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REVIEWS LEGAL INDUSTRY



In this edition, **Jacob Alexander**, our Editorial Director, talks about the reforms in the law of Arbitration in India and how arbitration has become an optimal choice for resolution of commercial disputes owing to the expediency, flexibility, and speed at which the proceedings can be concluded.

Proposed New Labour Codes in India

The Indian labour and employment law framework has traditionally been perceived as rigid, archaic, confusing and cumbersome. Over recent years, there have been efforts to simplify, rationalize and consolidate Indian labour laws. 29 existing Central legislations are proposed to be reduced to four Codes, namely, the Code on Wages, 2019, the Code on Social Security, 2020, the Occupational Safety, Health and Working Conditions Code, 2020, and the Industrial Relations Code, 2020. These Labour Codes, once enforced, will govern the conditions of employment, social security, employee health, safety and welfare, industrial and labour disputes, payment of wages, etc. The Codes will facilitate the ease of doing business and eliminate the inconsistency and multiplicity of definitions across several existing labour laws. While a formal date for implementation has not yet been announced, it is anticipated these will come into effect in the near future.

While most provisions under the proposed Codes are analogous to those in the current regime, there are some significant new developments including various new obligations that employers would need to comply with. Hence, companies will need to ensure that any changes brought forth in compliance with the Codes are executed carefully.

One of the key changes to be introduced by the Codes is change in the definition of 'wages'. Under the current regime, most employment statutes have their own definition for 'wages', with each statute prescribing its own list of salary components to be included and excluded from such definition. Going forward, there would be a single, uniform definition for 'wages' across all four labour codes, impacting existing practices on how employers calculate and pay various statutory amounts and benefits. While the intent behind this step is to achieve consistency in approach, the new definition itself is unfortunately quite convoluted. A common definition may lead to unintended outcomes since it will be applied in cases of payment of wages, gratuity, employee benefits, provident fund, and a plethora of other payments. Most organizations clearly see the new definition resulting in higher gratuity payments. What component will or will not be considered wages



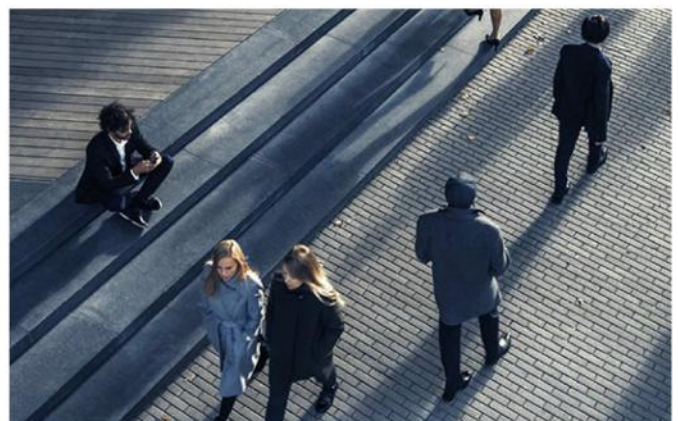
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has been litigated in India for several decades. With a new definition of wages on the anvil, decades of established practices will have to be re-assessed including the financial impact on organizations, the impact on employees, how the best balance can be achieved and how changes to compensation will be communicated to employees and implemented.

Apart from this, several other new obligations would apply (for e.g., payment of gratuity to fixed term employees; mandatorily constituting grievance redressal committees with adequate representation of women, abolition of contract labour in core functions, mandatory paid health checks for certain employees, etc.). It is imperative that employers plan ahead for the implementation of the Labour Codes in order to ensure that once the Codes are in place, they are adequately equipped to deal with the changes that will be introduced under the Codes.

The government has faced strong opposition and demands from trade unions around lack of adequate consultation while preparing the Labour Codes. Nonetheless, the government has indicated its desire to implement the Labour Codes at the earliest.





Practice Area News

Deepika Singh v Central Administrative Tribunal and Others (Civil Appeal No. 5308 of 2022). The **Supreme Court** on **16 August 2022** held that a woman who utilised childcare leave to care for children from her spouse's first marriage is not disentitled from availing maternity leave for her own biological children. Court observed that atypical families (that take the form of unmarried partnerships or queer relationships) are also entitled to equal protection of law. Hence, employers should consider redefined familial roles while extending employee benefits.

Work from Home (WFH) allowed in Special Economic Zones. The **Ministry of Commerce and Industry** issued a notification on **14 July 2022** amending the Special Economic Zones Rules, 2006 to include a specific rule (Rule 43A) for governing 'work from home' by the SEZ units. Additional guidelines were issued on **12 August 2022** providing standard operating procedure for WFH such as details required to be mentioned in the application for WFH scheme, timelines for approval of the application, etc.

Exemptions for engaging women in night shifts in Telangana. Employers in Telangana are not allowed to engage women employees to work in night shifts. **Telangana Government** via notification **G.O.Rt.No. 476** dated **17 October 2022** exempts all establishments in Telangana from this restriction subject to certain conditions including obtaining consent of women, ensuring their safety. A prior notification had allowed IT companies to engage women in night shifts till May 2013, without obtaining their consent.

Tausif-ul-Hasan v The State (Govt. of Delhi NCR) (Criminal Revision No. 545 / 2022- 29 October 2022). A Delhi Court observed that "f*** off" is a 'sexually colored' remark and upheld the sexual harassment charges against the respondent who threatened a woman using this phrase. The respondent had argued that the phrase meant to "leave"/"go away." But the Court held that it is an abusive and offensive phrase in context of the case and is not used in Indian society to imply "leave" or "go away".

In the Firm

Top Labour Practice in the Country. Trilegal Employment practice has consistently been rated as tier 1 by Chambers & Partners. Atul Gupta has been featured as a Recommended Lawyer and Global Leader in Who's Who Legal.

Foremost Employment Practitioner. Atul has been recognized as one of the Future Legal Leaders 2020 by India Business Law Journal and "Leading Individual" by Legal 500 in the Employment Law practice in India.



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