

**The Terminated Employees (Welfare) Bill, 2020**

*“No country, however rich, can afford the waste of its human resources. Demoralization caused by vast unemployment is our greatest extravagance. Morally, it is the greatest menace to our social order.”*

What Franklin D. Roosevelt, the 32<sup>nd</sup> President of the United States of America, almost 90 years ago, portrayed as a worst-case synopsis is nonetheless lurking into the minds of the people all over the world. The International Labour Organization (“ILO”) has surmised that in excess of 25 million jobs would be endangered due to the COVID-19 pandemic, which has plagued the world. The ILO in its report ‘ILO Monitor 2<sup>nd</sup> Edition: COVID-19 and the world of work’ dated 7<sup>th</sup> April 2020 classifies COVID-19 as the ‘worst global crisis since World War II’.

The unemployment rate in India has escalated to an anomalous two-digit number affecting several sectors of the economy. As reported by the Centre for Monitoring Indian Economy (“CMIE”) on 15<sup>th</sup> April 2020, the 30-day moving average of unemployment rate in India rested at a disconcerting rate of 16.6% - increasing for the 20<sup>th</sup> consecutive day. The CMIE report said that *“What has happened between January and March is that the number of employed fell from 411 million to 396 million and the number of unemployed increased from 32 million to 38 million.”* This has stimulated an extensive pressure for setting up an unemployment allowance in the country. Coincidentally, however, on 7<sup>th</sup> February 2020, a private member bill titled the Terminated Employees (Welfare) Bill, 2020 (“Bill”) was introduced in the Rajya Sabha by BJP MP Mr. Rakesh Sinha.

The object of the Bill is to provide welfare measures for the employees who have been terminated by the employers and for matters connected therewith or incidental thereto.

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**Crux of the Bill:**

**1. Applicability:**

An employee shall be entitled to unemployment compensation, health insurance benefits or other benefits as may be prescribed by the Central Government, if such benefits are not part of the employer-employee agreement, for a period of nine months or till the time he gets employed elsewhere, whichever is earlier. However, the employment must be terminated for the reasons of the winding up of the organization or the establishment due to:

- a. economic slowdown; or
- b. change in technology in the respective field; or
- c. the owner or the director managing the affairs of the establishment becoming insolvent; or
- d. the orders of any court; or
- e. incurring losses or unable to carry on business; or
- f. the change in Government policy.

However, the Bill shall not be applicable to any employee who has been terminated for the following reasons:

- a. proven misconduct;
- b. cheating;
- c. indulging with fraudulent means and appropriate money; or
- d. having been found guilty of criminal court of justice.

## **2. Definitions of Employer and Terminated Employee:**

The definition of an employer in the Bill is non-identical with any of the current labour legislations in India. 'Employer' is defined as any owner or the director of any establishment or any organization where not less than 10 persons are employed, and which is not owned by the Central or State Government in any manner whatsoever.

The definition of 'Terminated Employee' in the Bill is contrived in such a way so as to protect the regular employees along with temporary or casual workers who have been employed on a contractual basis.

## **3. Benefits under the Bill:**

- a. Under the Bill, the unemployment compensation is only applicable if the employer does not provide any severance package or the severance package is less than the compensation provided under this Bill.
- b. The unemployment compensation shall be solely borne by the employer and shall not be less than 60% of the gross salary of the terminated employee or as per the terms of the employer-employee agreement, whichever is higher.
- c. In addition to the unemployment compensation, the terminated employee is also entitled to health insurance benefits and other benefits like provident fund, gratuity, leave encashment etc.
- d. Furthermore, on account of failure to pay the benefits to the terminated employee, the employer is liable to pay interest at the rate of 12% per month for the period of such delay.

## **4. Corpus Fund:**

The Bill makes it mandatory for the employer to create a corpus fund which shall be used for the welfare of the terminated employees. Every employer shall contribute at least 5% of the net profits of the organization to this fund. As per the Bill, the fund shall also be utilized for the following purposes:

- a. Payment of expenditure in connection with the education of the children of the terminated employees; and
- b. medical facilities, free of cost, in the manner prescribed.

Additionally, the Bill entitles the employer to solicit contribution from any organization, individual or trust for the purpose of maintaining the fund.

For the Bill to become a law, it needs to be passed by both the houses of the Parliament, receive the assent of the President, and be notified in the official gazette.

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### **Analysis of the Bill:**

Although the Bill proposes to lessen the burden on the employees due to the termination of employment, there are some realistic issues, which remain unaddressed in this Bill:

#### **1. Rising financial burden on the employers:**

The Bill foists considerable financial implications on the employers in comparison to their present obligations under the law. To provide a fair comparison, at present, the only legislation, which provides for severance pay is the Industrial Disputes Act, 1947 (“**ID Act**”), which pertains to “workmen”, who have completed 1 year of continuous service. Under the ID Act, upon closure, a dismissed employee is entitled to severance pay, which is calculated at the rate of 15 days average pay for every completed year of service or any part thereof in excess of 6 months. However, there is no statute for severance pay for non-workmen. Under the current regime, severance pay is only provided by companies under their voluntary separation/retirement scheme or contractual obligation under an employment contract.

The Bill, however, mandates a severance payment to terminated employees. If the severance package is more than the unemployment compensation then the employee cannot claim the unemployment compensation, however, if the severance package of an employee is lower than the unemployment compensation, then the present text of the Bill, is unclear on whether the employee could claim both benefits or the lower benefit. Also, proffering the benefits to senior management functionaries and employees in lucrative jobs would defeat the purpose of this Bill and hence, it may be suitable if the Bill would be applicable only to a certain segment of employees, who would genuinely require such support.

#### **2. Lack of Clarity:**

The Bill is silent on how an organization incurring heavy losses, would contribute towards the corpus fund. Further, some of the grounds for applicability like “economic slowdown” or “change in government policy” are beyond the control of the employer and hence uncontrollable in nature. Thus, the exceptions to the applicability of the Bill should be carved out to address these issues. It is also important to note that the term ‘winding up’ is not defined under the Bill and unless the rules framed under the Bill provide greater transparency on this subject, the Bill will only be triggered upon the permanent closure of the place and not as a consequence of redundancies, in terms of winding up under the Companies Act, 2013.

#### **3. Implications of non-compliance:**

For any non-compliance of the provisions of the Bill, the Bill does not specify any penalties which would be enforced upon the employers and thus making this Bill a toothless remedy for the benefit of the dismissed employees.

#### **4. Stringent checks on the employees:**

There should be a stringent method to keep a check on the terminated employees and prevent them from misusing their rights under this Bill, and thereby not treating it as a nine-month holiday.

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Due to the COVID-19 pandemic, the government is encountering a twofold obstacle today; firstly to provide jobs to the people who have lost them during this period; and secondly to provide jobs to the people who are already unemployed and are now, not able to find employment due to the pandemic.

The Bill, even though very raw and premature at this stage, is momentous since it underlines the various gaps in the private sector, whereby severance pay is minimal, or non-existent, and thus creates an unfathomable burden on the livelihood of the dismissed employee and his family. The words of Barack Obama are enough to ring a bell of caution, "*What is a danger is that we stay stuck in a new normal where unemployment rates stay high...*". This Bill can be perceived as the curtain-raiser towards a resolute and well-founded legislation protecting the interests of the dismissed employees.

As Mr. Rakesh Sinha rightly said in the statement of objects and reasons of the Bill, "*The goal of New India is to maximize egalitarianism and to minimize inequality. In this context, protection of economic interests and dignity of employees of private sector is both, a moral and a constitutional duty of the Indian state.*"

Considering the timing of the Bill and the low employability due to the COVID-19 pandemic, it would be important to consider several aspects of the Bill in view of situations such as this pandemic, wherein not only are the reasons for termination of employment beyond the control of the employee but also the employer may not be in a profit-making position.

**- Satwik Bapat, Associate,  
Solomon & Co.**

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