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WRONGFUL TERMINATION – VIOLATION OF RIGHT AND BREACH OF CONTRACT

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ABSTRACT

*The historical development of wrongful termination in English law is based on a group of ideas encompassing a limited contractual notion of wrongfulness and limited remedies. The chapter traces the persistence of this nexus in constraining the judicial development of wrongful dismissal throughout the twentieth and early twenty-first centuries. It examines the legal consequences where an employer can terminate the contract of employment (lawfully or unlawfully). It considers the 'elective' theory of termination, along with statutory intervention in the form of minimum periods of notice set out in the section 86 of the Employment Rights Act 1996 of the United Kingdom labour law. In 1971, the Industrial Relations Act created the right for many employees to not be unfairly dismissed, and though the act was repealed, the relevant provisions were substantially re-enacted in the Trade Union and Labour Relations Act 1974. The Industrial Disputes Act of India 1947 mandates a thirty-to-ninety-day notice period when terminating "workmen" *. According to the Indian labor laws, an employee ** may be terminated according to the rules laid out in the individual labour contract signed between the employer and the employee. Equally, the terms may be subject to the country's labor laws. The aim of the paper is to analyze whether being terminated without a sufficient reason always leads to wrongful termination, how does the employee know if the termination was legal or illegal, keeping in mind the constitution and labor laws of India and the United Kingdom.*

**Workmen: A term used in the Industrial Disputes Act 1947, which defines those employees whose primary role is not administrative, managerial or supervisory.*

***Employee: A term that covers all types of employees in any kind of role.*

Key Words: Wrongful termination, Elective theory of termination, English law, Indian law.

1. INTRODUCTION

1.1. Introduction

With the development and change in the market, the relationship between the employer and the employee has also changed and several disputes have arisen between them. The conflicts are mainly due to criticizing the employees due to their age/sex/caste/ illness, etc. Employers generally have a sense of superiority and assume that what they say or

do is right. Often, the employees are terminated wrongfully because of these assumptions.

A person is said to have been unlawfully dismissed if they are let go without good reason or if their employer limits their work because of a feud with another employer. Wrongful termination claims that the employer dismissed the employee in violation of a law mentioned in the contract signed. The person filing the suit is the plaintiff and the employer is the defendant. To avoid going to labour courts, the employee

who was unlawfully terminated might first send a legal notice to the human resources department. Most of the wrongful termination cases are settled out of court. These are called out-of-court settlements. In the United States, labour laws say that an employer can dismiss and employee for any cause, without warning or reason unless that reason is illegal. This is called the “at-will doctrine.” In India, the former employee can file a lawsuit and send a notice to the employer, and then the case moves forward to labour court. He/She can be wrongfully terminated based on these terms-

A) Discrimination: If the employer dismisses the employee based on race, caste, age, sex, nationality, or any such discriminatory grounds, the latter can sue the former for wrongful termination based on discrimination. Discrimination is a breach of **Article 15** of the Indian Constitution which states that the state will not discriminate its citizens based on caste, sex, age, birthplace, or religion.

B) Breach of Contract: If the employer violates any of the provisions of the employment agreement, which the employee had signed and which specifies that both parties must abide by the terms of the contract, it becomes a type of wrongful termination. The other factors are if the employer terminates the employee is due to personal grudge, refusal to personal pleasure, unfairness, and bias.

1.2. Research Problem

Many workers fear that if they disclose workplace wrongdoing, their bosses will retaliate. Retaliation may harm someone's present and future career whether they are dismissed from their job in a case of wrongful termination, demoted, rejected a promotion, blacklisted, or otherwise forced to work in a hostile atmosphere. So, instead of using their right to report workplace wrongdoing, employees would prefer to keep silent and put up with the behavior. They think that if they remain silent, they will be able to keep their jobs, earn a respectable salary, and maintain their

place in line for increases and promotions when they become available.

Employees frequently don't report workplace wrongdoing because they don't believe it would have a positive impact. They believe that some sexual harassment or employment discrimination occurs often in the workplace. So, it is a waste of time and resources for them to report misbehavior and maybe pursue a lawsuit against their company. They decide to remain silent as a result. These workers could leave a few weeks after engaging in wrongdoing. They could decide to continue working for the organization despite seeing retribution, sexual harassment, and job discrimination. In contrast, if they were aware that the case would result in payment, they could have reported the wrongdoing.

1.2. Existing Legal Solution

1) Industrial Disputes Act, 1947- The legislation governing dispute resolution in India is the Industrial Disputes Act. It was passed to establish procedures for the investigation and resolution of labor disputes, to stop unlawful strikes and lockouts, and to give workers relief during layoffs, following retrenchment, or after being wrongfully terminated.

Section 2(A) of this act states that “Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman, nor any union of workmen is a party to the dispute”¹

2) Section 11(A) of the Industrial Disputes Act, 1947- “Powers of Labour Court, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen. Where an industrial dispute relating to the

¹ Section 2(A) of the Industrial Disputes Act, 1947

discharge or dismissal of a workman has been referred to a Labour Court, Tribunal, or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal, or National Tribunal as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require: Provided that in any proceeding under this Section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.”²

The above Section talks about appropriate relief which has to be given to the employee by the labor courts, tribunals, and national tribunals if the employer has dismissed the employee without justification.

3) Section 25 (F) of the Industrial Disputes Act, 1947- “Conditions precedent to retrenchment of workmen- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of notice”³

This Act talks about the minimum time period of notice which should be given by an employer to an employee who has been in continuous service for a year, before terminating him/her.

4) Section 13 (1) of the Industrial Employment (Standing Orders) Central Rules Act, 1946-

“For terminating the employment of permanent workmen, notice in writing shall be given either by the employer or the workmen – one month's notice in the case of monthly-rated workmen and two weeks' notice in the case of other workmen: one month's or two week's pay, as the case may be, may be paid in lieu of notice.”⁴

5) Article 15 of the Indian Constitution-

Article 15 talks about the forbiddance of discrimination based on factors like religion, age, sex, and place of birth. Discrimination happens in the workplace and Article 15 may be used to retaliate.

6) The Maternity Benefit Act, 1961- prohibits of women employees based on the reason of pregnancy.⁵

1.4. Literature Review

1) David Harris, Wrongful Dismissal, 1978

Mr. Harris draws attention to the fact that numerous ways exist in which a termination act may take place. For instance, a request for resignation can be like a firing action. As a result, actions such as compensation decrease, job responsibility reduction, unilateral duty change, change in fringe benefit, unilateral change in job location, hiring a replacement, and even promotion may be viewed as equivalent to dismissal. In fact, one will discover that a resignation letter might not be worth the paper it's printed on. One will also discover that the employment contract will expire if a corporation is sold. Additionally, the issue of a subsidiary act is covered⁶. (Harris, 1978)

2) Hugh Collins, Keith Ewing, Aileen McColgan, Labour Laws: Chapter 18 & 19: Wrongful and Unfair Dismissal, 2019

This book talks about employment and labour laws common laws and statutes that protect against unjustified dismissal. It talks about how when terminating an employee, the employer

² Section 11(A) of the Industrial Disputes Act, 1947

³ Section 25(F) of the Industrial Disputes Act, 1947

⁴ Section 13 (1) of the Industrial Employment (Standing Orders) Central Rules Act, 1946-

⁵ The Maternity Benefit Act, 1961

⁶ David Harris, Wrongful Dismissal, 1978

must give notice and what happens when the employer does not abide by the set rules and regulations. It also talks about how one might get affected due to wrongful termination: it might cause economic loss or even psychiatric illness. The authors talk about the factors which qualify for unfair dismissal and how they should abide by the contract which was signed at the time of employment⁷. (Hugh Collins, 2019)

3) **Julian Yew, Wrongful Dismissal: A Practical Guide, 2001**

When people come across employment law-related concerns at work, this practice-focused guide serves as a quick reference for both employers and employees. It outlines the legal and contractual rights and responsibilities of employers and employees. The guide also covers coverage of contemporary issues like wrongful and unfair dismissal, email abuse, malingering, human rights, and whistleblowing⁸. (Yew, 2001)

1.5. Scope and Objectives

- 1) To analyze the behavior of an employer who violates the contract of employment and illegally terminates the employee.
- 2) To analyze the factors which lead to wrongful termination: mainly breach of contract and discrimination
- 3) To analyze how the affected can retaliate and sue the employer.

1.6. Research Questions

- 1) Whether wrongful termination and unfair dismissal are the same.
- 2) Whether employees take undue advantage of the fact that they can blame the employer and call it wrongful termination when the mistake is done by the employee.
- 3) Why, in some cases, the affected employees do not want to report the unlawful deed done by the employer.

1.7. Hypothesis

The assumption in the research paper is that the behavior of the employer plays a very important role during the course of work as well

as termination. Human psychology tends to convince people that they are treated wrongly, sometimes even when the employer is right. The employers unlawfully terminate the employee based on factors like discrimination due to age, caste, sex, religion; personal agenda, feuds with family leading to such behavior at the workplace, etc.

1.8. Methodology

The research paper is based partly on facts and partly on assumptions. It is based on primary and secondary sources. Primary sources include Statutes, Books, and Case Laws.

Secondary sources include data from the internet, articles, and journals. A mix of Qualitative, Quantitative, and descriptive methods of study is followed in the paper.

Chapter 2

Wrongful termination based on discrimination & breach of contract

Discrimination is when someone is treated unfairly due to who they are or because they have particular traits. You may have experienced discrimination if you were treated differently from others just because of who you are or because you have particular qualities. Factors of discrimination are Age, Religion, Disability, Pregnancy and Maternity, Sexual Orientation, Gender and Marriage and Civil Partnership.

Discrimination can occur in many forms such as indirect or direct discrimination, perception, verbal, harassment, etc. Direct discrimination occurs, when a person with a certain characteristic is treated less favorably than others, it is direct discrimination. For example – you have the qualifications and experience necessary for the job, but your application is turned down because you are ‘too young’ or ‘too old’. It may qualify as indirect discrimination if a rule or policy at workplaces you at a disadvantage when compared to others. Indirect discrimination also includes harsh language and unequal and unjust treatment. Additionally, the employer must regard the person less favorably than somebody who does

⁷ Hugh Collins, Keith Ewing, Aileen McColgan, Labour Laws: Chapter 18 & 19: Wrongful and Unfair Dismissal, 2019

⁸ Julian Yew, Wrongful Dismissal: A Practical Guide, 2001

not share the same personal trait. Employees are unable to claim discrimination if an employer treats all its employees unjustly.

Harassment also plays a huge role in discrimination. Harassment can be of any type but it is usually based on any protected characteristic, such as race, sex, age, color, national origin, religion, and disability. All illegal workplace harassment is by its very nature discriminatory. Discriminatory harassment is defined by its objectives rather than how it is carried out, unlike verbal or physical harassment. The victim may experience harassment based on race. Because of their ethnicity, skin color, heritage, origin country, or citizenship, a victim may encounter racial harassment. Even perceived characteristics of a certain ethnicity, such as curly hair, accents, habits, beliefs, or attire, may contribute. Racial harassment frequently manifests as racist remarks, racial epithets, racial humor, insulting remarks, intolerance for diversity, etc. This is also known as racism. A victim may experience harassment based on gender or sexual orientation. The core of the harassment is frequently negative gender preconceptions about how men and women should or do act. Gender-based harassment revolves around the idea of what work men should do and what work women should do. A prominent example of gender-based harassment is when a male nurse is harassed because the job of a nurse is stereotypically viewed as a job that is pursued by women. Harassment on the basis of sexual orientation takes place when a person is treated differently on the basis of his sexual preferences or when a person's sexual orientation is different from the people around him. Depending on their line of employment, people of any sexual orientation (heterosexual, gay, bisexual, asexual, etc.) may encounter this type of harassment. For instance, a straight male would be mocked for working in a salon whereas a homosexual man might experience harassment on a construction site. A victim may experience harassment and get terminated from his job on the basis of religion. A person

who practices a religion other than the "norm" of the workplace may encounter harassment or intolerance there. A person who practices a religion other than the "norm" of the workplace may encounter harassment or intolerance there. While racial harassment and religious harassment are frequently related, the latter focuses explicitly on the victim's religious convictions. Discrimination based on religion often results in the employee leaving the job or the company creating circumstances that force the employee to quit his job. Disability-based harassment is directed towards employees who are either disabled themselves or are associated with a disease or any kind of disability. Harmful jokes, remarks, refusals to provide reasonable accommodations, or isolation can all be forms of harassment that affect people with disabilities. Another form of discrimination is age-based harassment. A victim of age-based harassment could be: Teased and insulted, left out of activities or meetings, or unfairly criticized. (Hutto, 2022)⁹

Breach of Contract The phenomena of wrongful termination can happen in a variety of ways, but the primary reason for accusations of wrongful termination is a breach of a party's contract. When both parties sign a contract, they are making promises to one another and start the employer-employee relationship. There is a contract breach if the employer fails to uphold those commitments. The employee may submit a claim for damages against the employer if the employer violates the terms of the contract and wrongfully fires the employee. The idea that by breaching the contract, the employer has chosen to terminate the contract, and the employee is entitled to a reasonable amount of notice or pay in lieu of notice of the end of their employment is the basis for the number of damages an employee may be entitled to receive for a successful wrongful termination claim. This sum will vary depending on the situation and consider the terms of the employment contract, the

⁹ <https://www.inhersight.com/blog/guides-to-discrimination/discrimination-in-the-workplace>

employee's age, length of service, the nature of the job, the possibility of finding alternative employment, and other factors. There are two ways of termination: individual termination and collective termination. When terminating an employee individually, the employer is obligated to provide notice 30–60 days prior with a decent compensatory amount. For every year of service that has been completed, retrenchment compensation should be required to be provided at the rate of 15 days of pay. However, no prior notice of termination or retrenchment compensation would be necessary if an employee was fired for his wrongdoing or due to any illegal activity or misconduct. Collective termination of employees is permitted under Indian Labour Law but only under certain circumstances. Depending on the number of employees involved, companies are required to request approval from the relevant labor department in the event of a layoff. The "last in, first out" policy, which states that the employees with the shortest tenure shall be fired first, was once followed by companies in the event of a layoff. Employees who are wrongfully terminated may have the right to file additional forms of claims or complaints against employers in addition to wrongful termination claims resulting from a contract violation, such as Employers can't terminate the employees on grounds that are protected by the Indian Constitution. Employers cannot discriminate or hamper the fundamental rights of employees and terminate them based on race, caste, creed, gender, age, or sexual orientation. The victim of wrongful termination can also file a complaint when they are deprived of their minimum wages, made to work overtime, extended hours of work, etc.

Chapter 3

Methods to overcome wrongful termination

India doesn't have a set process for firing employees, even though the law attempts to address a variety of problems. Although it is imperative to put protecting employee interests

above all else, there is a lot of grey space here. Many workers are forgiving of their employers, which makes them more susceptible to any wrongful termination. Additionally, there cannot be any exact explanations for termination because they differ greatly from location to location and organization to organization.¹⁰ The Industrial Disputes Act, 1947 (ID), which will be included in the Industrial Relations Code, 2020 (IRC), once it becomes official, is the primary statute that governs such terminations. According to the IRC, retrenchment, which necessitates a month's written notice period, will be treated as a termination for any reason other than disciplinary action. The cause for the retrenchment must be specified in this notification period. Compensation for each company affected by the retrenchment must equal 15 days of average pay.¹¹ When 300 or more employees have worked continuously for a year at an establishment, prior approval from the relevant government is needed to terminate employment. Additionally, the company must give workers a three-month notice period. Employers are not required to give previous written notice when terminating employees for misconduct.

The employee must first file a formal complaint with the Human Resources Department. If they believe they were unlawfully fired by their company, the HR Department will address the issue and reinstate an employee who has been unlawfully terminated; however, if the HR Department does not take any action, the employee must give the employer a legal notice to demand damages, such as Back pay, lost benefits, and expenses, Prohibitive Relief, Retaliatory Damages, Severance Pay Reduction in Hours Compensation, Insurance Provident Fund for Health.

Kalyanasundara Nadar And Anr. vs Muthuraman, 1967:

¹⁰ <https://economictimes.indiatimes.com/news/how-to/what-to-do-in-case-of-wrongful-termination-of-employment/articleshow/86983537.cms?from=mdr>

¹¹ Industrial Disputes Act, 1947

In this case, the plaintiff was a high school teacher and was terminated by the management of the school. He stood firm and told the court that the termination was “illegal, unjust, and arbitrary” and prayed to the court that his services must be continued, and he must continue his job as an assistant teacher. He requested the court to even grant him damages for the duration. The plaintiff left the service voluntarily and of his own volition, and the management under the special circumstances of the case even refrained from insisting on a three-month notice in accordance with the rules governing the service. This was the management’s main defense on the merits of the case. The plaintiff received Rs.1,492 as a money decree and continued teaching.¹²

(T.R. Appaswami Aiyangar vs Narayanaswami Aiyar And Ors., 1930)

Bungo Steel Furniture Pvt. Ltd vs Union Of India, 1966: (wrongful termination of contract)

The Union of India entered into two contracts with the appellant, Bungo Steel Furniture Pvt.Ltd for the supply of 4,700 bins at an agreed price. After 2,172 bins, they canceled the supply of the rest 2,528 bins and committed a breach of contract. The agreements between the parties each included an arbitration clause requiring arbitration and in accordance with this clause, the conflict resulting from the contracts' cancellation was addressed to an arbitrator. Here is a situation where the arbitrator determined that the Government should pay a specific sum as damages for wrongful contract termination, and at his discretion, he determined that sum to be equal to the value of the steel as it existed after being divided into component pieces. (Bungo Steel Furniture Pvt. Ltd vs Union Of India , 1962)¹³

How To Sue For Wrongful Termination?

1) Check for the definition of “employee” and see if you’re an employee.

- 2) Keep detailed records of your employment and termination.
- 3) Have your employment file- personnel records.
- 4) Gather evidence for how your employer treated you.
- 5) Build your facts based on all the evidence and make a timeline
- 6) Consult an attorney, who has experience in wrongful termination and who can take the case further.
- 7) File a complaint and demand the “right to sue”
- 8) Lawsuit should be filed in the civil court.¹⁴

Conclusion

When a person is fired without cause or when their employer restricts their employment due to a conflict with another employer, it is said that they were illegally fired. Wrongful termination alleges that the employee was let go by the employer in contravention of a statute contained in the agreed contract. The employer’s conduct both during the duration of employment and upon termination is crucial. People frequently believe they are being treated unfairly due to human psychology, even while the employer is acting correctly in some cases. Employers may illegally fire an employee for reasons such as age, caste, sex, or religious discrimination; a personal agenda; family disputes that manifest themselves at work, etc.

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