COVID-2019

COMPLETE ANALYSIS IN RESPECT OF REPUGNANCY AROSE BETWEEN THE INDUSTRIAL DISPUTE ACT, 1947 INCLUDING SIMILAR STATE ACTs AND THE DISASTER MANEGEMENT ACT, 2005

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The growing number of COVID-2019 cases and as a part of the preventive procedure to curb the spread of the corona virus , the Hon'ble Prime Minister of India , being Chairperson of National Disaster Management Authority, (NDMC) has announced completely lock-down for 21 days , effecting from 25th March'20 which is forcing many public and private organisations to scale down their operations, as part of measures to contain the spread and by such announcement, it is expected to impact negatively on the profitability of organisations as well as on nation as whole .Therefore, the Employers , keeping in view various advisory notice(s) of the State Government as well as the Central Government , have been considering their options ahead of the lockdown , which will wreak havoc on their cash-flow and employment of employees thereof . Not only this, present havoc situation may also lead to wage cut as well as layoff by organisations battling to balance the books and make returns to shareholders. Hence, keeping in view various directions of the State Government as well as the Central Government, the following situations are available to consider for the employers /establishments:

A. *This could include forcing employees to take leave and shutdown their establishments during lock-down period and pay the full-salary for the month of March'20 and so on.*
B. *Another legal option is temporary layoffs for permanent workers which means that effected employees/workmen will receive 50% of their wages during lock-down period as per the provisions of the Industrial Dispute Act,1947*
C. *Another option to say the out-sourcing employees and /or daily wager employee engaged through independent contractor to discontinue on the principle 'no work and no wages'.*
D. *To follow the Home Ministry Order no. 40-3/2020-DM(A) dated 29.03.20 and also subsequent DO No. 40-3/2020-DM(A) dated 29.03.20 , directing all Chief Secretary to follow order dated 24.03.20 , 25.03.20 and 27.03.20 which were issued by the Home Ministry by using legislative power under Section 10 (2)(1) of the Disaster Management Act,2005*
E. *To follow the State Government's directions or the Central Government directions.*
F. *To follow the Labour laws i.e. Industrial Dispute Act, 1947 or the provisions of the Shop and Establishment Act or similar provisions of other labour laws.*

G. *The labour laws , being concurrent laws ,* contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to issue directions under Section 10 of the Disaster Management Act,2005 or other provisions of the said Act , which will be applicable upon the establishment/employers.

Given the opportunity to get answers from the team of www.makeinindialawfirm.com during proposed zoom meeting with Learned Advocate(s), Labour Laws Consultant(s) of the State of Maharashtra, Delhi and Karnataka , Gujarat etc.

The Disaster Management Act, 2005, (23 December 2005) No. 53 of 2005, was passed by the Rajya Sabha, the upper house of the Parliament of India on 28 November, and the Lok Sabha, the lower house of the Parliament, on 12 December 2005. It received the assent of The President of India on 9 January 2006. The DM Act, 2005 mandates the Central Government to establish National Disaster Management Authority (in short the 'NDMA") as nodal authority and the Prime Minister (PM) as its ex-officio chairperson. Like State Government also establish State Disaster Management Authority (in short the ' SDMA") and at District level also establishment District Disaster Management Authority (in short the ' DDMA") for implementation and management of the reasons and object this Act,2005.

To overcome the problem of COVID-2019 cases and as a part of the preventive procedure to curb the spread of the corona virus, the Central Government as well as the State Government have issued so many orders in cursory manner. So, the basic question is arose hereunder that whether the employers have to adhere the provisions of the Industrial Dispute Act,1947 or the provisions of State Industrial Dispute Act or Certified Standing Orders of the company , particularly the provision of the Layoff or termination etc. or to follow the latest orders of the Home Ministry issued by using the legislative power under Section 10 of the Disaster Management Act,2005. So, there is confusion among the employers, the legal professional and labour laws consultants, means that there is repugnancy or inconsistency to follow the orders of the State Government /Central Government or to follow the provisions of Labour laws . For that, we have to examine the latest settled laws in respect of the **doctrine** of Repugnancy as well as overriding effect as enumerated in Section 72 of the DM Act, 2005.

A. The Supreme Court's settled laws in respect of the Interpretation of 'Doctrine of Repugnancy' (re.pun.nan.cy)

To answer the doctrine of repugnancy, we have to examine the articles of the Indian Constitution, specific Article 254 of the Constitution of India says firmly the **Doctrine of Repugnancy** in India. However, to understand that "why repugnancy is arose? So, to understand the Article 246 is important for this discussion.

Article 246 also talks about Legislative power of the Parliament and the Legislature of a State. It states that:

Union List

1. The Parliament has exclusive power to make laws with respect to any of the matters enumerated in **List I or the Union List** in the Seventh Schedule.

State List

2. The Legislature of any State has exclusive power to make laws for such state with respect to any of the matters enumerated in **List II or the State List** in the Seventh Schedule.

Concurrent List

3. The Parliament and the Legislature of any State have power to make laws with respect to any of the matters enumerated in the **List III or Concurrent List** in the Seventh Schedule.
4. Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.

The **Article 245 of the Indian Constitution** states that Parliament may make laws for whole or any part of India and the Legislature of a State may make laws for whole or any part of the State. It further states that no law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation. For the sake of convenience, the Article 254 is being reproduced as under:

Article 254 in the Constitution of India 1949

254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States

(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State: Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State

Further , what the Supreme Court says about the interpretation of the Article 254 has been beautifully summarized by the Supreme Court in ***M. Karunanidhi v. Union of India (1979) 3 SCC 431.*** The Hon'ble Supreme held that:

1. Where the provisions of a Central Act and a State Act in the Concurrent List are fully inconsistent and are absolutely irreconcilable, the Central Act will prevail and the State Act will become void in view of the repugnancy.

2. Where however a law passed by the State comes into collision with a law passed by Parliament on an Entry in the Concurrent List, the State Act shall prevail to the extent of the repugnancy and the provisions of the Central Act would become void provided the State Act has been passed in accordance with clause (2) of Article 254.

3. Where a law passed by the State Legislature while being substantially within the scope of the entries in the State List entrenches upon any of the Entries in the Central List, the constitutionality of the law may be upheld by invoking the doctrine of pith and substance if on an analysis of the provisions of the Act it appears that by and large the law falls within the four corners of the State List and entrenchment, if any, is purely incidental or inconsequential.

4. Where, however, a law made by the State Legislature on a subject covered by the Concurrent List is inconsistent with and repugnant to a previous law made by Parliament, then such a law can be protected by obtaining the assent of the President under Article 254(2) of the Constitution. The result of obtaining the assent of the President would be that so far as the State Act is concerned, it will prevail in the State and

overrule the provisions of the Central Act in their applicability to the State only.

Now, the conditions which must be satisfied before any repugnancy could arise are as follows:

1. That there is a clear and direct inconsistency between the Central Act and the State Act.
2. That such an inconsistency is absolutely irreconcilable.
3. That the inconsistency between the provisions of the two Acts is of such nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other.

Thereafter, the Hon'ble Supreme court laid down following propositions in this respect:
"1. That in order to decide the question of repugnancy it must be shown that the ***two enactments contain inconsistent and irreconcilable provisions, so that they cannot stand together or operate in the same field****.*

2. That there can be no repeal by implication unless the inconsistency appears on the face of the two statutes.
3. That ***where the two statutes occupy a particular field, but there is room or possibility of both the statutes operating in the same field without coming into collision with each other, no repugnancy results****.*

4. That where there is no inconsistency but a statute occupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statutes continue to operate in the same field."

Further in the case of ***Govt. of A.P. v. J.B. Educational Society, (2005) 3 SCC 212*** the further the Hon'ble Supreme Court held that:

1. There is no doubt that both Parliament and the State Legislature are supreme in their respective assigned fields. It is the duty of the court to interpret the legislations made by Parliament and the State Legislature in such a manner as to avoid any conflict. However, if the conflict is unavoidable, and the two enactments are irreconcilable, then by the force of the non obstante clause in clause (1) of Article 246, the parliamentary legislation would prevail notwithstanding the exclusive power of the State Legislature to make a law with respect to a matter enumerated in the State List.

2. With respect to matters enumerated in List III (Concurrent List), both Parliament and the State Legislature have equal competence to legislate. Here again, the courts are charged with the duty of interpreting the enactments of Parliament and the State Legislature in such manner as to avoid a conflict. If the conflict becomes unavoidable, then Article 245 indicates the manner of resolution of such a conflict."

The Hon'ble Supreme Court further held that:
1. Where the legislations, though enacted with respect to matters in their allotted sphere, overlap and conflict. Second, where the two legislations are with respect to matters in the Concurrent List and there is a conflict. In both the situations, parliamentary legislation will predominate, in the first, by virtue of the non obstante clause in Article 246(1), in the second, by reason of Article 254(1).

2. Clause (2) of Article 254 deals with a situation where the State legislation having been reserved and having obtained President's assent, prevails in that State; this again is subject to the proviso that Parliament can again bring a legislation to override even such State legislation.

In the case of *National Engg. Industries Ltd. v. Shri Kishan Bhageria (1988) Supp. SCC 82 ,* it was held that ***"the best test of repugnancy is that if one prevails, the other cannot prevail".*** All the above mentioned cases have been upheld by the Supreme Court in ***Zameer Ahmed Latifur Rehman Sheikh v. State of Maharashtra, Civil Appeal No. 1975 .***

B. **Section 72 (Act to have overriding effect) of the DM Act,2005 : Doctrine of non-obstante clause** **(**non ob·stan·te).

Normally a non-obstante clause is always expressed in a negative form i.e. by using the words "notwithstanding anything contained" or "anything contained in previous law shall not affect the provisions of a particular Act" and so on. Hence , keeping in view of the settled law in respect 'overriding effect' , it is well settled laws that when two statutes contain non-obstante clauses the later statute would prevail. The rationale behind this is that the Legislature at the time of enactment of the later statute, is aware of the earlier legislation containing a non-obstante clause. Secondly, if there is a special statute though enacted earlier in point of time with a non-obstante clause, prevails over the later enactment, if the latter is a general statute as held by the Supreme Court in the case of Maharashtra Tubes Ltd. v. State Industrial & Investment Corporation of Maharashtra Ltd. & Anr., [1993] 2 SCC 144; Sarwan Singh & Anr. v. Kasturi Lal, [1977] 2 SCR 421; Allahabad Bank v. Canara Bank & Anr., [2000] 4 SCC 406 and Shri Ram Narain v. The Simla Banking Industrial Co. Limited, [1956] SCR 603.

So, in view of the above legal discussions in respect the latest orders dated 29.03.2020, passed by the Home Ministry by using legislative power under the Section 10 of the Disaster Management Act, 2005, will be applicable to all establishments /employers /employees on the basis of the settled law that "It is well settled that when two statutes contain non-obstante clauses the later statute would prevail. The rationale behind this is that the Legislature at the time of enactment of the later statute is aware of the earlier legislation containing a non-obstante clause. Secondly, if there is a special statute though enacted earlier in point of time with a non-obstante clause, prevails over the later enactment". However , I hereby , again opine that it is also relevant to read other Section of the Disaster Management Act,2005 i.e. Section 72 (Act to have overriding effect) , Section 51 (Punishment for obstruction etc.) , Section 42 , Section 39 (responsibilities of the State Government), Section 33 & 34 (Power and function of the District Administration), Section 12 (iv) { such other relief as may be necessary).

So, I am in the considered legal opinion that the effected establishments have to follow the Central Government orders which has been issued by the Home Ministry on 29th March'20 and the establishment cannot go for layoff as per the provisions of the I D Act,1947 /similar State Acts or non-payment of wages during lock-down period failing which the concerned District Authorities / Police Officers may take following legal action against the employees /peoples /director /employer who do not follow the order of the public servant (Executive Magistrate or District Magistrate or Police Commissioner): The relevant penal sections are as under :

1. **Section 188 of IPC :** Talks about Disobedience to order duly promulgated by a public servant**.** Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction; shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both; Cognizable, Bailable.

2. **Section 186 of IPC :** According to section **186** of Indian penal code, Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both

3. **Section 269 of IPC :** Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.
   Cognizable, Bailable

4. **Section 270 IPC** : Whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.
4. **Section 271 IPC:** Knowingly disobeying any quarantine rule Imprisonment for 6 months, or fine, or both
   Non-cognizable.

5. Section 51 to 54 of the Disaster Management Act, 2005. Non-compliance of the MHA's order or State Government's order or District Administration's order during lock-down period , the concerned DM/ Police Commissioner may take legal action under Section 51 of the DM Act,2005 read along with Section 188 and 186 of the IPC.

NB : 1. This is only legal views of our firm which may differ to other Learned Advocates. However , their legal views with supporting only Supreme Court's judgment are also welcome for legal discussions.

2. The above legal views are valid during lock-down period or during such period where Central Government has imposed order (supra) as per provisions of the DM Act,2005. Thereafter , all provisions of the labour laws (Central / State) will be applicable upon the establishments/companies .

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