Source : www.indianexpress.com Date : 2020-09-04

A LABOUR LAW, MORE BENEFICIAL

Relevant for: Indian Economy | Topic: Issues Related to Poverty, Inclusion, Employment & Sustainable Development

Written by Amartya Dey

Granville Austin, the American legal historian and the author of the seminal work, *Indian Constitution: Cornerstone of a Nation*, referred to the Directive Principles of State Policy (DPSP), along with the Fundamental Rights, as the “Conscience of the Constitution”. Although the Directive Principles enshrined in our Constitution are non-justiciable, they help the legislature in formulating policies and enacting laws, the judiciary in determining the constitutional validity of a law, and the executive in implementing the policies and laws not only in letter but also in spirit.

One of the many goals the Directive Principles of State Policy envisage is promoting the welfare of all people by providing them with a decent standard of life. The various labour laws of our country embody this spirit of the DPSP but while the principles aspire to include all the citizens of the country, our labour laws can sometimes be seen as “exclusionary”, creating multiple classes within the working class. The laws are predominantly aimed at protecting the rights of organised workers while the workers in the unorganised sector, who are more vulnerable, get scant protection. In certain cases, the labour laws have so many terms and conditions that a large number of workers in the organised sector also fail to derive any benefit. A case in point is the Payment of Gratuity (PG) Act, 1972.

The PG Act regulates the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops, or other establishments. It is a means for the employers to say “Thank you for your service” to the employees who have rendered service for five years or more. The gratuity amount can be perceived as a retirement benefit – a social security measure. But while a social security legislation should be defined as broadly as possible to ensure that maximum people, especially those from the marginalised and underprivileged backgrounds, can get the benefit, some provisions in the PG Act make it difficult for workers to get any benefit.

First, the Act applies only to organisations that employ 10 or more employees. Second, the organisation has to fall under the definition of “establishment” under the PG Act. Not all establishments have to pay gratuity even if they engage 10 or more of them. The laws in respective states define whether an organisation or institution falls under the definition of “establishment” and, unsurprisingly, the state laws differ in their definition. For example, in Odisha, a temple employee would get gratuity under the PG Act but in Karnataka, a person doing the same job would not be eligible to get any benefit because the Karnataka Shops and Commercial Establishments Act, 1961 does not include “Temple Trust” under its definition of “establishment”.

Third, the workers or employees of the establishment must fall under the definition of “employees” under the PG Act. For example, in *Ahmedabad Private Primary Teachers’ Association versus Administrative Officer & Others*, the Supreme Court ruled that primary school teachers were not eligible for receiving gratuity under the PG Act because they did not fall under the definition of “employees” even though the Court recognised that gratuity is “financial assistance to tide over post-retiral hardships and inconveniences”. (Fortunately, the legislature amended the Act in 2009 with retrospective effect to bring teachers within the purview of the definition of “employees” in the PG Act.)

Fourth, to get payment of gratuity, an employee has to work for at least five years continuously under the same employer or be separated due to death or disablement. Although this seems like a fair clause, it excludes a large number of contract labourers or workers who are forced by circumstances to work in short-term assignments. For example, suppose a hotelier outsources the house-keeping job in the hotel to a third party. It has been observed that such outsourcing contracts are normally for three to four years. At the end of each contract period, there is a high probability that a different contractor would be awarded the next contract. The workers engaged under the contracts would not be entitled to receive gratuity even if they continue to do the house-keeping job in the same hotel because they would not have completed service of five years or more under the same contractor, their immediate employer. Further, the hotelier would not be liable to pay gratuity to these workers because unlike the Employees' Provident Funds & Miscellaneous Provisions Act, 1952, the PG Act does not assign any role to the principal employer – the hotelier, in this instance.

Lastly, as per the PG Act, the employees have to work for at least 240 days per year for five years continuously to be eligible for gratuity payment in most industries. Thus, if an employee has to return to her village for attending to some personal misfortune, she can be denied gratuity payment if she cannot meet the prescribed annual quota of 240 days.

The above points make it amply clear that for the unorganised sector workers, it is almost impossible to receive any gratuity and for most organised workers working as contract labourers, ticking all the boxes under the PG Act is easier said than done. We can solve this problem by relaxing the clauses of the PG Act. The relaxation would also help in improving our country's ease of doing business metrics.

Our legislators can provide two options to the employees under the PG Act to increase its "coverage" and measured impact – deferred gratification and immediate gratification. Under the deferred gratification option, the conditions would be the same as prescribed under the PG Act currently — the employees would have to work for at least five years continuously under an employer and they would receive gratuity payment at the rate of 15 days' salary for every year of continuous service. This would preserve the rights of the employees who can offer long-term service to an organisation.

The immediate gratification option, on the other hand, would help employees who are forced to work on short-term contracts with durations of less than five years. This option would involve paying the gratuity amount to the employees along with their monthly salaries. The PG Act rate of 15 days of salary for every year of continuous service roughly translates to 4.81 per cent of Basic Pay and Dearness Allowance. Adding this to the monthly salaries would ensure that the workers engaged in short-term assignments also get benefits under the Act. This gratification option has, in fact, been implemented by a Fortune 500 organisation in India for contract labourers engaged by contractors under contracts that run for three to four years.

To increase the coverage of the PG Act, our legislators can mandate that any person receiving a salary be entitled to gratuity under the Act. The condition of 10 or more employees in an organisation should be removed and the definitions of "employees" and "establishments" should be made more exhaustive and inclusive. Such simplification would also help in reducing the burden of the labour authorities and the courts of our country who have to adjudicate claim cases and associated appeal petitions under the PG Act.

The Directive Principles of State Policy are often referred to as the soul of our Constitution. The eminent jurist, cabinet minister and former Chief Justice of the Bombay High Court, M C Chagla, had once pointed out that "if all these (directive) principles are fully carried out, our country would indeed be a heaven on earth". To achieve this goal, our labour laws have to be simplified

to ensure that more workers get benefits, businesses can implement the rules more easily, and our over-burdened judiciary is not burdened further.

The writer is Employee Relations Manager in Oil India Limited. Views are personal

END