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Lay-off of Workman in Industries in the Critical Time of Covid-19 Pandemic: A Brief Study

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ABSTRACT

Layoff provisions become relevant when developing any industrial establishment in India, particularly because most labour law legislation is pro-worker. Employers have the right to lay off workers, but they must use it carefully and in compliance with the relevant legal legislation. While the monetary punishment for breaching these laws is not serious, it may have a detrimental effect on the establishment's goodwill and prestige. Further, improper laying-off of workmen can lead to strikes and lock-outs, which can result in significant business loss for the establishment. Therefore, there is reason enough for every establishment in India to follow and adhere to labour legislations to ensure harmony amongst its workmen and facilitate smooth running of their business activities. Freedom of contract, an entrenched tenet of laissez faire, authorised an employer to discharge workmen whenever a breakdown of machinery, or a similar cause beyond the employer's control, enforced a stoppage of work. This exposed workmen to intermittent but grave hazards of unemployment. The paper analyses the key concepts of lay-off, its development, qualifications to claim compensation, prohibitions and judicial developments upon the subject over the years. Further it throws light on layoff in pandemic time and The Industrial Relation Code, 2019.

Keywords: Industry, Labour, Lay-off, Unemployment.

I. INTRODUCTION

The Covid-19 has brought a variety of problems to mankind. It has affected the economies and it is now affecting the global supply-demand. In such a situation, the governments are doing their best to handle around the world. However, all the major economies are on the verge of a global recession which could outlast the pandemic.

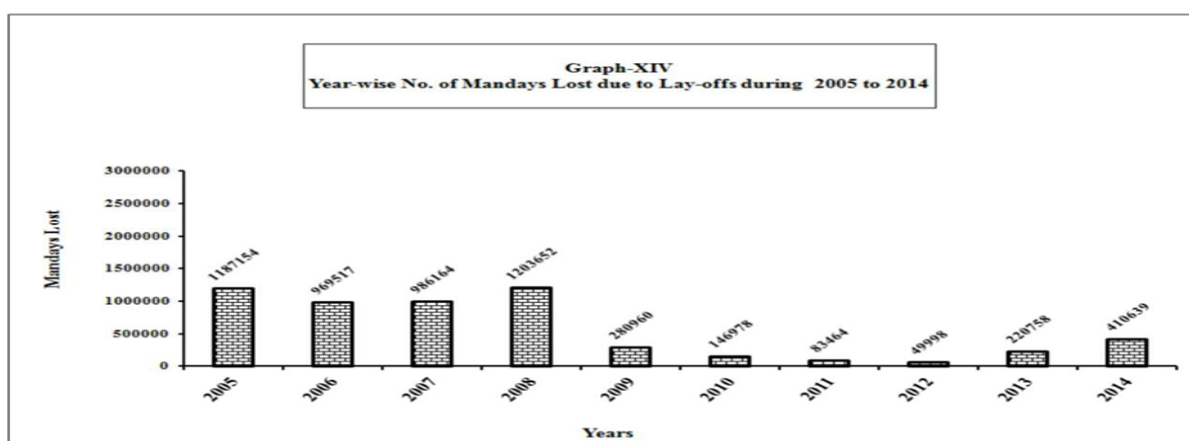
Whenever economies are affected, the brunt is faced by the workforce in the industries. Mass lay-offs are one of the obvious results of global recession. Developed societies which have surpassed intensive industrial phases and outsourced their units have evolved various

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euphemism to the concept of lay-off which does differ in objective as well in the manner to lay-offs. For instance, from the view of productivity, layoffs and other concepts which are used in refusing to give work to the workmen have been evolved. Like there is concept of 'Redundancy' in United Kingdom. It is said in simpler words that the employer ceased the employment for which worker was hired or employment is ceased at the place in which he was employed.³ On the other hand, lay-off has been given a very broader meaning under the same Act, if a worker had been employed on contract of such nature that his remuneration depends upon the work given by the employer and he has not been given any work and remuneration for the week, then such period is said to be lay-off.⁴ In such case of redundancy or even in an extended lay-off according to the conditions of the statute, an employee could claim statutory redundancy benefits. There is another concept of *downsizing* in western countries to increase efficiency of the units, cost-effective management and increasing long term productivity with *the retention of skilled employees only*.

"Lay-off is failure, refusal and inability of the employer to give employment to workmen." It may be for several reasons which will be discussed from the Indian definitional stand point in the later part. In spirit, lay-offs are just only temporary suspension of work and compensation is given for such period along with various conditions and prohibitions on the part of employer. Since lockdown, we have seen a number of lay-offs throughout the country. Government agencies have been asked to collect data upon the same. There is absence of data of the recent years. There has been no reported data since last six years and now the government agencies have been collecting the data during pandemic regarding the lay-offs.



If we look at the previous data from 2005-2014, a total of 5539284 man days had been lost to

³ Section 139, Employment Rights Act, 1996.

⁴ Section 147, Employment Rights Act, 1996.

lay-off.⁵ The number is substantial keeping in mind that India had not been affected much during 2009 recession and the data is pre-pandemic. Consequently, the number would advance from the current years to the near future. Therefore, there is a need to revisit the legal position of lay-off and analyse the legal intricacies of the same. It is to be noted that it's an obligation of a welfare state to ensure secure employment to the masses (*attaining social-economic justice as enshrined under the constitution of India*) and en still the spirit of development in the industries through industrial peace and amity. Therefore, it becomes necessary to understand the legal framework of lay-off at such point of time and for the progress of the nation.

Review of Literature

Lay-off is the *failure, inability, refusal of employer to give employment* on various contingencies. Under the present assignment, the researcher dwells into the comprehensive statutory and judicial analysis of the Indian Concept of Lay-off. The research aims to explain the concepts, its development, important amendments, and present day developments. The researcher has excluded the international concept of lay-off as it is remotely in alignment to the Indian conception of lay-off and vary in each country.

The paper explores the works of various authors of Industrial law and relations. The researcher explores through the work of S.N. Mishra, *Labour and Industrial Laws*, 20th edition, Central Law Publications, who deals the subject in a comprehensive statutory analysis by the judicial pronouncements. The researcher will explore S.C Srivastava's , *Industrial Relations and Labour laws*, 6th edition, Vikas Publishing House Pvt Ltd dealing the development, concept, awarding of compensations and limitations of lay-off in length. The researcher also peruses relevant Statutes including the proposed Bill of Industrial Relations Code, 2019 dealing with the prospective lay-off legal work framework. The researcher also explores the various articles relating to lay offs in the time of COVID-19 Pandemic through different internet sources.

Statement of problem

Lay-off is the failure, inability, refusal of employer to give employment on various contingencies. The Indian Concept of lay-off is different from the foreign counterparts and solely done upon various mentioned grounds in the definition. Midst of a pandemic, and a consequent recession to follow, there is a need to enhance the understanding of the framework of lay-off. Further, there is a need to look beyond the provisions in the near future so as to make

⁵ Statistics on Industrial Disputes, Closures, Retrenchments and Lay-offs in India during the year, 2014, Government of India, Ministry of Labour & Employment (March 20, 2021, 10:10 PM), http://labourbureaunew.gov.in/UserContent/ID_Review_2014.pdf?pr_id=FfR6mn4XUVE%3D

necessary changes in the Industrial Relations Code of 2019 regarding the applicability of lay-off.

Objectives of the study

1. To understand the concept of lay-off in India
2. To analyse the mechanism to lay-off
3. To understand and evaluate legal provisions regarding compensation to workmen during lay-off and suggesting effective changes to improve the framework.

II. LAYOFF AMIDST COVID-19 PANDEMIC

The world is in stasis with COVID-19 Pandemic infecting millions of people over the world. Under the guise of COVID-19, markets have been slowly rebalanced, immobilising populations and freezing funds, halting expansion across sectors. Employee layoff and terminations are becoming more frequent as company profits and asset costs in the economy plunge.

These circumstances have forced employers to undertake several cost-reduction measures such as layoffs, retrenchment, compulsory leave, early retirement schemes etc. Employers are cautioned against terminating employees during the lockdown, according to a Ministry of Labour and Employment (“MLE”) Advisory. Non-permanent workers to be laid off under the following order: Emergency, Temporary, Provisional, and Probationary. Permanent staff must be laid off on the basis of seniority if further cuts are required.⁶

Layoff is a process defined in India. It is subject to the terms of the employment contract and certain laws under state law and may apply to certain industries. Layoff, as established by the Industrial Disputes Act of 1947, have the benefit of allowing the employer to recall employees. However, in the most common sense, the word actually refers to a reduction in the number of workers in the workforce as a result of technological advancements, volatile business dynamics, and increased competition.⁷

III. BACKGROUND OF LAY-OFF IN INDIA

Pre-Independence and even after passing of the Industrial Disputes Act, 1947 (Herein after referred as “ID Act”), there was no provision regarding payments of compensation in case of

⁶ Sonam Chandwani, FAQs on Employment and Termination: COVID-19 (March 20, 2021, 10:15 PM), <https://www.people matters.in/article/employee-relations/faq-on-employment-and-termination-covid-19-25925>

⁷ Animay Singh, Alternatives to Layoffs & Retrenchment During COVID-19 (March 20, 2021, 10:30 PM), <https://www.simpliance.in/blog/layoffs-and-retrenchment-during-covid19/>

a lay off. The authorities had to take various scenarios to decide compensation and hence there was an absence of uniformity in deciding it. Under the traditional laws, the management had the right to adjust labour and do lay off. When the layoff was in violation of the contract between the employer and employee or for any other reason which was unjustifiable, only then employer had to pay compensation.

The year of 1953 became monumental for the developmental of law, where textile industries had stocks accumulated and the situation led to mass layoffs of workmen.⁸ The President promulgated an ordinance in the year 1953.⁹ The Ordinance provided for the compensation in case of lay off and retrenchment. Later, an amendment was passed on 23rd Dec, 1953 inserting section 25-A-25-J.¹⁰ Now, the modern law has restricted this right of lay off to a certain extent and it can be concluded that it is no more a right of the management to layoff.¹¹ Also, if the Standing Orders of the establishment provide for lay off and they are duly certified¹²in accordance with the Act of 1946. The layoff could be done in accordance on the grounds mentioned in the standing orders. The establishment cannot make layoffs on any other grounds which are not mentioned in the standing orders. In the ID Act, the management has the right to lay off which is mentioned under chapter V-A and V-B. If the standing orders do not cover any lay off then it is governed by the ID Act.

The Honourable Supreme Court in the case of *Workmen Of Dewan Tea Estate Vs Their Management*¹³, while dealing with the question of management's right to compensation replied in negative and went to add when a case is not covered by the standing orders and fulfil the situation under section 2(kkk) and section 25 (C), the compensation is to be given under section 25- C.

The previous amendments only dealt with the compensation and other conditions of lay-off compensation, and there was no prohibition regarding lay-offs in industries. In 1970s, it was required to enhance the workers confidence and productivity of nation. Therefore, 1976 amendment and later 1984 amendment were introduced. These amendments would be dealt in the later part.

Definition of Lay-Off

Section 2 (kkk) has defined lay-off under the ID Act, 1947: "*Lay-off means the failure, refusal*

⁸ S.N. MISHRA, LABOUR AND INDUSTRIAL LAWS 207 (20th ed, Central Law Publications).

⁹ Industrial Disputes (Amendment) Ordinance, 1953.

¹⁰ Industrial Dispute (Amendment) Act, 1953.

¹¹ *Workmen of Dewan Tea estate vs Their management*, (1964) 1 LLJ 358.

¹² The Industrial Employment (Standing Orders) Act, 1946, Act No. 20 of 1946.

¹³ *See supra* note 10

or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery or natural calamity or for any other connected reason to give employment to a workman whose name is bore on the muster rolls of his industrial establishment and who has not been retrenched.”

The definition involves three terms of acts on the part of the person employing i.e. ‘failure’, ‘refusal’ and ‘inability’ and the absence of any of the three would not constitute lay off under the Act. Further, if see the term ‘for any other reason’ in the latter part of the section has to be construed in ejusdem generis with the preceding reasons as mentioned aforesaid.¹⁴

In case of *Priya Laxmi Mills Ltd v Mazdoor Mahajan Mandal*¹⁵ Goswami J interpreted the definition according to the dictionary “in its etymological sense” and held that “*lay-off is a period in which worker is temporarily discharged.* Later, the Supreme Court in *Workmen of Firestone Tyre and Rubber Co of India Ltd v Mgmt*,¹⁶ held that *neither discharge of a workman nor temporary suspension of his contract of service; and that it was merely a fact of temporary unemployment of the workmen. The learned judge further held that ‘layoff’ means the failure, refusal or inability of the employer to give employment to his workmen on account of the contingencies mentioned in the definition.*” Therefore, there is no need to take refuge to other definitions as the definition under ID Act is clear and it is different from the western conception of lay-off.

Lastly, there has be to an employer-employee relationship, which further needs to be established at the time of lay-off. A lay-off cannot be said under the definition on the ground of *financial depression* of the employer.¹⁷ Similarly, Lay-off resulting by acts of malice by the employer or for victimizing the workmen would not be covered by the definition.¹⁸

IV. APPLICABILITY OF PROVISIONS

The provisions of lay-off as under section 25-C to section 25-E are not applicable to industrial establishments having less than 50 members averagely on the working days of the preceding month. Further, Industrial establishments having seasonal or intermittent work are not covered by the aforesaid provisions.¹⁹ *The Appropriate government has the power to decide whether the establishment is of seasonal character or it has an intermittent character.* Its decision shall

¹⁴ S.C SRIVASTAVA, INDUSTRIAL RELATIONS AND LABOUR LAWS 637 (6th edition, Vikas Publishing House Pvt Ltd).

¹⁵ (1977) I LLJ 22 (26-7) (SC).

¹⁶ (1976) I LLJ 493 (SC).

¹⁷ *Tatanagar Foundry vs Workmen*, (1962) I LLJ 382 (SC).

¹⁸ *Id.*

¹⁹ Section 25-A, Industrial Disputes Act, 1947.

be final. Further, the word “Industrial establishment” means “a factory as defined under section 2(m) of the Factories Act, 1948, a mine as defined under section 2(j) of the Mines Act, 1952, and a plantation as defined under section 2 (f) of the Plantation Labour Act, 1951.”

The provision has a restricted application as to the provisions of lay-off only and it is not applied to other sections of the Act. Further, the lay-off could only be granted to establishments having more than 50 workmen. The question regarding awarding of compensation by invoking provisions of lay-off in an establishment having less than 50 workers was answered by the High Courts in negative. *It was held that tribunals have no jurisdiction to award compensation to workmen in such case on the grounds of social justice.*²⁰

Procedure of Lay-Off

ID Act does not provide for the procedure to be followed in case of lay-off. The Procedure can be found under the Industrial Disputes (Central Rules), 1957. The provision providing or the procedure can be found under Rule 75-A. It creates an obligation on the part of the employer of an industrial establishment (as according to the explanation appended to the section 25-A) to serve a notice to within 7 days from the start of lay-off or the end of lay-off to every laid off employee irrespective of the fact that he may or may not be entitled for compensation.

Compensation for Lay- Off

It is to be noted that the compensation has been held not to be a condition precedent to declare lay-off on the part of employer. An employer can independently exercise his right to lay-off. It is after the lay-off where the right to compensation of employee arises, not prior of the lay-off.²¹

The right to Compensation for lay-off is generally available through two ways:-

- (a) Most of the times, the standing orders of the establishments usually provide under their clauses for the compensation to be paid in cases of lay-off. However in some situations, there might be a conflict between the provisions of the section 25-C and the former standing orders or in a scenario where only grounds of lay-off has been mentioned in such orders and there is no reference as to the compensation. In such cases the provisions under section 25-C would prevail.
- (b) Section 25-C provides during the period of lay-off, an employee whose name is on the muster rolls and *he has completed continuous service for one year or more*. The

²⁰ *South India Corporation and others vs All Kerala Cashewnut Factory Worker's Federation*, (1960) 1 LLJ 103 (Ker).

²¹ *Central India Spinning Manufacturing Company vs Industrial Court*, (1959) 1 LLJ 468 (Bom).

employee is to receive the fifty per cent of the basic wage and dearness allowance for the period of lay-off.²²

To claim compensation under section 25-C as discussed aforesaid, two conditions need to be established. Firstly, the workman should be in continuous service and secondly, it should be for at least one year.²³ Under the expression 'continuous service', it means that service by workman has to be uninterrupted and continuous in nature. However, the rule is not strict and it can be relaxed in many circumstances like accident, sickness, legal strike, sanctioned leaves etc. The later part requiring service to be of at least one year means the worker should be employed for the preceding 12 months in the establishment. Generally, he has to be employed at least for 240 days out of the 12 months. In case of mine workers, the employment of 190 days is sufficient.

There is a situation where a worker might not have worked for a single day but he can be deemed to be in continuous service. Explanation to the section provides that if he has been laid-off under any law for the time being force or under the Standing Orders, or if he is on paid leave for the preceding year or due to temporary disablement which arose during the course of employment or maternity leave as permitted under the law to a female worker.

Generally, the compensation of lay-off is given for a maximum period of 45 days to the laid-off workmen. If the lay-off period exceeds 45 days, then the employer has two choices:-

- (a) He may choose to continue paying the compensation to laid-off employee unless there is an agreement between the employer and laid-off workman to the contrary.
- (b) He may retrench such workman according to the provisions of the Section 25-F, ID Act, 1947

Further, the Bom HC in *Veiyre vs Fernandes*²⁴, while deciding the question that whether law confers right to compensation on the employees only and there is no right to lay-off on the part of employer. The Court held that the legislature intended that employer has the right to lay-off and there is no obligation on their part to keep employment and give full year's salary. Therefore, the retrenchment of workmen after giving lay-off and retrenchment compensation was held to be valid.

Circumstances where No Compensation is Given to Workmen

- (I) Where a laid-off employee refuses to accept another employment ("alternative

²² See *supra* note 13 at pp. 642-643.

²³ Section 25-B, Industrial Disputes Act, 1947.

²⁴ (1956) I LLJ 547.

employment’) given by the employer in the same establishment or an establishment belonging to the same employer within same city, village or in the radius of five miles from the erstwhile establishment from which he is laid off. (Section 25-E [1])

This gives rise to the meaning of the word ‘alternative employment’. It gives two propositions:

(a) An employer will be justified to give any work to the employee (even inferior work) requiring no set of special skill or experience provided there is no deduction in wages.

(b) The employment has to be of ‘equal status. This has been endorsed by construing the expression “*like, similar or substitute of work.*”²⁵

Further, the work should be acceptable by the workers as well. For example, in a case where skilled workers had been given the *work of mazdoors and coolies* which they refused. In such case, the establishment could not take away their compensation of lay-off.²⁶

(II) If the workman does not present himself at the establishment on the working hours once in a day on the appointed time. Then such workman is not entitled to receive compensation as provided under section 25-C of the ID Act.²⁷ However, the restriction is only to compensation, the worker has to be re-instated on the expiration of the lay-off period.²⁸

(III) The workman is not entitled to compensation if lay-off is done due to the reason of strike or slowdown in another part of the same establishment.

(IV) Where a workman is badli in such case he is not entitled to receive compensation for lay-off. Badli workman can be defined as a workman who is employed in the place of a worker whose name is mentioned in the muster rolls of the establishment. However, there might be a situation where such worker may cease to be badli worker in status. Like when a badli worker is continuously employed for more than a year. In such case, if such badli-worker is available to work after one year then employer may either employ him or give him lay-off compensation.²⁹

V. DUTY OF EMPLOYER TO MAINTAIN MUSTER ROLLS

The employer has to maintain a muster roll and make entries of workmen presenting themselves at working hours of the establishment.³⁰ It is pertinent to note that workmen has to

²⁵ *Industrial Employee’s Union vs J K Cotton and Spinning and Weaving Mills Co.*, 1961 AIR 1170.

²⁶ See *Supra* note 7 at page 214.

²⁷ Section 25-E (2), Industrial Disputes Act, 1947.

²⁸ *Nutan Mills Ltd vs Employees’ State Insurance Corp.*, (1956) 1 LLJ 215 (Bom).

²⁹ See *Supra* note 7 at page 213.

³⁰ Section 25-D, Industrial Disputes Act, 1947.

present themselves at the working hours of work to claim compensation. Employer has to maintain the muster roll otherwise he cannot claim the plea under section 25-E (2) as a defence for not paying compensation to the workmen.

VI. PROHIBITION ON LAY OFF- SECTION 25 M

During 1970s, there were major layoffs in the country and it became impertinent to create a sense of security among the workforce. This led to the amendment of 1976 in section 25-M, thereby putting restriction on the right to lay off on the part of employer. However, the Supreme Court³¹ and the High Courts in a number of cases declared it to be invalid. It was again re-introduced in the year 1984 with changes.³² It creates several prohibitions on the employers to lay-off. Firstly, an employer has to take permission by way of an application from the appropriate government or prescribed authority to proceed lay-off who have been named in the muster-rolls.³³

The application has to state the reason for lay-off and meanwhile a copy has to be served to the workmen. However, the rule is relaxed, when the lay-off is done for the reason of *shortage of power or to natural calamity* in Industrial establishments. “In case of mines, the rule is only relaxed when the lay-off is done due to *fire, flood, excess of inflammable gas or explosion.*” In such cases no permission is not required initially to lay-off but the employer has to apply for permission to the authorities (as discussed earlier) within 30 days to proceed further with such lay-off.³⁴ “The application under subsection (3) should be made in *Form O 3* and it will be *delivered personally or through registered post to the authority. The date on which it is delivered shall be deemed to be the date on which application is made.*”

In all these cases, where an application for permission is being sought then the authority after examining the application, reasons, interests and after hearing parties. It would communicate its decision.³⁵ If the authority fails to decide the application within 60 days of the application then in such case it is deemed that permission to lay-off has been granted to the employer.³⁶ The order as made under the sub-section (5) of the section would be binding on each party and it would have the validity of 1 year from the date on which such order is made.³⁷

³¹ See also, *Excel Wear vs Union Of India*, 1979 AIR 25; 1979 SCR (1)1009.

³² See *supra* note 13 at pp. 641; Industrial Disputes (Amendment) Act, 1984 came into force on 18th August 1984 (it applies to every establishment having more than 100 workers on the preceding year on an average working day).

³³ Section 25- M (2), Industrial Disputes Act, 1947.

³⁴ Section 25- M (3), Industrial Disputes Act, 1947.

³⁵ Section 25- M (4), Industrial Disputes Act, 1947.

³⁶ Section 25- M (5), Industrial Disputes Act, 1947.

³⁷ Section 25- M (6), Industrial Disputes Act, 1947.

The Authority may suo-moto or the parties (workers and employers) may apply for the review of the decision. The Authority may also refer the matter to a tribunal which would be decided within 30 days of the reference made to it.³⁸ It is to be noted that if a lay-off has been made without any permission being sought then such lay-off would be illegal and the workers would be entitled to every benefit for such period as they had not been laid off.

In *Papanasam Labour Union vs Madura Coats Ltd*,³⁹ the question before the division bench of the apex Court was regarding the constitutional validity of section 25-M. The Court while upholding the constitutional validity of the said provision held that the object of the provision is to avoid hardship to workmen and encourage industrial amity. Further, there is no need to take prior permission in extreme cases as mentioned under sub-section (3). For the reason of greater interest in avoiding unemployment and industrial peace such provision was held not to be arbitrary and unconstitutional. The view was also adopted in the case of *Ashok Kumar Jain vs State of Bihar*⁴⁰, it was held that constitutionality has been already decided by the Supreme Court.

VII. PENALTY FOR LAY-OFF - SECTION 25 Q

Where an employer disregards the provision under the section 25 M is punishable under section 25 Q with imprisonment up to one month or a fine which may extend up to thousand Rupees or both. Therefore, an employer who contravenes the provision of section 25-M can be punished with an imprisonment of 1 month or with a fine up to 2,000 Rupees or both.

VIII. RECOVERY OF LAY-OFF MONEY

Under the provision of section 33-C gives the remedy to the workmen regarding the recovery of compensation which has been due to him. The provision is as follows:-

“Where any money is due to a workman from an employer, under a settlement or an award or under the provisions of Chapter V-A or Chapter V-B, the workman himself or any other person authorized by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate government for the recovery of the money due to him, and if the appropriate government is satisfied that any money is so due, it shall issue a certificate for that amount to the collector who shall proceed to recover the same in the same manner as an arrears of land revenue.... have raised several issues”.

³⁸ Section 25- M (7), Industrial Disputes Act, 1947.

³⁹ (1997) III LLJ 938: AIR 1995 SC 2200: (1995) 1 SCC 501: (1995) 86 FJR 280 (Suppl).

⁴⁰ (1995) II LLJ 685: (1995) 1 SCC 516.

The aforementioned section provides that in a situation where the lay-off money of worker is due and it has not been paid by the employer. The worker or his heirs (in case of his death) or any such person assigned or authorised by him may make an application to the appropriate government for the payment of such money. If the government is satisfied then a certificate would be issued to the person and the money would be recoverable as of land arrears by the concerned collector.

IX. THE INDUSTRIAL RELATIONS CODE, 2019

Recently, the Union Government has proposed four codes to consolidate the fragmented labour laws of the country. The government has also tried to reform various existing laws. One of the proposed code is the Industrial Relations Code which would be related to the lay-off and other existing industrial law and relations provisions. The law aims to replace three existing labour laws i.e., *Industrial Dispute Act, 1947*, *Trade Unions Act, 1926* and *Industrial Employment (Standing Orders) Act, 1946*.⁴¹

Chapters IX and X of the Bill deals with the lay-off of workmen. The Bill reproduces all the current provisions in the existing laws with almost minimal changes to welfare of the workmen. The makers had the opportunity to universalise the application of the provisions to every industry and establishment. However, the provision remains the same as of the existing laws. The only glaring change which could be said somewhat regulatory and it could be misused by the executive in a possible scenario to regulate the threshold of workers in case of lay-off in establishment having more than 100 workers. This threshold of “100 workmen or more” could be regulated by the appropriate government in the present proposed Bill.⁴² There is a possibility that this provision might be misused to give relaxations to the establishments by increasing the threshold limitation of 100 workmen.

On 23rd April, 2020, the Standing committee in its report on proposed bill had also recommended that power to decide the application of lay-off provision (by increasing the limitation of 100 workers or more or as decided by the appropriate government) should not be vested with the executive but with the state legislature through an amendment.⁴³

⁴¹ The Industrial Relations Code, 2019, Bill no 364 of 2019, the Bill was introduced in Lok Sabha on Nov 28, 2019.

⁴² PRS Legislative Research, The Industrial Relations Code, 2019, (March 21, 2020 4:00 PM), <https://www.prsindia.org/billtrack/industrial-relations-code-2019>

⁴³ Standing Committee on Labour (2019-20), Ministry of Labour and Employment, 8th report, New Delhi, 23rd April 2020; (March 31, 2021, 11:00 AM) http://164.100.47.193/Isscommittee/Labour/17_Labour_8.pdf see also, PRS India, Standing Committee Report Summary, (March 31, 2021, 11:10 AM) (<https://www.prsindia.org/node/845313/chapters-at-a-glance>)

X. CONCLUSION

Workmen are the back bone of the industries and the economy. India has one of the largest working forces in the world and it is said to be the next global hub of industries in the longer run. India being a welfare state through its directive principles of state policies and socialistic preamble have larger commitments to inspire confidence in its work force both in law and policy. At the same time, the framework has to be balanced for industrial amity and investments. Industrial peace and amity are the sine qua non for greater productivity in normal working days of economy There is no denial to the fact that lay-off has been a right of the industries but laws have to be more favourable towards the protection of workmen emanating the ethos of social and economic justice as provided under the Constitution of India. This can only be achieved with the comprehensive legal protection and effective scheme to ensure compensation, re-instatement and curbing the malafide of employers during and after lay-offs. There are certain suggestions to improve the existing framework of lay-off laws and safeguarding workmen against it: -

- (a) Firstly, an amendment should be introduced under section 25-A to expand the application of the law to every industry and industrial establishment.
- (b) The trade unions and civil society groups need to strengthen workmen for timely compensation and re-in statements of workmen.
- (c) Government needs to protect workmen during pandemic from lay-offs in the industries by timely economic and policy interventions.
- (d) Regular collection of data regarding lay-off needs to be collected by the agencies so as to concentrate for effective policy making. As we noted, there has not been any official report since 2014 regarding lay-offs.
- (e) Lastly, in addition to the industry awarded compensation, more welfare schemes need to be formulated for laid off and retrenched workmen to support themselves for the deficit 50% wages to an extent.

Thus, it can be said that layoff is the last resort. Its effect on the use of human resources and the production of recruiting costs is important. It has a negative impact on staff productivity and a company's potential to profit from a business rebound.
