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Between Trial and Termination: Rethinking Probationary Employment Law in India.

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ABSTRACT

The Indian law, governing probationary employees is a disjointed and, in most instances, inconsistent field in which legal precedents and other ad hoc arrangements in laws are over-exploited rather than a codified law framework. The absence of a distinct framework that subjects the employees, particularly those in the privatized sector to vulnerability, insecurity as well as exploitation is a critical research issue addressed in this research paper. This paper is directed to a critical analysis of the existing legal framework, description of the vacuum and inconsistency, and convincing the audience that the urgency to adopt an all-encompassing piece of legislation is very high. It will be addressed the in-depth analysis of landmark judicial decisions followed by the Supreme Court of India and other High Courts, analysis of the necessary legislative instruments, including the Industrial Employment (Standing Orders) Act, 1946, and its hypothetical assumption in The Precariat: The New Dangerous Class by Guy Standing. This regime, the variant of which contributes to the ambiguity, is proposed by the article to create a so-called precariat - an employee with permanent insecurity in the working place and deprived of the previous rights to labour[1] jeevith. Huntington v. Parshotam Lal Dhingra[2]. UOI may be viewed in detail. The judicial attempts to establish a legislative gap jeevith were the intention to form a union of India in the establishment of the test of motive vs. foundation jeevith and High Court of M.P. v. Satya Narayan Jhavar in which the rules on deemed confirmation were categorized. This case-by-case approach has resulted in non-standardized and unpredictable legal environment though[3]. The conclusion of this paper is that the employment system in India should be fair and equitable and to make that a possibility, a probationary employment all-inclusive and national law would not only be desirable but also necessary. This law ought to streamline probation period, they ought to map out definite terminating procedure and these employees ought to have rights without ambiguity and that is

[1] *Guy Standing, The Precariat: The New Dangerous Class 23 (Bloomsbury Academic 2011).*
[2] *Parshotam Lal Dhingra v. Union of India, AIR 1958 SC 36*
[3] *High Court of M.P. v. Satya Narayan Jhavar, (2001) 7 SCC 161*

what this law must do to outshine the home-cooked judicial interpretations of this vital aspect of labour relations that now dominates the same on the judicial scene.

KEYWORDS

Probationary Employment; Legal Reform; Indian Labour Law; Precariat; Termination Simpliciter.

INTRODUCTION

One concept that is deemed to be among the core of the labour relations in India and in the rest of the world is the probationary period, through which a new worker is trying out before the labour relations. It means a lot to the employers as a phase of evaluating the professional competence, behaviour, and qualification of a new employee to a post that will offer them a concrete estimation that will not be based on a single interview or a test alone. It is a time to the worker to prove his or her worth and to get to know the business culture and work expectations. However, the legal system of this period in India cannot be this easy, however appealing such a task might appear to be. The absence of a single and transparent law has left the system disjointed as the steps taken in the engagement are often established by a mixture of ancient statutes and employment agreements which are not explicit and distinct and a web of bractic system case law. This places the probation employees in a tight and embarrassing position since they are in constant fear of not knowing where they belong either with or without the law. What makes the legal framework, which will be considered in the given paper, so unsatisfactory is that it begins to lose the picture of the reality of the contemporary employment, especially in the future in the globalized, post-pandemic economy. The safeguarding of the civil servants in the private sector as compared to the constitutionally mighty protection of the civil servants is abandoned to a legal semantic minefield where the rights of the employees are broadly ill-defined and left at the mercy at their employers. This situation predetermines building a new category of labourers, the so-called precariat, which, social theorist Guy Standing, refers to regarding the existence full of uncertainty, the lack of professional identity and problematic labour rights. The research question therefore is to analytically examine the weakness of the legal structure of the nation, in the case of probationary employees in India, and to create a good argument on why a high level of legislation change is required. This paper has fulfilled its primary objective that is to provide detailed research concerning the ineffectiveness of the current laws without being desperate like a desperate academic paper but just an appeal to action. The methodology will be multi-pronged in the sense that the initial

part will be a critical analysis of the statutory landscape existing and highlighting its flaws and their deficiencies. Secondly, it will trace the history of the probationary law by taking a keen survey of the background of the basic judicial precedents. This will show how the judiciary in its attempts to be the paramount defender of the rights of the employees have been forced to come up with a costly and even counterintuitive corpus of case law that cannot substitute an apparent legislative dictum. Finally, according to the article by Standing, the paper will also use imaginative comparisons and a socio-economic approach to claim that the legal vacuum that currently exists is not merely an issue of bad drafting, but a system of structural issues that keeps a group of insecure employees. It will conclude the analysis with a set of practical suggestions as to a new, standard legal system, which ought to protect the rights of probation employees and offer them a decent and just labour climate in India.

LITERATURE REVIEW

The issues that the probationary workers in India are bound to go through can only be successfully batted by first establishing it on broader theoretical and comparative context. It is not an open oasis, but a miniature of a global trend towards "precarious labour," which is the absence of systematic character of India probationary legislation. It will start by arguing how the concept of the precariat as developed by Guy Standing provides powerful prismatic glasses through which the plight of the precarious workforce in India can be viewed. It will then put the legal landscape of India within a comparative context within the global spectrum as to how other jurisdictions had made attempts to enact laws which were yet to be identified in India.

A. The Precariat a Theoretical Prism of Probationary Employment.

The old model of Marxism on how the opposition of the bourgeoisie to the proletariat still cannot be used to describe the sophistication of the modern global economy. The author, a social theorist, Guy Standing, defines the appearance of a new group of social strata, a category of people whom he refers to as the precariat, as the synthesis of neoliberalism and globalization. It is a mixture of precarious and proletariat and a layer of society with an unstable status, fragmented work and an overall sense of alienation. The precariat lacks the traditional understanding of labour security i.e. good employment practices, occupational identity, and social benefits that are offered by the state or company[4].

[4] *Guy Standing, The Precariat: The New Dangerous Class 26 (Bloomsbury Academic 2011).*

Probationary employment in India is one of the institutional processes of creating this precariat group. The confusion in the status of a probationer is precisely in accordance with the nature of a precarious life. A probation worker performs but he or she lives a life that is full of threats that constantly loom over them, in case he or she loses the job. Their career identity is put in the state of occupational limbo as they are constantly on trial and cannot claim their rightful place in the professional community. It is also worsened by the fact that most employers take the period of probation as a method of saving money and avoiding long-term commitment like statutory benefits that would otherwise drop on the lap of a permanent staff member. It is upon this phenomenon of an employee that is under indefinite (or extended) probation, particularly, that this is known as precrastination. It puts the employee in the state of constant transition, and the employer has as much freedom as he has and leaves the worker with no form of protection.

B. Comparative Analysis: Indian Lags behind.

The faultiness of the probation laws in India is dipped into the acute lenses in comparison with the Indian standards of law jurisdiction. Though this is not an ideal system, many countries have taken specific steps to oversee the probationary period and this kind of transparency in the legislature is highly needed in India.

As an example, labour laws are more generous in Europe Union. Probably, the statutory termination period of probation can be limiting to the probationary term permanently because the member states tend to have predetermined time limits to the probation term. The United States has the concept of employment-at-will whereby either party are free to fire at will without any explanation. However, in that kind of setting, the discriminative or retaliatory dismissal laws are very expansive. The court battles, still raging on the US over the wholesale lay-off of federal probationary employees demonstrate that the courts have partially found themselves in the dilemma of attempting to balance a governmental administrative prerogative with the concepts of justice and due process, to which the Indian courts are also finding themselves, albeit to some degree, which lacks clear statutory foundation.

C. Indian PSE and the Boundaries of Judicial Activism.

History of the current state of probation law has been documented under the Indian lawyer and commentator criticism. The reliance of the judicial pronouncements, in most instances, offers defence to the employees, but has resulted in the creation of a complex and unpredictable legal

realm. This judicial struggle to lift the veil of termination orders to ascertain the actual ground behind termination and not the one stated has posed a semantic minefield to which the employer and the employee cannot escape. It is not a relatively new theme in the case law where either a slight difference in the word choice when composing a termination letter or an internal report can result in a win or a loss. As much as it is a correct action, such a case-by-case approach, though a valid reactionary measure, cannot substitute an explicit proactive approach to legislation.

On top of this, the disequilibrium in applying labour laws, in which one body of law is enforced upon the so- called workmen of the industrial establishments, and another body of law is enforced upon workers in the service sector, additionally separates the legal arena. The rigidity of the existing legislation to view the modern, white-collar worker as an object of protection has led to the gigantic, uninsured population of employees. This is a legal loophole coupled with the judicial unwillingness to question a subjective ruling of an employer on the appropriateness of a given employee is a sign that the system is straining as it is trying to keep up with the dynamics of the modern labour market. All these sources have been concluding that they badly need a new and codified system that would offer stability, security and dignity to the growing number of probationary workforces in India.

CRITICAL ANALYSIS OF THE EXISTING LEGAL FRAMEWORK.

The Indian Probation laws of the probationary employees are an iconoclastic unsystematic system and lack any single and uniform law. Instead, it is a haphazard constellation that is based on a few statutory provisions, administrative rules, and vast number of judicial precedents. This has been the major weakness to the current framework in which lapse in enacting a law has significantly sparked a significant level of scramble and legal uncertainty in millions of workers particularly in the dynamic private sector.

A. Contractual Illusion and the Inequalities of Bargaining.

The employment contract is the most significant mode of regulating probationary employees in the case of the private sector. However, such a reliance on the terms of the contracts is highly problematic because there exists an issue of inherent power imbalance between employees and employers. An employee who is just joined, especially that, who is either unemployed or an employee who is eager to begin work has a very low bargaining ground in the terms of his contract. The terms and conditions of the offer concern the employment since it is a take it or

leave it kind of offer with slight or no bargaining concerning very vital terms on probation period or extensions, or termination.

This imbalance of bargaining power is among the most significant themes of legal studies, and the situation with probationary employment is the one where the security and rights of the employee are the most jeopardized. In the Legal Implication of Probation Period in Employment Contracts legal article you have provided, there are unfair terms that are most likely to be entrenched within the probation provisions practiced in various companies and that might result in exploitation of the probationary workers who are less bargaining power. The fear of a new employee turning into 100x harder to fire, as soon as he/she becomes a permanent employee, may be regarded as the primary concern of many managers in online discussions, as it is not about the potential of such an employee to grow, but about the fear of such a scenario. This stance is presupposed by the intention to possess a flexible workforce and the fear of litigation which may be traced directly in the employment contracts. The terms such as satisfactory performance are used in an ambiguous state and the terms allowing infinite extensions can be used to keep employees in a trial with no end to it, a new manifestation of serfdom. It deprives the employees of the stability and benefits that an employee gets with a permanent position, but it is also an atmosphere of anxiety and insecurity that it breeds. It is a construct, which leans toward even greater flexibility of the employer of the system to the detriment of the wellbeing of the employee and at the cost of his employment stability.

B. The Anachronism of the Industrial Legislation.

The existing labour laws in India such as the Industrial Employment (Standing Order) Act, 1946 (IESA) and the Indian Disputes Act, 1947 (IDA) are highly noble but they fail to suit the details of the modern work environment. These laws were based on a reasonably industrialized economy in the mid-20th century, and their definition and location has become obsolete.

According to the IESA, a probationer is a trial workman, whose probation will not exceed three months. However, even though it entails specific conditions of employment, this Act applies only to industrial establishments that have a specific number of employees and leaves a significant portion of the modern labour force, including so-called white-collar workers in the booming services sector, information and knowledge sector, outside the coverage of this Act. Similarly, the protections that come with the IDA like a 240-day rule on the notice and compensation that apply in Section 25- F only apply to employees in the narrow meaning of the term define as a workman. This is a statutory framework, which fails to protect a high

percentage of the labour force in the service-based gig economy because they have no protection under the circumstances of not being warned of their dismissals without compensation.

Firing of many probationers before 240 days is usual which has not only allowed the employers to evade their statutory obligations but also to provide inexpensive and easily replaceable labour force. The employers even use as a loophole the definitions of these staple terms, which were created to work in the factory floors and assembly lines.

C. The Inequality in Public and Private Employments.

The first loophole that is most apparent in the Indian labour laws is the disparity in the rights granted to the workers in the public sector and the workers in the privatized sector. Though the government employees have a detailed service regulation that is the constitutional protection offered under the Article 311(2), guaranteeing the protection of due process in case of such actions, the employees who are most of the workers in the sector who work in the private sector possess little alternatives. This offers a dualistic system where the level of protection against arbitrary dismissal of employees is becoming increasingly strong among the public servants. A government employee such as a probation employee cannot be dismissed without a due hearing in case the dismissal is disciplinary. This was repeated in Ajay Kumar Singala case where a court invalidated a government notification that was trying to adjust the emoluments of probationers and the state had to be a good role model employer.

This is the sharp contrast which is an inner weakness of the law: it is supposed that the state provides an even greater example of the fairness, yet the private employers who represent much more significant percentage of the labour market should not be subjected to the close legal scrutiny. This rejection of all possibilities as these are authorized by the law in essence assists in enforcing the system of employment as a dualism in that one group of workers has the right of employment at a certain degree of job satisfaction and dignity that is not accorded to another group of workers.

D. Inequality at the State Level and the absence of a Uniformity

Added to this perplexity there is the crumbling nature of state law. The Shops and Establishment Acts applicable to non-industrial plants differ in several ways depending on the states. Meanwhile, other states can have other conditions that a period of notice is given in case

of termination and yet there are other regulations in other states and majority of states are silent about the aspect of probationary employment. This is that an employee under probation in one country would have a right to spend time of length to say that they are being dismissed whereas the same employee in another country would not enjoy the right. This non uniformity renders consistency in policies with that of companies in the national level extremely difficult and one can have rather patchwork of policies and practices which entails legal uncertainty and wastefulness in administration. This further complicates the legal issue, where it is harder to provide the employees under the pressure to know their rights within a specific jurisdiction, something that they cannot execute with their legal literacy. This state-by-state labour law in a globalized economy is simply unsustainable and is another example of a legal system struggling to meet the reality of the economic world.

CASE LAW: - DELOPMENT OF PROBATIONARY LAW

In the absence of the elaborate legislative framework, the Indian judicial system has continually stepped into settling the controversies and formulating some guiding principles regarding the probation employment. This has occurred over a period of several decades and culminated in a very rich and complex case law that attempts to balance out the concerns of the employer and the employee. This part also traces the historical development of these legal principles going back in a series of court rulings by the Supreme Court of the United States that determine the key assumptions that have emerged to govern this area.

A. The Mainstream Doctrine: Termination Simpliciter v. Punitive Termination.

The initial and simplest difference which the judiciary made is delivered in a termination simpliciter and punitive termination. The statements the Supreme Court issued concerning this, formed the basis of all further jurisprudence.

Parshotam Lal Dhingra v. AIR 1958 SC 36, Union of India: This was an important case which concluded that a probationer as such had no title to the post and could be fired based on unsuitability[5]. The Court however made a crucial caveat that in case of a termination being a form of punishment i.e. in the alleged misconduct case, it would be subjected to the constitutional protection of Art. 311(2), that needed sufficient inquiry and hearing. The Court developed the so-called motive vs foundation test according to which the courts could evaluate

[5] *Parshotam Lal Dhingra v. Union of India, AIR 1958 SC 36.*

what the essence of the termination order was although the terminology of the order was neutral.

State of Bihar v. Gopi Kishore Prasad, AIR 1960 SC 689: It was reiterated that the cancellation of the service of a probationer since alleged corruption or even inefficiency was punitive, and it had to be enquired[6]. The Court emphasized the fact that a government will never under the guise of a simple discharge order punish a probationary officer without granting them any hearing.

State of Punjab v. Sukh Raj Bahadur, (1968) 3 SCR 234: It was also a case which trimmed down the test of form vs. substance. The Court had cautioned the employers against relishing on a mere statement of dismissal as a veil or mask on what is a disciplinary penalty.[7]

The court was given the mandate to research the events behind the termination so that it could be able to define the actual reason behind the move.

Shamsher Singh v. State of Punjab, (1974) 2 SCC 831: This is a landmark seven judge bench decision which solidified the motive vs. foundation test. This was decided by the Court to hold that in the case of termination where it was based on a formal inquiry or a conviction of misconduct, it was on what termination was basing the course of action concerning it and would be punitive.[8] The termination which was solely prompted by poor performance of a probationer and not by means of a formal investigation might be termed as a termination simpliciter. This brought a great difference that has since been applied by courts.

Pavanendra Narayan Verma v. Sanjay Gandhi PGI, (2002) 1 SCC 520: This was a courtroom case that gave a refreshed and helpful three-niche bar in the determination of whether a firing is punitive. It is punitive whereby it follows a full-scale formal enquiry, on allegations of moral turpitude or misconduct, and eventual finding of guilt[9]. Failure to satisfy any of the three conditions will lead to a termination being considered a termination simpliciter and affirmed. Another thing which the Court had to establish was that the ambiguous words like unsatisfactory work are not always unstigmatized, and they do not always require a thorough investigation.

[6] *State of Bihar v. Gopi Kishore Prasad, AIR 1960 SC 689*
[7] *State of Punjab v. Sukh Raj Bahadur, (1968) 3 SCR 234.*
[8] *Shamsher Singh v. State of Punjab, (1974) 2 SCC 831*
[9] *Pavanendra Narayan Verma v. Sanjay Gandhi PGI, (2002) 1 SCC 520*

Chandra Prakash Shahi v. State of U.P. & Ors., (2000) 5 SCC 152: In present case, a case critical analysis of the motive vs. foundation test was conducted[10]. that when the probationer was discharged on the ground of preliminary inquiry into misconduct the termination of his services was punitive since the inquiry was not to determine general suitability but to establish the facts of the accusations. The Court lifted the veil of innocence of the termination order that was seemingly innocent and discovered that it was pegged on misconduct, thus rendering it unlawful since failure to follow due processes.

B. The Doctrine of "Deemed Confirmation".

The other significant grounds of judicial intervention have been the idea of deemed confirmation. This is in response to the situation of an employee who remains to serve after the probation period without the employer informing them formally. Failing to have a clear statutory provision, the courts have created a complicated system of rules that should be used to decide when the status of a probationer should automatically turn into that of a permanent employee.

State of Uttar Pradesh v. Akbar Ali Khan, AIR 1966 SC 1842: The Supreme Court made it clear that confirmation is not had through the lapse of time of the probation[11]. It was that where there is no explicit statement in the appointment letter or service regulations that the employee will automatically be confirmed, express order of confirmation is required. Without such an order the employee remains a probationer by implication.

High Court of M.P. v. Satya Narayan Jhavar, (2001) 7 SCC 161: It was a landmark case, which gave an extensive classification of judicial opinions on deemed confirmation. It distinguished three categories of cases: “(1) cases where there is no maximum period of probation, there is no deemed confirmation; (2) cases where there is a maximum period, where termination is not passed before the expiry, and so deemed confirmation by implication occurs; and (3) cases where there is a maximum period, but where a positive act of confirmation is necessary (e.g. the passing of a test or the issue of a formal order). In the most common category, the third, no deemed confirmation takes place.”[12]

[10] *Chandra Prakash Shahi v. State of U.P. & Ors., (2000) 5 SCC 152.*
[11] *State of Uttar Pradesh v. Akbar Ali Khan, AIR 1966 SC 1842*
[12] *High Court of M.P. v. Satya Narayan Jhavar, (2001) 7 SCC 161.*

V.D. Barot vs State of Gujarat, (2002) 4 GLR 3734: The petition was dismissed by the Gujarat High Court, in which a judicial officer challenged to be deemed confirmed on finding that the service rules and order of appointment were silent on a positive order of confirmation and that a competed appropriately had not been achieved[13]. The fact of mere continuation of the services was also pointed out by the court to be insufficient in altering the status of the employee.

High Court of Judicature at Allahabad, (2016) SCC Online All 2108: Raj Kamal sonakr vs high court of Judicature at Allahabad is another example of the third type of cases. Though the employee was under serving a maximum of 4 years' probation, it could not be deemed as the employee being confirmed as per service regulations there was a specified sequence of confirmation that was subject to satisfactory work conduct and integrity[14]. According to the court, it was required to be a good act by the employer that it must have, and it cannot be a mere efflux of time.

C. Judicial Review and Arbitrariness.

Along with the primary tenets of termination and confirmation, the courts have been playing a peripheral but significant role in scrutiny of the administrative verdicts made by the employers to prevent arbitrariness and discrimination.

Ajit Singh And Others v. AIR 1983 SC 11 State of Punjab and Another: The case concerned in this context was termination of the public servants arbitrarily. The court determined that all the reasons behind the termination like unsuccessful probation, and poor performance are not factual, but a scale of another to dismiss her arbitrarily and discriminately[15]. This finding was further made by the Court in the assertion that an administrative act could not be arbitrary and thus, it had to be pegged on a justifiable reason.

Chhayaben Labhshanker Mehta vs State of Gujarat, (2004) 4 GLR 3734: The court decided in the case that the cancellation of the tenure of a judicial officer on probation was suspended when it was stated that the action was done arbitrarily and discriminatory[16]. The court indicated that the employer had acted on contradictory and archived negative reports and ignored positive performance records. It thought that during confirmation of probationers, it could not be done

[13] *V.D. Barot v. State of Gujar 4. at, (2002) 4 GLR 373*
[14] *Raj Kamal Sonkar v. High Court of Judicature at Allahabad, (2016) SCC Online All 2108*
[15] *Ajit Singh and Others v. State of Punjab and Another, AIR 1983 SC 11.*
[16] *Chhayaben Labhshanker Mehta v. State of Gujarat, (2004) 4 GLR 3734*

through testing of various individuals, the orders and the parameters would be required to be standardized. The decision on whether to confirm a probationer or otherwise to renew his or her probation should be taken on independent and unbiased judgment as observed by the Supreme Court in the case when State of Haryana and Ors vs Vijay Singh and Ors, AIR 2012 SC 4799. The biggest work that the court could have achieved in such cases is not to override the performance of the employee but to make out that the process that the employer followed was not arbitrary, discriminatory and without any malaise motives.[17]

This expansive case law has created a complicated and very unpredictable legal environment because of its progressive spirit. It leaves the individual employees in the place to make an appeal against the termination decisions, in the courtroom where a small finding of the words used in a termination letter, or the exact wording of a service regulation can either sink or float the case. It is a post-facto intervention of a judicial type in lieu of a pre-emptive clarity of legislature, however, one of the main shortcomings of our current system.

THE NECESSITY OF THE REFORM OF THE LEGISLATIONS.

A subtle netting of judicial ruling, though well intentioned, does not cover the fundamental gap of an integrated legal system and creates a backdoor of an empty loophole that undermines the fundamental concept of a fair and free labour system. The specific failures of the existing legislation and court dogmatisms will be discussed in this section until it is adequate to service the needs of a modern economy and an enlarging nuclear.

A. The reason why Judicial Activism can never substitute Legislation.

The case with the current vacuum in the legislative domain is not a question of insufficient control; it is the fact that the structural aspect causes a direct devolution towards the creation of a precariat type of the class as described by Guy Standing. The precariat can be described as a workforce that comes with perpetual job insecurity, lacking specific job identity together with the cancellation of outmoded social and economic rights. Unlike the proletariat of the industrial era, the precariat does not have the right to have long-term routine jobs, a set number of working hours, and a sense of togetherness. Instead, they are made to be in a continuous state

[17] *State of Haryana and Ors v. Vijay Singh and Ors, AIR 2012 SC 4799.*

of flux, with their employment either becoming temporary, part-time or being contractual in nature.[18]

One of the primary ways through which precariat is manufactured and solidified in India is in probationary jobs, which are part of the gray aspect. The flexibility of labor arrangements, which would characterize the new generation is within the reach of the employer being able to keep the employees in longer or indefinite probation without a clear way of validation. In Rangnath Banduji Salve v. Bombay High Court. State of Maharashtra was also aware that when a probationer was terminated after undertaking a pre-determining inquiry of inadmissibility it may be valid, but it did not consider the larger parameter in the society of the implications of such practice on the sense of insecurity to a worker.[19]

The failure of the legislative system to balance the situation with probation and limitless extensions is the main reason that basically justifies the low-cost, high flexibility labour force. This will be beneficial in the sense that the employers will be enjoying some form of reduced long-term commitment and statutory commitment such as provident funds payments or gratuity. This would be in the form of denial of income security, lack of societal nets, fears of being always thrown away to the employee. The law disrupts the importance of labour by not providing a clear cut and workable means of attaining permanent status, which continues to generate a system in which the worth of an employee is in a permanent state of docking.

B. Policy Arguments: Economic Stability, Worker Dignity and Constitutional Values.

This action of the judiciary of applying the legal doctrines like the test beginning with motive vs. foundation though philosophically sound enough to be performed has resulted in the semantic mine field which cannot be maneuverer by the lay man in a simple manner. The distinction between a termination that can be explained, by a lion of practice, as justified, and a termination that is founded on it is a yardstick of tininess whereby the legal service to the employee magnifies a burden of a tremendous liability on the legal service to the employee to prove their point. The P.K. Jain v. To give a good example of such complexity, one can refer to the case of Directorate of Education where the Delhi High Court had to revise thoroughly the service regulations in the given case and a memorandum and determine whether the probation of the teacher had been unfairly extended. Though the court role must be made, it

[18] *Guy Standing, The Precariat: The New Dangerous Class 34 (Bloomsbury Academic 2011).*
[19] *Rangnath Banduji Salve v. State of Maharashtra, 1994 (1) Mah. L.J. 310 (Bomb. H.C.)*

raises the awareness of the reality that the employees are being forced towards an extremely costly direction and protracted legal struggle to experience the privileges which are expected to be enshrined in readily available statutes.

More so, the judicial system tends to make a patchy and untrustworthy legal environment in the way they handle the case. The case of the decision made by the Delhi High Court in P.K. Jain was a very interesting case since the court did not concur with an opinion made in one of the Tribunals and it also illustrates how the case development can be different depending on the interpretation of the facts and regulations made by a specific court. Such level of contradiction makes it hard to accomplish both employers to establish compliance policies, as well as it is hard to make employees aware of human rights. The right legal system and particularly having definitions and process would eliminate this judicial buffering and provide the parties with some picture of an uphill direction.

C. The Inequality in the Public vs. Private Employment.

The brightest violation in the labour law in India is the disparity between the protection afforded to the employees in the government and corporate sector. The government employees are afforded by the intricate regulations that control service and the guarantees of the constitution of the Article 311(2) the employees in the private sector who form the larger portion of the workforce, have minimal options. A case in point is Ajay Kumar Singala and Ors versus State of Punjab and Ors whereby the court invalidated a notification by the government served as a kind of fairy godfather to employees and shielded them against unreasonable conditions. However, it is not so often so with the private companies. Such an unfair playing field at law leads to an unfair result and to unequal or dualistic labour market where one section of the labour market has some form of job security and dignity, which another section of the labour market does not.

The lack of efficient use of the uniform standard of fairness across the board by the judicial system by all the sectors highlights the urgent need of a new law. The courts are not expected to provide a legal framework that does not exist as was seen in the case of Chhayaben Labhshanker Mehta vs State of Gujarat and most of the administrative decisions must be subjected to scrutiny by the courts. It is to this reason that the remedy is not seen in the enhanced involvement of the judiciary but instead, a clear mandate in the shape of a legislation that defines minimum standards of rights to all probationary employees regardless of their areas of

operation[20]. This would play a significant role in dissolving the two-tiered system as well as ensuring that the tenets of equity and fairness are applied without discrimination.

THE LEGISLATIVE REFORM WAS REQUIRED

The proliferation of case law, although the motivation is desirable, is simply a poor substitute of a complex statutory system. The court system has felt that it is forced to be a significant policy maker, and it is not very well suited. This reliance on judicial corrective action is a law regime that is responsive, arbitrary and unattainable to the people, to whom it is most generally directed.

A. Why Judicial Activism will not replace Legislation.

Case law is a reactive justice. The making of a case law follows a legal wrangle which has taken place, an employee has been fired, and the case has been through a torturous and cost-y litigation process. The implication of this is that to each case decided in favor of the plaintiff there are millions of other cases where the employees who failed to bring resources and legal capability had no opportunity to challenge an unjust dismissal. This does not imply that an employee can expect a legal safeguard when they are finally employed in their job but rather a post facto that can only last after a long and hard struggle has been fought. It is a stark difference to a statutory framework which would provide pre-emptive and straightforward rights that can be enforced and known by both the employer and the employee that will not require passing through the courts.

In addition, the judicial system policy has the propensity of creating an incongruous and uncertain lawlessness. The case of Delhi High Court on P.K. Jain vs. The other interesting scenario was in the case of the Directorate of Education the ruling of the court did not align with the ruling of a Tribunal which indicates how a specific court can perceive issues and rules to provide a different result. This inconsistency makes it difficult to have a case where the employers of both can develop compliance policies and a case where the employees are aware of their rights. This speculation in the courtroom would be eliminated by a common legal system with well-established definitions and procedures which would provide a sense of direction to all.

[20] *Chhayaben Labhshanker Mehta v. State of Gujarat, (2004) 4 GLR 3734.*

B. Policy Defences, Economic Stability, Worker Dignity and Constitutional Values.

The promotion of the changes to the laws is not merely a matter of law, but it is also a matter of good policy and constitutional principle. A written, open law on probation employment would assist in stabilizing this economy by introducing some confidence among the businesses. Having explicit guidelines on what is to occur in any hiring and termination, employers do not fear making a sound judgment without the prospect of a costly and unpredictable court case.

More importantly, it would watch the honor of work which is among the core values that are inculcated in the Indian Constitution. The current precarious employment system directly endangers the right to the dignified livelihood that is guaranteed in the Article 21. A controversial employee who has nothing more than a threat of being terminated is denied the basic safety that he needs to enjoy his decent life. The lack of the coherent legal regime is also non-conforming to Article 14 and 16 (right to equality and to equal opportunity) in terms of two-tier system in which the employees of the private sector do not get as much protection as the ones of the public sector.

It is in the vigorous role of the Parliament and the Labor ministry. They ought to not just be reactive in the situation of judicial interpretations of the law but come up with one statute that would be applied to correct the failure of the current laws. It is a task, which would require political goodwill and commitment to make sure that the rights of all the workers in the transforming economy of India are protected.

CONCLUSION

The following paper is a proposal as a solution to the suggested model of legislative framework, the Probationary Employment (Regulation) Bill. This would be a national Bill that would serve as a unifying body in the regulation of the employer and the duty of probationary employees in all areas. The proposed Bill would form a part of a complex of laws that would lay out the vital loopholes and contradictions in the current legislation. The primary provisions of it would be Limitation on Probation Period: The Bill would not allow more than a certain amount of probationary period with a period of six months to a period of twelve months. This period may be extended once and limited under some time e.g. an additional six months. This provision would come in handy to prohibit the concept of probation permanently. Rule of Procedure and Rule of Deemed Confirmation: The Bill would need an elaborated process in that of confirming employees. It would mean that, if an employer is contented with the satisfactory expression of the probation period, the employer will be anticipated to provide a formal confirmation letter

within a predetermined deadline. The deemed confirmation rule will also undertake the option of stating that when an employee has served over the maximum number of probation days and has no termination order delivered to him or her, he or she will be deemed a permanent employee. Standardized and Fair Process of all terminations during probation, Mandatory Notice and Inquiry Process: The Bill would offer a standardized system of all terminations during probation. Dismissal would require at least 30 days of written notice and in any case in which such dismissal is based on misconduct or other serious accusations, formal inquiry process would be a binding condition. This would be a higher standard of termination than a satisfaction less performance and due process. Ban on the Extensions of the Prohibition: There is prohibition of the Bill on the indefinite extensions. The Bill would apply to all the sectors of employment such as the gig and platform economy. Any aspect of an employment contract that attempts to circumvent the maximum amount of probation would be said to be void. It would redefine the term of employee and workman to be more acceptive of the modern workforce, such that somehow all employees, whether working or not in a contract have a right to the same basic protection.

The provided Regulation (Probationary Employment) Bill would be designed in a manner it would align with the other labour codes such as the Industrial Relations Code, 2020. It would be another law that would provide a proper legal foundation based on which the principles of the current codes would be applied more effectively. This would put in the synergy of consolidation and saving uniformity of the law system that lack of jurisdictional ambiguity and inconsistencies are extreme in relation to the present rule of law system. The Bill would protect the employees, and besides, establish the businesses with a clear and predictable level of labour which would make the economy more stable and fairer in the long run.