
EMPLOYMENT CONTRACTS WITH AN EMPHASIS ON HAZARDOUS WORK

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ABSTRACT

Employment contracts for performance of hazardous work would need to have clauses that adequately guard the legal rights of workers and employers. Contracts cannot be voided unless a statute clearly intends that such contract ought to be void. Employment contracts would contain informational clauses giving the employee right to seek information about employee safety. Training clauses govern necessary training to be provided and when indemnity can be asked from the worker for the provided training. Warranties and Representation clauses fixate the statements of truth made to induce into contract or merely provide assurance of any fact deemed important. Termination clause lays out when the employee may be terminated and protects from arbitrary termination. Compensatory clause dictates quantum of compensation to be given and under what conditions. Confidentiality clause would protect employer interests. Whistleblower Protection clause balances confidentiality and freedom of expression. Employment Contracts save time and money of the parties and the court during disputes.

INTRODUCTION

In the financial year of 2023, India employed around 1.3 million workers under the mining sector.¹ The number of workers in the construction sector in the same year was 71 million and thus, this sector is the second most massive generator of employment in the country.² There is one thing common for the employees- specifically manual laborers, in both these sectors; They work in immensely unforgiving conditions. Many workers in the mining sector suffer from silicosis, COPD and cardiovascular issues.³ Construction workers often have similar ailments.⁴ Apart from these diseases there is significant risk of collapse of mines/buildings due to which grievous physical injury may occur.⁵ Such injuries can leave the worker crippled for life, and even if the injury is not of this nature, it is not an insignificant matter.

In the formal sector, workers in factories where crushing takes place, where large amounts of electric current flows close to working areas, where harmful chemicals must be handled, or where chemical vapors are present may also suffer debilitating conditions. Nuclear energy plants are high risk zones- Chernobyl and its surroundings still facing the consequences for the disaster and the incident being alive in popular memory.

The circumstances above are some of the reasons why employment contracts are so crucial. It is always useful for terms and conditions to be laid out clearly in a document and on which there is consensus ad idem. It is true- There are laws in India that protect the interest of both employers and the employees even without the presence of a contract. However, **the presence of a contract simplifies the situation by explicitly highlighting rights and liabilities of the employer and the employee in one document**, it saves time by avoiding the need to run through numerous case laws and statutes when disputes arise. In this paper, I seek to explore

¹ *Number of People Employed by the Mining Sector in India from Financial Year 2017 to 2023 (in Millions)*, Statista (Oct. 30, 2023), <https://www.statista.com/statistics/1284360/india-mining-sector-employment/>.

² *India's Construction Sector Second-Largest Employment Generator: Report*, The Economic Times (Aug. 4, 2023), <https://economictimes.indiatimes.com/industry/indl-goods/svs/construction/indias-construction-sector-second-largest-employment-generator-report/articleshow/102399804.cms>.

³ Saranya Rajavel et al., *Silico-tuberculosis, Silicosis and Other Respiratory Morbidities Among Sandstone Mine Workers in Rajasthan—A Cross-Sectional Study*, 15 PLOS ONE e0230574 (2020), <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0230574>.

⁴ Sourav Mondal et al., *Silicosis Prevalence and Related Issues in India: A Scoping Review*, 20 J. Occup. Med. & Toxicol. 3 (2025), <https://occup-med.biomedcentral.com/articles/10.1186/s12995-024-00445-2>.

⁵ Sajjan S. Yadav et al., *They Built This City—Construction Workers Injured in Delhi, India*, 9 Inj. Epidemiol. 20 (2022), <https://injepijournal.biomedcentral.com/articles/10.1186/s40621-022-00388-4>.

what the basic features of an ideal hazardous work employment contract would look like and legal backing, if any.

An efficient employment contract brings together established legal norms to protect both employee and employer interest. It becomes essential for the employment contract to be comprehensive. A simple observation of labor employment contracts reveals it is not sufficiently detailed. Hazardous work employment contracts are not very different from regular employment contracts apart from few more safeguards.

EXPLORING CLAUSES

Contractual clauses that differ from statutory provisions

It is a natural question whether an agreement which has a clause differing from the words of a statute are acceptable. To be efficient, employment contracts must be flexible so they may differ from what a statute dealing with the matter states. Agreements that would render futile the provisions of any statute or seek to do something that is forbidden by law are unlawful.⁶ As such if any employment agreement seeks to directly go against any statutory provision, the agreement is void. However, there exists **a subtle distinction between violating a statute or defeating its purpose and differing from it. While all violations are certainly differences, all differences are not violations.** As I see it, there is a dearth of Indian case laws with clarity regarding such matters hence I shall rely on an English Judgment. Lord Devlin in a case⁷ noted that “A court should not hold that any contract or class of contracts is prohibited by any statute unless there is a clear implication, or necessary inference, that the statute so intended.”

Informational Clauses

The Occupational Safety, Health, and Working Conditions Code, 2020 which replaces over 10 labor laws in India, mandates that the employer must create as safe a work environment as possible⁸ and also declares that the employee has the right to seek information about health and safety at work.⁹ I have observed that it is not a common practice to include clauses pinning liability on the employer in case all necessary information is not revealed to the employee

⁶ The Indian Contract Act, No. 9 of 1872, § 23 (India).

⁷ St John Shipping Corp. v. Joseph Rank Ltd., [1957] 1 Q.B. 267 (Eng.).

⁸ Occupational Safety, Health and Working Conditions Code, No. 37 of 2020, § 6 (India).

⁹ Id. § 14.

before they start working in a hazardous environment. There is no case law that directly states the above but case law¹⁰ as well as statute law¹¹ is clear that employers are obligated to protect the health of the worker in the course of employment whether engaged/not engaged in hazardous work. From this it can be understood that if the employer does not inform the employee of potential hazards before they begin to work in such an environment, they can potentially face legal consequences. Proceeding from this reasoning it can be safely concluded that when the work environment is known for being especially hazardous, the responsibility of the employer to inform the employee is even higher.

An employee also has crucial things to inform the employer, for example any underlying health issues that makes the employee vulnerable to harm or compromises performance,¹² There is also immense importance in being truthful when revealing information of any training or qualification required for the task or the loss of qualification thereof.

Training Clauses

If the employer chooses to hire a worker who does not have the required training to perform the hazardous work assigned, it becomes a legal duty for the employer to provide such training.¹³ Incorporation of such a clause is important both for the employer and the employee. There is already a legal obligation on the employer to ensure employee health and safety at the work site and this would be impossible if the employee has no idea what she/he is doing and the consequences thereto. It is also necessary for the prevention of losses to the employer. If the employee decides to terminate employment after finishing this training, then the employee can be asked to indemnify the employer for the cost incurred from the training if the indemnification clause exists to such effect.¹⁴ If the clause does not exist it may be in the court's discretion whether to grant damages or not. Case law mostly deals with the presence of an indemnity clause, so including such a clause under the training clauses or in a separate section is beneficial for the employer.

¹⁰ *Occupational Health and Safety Association v. Union of India & Ors.*, (2014) 2 SCC 1 (India).

¹¹ *Occupational Safety, Health and Working Conditions Code*, § 6 (2020) (India).

¹² *Hrdlicka v. General Motors LLC*, 59 F.4th 791 (6th Cir. 2023).

¹³ Factories Act, No. 63 of 1948, § 6(2)(c) (India).

¹⁴ *SpiceJet Ltd. v. Monal Sachdeva*, C.S. No. 52/13A (Civil Judge-I, New Delhi Dist., Sept. 26, 2014).

Warranties and Representations

These words are not defined in the Indian Contract Act, 1872 but are well understood especially in the context of sale contracts. Representation can be defined as '*a presentation of fact either by words or by conduct, made to induce someone enter into a contract*' and a Warranty is a statement of truth that can refer to either the present or the future. The misrepresentation or false warranties is a ground for either damages or repudiation of the contract depending on their nature.¹⁵

There are some crucial representations/warranties every employer involved in hazardous work ought to make- Provision of Safety Equipment, Provision of any necessary medical aid whatsoever. There is a legal duty on the employer to do this. Judgments have emphasized a safe working environment, and this cannot be realized if workers handling hazardous material or exposed to hazardous situations are not given safety equipment. But some don't have any legal requirement like provision of rage-rooms (a modern trend) which tends to be extremely useful for employees. Workers who are knowledgeable and Unionized can demand for such facilities.

Another useful representation/warranty can be that the employer shall conduct regular health camps and submit a copy of their report to the employees.

This can reveal whether the hazardous work is having a negative impact on their health.

On part of the employee- representations of qualifications, required standard of health while joining employment, transparency about the behavior of colleagues, etc. can be made. It may seem strict but for gaining good promises (especially from an employer) one must give good promises.

Termination Clause

Hazardous work is still a source of livelihood though it may be undesirable, and employers must not be let to arbitrarily dismiss employees for the insignificant reasons. If looked from a point of view of good conscience, an employee risking their health for the employer, though

¹⁵ Ashima Obhan & Vrinda Patodia, *Revisiting Representation and Warranty Clauses*, MONDAQ (June 19, 2020), <https://www.mondaq.com/india/securities/940472/revisiting-representation-and-warranty-clauses>.

remunerated in money for such service should be dismissed only when the situation calls for it. This is not the legal position- in fact, this is far from the legal position. In the absence of a termination clause, the grounds of termination fall under the labor laws.

This clause is dependent on the type of employment being considered- Temporary or Permanent. Under temporary employment, there is a fixed time period after which the employment is terminated. A permanent contract is indefinite- workers are employed as long as the termination clause is respected. Loss of confidence resulting from misconduct/misbehavior is a strong ground for termination.¹⁶ A subclause for the conduct of disciplinary inquiry before termination may also be added since the Supreme Court of India has expressed that if there is no disciplinary enquiry then the employer must present evidence in justification of the order of dismissal.¹⁷

Compensatory Clause

The Employee's Compensation Act of 1923 is the primary legislation that governs compensation to be paid by employers in circumstances of injury to the employee. It also provides the method of calculation of such compensation. Section 3(a) of the Act states that employer shall not be held liable to pay compensation if the injury does not result in the total or partial disablement of the employee for a period exceeding three days. However, the law does not prevent the employee from negotiating with the employer for compensation even for injuries that are different from "disablement for 3 days" – For example cuts and lacerations that don't disable the employee but are common in hazardous workplaces. Contractual clauses that are different from statutory provisions were discussed earlier in this paper. The distinction between going against a statute and differing from it is clear cut here- The act makes it plain and simple that the employer cannot enter into a contract such that it decreases the provided compensation in the Act, but the Act never states the employee is not allowed to ask for more or the employer cannot give more indemnities.

Confidentiality Clause

It is natural that certain hazardous practices/practices in general are innovative and are not

¹⁶ Madhusudan Bose & Nayantara Chauhan, *Termination of Worker for 'Loss of Confidence' Does Not Amount to Retrenchment*, IndiaCorpLaw (Apr. 3, 2020), <https://indiacorplaw.in/2020/04/termination-of-worker-for-loss-of-confidence-does-not-amount-to-retrenchment.html>.

¹⁷ *Kamal Kishore Lakshmanan v. Management of Pan American World Airways Inc.*, AIR 1987 SC 229.

known to the public, revealing to the public of which can cause significant harm to commercial interests of the employer. To prevent this, a confidentiality clause/ non-disclosure clause is added. The validity of this clause has been well established in cases.¹⁸

Whistleblower Protection Clause

It may happen that employees notice that the workplace is not running under the standards that it should and find it difficult to approach NGOs or the Media out of fear of corporate retaliation for breach of confidentiality clauses. Whistleblowers Protection Act, 2011 pertains mainly to public service officers. A notable European Union case¹⁹ specifically deals with this- The court declared the dismissal of a whistleblower journalist exposing political control over judiciary as a violation of the freedom of expression and highlighted the importance of balancing confidentiality and expression. The court also emphasized that revealing information in public interest can outweigh confidentiality. The Bombay High Court²⁰ has ruled that it is important that confidentiality clauses do not unreasonably impinge upon the individual rights of employee. There is also a recourse in the Indian Contract Act too. Section 23 of the Act declares a contract void, therefore unenforceable if the object of the Contract is forbidden by law *inter alia*. The various labor laws can be invoked using this provision, thus, if the court determines that the object of a confidentiality clause is to carry out unsafe work unreasonably compromising employee safety, the clause may be struck down.

CONCLUSION AND COMMENTS

Contract and Employment laws are interwoven beautifully within an employment contract and such contracts, as stressed earlier, serve crucial functions enhancing the protections available to the employers and employees. With unique types of employment contracts of the nature discussed here (Astronaut Contracts for example) that are an eventuality, the field and study is only going to expand. This paper has taken a suggestive form since in a developing country like India with one of the largest informal sectors in the world, employment contracts for hazardous work are scarce. Blue Collar workers are not aware of the rights they possess and are mainly dependent on NGOs and legal services authorities to defend their rights. It is impossible for these institutions to be with every single worker. The significance of an

¹⁸ *Zee Telefilms Ltd. v. Sundial Communications Pvt. Ltd.*, (2003) 5 Bom. CR 404 (Bom. H.C.).

¹⁹ *Guja v. Moldova*, App. No. 14277/04, 46 Eur. H.R. Rep. 36 (2008).

²⁰ *VFS Global Services Pvt. Ltd. v. Suprit Roy*, (2008) 2 Bom. CR 446 (Bom. H.C.).

employment contract is that it fills this void and creates a structure that aides judicial work and eases the load on organizations. However, the popularization of such contracts still rests in the hands of social justice institutions who directly engage with workers and employers. Lastly, I opine that an employment contract is not a tool for attacking the employer's rights and asserting the rights of the employee. Such a contract would likely not be considered enforceable- The ultimate purpose of an employment contract is to clearly define rights and obligations of the parties according to the contours of law so both may fairly conduct their course of life.