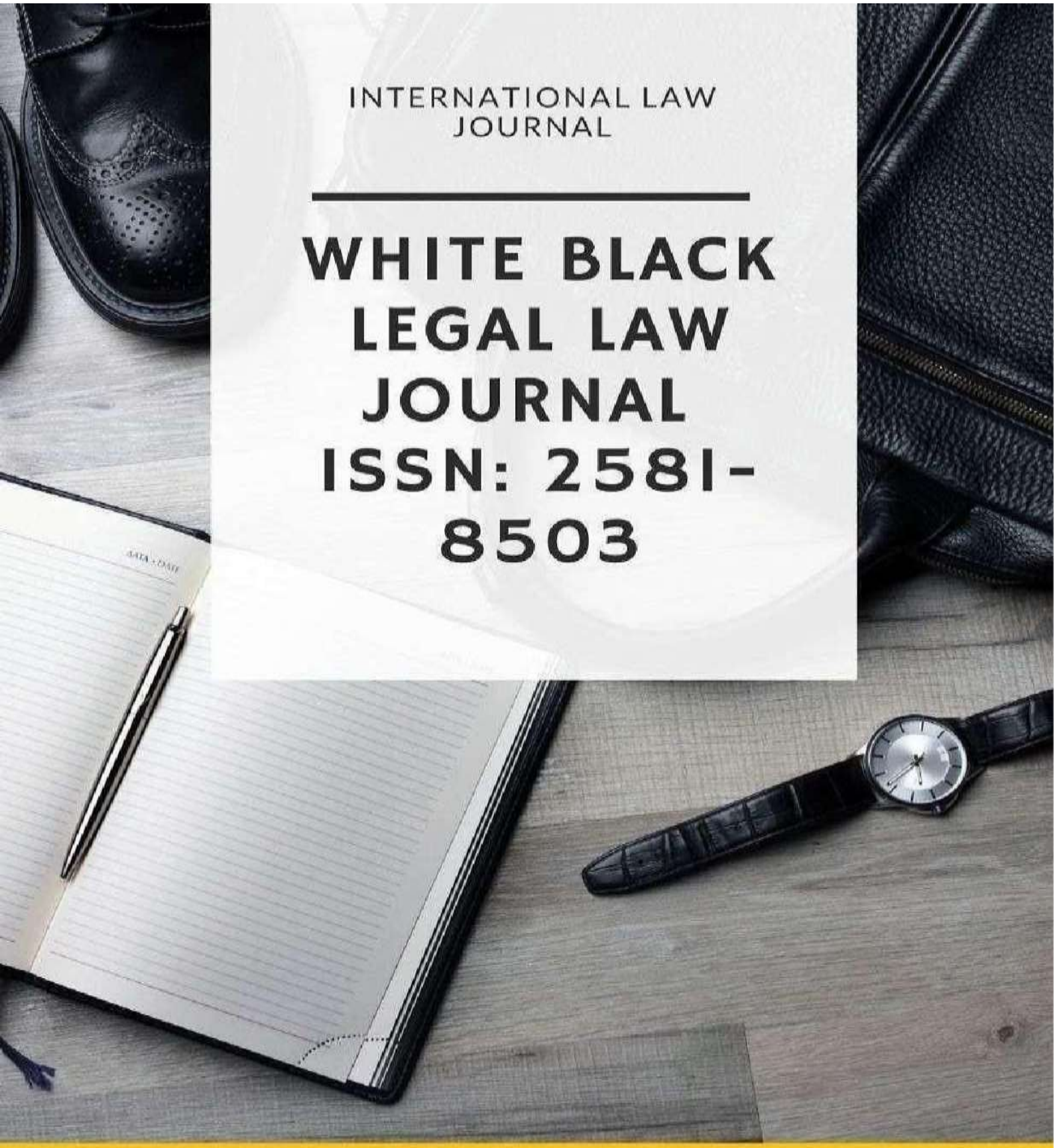

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DECODING THE CONCEPT OF COMPOUNDING OF OFFENCES UNDER THE CODE ON WAGES ACT, 2019

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ABSTRACT

The employment process in India is no less than an administrative procedure which demands a lot of bits and pieces to be considered and dealt with. Beginning from becoming an employee or employer till the time of termination and superannuation, as the case may be, there are a lot of things such as rights of employees, responsibilities of employers, wages of workmen, working hours, awards, punishments, offences and the like.

The paper scrutinizes the compounding of offences along with impacts of the related provisions under the Code on Wages Act, 2019 on the workers. Apart from this the paper will also shed light on the intention of the legislature to implement such provisions. We all are well versed with our rights as well as duties in a generic sense and rest as provided under the Indian Constitution and also, we are conversant with how to claim security of those rights under certain laws which govern relief for violation of any such right as well. But, some laws are enacted purposefully to secure rights and curb the issues in a particular field and so under the Labour Laws, the issues related to employment are stressed upon. The paper underscores everything related to compounding of offences by giving a small reference to what exactly compounding means.

Subject to the contextual part, the matter will be discussed on the basis of analysis and research but hanging onto concluding the topic, a purely hyper-technical and observatory epilogue will be provided.

Keywords – Composition, Compounding, Code on Wages, Workmen, Compounding authority.

SYNOPSIS

INTRODUCTION

One of the most important purposes of labour laws is peaceful settlement between workers and trade unions which is also one of the reasons for bringing it into existence. A healthy environment is the most basic amenity every individual requires whether he is an employee or an employer, besides this, progress in business and sufficient earning along with adequate living are two major needs of the employer and employee respectively. Labour law is developed to formulate a standard between employers and employees and elaborate their limits. It is noteworthy to say that the number of employees are always more than the number of employers and are not victim in every case scenario, that is to say, nor the employers are always at default, neither the labourers are, thus it is mandatory to have such laws which eschews exploitation of both categories of people. But, as far as the opinion of the legislation is concerned, the labour laws are inclined more towards the welfare and safety of workmen i.e. the employees as the law presumes them to be in a needy condition and more prone to exploitation because of the employer being in power and a rank above the employees. This is a scenario where the labour is at an extra benefit.

HISTORY OF LABOUR LAWS IN INDIA

The historical development of Labour Laws in India can be traced into two parts i.e. the Pre-Independence or during the British Period and Post-Independence Period. At the outset Britain and America were the two countries to consider the need for setting up such bodies that will work upon edifying the lives of labourers. The International Labour Organization was the first ever body which came into existence with the aim of bringing such standards which may improve the quality of working environment for the workers. This emerged as a part of the United Nation after the abolition of the League of Nations. Consisting of 187 signatories to it, the International Labour Organization was known as the only tripartite United Nations Agency which was sighted ardent enough towards fostering social justice and acknowledging the essence of human and labour rights for a bracing working environment. The International Labour Organization was created as a part of Treaty of Versailles which aimed at and did ended World War I by upholding the importance of social justice declaring it to be the topmost

essential feature for attaining universal and lasting peace.[1] And so was basis of achieving an end to victimization of workers in the employment field. Social justice was considered as the sole ideology for any positive change that was to be brought in managing the affairs of the working environment in those times of industrialization.

The Factories Act, 1883 and Trade Disputes Act, 1929 were the two main laws passed at the time of pre – independence period. Where the factories act dealt with certain issues related to working conditions, one of which was working hours and concerns focusing on working environment for women and abolition of child labour, there, on the other hand, the Trade Disputes Act was inclined more towards industrial headway. This was aspired towards managing relations of employers, employees and unions of employees. During the post – independence period four acts were focused towards labour sector, namely, Factories Act, 1948, Minimum wages act, 1948, Industrial Disputes Act, 1947, Child Labour Prohibition Act. The Factories act, again, was emphasized on working hours and safety norms, specially, considering safety of women. The Minimum wages act, dealt with the concern of wages i.e. the salary that is to be paid to a worker according to the working hours. The act also included a categorization of workers among skilled, unskilled and manual as far as the work and amount of wages is concerned. The industrial disputes act was accentuated more towards industrial growth and urged peace and harmony in working sectors. It also aimed at bringing the modes of arbitration and adjudication in resolving industrial disputes. The Child Labour Prohibition Act engrossed towards child welfare and proscribed child labour i.e. employment of children below 14 years of age group in any factory and especially hazardous sites.

COMPOUNDING OF OFFENCES – INTRODUCTION AND CONTEXT UNDER THE CODE OF CRIMINAL PROCEDURE, 1973

Compounding is a scenario whereby a person who is at default is vindicated of an offence and by payment of a certain amount of money. So basically compounding is a form of middle ground which enables the parties to settle the matter without any conflict with the help of agreement between the two whereby the claimant goes along with the idea of discontinuing the proceedings against the defendant. However the possibility of the compounding depends upon the character of offence and the category of offence it is falling under. That is to say, offences are divided into two categories based on their nature, namely, ***compoundable offences*** and ***non***

[1] *International Labour Organization*, www.ilo.org, https://www.ilo.org/global/about-the-ilo/history/lang--en/index.htm

– compoundable offences.

Compoundable offences, as the name suggests are the ones which are subject to compounding. Basically the gravity of these types of offences are less severe in nature and hence they are deemed appropriate for compounding. Whereas the term non – compoundable offences is just opposite to compoundable offences and exempts it from the ambit of compounding just because of the severity of the offence. The earnest nature of such offences make them unacceptable for compounding. Section 320 of the Code of Criminal Procedure discusses the two types of offences and states about the compounding which necessitates the authorization of the court and compounding which takes place without the authorization of the court.

Some of the examples of offences which can be compounded with the permission of the court are theft, voluntary causing grievous hurt, assault on a women with an intention to outrage her modesty, criminal breach of trust, dishonest misappropriation of property amongst others. Whereas offences such as defamation, adultery, criminal trespass, causing hurt fall under the category of offences which can be compounded without the permission of the court[2].

Compounding as a step has a direct effect of liberation on the person who is at default. This means that as soon as the process has been opted for the purpose of resolving the matter and a final step is decided and taken, the concerned accused shall be exonerated from all the blames and set free.

As far as the opinion of the courts is concerned, they have always taken a broad view of the case and have looked at the situation from a wide angle. That is to say, while dealing with any matter, irrespective of it being compoundable or non – compoundable the courts have observed and decided it as per the perspective and consensus of the parties because in such matters it has laid its opinion as per the views of the parties to the dispute. Not in all the matters but where it seems that although being of criminal nature, the offence is not that grave and can be resolved in a private manner through mutual settlement, there, the court depends upon the medium chosen by the parties. In the case of ***Mahesh Chandra v. state of Rajasthan***, where the persons were inculpated by and convicted under section 307 of the Indian Penal Code, which was not a compoundable offence the court adopted the ruling of the case of ***Suresh Baboo v. State of Uttar Pradesh*** [3] wherein the consent of the parties as to compounding of a non – compoundable offence was granted[4].

[2] Ayushi Tripathi, Compounding of offences(October 22, 2021), Compounding of Offences - Law Times Journal
[3] Suresh v. State of U.P. 2001 3 SCC (February 2, 2001).
[4] Mahesh Chandra Tak v. State of Rajasthan And Ors., RLW 2006(1) RAJ 828, 2006(2) WLC 559, (February 3, 2006).

ROLE OF COMPOUNDING UNDER THE CODE ON WAGES ACT, 2019

Section 321 of the Code of Criminal Procedure, 1973 talks about compounding. Composition or compounding is a form of settlement which is done for pity offences. The present code related to the labour laws i.e. the Code on Wages, 2019 discusses the notion of Composition. Earlier there was no provision related to compounding of offences, which thus makes it more important to understand the intent of the legislature behind such insertion.

To understand the meaning and role of compounding we need to understand its requirements. That is to say, we need to acknowledge the prerequisite of inserting the provisions of composition in labour laws. Earlier there were no provisions related to compounding and it is only under the present code that had introduced the roots related to the notion. From the intention of the code one can acknowledge the need of introducing composition as to balance the role of act which seems to be inclined more towards the employees. Even in cases of provisions related to offences and penalties the resolution of the act of employer is discussed and employees are more at a secured edge, so to efface the appearance of the law to be tilted towards employees when it comes to discussion of offences and penalties, Section 56 of the Code on Wages, Act 2019 set forth a process of settlement with an intent to avoid unnecessary conflicts and liberalizing the person at default to seek middle way so to resolve the dispute. By this way, the act is providing an opportunity to the employer as a second chance for settling the matter through mutual agreement and understanding.

However the notion is not allowed in all the cases i.e. composition is not applicable in every case scenario and is allowed only in cases where the punishment is charged with fine only, whereas in cases which includes imprisonment along with fine or even imprisonment alone, there is no scope of compounding. Hence it can be said that the provision is inserted with the limited scope but wide benefit.

As the paper is focused on discussing the concept under the labour laws, specifically with regards to the Code on wages so ***Section56*** under chapter VII of ***the Code on Wages, Act 2019*** which deals with the concept of compounding is read as following;

56. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Code, not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may, on an application of the accused person, either before or after the institution of any prosecution, be compounded by a Gazetted Officer, as the appropriate Government may, by notification, specify, for a sum of fifty percent of the maximum fine provided for such offence, in the manner as may be prescribed.

(2) Nothing contained in sub-section (1) shall apply to an offence committed by a person for

the second time or thereafter within a period of five years from the date—

(i) Of commission of a similar offence which was earlier compounded;

(ii) Of commission of similar offence for which such person was earlier convicted.

(3) Every officer referred to in sub-section (1) shall exercise the powers to compound an offence, subject to the direction, control and supervision of the appropriate Government.

(4) Every application for the compounding of an offence shall be made in such manner as may be prescribed.

(5) Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, against the offender in relation to whom the offence is so compounded.

(6) Where the composition of any offence is made after the institution of any prosecution, such composition shall be brought by the officer referred to in sub-section (1) in writing, to the notice of the court in which the prosecution is pending and on such notice of the composition of the offence being given, the person against whom the offence is so compounded shall be discharged.

(7) Any person who fails to comply with an order made by the officer referred to in sub-section (1), shall be punishable with a sum equivalent to twenty percent of the maximum fine provided for the offence, in addition to such fine.

(8) No offence punishable under the provisions of this Code shall be compounded except under and in accordance with the provisions of this section[5].

So sub section 1 to section 56 clearly states the applicability and scope of the provision by eliminating the offences punishable with imprisonment along with fine and imprisonment only from the ambit of compoundable offences. Hence, the section will prevail only when the offence is of such a category which is punishable with fine. So as per the provision the accused is required to write an application to the gazetted officer who will further decide whether the offence can be compounded or not and accordingly will issue directions for compounding by submission of fifty percent of the fine amount. Another point to be noted under this provision is the exceptional case where the provision will not be a safeguard i.e. where the defaulted person has perpetrated the similar offence for the second time within a tenure of five years from the date of commission of such offence for which such person was earlier found guilty and sought to resolve the matter through compounding.

So compounding under labour laws can be understood as an opportunity to the employers who

[5] The Code on Wages Act, 2019(Act 29 of 2019, dt. 8-8-2019)

were accused of any injustice or have been subject to any grievance maybe due to unfair treatment, non – payment of wages, unnecessary deduction, or for that matter any such concern which arose any issue between employer and the employee. So this provision grabs an opportunity for the employer to emancipate him from the matter. And the effect is such that it occurs privately and makes the employer get rid of any and every allegation against him. It ensures the matter gets resolved without any conflict.

CONCLUSION

The unorganized sector of the Indian Labour industry is the most important topic to be dealt with when it comes to discussing the labour laws in India. In fact the laws and norms related to the employment sector need a real attention for the proper management of the labour workplace and carrying on business. This further requires the employers and employees to be surrounded by a healthy environment and good quality of work. Conflict between the employers and the employees is a very normal situation at any workplace but it may turn up into a serious issue when not resolved at the initial phase. This may then require involvement of middle ways to find a conclusion. So the concept of compounding plays the role of that middle path which can be resorted by the parties for the purpose of settlement between them. The process not only reduces the possibility of loss as it is based on the consent of the parties but also avoids undesirable conflicts. As far as the side of advantages of composition is concerned over any other means of dispute settlement then the benefits must not be avoided because of its contribution in lessening the burden of the courts by providing space to the parties to opt for whatever way they would like to get rid of the issue and getting the issues resolved as soon as possible. This also declares the act to be impartial when it comes to deciding about offences and penalties irrespective of the party in concern since in majority of cases the act seems to be inclined more towards the employees, considering them to be in a needy condition.

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