are entitled would depend on the state-specific S&E Acts (depending on the location of the establishment). The minimum threshold usually ranges from 12 to 20 days. This leave is pro-rated for the first year of employment. In several states, employees are also entitled to casual leave (that is, leave to attend to personal needs) and sick leave.
- At the time of separation, an employee is also entitled to fixed salary for accrued but unused privilege leave, up to the maximum accrual limits set out under the Factories Act or the state-specific S&E Acts (unless the employer contractually provides more beneficial terms).
- Note that there may be special laws apart from the above that deal with leave entitlements for special kinds of workforce. For instance, the Sales Promotion Employees (Conditions of Service) Act 1976 deals with leave entitlements for employees engaged in sales activities in notified sectors such as the pharmaceutical industry.

Maternity Benefit

As per the Maternity Benefit Act 1961 (the MB Act), every woman who has completed 80 days service with the employer is entitled to paid maternity leave of 26 weeks. However, women with two or more surviving children are entitled to 12 weeks of paid maternity leave. Commissioning mothers and adoptive mothers are also entitled to paid maternity leave. Other kinds of paid leave envisaged under the law are in respect of special situations such as miscarriage, medical termination of pregnancy, tubectomy operation, etc.

Confidentiality and Non-disparagement

There are no standard laws as regards confidentiality and non-disparagement, but it is a standard practice to include these provisions in the appointment letter/employment agreement. Note that these obligations are typically continued even after cessation of employment. The employee can be held liable under the law of contract if there is a violation of such stipulations.

3. Restrictive Covenants

3.1 Non-competition Clauses

Validity

The Indian Contract Act 1872 stipulates that an agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind is, to that extent, void. A restrictive covenant, such as a non-compete, extending beyond the term of service is void, irrespective of reasonability of such restriction, except in cases involving sale of goodwill.

There is, however, case law recognising an exception to the rule covering restrictions aimed

at protecting the employer's legitimate business interests, such as its business connections and trade secrets. Therefore, clauses relating to post-employment non-solicitation of employees or customers and protection of confidentiality with respect to trade secrets are not caught by the above restrictions and have been enforced by the courts, albeit on a case-by-case basis.

Enforcement
A breach of a restrictive covenant being a breach of contract, the remedies discussed in the following points are available to an employer in such case to the extent the covenant is valid and enforceable.

Where a breach has occurred, but the employer has not suffered a loss, and the contract provides a pre-estimate of the loss (in the form of liquidated damages) which might be incurred due to breach of contract, the party may claim the said amount (to the extent the court determines it to be a genuine pre-estimate of the loss) irrespective of any actual loss arising on this account.

However, where the contract does not provide for such pre-estimate and the breach has occurred (as is usually the case with employment contracts), courts would typically grant an injunction restraining the former employee from continuing the breach.

Where a breach has occurred, and the employer has suffered an actual loss, then, irrespective of whether the employer has stipulated a pre-estimate of the loss in the contract, it can claim unliquidated damages for the loss caused to it which the parties knew would be caused as a result from the breach.

3.2 Non-solicitation Clauses – Enforceability/Standards
As mentioned in **3.1 Non-competition Clauses**, covenants with respect to non-solicitation and non-disclosure of confidential information may be enforced post-cessation of employment on a case-by-case basis, depending on the impact of the restriction on the ability of an individual to exercise lawful pursuits. In the case of Desiccant Rotors International Private Limited v Bappaditya Sarkar and Another [CS (OS) Number 337/2008], the Delhi High Court noted the following:

"Clearly, in part at least, the obligation agreement sought to restrain defendant number 1 from seeking employment with an employer dealing in competitive business with the plaintiff after he had ceased to be an employee of the plaintiff, and that too for a period of two years. Such an act cannot be allowed in view of the crystal-clear law laid on this issue. However, in the impugned order dated February 20, 2008, the injunction restraining defendant number 1 is limited in scope, in the sense that it does not restrain the defendant number 1 from working with defendant number 2 or any other person/company, thereby steering clear of impinging the former's freedom to choose his own workplace. The injunction only restrains defendant number 1 from approaching the plaintiff's suppliers and customers for soliciting business which is in direct competition with the business of the plaintiff. Hence, the injunction which has already been granted by order dated February 20, 2008, is made absolute."

4. Data Privacy Law

4.1 General Overview
India does not have a data protection/data privacy legislation. The limited provisions on protection of one's information are set out under

the Information Technology Act 2000 and the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules 2011 (SPDI Rules) framed thereunder. The SPDI Rules protect individuals (whether employees or otherwise) from an entity obtaining access or using of their sensitive personal data or information (SPDI). The term "sensitive personal data or information" is defined in the SPDI Rules to mean personal information which consists of information relating to:

- passwords;
- physical, physiological and mental health conditions;
- financial information such as bank account details;
- sexual orientation;
- medical records; and
- biometric information.

If the requested information falls within the purview of the SPDI Rules, consent from the employee would be required before the data is collected. Typically, such consent is taken at the commencement of employment itself (through a consent clause in employment contract/company policy), but even so, it is advisable that employers procure consent even at the time of collection and/or transfer of such protected information, so that an employee has an effective opportunity to withdraw consent, which is an opportunity that must be given to the employee as per the SPDI Rules.

Employers are also required to implement reasonable security practices and procedures in relation to storage of SPDI.

5. Foreign Workers

5.1 Limitations on the Use of Foreign Workers

Indian labour laws do not prescribe any limitations in respect of the engagement of foreign workers by Indian establishments. However, there are certain additional compliance requirements from a social security standpoint that an employer will have to undertake (such as making employees' provident fund contributions in case the foreign worker qualifies as a non-exempt "international worker" under the Employees' Provident Funds Scheme 1952).

Specifically in respect of Overseas Citizens of India (OCI), in 2021 the Ministry of Home Affairs of the government of India prescribed various conditions/requirements to be fulfilled by OCI cardholders before being engaged as an employee of an Indian entity. Primarily, all OCI cardholders are now permitted lifelong multiple entries to India for any purpose. However, OCI cardholders will have to seek special permission from a specified competent authority, or the Foreigners Regional Registration Office (FRRO) or the relevant Indian mission, to be engaged as research scholars, in journalistic activities, or as interns or employees in foreign diplomatic missions/foreign government organisations in India (special category). For OCI cardholders who are employed with an Indian entity to render services apart from the work falling within the ambit of the special category, there is no requirement for them to seek prior permission from any competent authority or FRRO.

Depending on the duration of a foreign employees' stay in India and the nature of services proposed to be rendered, they will also have to comply with the applicable immigration laws for obtaining the appropriate visa (ie, business/employment visa) to enter India.

5.2 Registration Requirements

Foreign nationals entering India on an employment visa which is valid for more than 180 days are required to register themselves with the FRRO within 14 days of their arrival in India. No such registration is required if the employment visa is valid for 180 days or less.

Further, all OCI cardholders residing in India (including those rendering services apart from those in the special category) are required to notify the FRRO by email of any change in their permanent residential address or occupation (this is not a registration requirement per se).

6. Collective Relations

6.1 Status/Role of Unions

In India, the Trade Unions Act 1926 provides for registration of trade unions (which is an optional process for a trade union), and such registration confers on the union certain rights and liabilities which a non-registered trade union does not have. For example, a non-managerial employee who is a party to an industrial dispute can be represented by a registered trade union. Further, a registered trade union can acquire and hold movable and immovable property and can contract, sue, and be sued in its name.

At the state level, however, there are few states which have gone ahead and made provisions for recognition of a trade union. Maharashtra, for instance, has enacted the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act 1971. The said statute sets out a procedure which may be followed by a registered trade union to obtain the status of a recognised trade union. Where a state government has not enacted a legislation for recognition of a trade union, an employer may accord its recognition to a union by way of a collective bargaining agreement.

A trade union which is both registered and recognised is conferred with the right to collective bargaining with the employer, such that if the employer refuses to negotiate with such union on terms and conditions of employment of the workers being represented, the union can file a claim before the competent authority alleging unfair labour practice by the employer.

6.2 Employee Representative Bodies

In addition to trade unions, the ID Act provides for constitution of a works committee in an establishment with 100 or more non-managerial employees, in the event that the relevant government issues any specific or general directions to that effect. Such works committees have an equal right of representation of non-managerial employees' representatives and employers' representatives, and to discuss the terms and conditions of employment of non-managerial employees in an amicable manner.

6.3 Collective Bargaining Agreements

In India, collective bargaining agreements are primarily the product of a charter of demands and several rounds of negotiations between a particular employer and the employees who are typically members of a trade union. Collective bargaining agreements are a predominant feature of employment in the manufacturing sector, although the existence of such agreements in the services sector is not uncommon. Collective bargaining agreements can only establish better employment conditions than those prescribed under various employment and labour laws, and therefore, these instruments cannot be used to opt out of statutory payments, benefits, and protections. Collective bargaining agreements typically entail provisions relating to working hours, working conditions (such as health and safety), remuneration (including bonus and yearly increments), leave and holiday entitlements, etc.

For more details in relation to collective bargaining, please see **6.1 Status/Role of Unions**.

7. Termination of Employment

7.1 Grounds for Termination

In India, an employer may terminate the services of an employee on two main grounds.

Termination Simpliciter

Termination of employment at the employer's discretion for any reason other than proven misconduct, by simply invoking the notice period provisions in the employment agreement/applicable law/policies. Such termination could be on account of:

- an employee's unsatisfactory performance;
- redundancy of the role/downsizing/closure of the establishment; or
- frequent absence from work due to continued ill health, etc.

Termination simpliciter includes scenarios wherein there may be underlying reasons for the separation but the employer, as per its assessment of such reasons or cause does not intend to or does not deem it appropriate to:

- mention or assign such reasons for the separation in the exit documentation; and/or
- deprive the employee of any contractual or statutory benefit pursuant to their exit.

The employee will be entitled to all service benefits (statutory as well as contractual) which have been earned up to the date of cessation of employment. Non-managerial employees who have rendered at least 240 days of service will be entitled to notice of at least one month (or salary in lieu thereof) and statutory severance compensation (computed at 15 days wages for every year of completed service or part thereof in excess of six months) (Retrenchment Compensation). Additionally, in case of collective redundancies involving non-managerial employees, as per the ID Act, employers will also have to comply with the "last in first out" principle.

Termination with Cause

Termination of employment for breach of terms and conditions of employment, misconduct, etc. Termination on account of misconduct should be preceded by a domestic enquiry conducted in accordance with principles of natural justice (ie, the employee should be given a fair opportunity to present their case and defend themself against the charges levelled). In cases of termination on grounds of misconduct, the employee would not be entitled to receive notice pay or any other statutory and contractual payments except gratuity (with necessary adjustments for losses due to misconduct, if any) and leave encashment.

7.2 Notice Periods/Severance

The concept of "at will" employment (or hire and fire policy) is not recognised in India. Employers are required to comply with the notice period requirement (or pay salary in lieu of notice) as per applicable laws/employment agreement/policies (whichever is higher) in case of termination of an employee's services for any reason other than proven misconduct. The ID Act as well as state-specific S&E Acts prescribe a minimum notice period of one month in the event of termination simpliciter. While the ID Act and most S&E Acts only apply to non-managerial employees, certain S&E Acts (such as that of Haryana and Delhi) also apply to managerial employees. Notice period requirements in respect of managerial employees will be governed by the terms of their employment agreement/employer's policy in this regard.

In case of termination simpliciter (which includes termination of employment on account of redun-

dancy or unsatisfactory performance), non-managerial employees who have rendered at least 240 days of service will be entitled to retrenchment compensation. Further, employers are also required to notify the jurisdiction's labour commissioner regarding such termination (please note that this is not an approval requirement).

Additional Requirements for Factories, Mines and Plantations

In a termination of services of non-managerial employees (who have rendered at least 240 days of service) engaged in factories, mines or plantations employing at least 100 or 300 non-managerial employees (the threshold varies from state to state), an employer is required to:

- obtain prior permission from the appropriate government;
- provide the concerned non-managerial employees with three months' notice or salary in lieu thereof; and
- pay retrenchment compensation.

7.3 Dismissal for (Serious) Cause (Summary Dismissal)

There is no set list on acts of "serious/gross misconduct" or statutory guidance on what amounts to serious misconduct warranting summary dismissal. While determining an act to be misconduct or gross misconduct, one should consider factors such as whether the alleged act affects discipline in the organisation, whether the act is backed by an improper motive, and whether the act, if condoned, would send the wrong message to others.

As a general principle, termination on account of misconduct (gross misconduct or otherwise) should be preceded by a domestic enquiry conducted in accordance with the principles of natural justice. The employee should be given a fair opportunity to present their case/defend themself against the charges levelled. To commence the domestic enquiry/proceeding, an employer is required to share a charge sheet or serve a show-cause notice to the concerned employee so that they are aware of the charges levelled against them and can prepare to present their case. The parties should also be allowed to present their evidence/witnesses and cross-examine the witnesses presented by the other party. Post the enquiry, the findings should also be recorded and communicated to the employee.

As per judicial precedents, in some cases, the requirement of conducting a disciplinary enquiry may be dispensed with, if:

- the misconduct is so apparent that a disciplinary enquiry is not required; or
- the act constituting misconduct has been unconditionally admitted by the employee.

7.4 Termination Agreements

While there is no statutory requirement for executing termination agreements/exit documentation, it is industry practice (and a recommended practice) to record the terms of an employee's exit in an appropriate document and set out the exit payments, the release of claims provisions, post-employment obligations and restrictive covenants, etc.

There are no prescribed procedures/formalities or limitations in respect of execution of the termination documents. Depending on the nature of the exit, the documentation may vary.

In case of resignation by an employee, a resignation acceptance letter is issued by the employer pursuant to receipt of written resignation letter/email from the concerned employee and it will have to be countersigned by the employee. In case of key employees, employers may require them to execute more detailed "settlement and release agreements" that record the full and

final settlement payments, as well as the related logistics and conditionalities.

In case of termination of employment by the employer, the employer will issue a termination letter/notice, which is not required to be counter-signed by the employee (since such termination is a unilateral act of the employer). In case of termination simpliciter, there is no requirement to mention the circumstances of exit in the termination notice, while in case of termination for cause/misconduct, the termination letter will have to set out details of the proven misconduct against the employee.

7.5 Protected Employees

Industrial relations laws in India (such as the ID Act, the IESO Act and most S&E Acts) provide protection against dismissal for the non-managerial category of employees. Protections prescribed for non-managerial employees against dismissal include prior notice requirements, payment of retrenchment compensation, prior approval requirement (in case of employees engaged at factories, mines and plantations engaging beyond the specified number of employees), etc.

Further, the MB Act also prohibits dismissal or discharge of women (engaged in managerial or non-managerial roles) during their pregnancy/while on maternity leave.

8. Employment Disputes

8.1 Wrongful Dismissal Claims

Employees may initiate wrongful dismissal claims on various grounds, including shortfall/denial of exit payments and failure to follow the due procedure for termination (ie, failure to comply with a notice period in case of termination simpliciter, failure to conclude a disciplinary inquiry in case of termination on account of misconduct, failure to comply with the last-in-first-out principle in case of collective redundancy involving non-managerial employees, etc).

Only non-managerial employees may approach the labour courts/industrial tribunal constituted under the ID Act, with a claim of wrongful dismissal. Managerial/supervisory employees would be precluded from approaching the labour commissioner/labour court/industrial tribunal/High Court/Supreme Court for any relief, and they may only approach the competent civil courts or the appropriate authorities prescribed under the S&E Acts (if applicable).

In case of a successful claim of wrongful dismissal in respect of non-managerial employees, the competent authorities may award relief of reinstatement of services (with or without back wages) and/or damages. However, in respect of managerial employees, depending on the facts and circumstances of the case, the civil courts may only award compensation/damages by way of relief. Managerial employees are not entitled to any relief which is akin to reinstatement of services.

8.2 Anti-discrimination Issues

Employees may raise claims/disputes in case of contravention/non-compliance with any of the following anti-discrimination legislations in India.

- The Equal Remuneration Act 1976 which prohibits discrimination in relation to remuneration on the grounds of gender (whether at the time of recruitment or during employment).
- The Rights of Persons with Disabilities Act 2016 which prohibits discrimination on the grounds of the disability status of an employee.
- The MB Act which prohibits discrimination based on the pregnancy/maternity status of a woman and provides for paid maternity leave entitlements.

- The Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act 2017 which prohibits discrimination against persons with HIV and AIDS and also prohibits the requirement for HIV testing for obtaining employment.
- The Transgender Persons (Protection of Rights) Act 2019 which prohibits discrimination against a transgender person resulting in an unfair treatment in employment, or a denial of, or termination from, employment.
- The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 which prohibits sexual harassment of women in the workplace.

The relief granted to the aggrieved employee can be in form of injunction, punishment to the offender, penalty, compensation, reinstatement of services, or another form and is subject to the provisions of the applicable law, the nature of discrimination, the impact/consequences of such discrimination, etc.

9. Dispute Resolution

9.1 Judicial Procedures

The ID Act provides for the appointment of conciliation officers, boards of conciliation, labour courts and industrial tribunals to hear claims of non-managerial employees. A non-managerial employee can raise a dispute directly before a conciliation officer in case of discharge, dismissal, retrenchment or any form of termination of service. All other "rights disputes" (as mentioned in the Second Schedule of the ID Act) and "interest disputes" (as mentioned in the Third Schedule of the ID Act) may be raised by the trade union or management before the labour court and industrial tribunals, respectively.

Managerial employees may approach the civil court, or the appropriate authorities prescribed under the S&E Acts (if applicable).

The common law principles of class action suits or representative litigation are found in the ID Act, which permits and facilitates collective bargaining by employees/workers (whether through a trade/labour union or otherwise).

9.2 Alternative Dispute Resolution

Disputes between employers and employees may be subject to arbitration. In fact, the ID Act provides that the employer and non-managerial employees may agree to refer industrial disputes to arbitration (as per the procedure prescribed under the ID Act) before approaching the labour courts.

As regards arbitration of disputes arising between employers and managerial employees, the parties may certainly agree to refer the disputes to arbitration in accordance with the Arbitration and Conciliation Act 1996. However, subjecting employee disputes to arbitration proceedings in India is uncommon given the personal nature of the contract as opposed to commercial agreements. Also, costs involved in arbitration proceedings mostly tend to exceed the litigation costs in employee disputes in India. Accordingly, arbitration clauses are typically not included in employment agreements in ordinary course and are largely restricted to key executive and founders agreements.

9.3 Awarding Attorney's Fees

While the relevant judicial authority may, at its discretion and depending upon the facts and circumstances of the case, award attorney's fees to the prevailing employee, there is no statutory entitlement/right in this regard.

Khaitan & Co is among India's oldest and most prestigious full-service law firms. Its teams, comprising a powerful mix of experienced senior lawyers and dynamic rising stars in Indian law, offer customised and pragmatic solutions that are best suited to clients' specific requirements. Its offices in Delhi-NCR, Mumbai, Bengaluru, Kolkata, Chennai and Singapore, and international country-specific desks give it a strong pan-Indian and overseas presence. The Employment Labour and Benefits (ELB) practice group at Khaitan & Co has become one of the most sought-after employment practices in the country. The group has advised several clients (domestic and international) from diverse sectors and industries such as information technology/security, mining, healthcare, construction, automobiles, and management consultancy. The ELB practice group is known for its bespoke advice and assistance on critical issues and strategy on employee transition/workforce restructuring, employee transfers on account of business/asset transfers, trade union related issues, and more. Some of the practice group's notable clients include Hindustan Unilever, FirstRand Bank and HDFC Limited.

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