

LEGAL INSIGHT
(MARCH, 2015, ISSUE 2)
A DIP INTO THE SEA OF KNOWLEDGE

EDITORIAL

As quoted by *Aristotle*, 'At his best, man is the noblest of all animals; separated from law and justice he is the worst'. Hence the significance of law can never be undermined. The relevance of law is not confined to only preventing and deterring crimes of passion but it also plays an indispensable and dynamic role in regulating the economic and commercial markets. In fact one cannot imagine any field which is divorced from law. Rule of law is the cornerstone of all flourishing economies. The current issue deals with proposed reforms in labour laws and its implications for industry and labour.

PROPOSED CHANGES IN LABOUR LAWS AND ITS IMPLICATIONS



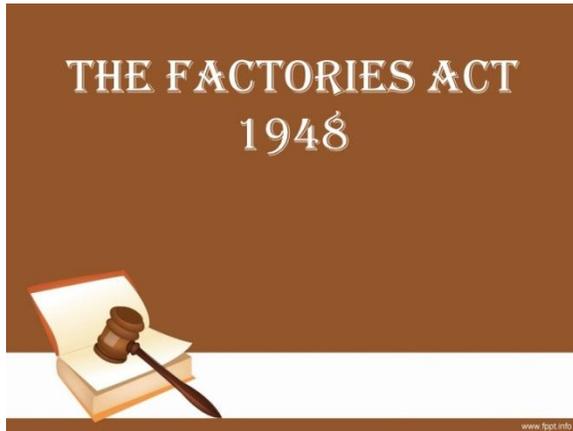
With the proposed amendment in Factories Act through Factories Amendment Bill, 2014, more than half the factories across the country would be exempt from the restrictive provisions applicable under the current law. The amendment seeks to revise the definition of a factory by effectively doubling the threshold

of the number of workers employed in such a unit.

The move is expected to ease the burden of labour laws on existing factories by relieving them from the requirement of filing lengthy compliance reports to the government. The original Act identifies a factory based on the number of workers employed. To qualify as a factory, units where power is used must employ 10 workers or more in a year while units that do not use power must employ at least 20 workers in a year. Under the amendment, the minimum number of workers in a factory is sought to be doubled to 20

for units with power and 40 for non-power units.

CRITICISM



But trade unions as well as experts have opposed the amendment, arguing that it could lead to greater violations by factories. As a consequence of the amendment, many factories will fall outside the purview of the government and working conditions of workers will be beyond regulations. The proposed changes to the labour laws, without understanding the long-standing consequences on workers and safety aspects in the factories and companies, would land the country in serious problems, like the Bhopal

gas tragedy which took the lives of thousands of innocents.

However the move has come under criticism from Mr. Kharge, who was the Labour Minister before taking over the Railways portfolio in the previous UPA government. He said that though the Congress was also against the Inspector Raj and the unwanted restrictions affecting industrial growth, while wiping out Inspector Raj, the Union government should not put, the safety and welfare of the workers and those who live in the vicinity of the factories, at stake. Mr. Kharge argued that all measures incorporating checks and balances in various labour laws, (which Modi Government was seeking to amend), were incorporated taking into consideration the previous violations by industrialists and corporates, and were based on the recommendations of the International Labour Organisation (ILO). He said history had proved that the existence of tough labour laws and regulations would neither deter the economic growth of the

country nor stop the flow of investment to industries. In the name of reforms & creating wealth and increasing GDP, the Modi Government was acting in favor of the rich industrialists and corporate sector while the interests of the labour class who were responsible for the generation of wealth, was being put at stake.

However Chief Minister of Maharashtra Devendra Fadnavis has favored labour reforms and is of the view that labour reforms were unnecessarily being criticized as anti-labour and pro-industry. He opined that current labour laws were neither benefiting labour nor industry and reforms were the need of the hour so that labour laws could keep pace with the era of free markets and liberalization. The challenge that Indian economy faces is to usher in reforms which while keeping pace with globalization will at the same time protect labour in the current economic scenario.

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DID YOU KNOW WHAT IS A LAME DUCK IN POLITICS?



A lame duck, in politics, is an elected official who is approaching the end of his or her tenure, especially one whose successor has already been elected. The official is often seen as having negligible influence due to his limited term left in office. However a lame duck is free to make decisions with little fear of its repercussions. Lame duck politicians may result from term limits or planned retirement, or electoral losses.

(CO-AUTHORED BY SYBCOM STUDENT VIJAY PURI & ASST. PROF. RENUKA B. MANGTANI; PROOFREAD BY HOD PROF. DEEPA CHITNIS)

LEGAL INSIGHT
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A DIP INTO THE SEA OF KNOWLEDGE

EDITORIAL.

If I were to name one major stumbling block in the justice delivery system, which has grave implications on the psyche of the common man, it is the tedious procedure involved therein. To quote Thomas Sowell, “You will never understand bureaucracies until you understand that for bureaucrats procedure is everything and outcomes are nothing.” The tediousness of procedure affects the dissemination of justice at mainly two stages: a) at the point of access i.e. at inception stage and b) during the stage of trial.

The current issue of Legal Insight Online News Bulletin focuses on the issues in the effective implementation of Consumer Protection Act and studies the shortcomings in the implementation of Consumer Protection Act and the proposed changes to enable consumers in India to realize the motto ‘Consumer is the King’ in letter and spirit.

**ISSUES IN THE IMPLEMENTATION OF
CONSUMER PROTECTION ACT.**



The Consumer Protection Act, 1986 had promised a three tier redressal machinery, (District Forum, State Commission and National Commission) with simple procedure involving principles of natural justice, recording of reasons while granting adjournments, speedy resolution of disputes with no need for advocates, no stamp paper, quick redressal of grievances within a fixed time period.

But the nation’s experiment with the implementation of the Act has witnessed issues to the contrary.

In the words of Sakuntala Narasimhan,

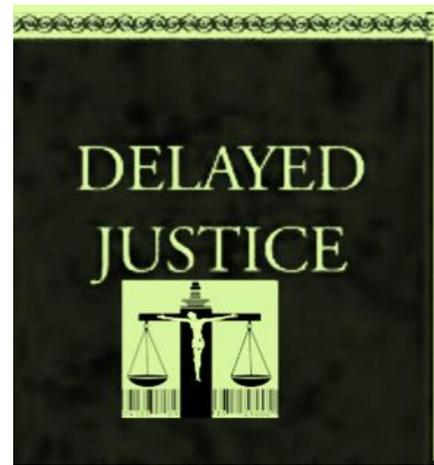
“Twenty-five years after the Consumer Protection Act was put in place as a uniquely beneficial social legislation offering ‘simple, speedy and inexpensive’ redressal, all three characteristics seem to have disappeared. Amendments to the Act now being proposed will further erode consumer rights instead of addressing existing lacunae.”

Implementation of the Consumer Protection Act has been beset with complicated and technical procedures, frequent presence of advocates, submission of affidavits as well as notarized documents, failure to record reasons while granting adjournments and long pending cases.

An amendment in 2003 has directed the courts to award costs to the complainant for every adjournment. However the costs are rarely claimed as the litigants are not aware of this provision in most cases. In one case 26 adjournments were granted and the resolution of disputes took 38 months. Unfortunately, the complainant died before the case was resolved. Due to frequent and unjustified adjournments and steady increase in pending cases, justice is delayed. Statistics have revealed that approximately 3.5 lakh complaints are pending in consumer forums.

Another matter of concern is that big business houses and corporate houses have

access to the best of legal minds to defend themselves whereas the consumer, often being a common man, has the onerous task of proving the defect in goods or deficiency in services without expert legal advice. Defences put by the advocates are often ridden with technicalities in place of simple and cogent language. As a result, consumer is often at the receiving end.



The Consumer Protection (Amendment) Act, 2014 has been proposed which seeks to introduce following changes some of which are enumerated below;

- ✓ The proposed Amendment makes the billed value of goods or services in a complaint as the basis to determine the pecuniary jurisdiction of a Consumer Forum to entertain a complainant.
- ✓ The proposed Amendment allows a complainant to file a case in any Forum/ Commission in whose jurisdiction he/she is residing.
- ✓ It provides for standardization and enhancement of remuneration of the

presiding members of the District Forums, State Commissions and the National Commission;

- ✓ Amendment to Sec. 13(2)(c), requires the Forum to decide the case on merits based on available records, instead of dismissing it when the consumer fails to appear before it.
- ✓ It also provides for quantification of punitive damages.
- ✓ The amendment introduces restrictions on the appearance of advocates.
- ✓ The proposed amendment imposes an enhanced penalty under Sec 14(1)(hb) when the goods or services affect a large number of consumers.
- ✓ It seeks to prevent members of political parties from being appointed as members of the quasi-judicial machinery;
- ✓ The proposed amendments seek to eliminate the Central and State Consumer Protection Councils.
- ✓ It seeks to replace the present Central Consumer Protection Council by the Central Consumer Protection Authority which would be delegated extensive powers including punitive powers in event of exploitation of consumers and violation of their rights.

However the amendments have also been criticized as regressive. The nation needs a national debate amongst law makers, academicians, jurists and consumer activists to work out the most effective amendments.

DID YOU KNOW WHAT IS 'ZERO HOUR' IN PARLIAMENTARY PROCEEDINGS



The 9th Lok Sabha Speaker, Rabi Ray introduced the concept of zero hour to create more opportunities for the members to raise matters of urgent public importance. He proposed a mechanism to regulate the proceedings during the 'Zero Hour' by raising matters in a more orderly manner and optimizing the time of the House.

In parliamentary parlance, 'Zero Hour' means the time gap between the end of Question Hour and beginning of the regular business.

'Zero Hour' doesn't find a mention in the Rules of Procedure and hence it's considered an informal procedure to raise matters of serious importance. The other reason underlying the terminology could be the fact that it starts at 12 noon.

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LEGAL INSIGHT
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& DIP INTO THE SEA OF KNOWLEDGE

Editorial.

The current issue of online law bulletin '**LEGAL INSIGHT**' focuses on Centre-State relations with special focus on the recent controversy between Delhi Governor Lieutenant Najeeb Jung and Delhi Chief Minister Arvind Kejriwal. The controversy highlighted the ambiguity in the distribution of powers between the Union Government and Delhi State Government which if not clarified could lead to a constitutional crisis.

The focus of the current issue is to apprise the reader of the genesis of the conflict between the Lieutenant Governor and Chief Minister of Delhi, the reasons underlying thereunder and the need for Supreme Court's clarification on the same.

**Centre-State Relations With Reference To
National Capital (Delhi): Conflict Between
Lieutenant Governor Najeeb Jung And Chief
Minister Arvind Kejriwal**



Delhi, the national capital of India faces a peculiar situation. It is a Union Territory (by definition, a piece of land directly ruled by the Union or Central government), but also has an elected legislative assembly.

Thus, Delhi has an elected Chief Minister who runs the administration, while the Lieutenant governor, appointed by the President, acts as the head of the state. But paradoxically, three powers lie

with Central government: security (police), babudom (bureaucracy) and control of land. As a result, Delhi police reports to Union Home Minister and not Delhi's Chief Minister.¹

The recent conflicts between Delhi Chief Minister Mr Arvind Kejriwal and the Lieutenant Governor Najeeb Jung arose over several issues, involving distribution of powers between the elected Chief Minister and unelected Lieutenant Governor, one of the issues involving the appointment of an IAS officer described by the Chief Minister as a "lobbyist for power companies". She was selected by Mr Najeeb Jung as Acting Chief Secretary i.e. the senior-most bureaucrat in the Delhi government.²

¹ DNA Webdesk, (2015, February 1), Delhi Statehood: Let federalism win, as retrieved from, <http://www.dnaindia.com/analysis/report-delhi-statehood-let-federalism-win-2057351>.

² NDTV, Sen R. S., (2015, May 22), Centre Backs Lieutenant Governor Najeeb Jung on Virtually Every Point of Dispute With Arvind Kejriwal, as retrieved from <http://www.ndtv.com/india-news/centre-backs-lieutenant-governor-on-virtually-every-point-of-dispute-with-arvind-kejriwal-765126>, as viewed on June 6, 2015.

The Delhi Chief Minister demanded the right to appoint his own bureaucrats whereas Lieutenant Governor insisted that the effective power for the same lay in his (Governor's) hands.

Unlike the Central Government and other States, where the elected government has the real power and the President or Governors are mere titular heads who are bound by the advice of the Council of Ministers, in Delhi, the Lieutenant Governor is also the executive authority in many domains. Former Delhi Chief Secretary S. K. Sharma said

*"In the case of Delhi, the Lieutenant Governor is not bound by the advice of Chief Minister and his ministers."*³

³ Jagannathan R., (2015, May 20), Kejriwal vs. Lt. Governor: Where did Delhi CM go wrong, moneycontrol.com, as retrieved from http://www.moneycontrol.com/news/current-affairs/kejriwal-vs-lt-governor-where-did-delhi-cm-go-wrong_1388390.html.

The Central Government issued a notification clarifying the powers of the Lieutenant Governor as the representative of the Union Government in Delhi. The notification stated that the Lieutenant Governor had authority over Delhi Police, issues related to land, and postings of key government officers.⁴

Mr Kejriwal challenged the notification stating that an elected government cannot be saddled with bureaucrats against its choice, a stand that has been backed by other heads of state governments.⁵ The notification was tagged “suspect” by the Delhi High Court. The High Court in its verdict stated that the Centre had wrongly stated that the Lieutenant

Governor was not obliged to consult the Chief Minister about the appointments of bureaucrats; it also overruled the Centre's declaration that its officers could not be investigated for graft by the Anti-Corruption Bureau of the Delhi government.⁶

The Delhi High Court's verdict has been challenged by the Union Government in the Supreme Court. Hopefully, the Supreme Court would resolve the issue in the light of constitutional provisions and without compromising in any manner efficiency in governance of the national capital.

(The article has been authored by Ms. Renuka B. Mangtani, Asst. Prof., Dept of Law, N. M. College of Comm. & Eco.)

⁴ Jagannathan R., (2015, May 20), Kejriwal vs. Lt. Governor: Where did Delhi CM go wrong, moneycontrol.com, as retrieved from http://www.moneycontrol.com/news/current-affairs/kejriwal-vs-lt-governor-where-did-delhi-cm-go-wrong_1388390.html.

⁵ NDTV, Sen R. S., (2015, May 22), Centre Backs Lieutenant Governor Najeeb Jung on Virtually Every Point of Dispute With Arvind Kejriwal, as retrieved from <http://www.ndtv.com/india-news/centre-backs-lieutenant-governor-on-virtually-every-point-of-dispute-with-arvind-kejriwal-765126>.

⁶ Angre K., (2015, May 29), In Arvind Kejriwal vs Centre, Ignore 'Suspect' Tag For Notification, Says Top Court, NDTV, as retrieved from <http://www.ndtv.com/india-news/arvind-kejriwal-and-centre-see-two-court-cases-reduced-to-one-for-now-766919>.