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Research Article

'Termination of Service for Any Reason Whatsoever' and 'Employment at Will': A Comparative Analysis of the Indian and US Labour Laws

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ABSTRACT

The termination of employment is a critical aspect of labour law that significantly impacts both employers and employees. This paper aims to explore the legal frameworks governing the termination of employment in India and the United States, focusing on the Indian Industrial Disputes Act, 1947, and the doctrine of employment "at-will" prevalent in the US. The concept of retrenchment in India encompasses a broad interpretation of termination, including the phrase "for any reason whatsoever" which raises important questions about employee rights and protections in the context of economic fluctuations and organizational restructuring. In contrast, the US employment law operates under the "at-will" doctrine, which permits either party to terminate the employment relationship at any time, for virtually any reason, or for no reason at all. This fundamental difference in approach highlights the core issues of job security and economic stability for employees paving way for the need to strike balance between employer flexibility and employee security, a theme that resonates throughout this analysis. The paper will delve into landmark Supreme Court cases and statutory provisions that shape these legal landscapes, providing a comprehensive understanding of how each jurisdiction addresses the complexities of employment termination. Furthermore, the paper will examine the implications of these legal frameworks on the workforce, particularly in terms of job security and the potential for arbitrary dismissals. By contrasting the Indian and US systems, this research seeks to illuminate the varying degrees of protection afforded to employees and the underlying philosophies that inform these legal principles. Ultimately, this comparative analysis aims to contribute to the ongoing discourse on labour rights and the evolving nature of employment law in a globalized economy.

INTRODUCTION

The termination of employment constitutes an important area of concern in the relationship between employers and employees, including a complex interplay of legal, economic, and social considerations. Across jurisdictions, the legal frameworks regulating such terminations reflect divergent and distinctive approaches while endeavouring to strike a balance between the managerial prerogative and employee protections. The comparative analysis of two major diverse legal systems *i.e.*, India's protective labour laws and the United States' minimalist regulatory approach allows us to examine the broader conflict between employer autonomy and employee security in these two legal regimes. In India, the Industrial Disputes Act, 1947 outlines a structured approach to the termination of employment, embodied in the concept of retrenchment, which broadly covers the termination of employment *"for any reason whatsoever"*, subject to statutory restrictions imposed upon the exercise of such discretion on the part of an employer. In India, the inclusion of procedural requirements, such as notice period and payment of compensation under Section 25-F of the Industrial Disputes Act, 1947 alongside judicial interpretations of reinstatement and back-wages, reflects legislative and judicial approach towards protection of the weaker section in our society. Indian legislative framework reflect the Country's commitment to safeguard workers' interest against arbitrary dismissal, particularly in the context of economic restructuring and surplus labour management. Conversely, the United States laws subscribes predominantly to the doctrine of employment *"at-will"*, a principle embedded in 'freedom to

contract' principle which grants both employers and employees the liberty to severe the employment relationship at any time, with or without cause, absent substantial contractual or statutory constraints. This doctrine, while affording employers significant flexibility, often leaves employees vulnerable to the wrongful exercises of managerial discretion. The US model, tempered by limited exceptions such as public policy and implied contracts, privileges economic efficiency and contractual freedom, often at the expense of job security and lack of post-termination benefits.

This research paper seeks to elucidate the legal underpinnings of termination in both jurisdictions through an examination of statutory provisions, landmark judicial pronouncements, and their practical implications for the workforce. By juxtaposing India's legal framework relating to retrenchment with the US employment *"at-will"* doctrine, this research paper aims to illuminate the philosophical foundations and policy rationales that are possessed by these systems. Through this comparative study, this research work endeavours to contribute to the evolving scholarship on employment law, offering insights into how these frameworks balance the competing interests of flexibility and fairness in the modern workplace.

INDIA (*termination for any reason whatsoever*)

Indian Law relating to management of Industrial relations *i.e.*, the Industrial Disputes Act, 1947 regulates the termination of an employee's service under the concept of 'Retrenchment' which literally means *'discharge of surplus labour or staff'*[1] in a continuing industry or removal of *"the dead weight of uneconomic surplus"*. However considering the use of wide expression *i.e.*, *"for any reason whatsoever"* the 'retrenchment' has been interpreted as: *"It does not matter why you are discharging the surplus if the other requirements of the definition are fulfilled, then it is retrenchment."*[2] The definition of 'retrenchment' also does not make any difference between regular and temporary appointment or appointment on daily wage basis or appointment of a person not possessing requisite qualifications. Let us have a look at the statutory language used to define this concept as contained in the Section 2(oo) of the Industrial Disputes Act, 1947:

"retrenchment" means the termination by the employer[3] of the service of a worker for any reason whatsoever[4], otherwise than as a punishment inflicted by way of disciplinary action, but does not include—
(i) voluntary retirement of the worker; or
(ii) retirement of the worker on reaching the age of superannuation; or
(iii) termination of the service of the worker as a result of the non-renewal of the contract of employment between the employer and the worker concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein[5]; or
(iv) termination of service of the worker as a result of completion of tenure of fixed term employment[6]; or
(v) termination of the service of a worker on the ground of continued ill-health;

Most recently, in the case of *K.V. Anil Mithra v. Sree Sankaracharya University of Sanskrit*[7] the Hon'ble Supreme Court noted: *"A breakdown of Section 2(oo) unmistakably expands the semantics of retrenchment. Termination ... for any reason whatsoever are the key words. Whatever the reason, every termination spells retrenchment. So the sole question is, has the employee's service been terminated? Verbal apparel apart, the substance is decisive. A termination takes place where a term expires either by the active step of the master*

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[1] See *Barsi Light Rly Co Ltd v. KN Joglekar* AIR1955 BOM 294 where the Bombay High Court held: *"Retrenchment means discharge of surplus labour or staff by the employer, for any reason whatsoever……in no case is there any retrenchment unless there is a discharge of surplus labour or staff in a continuing or running industry."*
[2] See *Hari Prasad Shiv Shanker v. AD Divelkar* 1957 SCR 57 (SC).
[3] See *State of Haryana v. Om Prakash* (1998) 8 SCC 733 wherein the Supreme Court noted: *"Retrenchment contemplates an act on the part of the employer, which puts an end to the service, to fall within its ambit."*
[4] See *Punjab LDRC v. PO Labour Court* (1990) II LLJ (SC) where the Supreme Court of India decided that termination for any reason shall be treated as retrenchment instead of the single ground *i.e.*, discharge of surplus labour.
[5] Where in the case of *M Venugopal v. LIC of India* 1994 AIR 1343 SC, the terms of contract of service provided for the necessity of some minimum business to be done by the employee and in case of failure provided for the termination, the Court held that the case was covered by exception, and was not retrenchment.
[6] See the case of *State of Rajasthan v. Rameshwar Lal Gahlot* 1996 I LLJ 888 (SC) where the court decided that where appointment of a workman is made for a fixed period, termination of his services in accordance with the terms of such appointment does not become illegal and the provisions of section 25F will not come into operation. Similarly, in the case of *Haryana State FCCW Store Ltd v. Ram Niwas* AIR 2002 SC 2495, the Court decided that where appointment was created for a specific purpose and for a particular period, there shall be no retrenchment in termination of employees' services.
[7] 2021 SCC Online SC 982.

or the running out of the stipulated term. To protect the weak against the strong this policy of comprehensive definition has been effectuated. Termination embraces not merely the act of termination by the employer, but the fact of termination howsoever produced."

Section 25-F. Conditions precedent to retrenchment of workmen

No worker employed in any industry who has been in continuous service for not less than one year under an employer[8] shall be retrenched by that employer until—
(a) the worker has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the worker has been paid in lieu of such notice, wages for the period of the notice;
(b) the worker has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay, or average pay of such days as may be notified by the appropriate Government, for every completed year of continuous service or any part thereof in excess of six months[9]; and
(c) notice in such manner as may be prescribed is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification[10].

Failure to tender retrenchment compensation alongwith the order of termination would be violative of section 25F of the Industrial Disputes Act, 1947. Payment of compensation is condition precedent for valid retrenchment. Retrenchment compensation is not required to be paid or tendered along with notice, it has to paid only before or at time of retrenchment.[11] If the retrenchment order is invalid in law *ab initio*, subsequent payment of compensation cannot validate it. Even if the workman received compensation subsequent to the order of retrenchment, they will not be estopped from challenging the legality and validity of the order of retrenchment.[12] Similarly, acceptance of lesser amount *'in full and final settlement'* of the retrenchment claim or accepting a lower post after termination shall not satisfy the requirements of the Section 25-F and shall not extinguish right of workman under it. Because there cannot be estoppel against the statute and terms of contract cannot override the statutory provision.

Part-time workers are also entitled to the benefit of section 25-F and this provision applies to probationers also. At the same time, a casual employee[13] and a daily wage earner[14] who had completed 240 days of service in preceding 12 months were held entitled to protection. Recently, in the case of *K.V. Anil Mithra v. Sree Sankaracharya University Of Sanskrit*[15] the Hon'ble Supreme Court noted: *"The scheme of the Act 1947 contemplates that the workman employed even as a daily wager or in any capacity, if has worked for more than 240 days in the preceding 12 months from the alleged date of termination and if the employer wants to terminate the services of such a workman, his services could be terminated after due compliance of the twin clauses (a) and (b) of Section 25F of the Act 1947 and to its non-observance held the termination to be void*

[8] Number of days worked in broken spells in different departments, which are independent departments of the corporation, cannot be taken as continuous service for the purpose of Section 25-F. Where a workman does not work for required 240 days in the preceding year before his dismissal, he is not entitled to the benefit of section 25-F. See *Mohd. Ali v. State of HP* (2018) 15 SCC 641.
[9] Non-compliance of section 25-F and its clauses (a) and (b) will render retrenchment a nullity. The employer is under the burden to provide tangible evidence of compliance with the section. Where the employer could not produce evidence showing that the compensation was offered on the day of retrenchment and also could not explain the delay in sending demand draft after three months of termination of service, it was held by the Supreme Court that the employer had failed to prove the compliance. See *Anoop Sharma v. Public Health Division, Haryana,* (2010) 2 SCC 497.
[10] In the case of *Bombay Union of Journalists v. State of Bombay* AIR 1964 SC 1617, the Hon'ble Supreme Court of India noted that the compensation for retrenchment must be paid at the time of retrenchment. It is implicit in the requirement to pay compensation at the time of retrenchment that the law recognises and declares the right of the workmen to compensation at the time of retrenchment. But, clause (c) cannot be held to be a condition precedent even though it has been included under section 25-F as it is only for the purpose of keeping the government informed about the conditions of employment in different industries within its region. Non-compliance with the clause (c) before the retrenchment, would not, therefore, invalidate the retrenchment.
[11] Where the notice of Retrenchment was served on 27.07.1992 which was effective from 04.08.1992. There was nothing on the record to prove that workmen were paid One month's salary nor any evidence was produced by the employer regarding the compliance of clause (c) of 25-F. See *Mackinon Mackenzie and Co Ltd v. ME Union* (2015) 4 SCC 544.
[12] See *Promod Jha v. State of Bihar* AIR 2003 SC 1872.
[13] *Ramesh Kumar v. State of Haryana,* (2010) 2 SCC 543.
[14] See *Rattan Singh v. Union of India,* (1998) 3 Lab LJ (Supp) 714 (SC).
[15] 2021 SCC Online SC 982.

ab initio bad and so far as the consequential effect of non-observance of the provisions of Section 25F of the Act 1947, may lead to grant of relief of reinstatement with full back wages and continuity of service in favour of retrenched workman……"

Relief

Relief to be provided in case of wrongful termination of employment has not been uniform across the years of judicial interpretation rather the same has been decided by the Court on the basis of peculiar circumstances of each case. Initially, the Supreme Court of India held that when the Retrenchment is found to be illegal and invalid for non-compliance with section 25-F of the Industrial Disputes Act,1947 it is imperative for the Industrial Tribunal to award relief of 'Reinstatement with Full Backwages' and it should not award any other relief.[16] However, later in the case of *Surendra Kumar Verma v. CGIT-cum-LC*[17], the Hon'ble Supreme Court of India aptly noted: *"Plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been and so it must ordinarily lead to back wages too. But there may be exceptional circumstances which make it impossible or wholly inequitable vis-a-vis the employer and workmen to direct reinstatement with full back wages. For instance, the industry might have closed down or might be in severe financial doldrums: the workmen concerned might have secured better or other employment elsewhere and so on. In such situations, there is a vestige of discretion left in the Court to make appropriate consequential orders. The Court may deny the relief of reinstatement where reinstatement is impossible because the industry has closed down. The Court may deny the relief of award of full back wages where that would place an impossible burden on the employer. In such and other exceptional cases the Court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back wages. That relief must be awarded where no special impediment in the way of awarding the relief is clearly shown. True, occasional hardship may be caused to an employer but we must remember that, more often than not. comparatively far greater hardship is certain to be caused to the workmen if the relief is denied than to the employer if the relief is granted."* Also, in the case of *General Manager, Haryana Roadways v. Rudhan Singh*[18], the Court observed: *"There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily-wage employment though it may be for 240 days in a calendar year."*

During the last decade, in the case of *Deepali Gundu Surwase v. Kranti Junior Adhyapak & Ors.*[19], the Hon'ble Supreme Court of India explained: *"The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer employee relationship, the latter's source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead*

[16] See *Swadesmitran Ltd. v. Workmen* AIR 1960 SC 762.
[17] AIR 1981 SC 1422.
[18] (2005) 5 SCC 591.
[19] (2013) 9 SCR 1.

and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments."

Following the same approach, in the case of *BSNL v. Bhurumal*[20], the Hon'ble Supreme Court noted: *"23. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or malafide and/or by way of victimization, unfair labour practice etc. However, when it comes to the case of termination of a daily wage worker and where the termination is found illegal because of procedural defect, namely in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious. Further, 24. Reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily wage basis and even after he is reinstated, he has no right to seek regularization. Thus when he cannot claim regularization and he has no right to continue even as a daily wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose."*[21]

Rule of 'Last Come, First Go'

Section 25-G. Procedure for retrenchment - Where any worker in an industrial establishment who is a citizen of India, is to be retrenched and he belongs to a particular category of workers in that establishment, then, in the absence of any agreement between the employer and the worker in this behalf, the employer shall ordinarily retrench the worker who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other worker.

The rule of 'last-come, first-go' protects the employees serving for a longer duration against the termination by the employer compared to those who have not served for a longer period of time. The rule mandates for termination of junior most employee and termination of others in chronological order during a retrenchment exercise. This rule has to be applied where other things are equal. Failure to comply with this rule, or in case of departure from this principle by the employer, the reasons for such departure not being recorded, would make the retrenchment invalid.[22] It is sufficient if the workman can prove that the employer violated the rule of 'last come and first go' principle without any tangible reason. However, the rule of 'last come, first go' can be altered, modified or completely abrogated by an agreement between the employer and workmen by making a provision in Contract of Service or in a Collective Bargaining Agreement or Standing Order. The Tribunal merely has to determine whether the management has in ordering the retrenchment acted fairly and properly and not with any ulterior motive.[23]

[20] (2014) 7 SCC 177 Also see *Dharamraj Nivrutti Kasture v. Chief Executing Officer* (2019) 11 SCC 289.

[21] Also see the cases of *Hindustan Machine Tools Lt. v. Ghanshyam Sharma* (2018) 18 SCC 80 and *State of Uttarakhand v. Raj Kumar* (2019) 14 SCC 353 where the Supreme Court of India had awarded only compensation and not the reinstatement into service.

[22] Non-compliance of conditions of s. 25F, 25 G and 25 H renders the termination order void *ab initio*. See *Gauri Shanker v. State of Rajasthan,* (2015) 12 SCC 754. Violation of 'last come and first go' rule has to be pleaded and proved by retrenched workman, *Ajaypal Singh v. Haryana Warehousing Corpn,* (2015) 6 SCC 321.

[23] In the case of *Swadesimitran Ltd. v. Workmen* AIR 1960 SC 762 the Supreme Court held that where it is proved that the rule in question has been departed from, the employer must satisfy the Industrial Tribunal that the departure was justified, and in that sense the onus would undoubtedly be on the employer. In other words, the employer should be able to justify the departure if an ID has been raised by the workman regarding his retrenchment.

Re-employment of retrenched workmen

Section 25-H. Re-employment of retrenched workmen – Where any worker is retrenched and the employer proposes to take into his employment any person within one year of such retrenchment, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workers who are citizens of India to offer themselves for re-employment and such retrenched workers who offer themselves for re-employment shall have preference over other persons.

This section provides for preferential re-employment of retrenched workmen. The section comes into play when there is a proposal to employ any persons after a retrenchment. This provision has not been enacted only for the benefit of the workmen to whom Section 25F applies, but it would apply to all classes of retrenchment. If the termination of services is not retrenchment, Section 25H is not applicable.[24]

In the case of *Management of the Barara Cooperative Marketing and Processing Society Limited v. Pratap Singh*[25], the Hon'ble Supreme Court of India held that section 25H of the Industrial Disputes act 1947 is to be implemented as per the prescribed procedure in the rules of 1957, which clear term provides that this provision is applicable only when the employer decides to fill up the vacancies in their set up by recruiting persons. The Court noted: *"Section 25H is couched in a wide language and is capable of application to all retrenched workers and not merely to those covered by section 25F. The provision for re-employment of retrenched workmen merely gives preference to a retrenched workman in the matter of re-employment over other persons. It is enacted for the benefit of retrenched workmen and there is no reason to restrict the ordinary meaning which promotes the object of the enactment without causing any prejudice to a better placed retrenched workman."*

USA (employment *"At-Will"*)

The American perspective of employment law is viewed through an economic lens that "ultimately affords capitals' interests a higher value than worker's rights and provides for minimal regulation of employment practices. Employers, as owners of the business, are often seen as having the property right to control the job and which employee fills the position.[26] Employment law in the United States does not, through either federal statute or federal common law, prohibit "unfair dismissal or discharge" without cause, nor even any period of notice.[27] The United States, has neither adopted any general protection against unfair dismissal or discharge without just cause, nor even any period of notice. The employment *"At-will"* doctrine governs when and how an employer and employee may terminate an employment relationship having no definite term. The employment *"at-will"*, remains firmly anchored in the US Legal system.[28] In the majority of the United States, action of dismissal "at-will" by an employer is lawful.[29]

[24] In the case of *Central Bank of India v. S Satyam*, (1996) 2 Lab LJ 820 (SC), the Supreme Court noted that Section 25H provides for re-employment of retrenched workmen but, it is not restricted only to those workmen only who are covered under Section 25F.
[25] AIR 2019 SC 228.
[26] The assumption is that the employee is only a supplier of labor who has no legal interest or stake in the enterprise other than the right to be paid for labor performed. The employer, as owner of the enterprise, is legally endowed with the sole right to determine all matters concerning the operation of the enterprise. This includes the work performed and the continued employment of its employees. The law, by giving total dominance to the employer, endows the employer with the divine right to rule the working lives of its subject employees. *See* Clyde W. Summers, *Employment at Will in the United States: The Divine Right of Employers*, University of Pennsylvania Journal of Labor and Employment Law 65 (2000).
[27] *Ibid.*
[28] See Scott A. Moss, *Where There's At-Will, There Are Many Ways: Redressing the Increasing Incoherence of Employment-At-Will*, 67 U. Pir. L. Rev. 295,298 (2005).
[29] See Nicole B. Porter, *The Perfect Compromise: Bridging the Gap Between At-Will Employment and Just Cause*, 87 NEB. L. Rev. 65, 67 (2008). The exception would be Montana, which is the only state that does not follow the employment at-will doctrine.

"At-will" employment means that your employer does not need any cause to fire you[30] unless a contractual agreement[31] or a particular provision in your employment contract requires such disclosure. It allows either the employer or the employee to terminate their employment relationship at any time for virtually any reason or for no reason at all.[32] The *"at-will"* doctrine is an anti-contract concept. At-will employment stems from the American belief that free markets should control employment standards without government intervention.[33] The US Supreme Court has also decided that it is *"not within the functions of government for either Congress or the state legislatures to constrain employers' right to hire and fire at will"*.[34] The United States stands virtually alone in the developed world in its continuing adherence to the background rule of employment *"at-will"*, under which employees can be fired without notice at any time and without any reason absent an agreement to the contrary.[35]

The employment *"at-will"* rule was firstly described by Horace Gray Wood in his 1877 treatise on master and servant law.[36] He asserted that the rule for when there was no contract for a defined period of time was *"that a general or indefinite hiring is prima facie a hiring at will, and if the servant seeks to make it out a yearly hiring, the burden is upon him to establish it by proof"*. The Tennessee Supreme Court articulated the employment *"at-will"* doctrine in 1884, endowing employers with divine rights over their employees in the case of *Payne v. Western & Ad. R.R.*[37], wherein the court noted: ***"****Men must be left without interference… to discharge or retain employees at will for good cause or for no cause, or even for bad cause without thereby being guilty of an unlawful act per se."*

Exceptions to the *"At-Will"* Presumption

Over the years, courts have carved out exceptions to the at-will presumption to mitigate its sometimes harsh consequences. Together, such exceptions demonstrates that there are limits to the well-established rule of employment "*at-will"*, and that the default rule cannot, and should not, be used as a license to disregard fundamental rights. However, in the United States, the plaintiff employee has the burden of proving any wrongful termination under any applicable statute or doctrine forming exception to employment *"at-will"*.

Public Policy

The public-policy exception is the most widely accepted exception, recognized in 43 US states out of the 50. Under the public-policy exception to employment *"at-will"*, an employee is wrongfully discharged when the termination is against an explicit, well-established public policy of the State. Three main categories of actions fall under the umbrella of public policy: (a) An employee's refusal to break the law; (b) An employee's performance of a public obligation; and (c) An employee's exercise of a legal right.

The first case to recognize the exception of public-policy was in California in the year of 1959 namely, *Petermann v. International Brotherhood of Teamsters*[38], where an employee was hired as a business agent and was told that he would be employed for as long as his work was satisfactory. During his employment, employee was summoned by the California legislature to appear and testify in investigating proceedings of corruption charges against employer. The employer directed employee to make false statements during his testimony, but he instead truthfully answered all questions posed to him. He was fired the day after his

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[30] Any Trivial reasons may be legal. Silly and ill-advised reasons can also be legal. For example, an employer may fire you because you do not get along with your boss. Your employer can fire you because you are frequently late. Your employer can fire you because they want to eliminate your position. You can get fired "Because the boss is having a bad day", "Because he's in a bad mood", "Because you didn't laugh at his joke." None of these would necessarily qualify as unlawful termination, unfair as they may seem.

[31] If the parties have a contract of employment for a fixed term, such as a contract to work for one year, then it is not terminable at will. However, a court finds that such a contract is for an unreasonably long duration, it will treat the contract as at-will. For example, employment contracts that purport to be of indefinite duration or for lifetime are deemed to be employment at-will.

[32] See David C. Yamada, *Human Dignity and American Employment Law*, 43 U. RICH L. REV. 523 (2009).

[33] *ibid.*

[34] See *Adair v. United States* 208 US 161, 174 (1908) where in striking down a statute prohibiting the discharge of an employee based on union membership, the Court observed: *"Absent a contract fixing a period of service, it cannot be, we repeat, that an employer is under any legal obligation, against his will, to retain an employee in his personal service any more than an employee can be compelled, against his will, to remain in the personal service of another."*

[35] *See* Clyde W. Summers, *Employment at Will in the United States: The Divine Right of Employers*, University of Pennsylvania Journal of Labor and Employment Law 67-68 (2000).

[36] Horace *G.* Wood, *Master And Servant* § 134, at 272 (1877).

[37] 81 Tenn. 507, 519-20 (1884).

[38] 344 P.2d 25 (Cal. 1959).

testimony. The California appellate Court decided that an employer's right to discharge an employee should be limited by considerations of public policy and noted that the definition of public policy, while imprecise, covered acts that had a *"tendency to be injurious to the public or against the public good."* Similarly, in 1981 the Illinois Supreme Court in the case of *Palmateer v. International Harvester Company*[39] noted that matters of public policy *"strike at the heart of a citizen's social rights, duties, and responsibilities"* and could be defined in the State constitution or statutes.[40]
However, in the case of *Brockmeyer v. Dun & Bradstreet*[41] the Wisconsin Supreme Court rejected such an expansive definition of public policy and limited the application of this employment-at-will exception in its State to cases in which the public policy was evidenced by a constitutional or statutory provision. In this matter, the court found that the public-policy exception should apply neither to situations in which actions are merely *"consistent with a legislative policy"* nor to *"judicially conceived and defined notions of public policy."* The court here decided to limit the application of the public-policy exception to *"fundamental and well-defined public policy as evidenced by existing law"*.

At the same time, New York Court has also rejected the public-policy exception in its entirety. In the case of *Murphy v. American Home Products Corporation*[42], the Court of Appeals of New York held that such exceptions to the employment-at-will doctrine were the province of legislators, not judges. The court noted that legislators have *"greater resources and procedural means to discern the public will"* and *"elicit the view of the various segments of the community that would be directly affected"*.

Implied Contract

The second major exception to the employment-at-will doctrine (recognized in 41 US states) is applied when an implied contract is formed between an employer and employee, even though no express, written instrument regarding the employment relationship exists. An employer's promises (oral or written) or actions that cause *"at-will"* employees to believe they can only be fired for cause, limit the employer to terminating employees for cause. However, employers also attempts to protect themselves against this exception to the employment *"at-will"* by using a clear and unambiguous disclaimer on written materials stating that "its policies and procedures do not create any contractual rights". The leading case having to do with the implied-contract exception is *Toussaint v. Blue Cross & Blue Shield of Michigan*[43], decided by the Supreme Court of that State in 1980.[44]

However, in *Muller v. Stromberg Carlson Corporation*[45], the Florida appellate court refused to entertain the arguments pertaining to creation of implied contracts of employment based on oral or written assurances. Similarly, Texas Court also refused to recognize the implied-contract exception in the 1986 case of *Webber v. M. W. Kellogg Company*[46]. Likewise, in *Richardson v. Charles Cole Memorial Hospital*[47], the Supreme Court of Pennsylvania rejected the implied-contract exception by deciding that employee handbook does not create any contractual relationship between parties as such

Discrimination

The broadest protections to employees from discharge at the whim of their employers come from the federal and state employment discrimination laws which limit the ability of employers to discharge employees if that discharge is motivated by the employee's status as a member of a protected class. Federal (Title VII of the Civil

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[39] 85 Ill. 2d 124 (1981).
[40] Also see the case of *Frampton v. Central Indiana Gas Company* 297 N.E.2d 425 (1973), where the court found in favor of an employee who was discharged for attempting to collect worker compensation: The Court noted: *"If employers are permitted to penalize employees for filing workmen's compensation claims, a most important public policy will be undermined. The fear of discharge would have a deleterious effect on the exercise of a statutory right."* Similarly, in *Bowman v. State Bank of Keysville* 331 S.E.2d 797 (1985), a Virginia court condemned retaliatory discharge of bank employees where, a couple of employee- shareholders of a bank were coerced to vote in favour of merger by bank' s officers. They alleged that the bank officers had warned them that they would lose their jobs if they did not vote in favor of the merger. They were then fired. The court decided in favour of the employee-shareholders.
[41] 113 Wis. 2d 561 (1983).
[42] 448 N.E.2d 86 (1983).
[43] 292 N.W.2d 880 (Mich.1980).
[44] Charles Toussaint was engaged for 5 years and his hiring official told that his employment would continue *"as long as [he] did [his] job"*. Further, the employment manual contained statements that employer shall terminate employees only for *"just cause"*. The court decided that a stipulation indicating to terminate employment only for just cause was enforceable and it creates an implied contract if it engendered legitimate expectations of job security in the employee.
[45] 427 So.2d 266 (1983).
[46] 720 S.W.2d 124, 127 (1986).
[47] 466 A.2d 1084 (1983).

Rights Act of 1964) and State discrimination statutes prohibit employers from basing employment decisions on an employee's race, colour, religion, sex, national origin, age, disability. The U.S. Supreme Court stated that when the workplace is riddled with *"discriminatory intimidation, ridicule, and insults are sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment"*, it will be considered a violation of Title VII.[48] However, in many states, courts have limited this exception to cases of extremely abusive employer conduct only to reduce claims for breach of an implied covenant of good faith and fair dealing.

Implied Covenant of Good Faith and Fair Dealing

A minority of states (Only 11 states) in US recognize an implied covenant of good faith and fair dealing in employment relationships. Such a covenant can be created through employer representations of continued employment, in the form of either oral assurances or expectations created by employer handbooks, policies, or other written assurances. The implied covenant of good faith and fair dealing prevents a party in a contract from taking benefits from the other party after an agreement is reached. The goodfaith covenant has been interpreted in different ways, from meaning that terminations must be for cause to meaning that terminations cannot be made in bad faith or with malice intended. California courts were the first[49] to recognize an implied covenant of good faith and fair dealing in the employment relationship. Later, Nevada Supreme Court also followed the same.[50] In 1984, the Supreme Court of Washington[51] while handling promises of fair treatment contained in an employee handbook explained: *"[T]he employer's act in issuing an employee policy manual can lead to obligations that govern the employment relationship. While an employer need not establish personnel policies or practices, where an employer chooses to establish such policies and practices and makes them known to its employees, the employment relationship is presumably enhanced. The employer secures an orderly, cooperative and loyal work force, and the employee the peace of mind associated with job security and the conviction that he will be treated fairly. Therefore, we hold that if an employer, for whatever reason, creates an atmosphere of job security and fair treatment with promises of specific treatment in specific situations and an employee is induced thereby to remain on the job and not actively seek other employment, those promises are enforceable components of the employment relationship."*

Union Activity

The National Labor Relations Act of 1935 (NLRA) created a major exception to employers' rights to dismiss employees at will by making it unlawful to dismiss an employee for union activity. This modification of the common law was also upheld by the Supreme Court in 1937 in the landmark case of *NLRB v. Jones & Laughlin Steel Corp*.[52]

Montana's Good Cause Rule

This exception is prevalent in the state of Montana, which adopted a *'good cause'* standard and a modest remedial regime at a moment when employers feared that the courts would do so, with civil litigation as the standard procedure for enforcement and juries as fact finders.[53] Montana is so far the only US state having The Montana Wrongful Discharge from Employment Act of 1987 (WDEA) which creates a cause of action for employees who believe that they were terminated without *'good cause'*. Contrary to employment *"at-will"*, the

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[48] *Harris v. Forklift Sys., Inc.*, 510 U.S. (1993).

[49] In *Lawrence M. Cleary v. American Airlines, Inc.* 111 Cal.App.3d 443 (1980), an American Airlines employee who had worked satisfactorily for the company for 18 years was terminated without any reason given. The court stated that *"Termination of employment without legal cause after such a period of time offends the implied-in-law covenant of good faith and fair dealing"* and that, from the covenant, *"a duty arose on the part of American Airlines to do nothing which would deprive the employee of the benefits of the employment having accrued during [the employee's] 18 years of employment."*

[50] In *Kmart Corporation v. Ponsock* 732 P.2d 1364 (1987) decided by the Supreme Court of Nevada, a tenured employee hired until retirement or as long as economically possible was terminated to avoid having payment of retirement benefits. The court ordered to extended employment and to retirement benefits based on that employment and that the *"special relationships of trust"* required a tort remedy in addition to any available contractual remedy if the employer conducts an *"abusive and arbitrary"* dismissal. Providing such a remedy, the court reasoned, would deter employers from engaging in such malicious behavior. The court aptly remarked*: "We have become a nation of employees. We are dependent upon others for our means of livelihood, and most of our people have become completely dependent upon wages. If they lose their jobs they lose every resource except for the relief supplied by the various forms of social security. Such dependence of the mass of the people upon others for all of their income is something new in the world. For our generation, the substance of life is in another man's hands."*

[51] *Thompson v. St. Regis Paper Co.*, 685 P.2d 1081 (Washington,1984).

[52] 301 U.S. 1 (1937).

[53] See Bradley T Ewin, Charles M North and Beck A Taylor, *The Employment Effects of a "Good Cause" Discharge Standard in Montana* (2005) 59 ILR Review 17.

"just cause" standard requires that the reasons offered in termination decisions be defensible. The statute prohibits discharge for other than good cause after a designated probationary period and gives the employee the right to challenge a termination in court or before an arbitrator.

Criticism

The employment *"at-will"* doctrine prevalent in US states has been criticized for leaving employees at the whim and mercy of the employers because exorbitant arbitrariness in the concept itself. Giving the employer such level of control over the employee's economic stability reflects merciful condition of employees while they are being employed. In legal framework like this, employees will be less willing or able to resist dangerous working conditions, discriminatory harassment, or demands for off the-clock work if they fear that the price of complaining may be their job.[54] Courts throughout the United States are also inconsistent in their application of the at-will doctrine by carving out certain exceptions that are recognized by some States and not by others.[55] The alternative to EAW is "for-cause" termination-a requirement that employers justify dismissals on the basis of legitimate business needs and a solid factual record.[56]

Conclusion

Employers everywhere across the globe, ordinarily stand in a position of power relative to prospective employees, and most employees, at any level, are replaceable with others. While the ability of employers to make economic decisions is essential, it should not come at the cost of arbitrary dismissals that lack legitimate justification. At a minimum level of *just employment*, employees deserve to be given valid reasons for termination of their employment. Unjustified dismissals are not appropriate in light of employees' considerable investment of time and effort. The Indian Industrial Disputes Act, 1947, offers a more structured approach to termination of employment, requiring justifiable reasons for dismissals, particularly in cases of retrenchment. Whereas, the American employment relationship does not offer workers any dismissal protection, severance rights or any reasonable reason. The framework of employment law within the United States necessitates that employers must be restricted from dismissing employees based on conduct that is not intrinsically related to their professional duties and does not adversely affect the employer's business operations. This proposed framework would safeguard the employer's prerogative to execute economic decisions without excessive governmental interference, whilst concurrently ensuring that governmental protection is afforded to the privacy and dignity of employees. In conclusion, the comparative analysis of employment termination laws in India and the United States reveals significant differences in the legal frameworks governing employee rights and employer flexibility. The paper advocates for a balance that allows employers to make necessary economic decisions while safeguarding employees from unjust terminations. The findings encourage further examination and dialogue on how to create a more equitable employment landscape that respects the rights of workers while allowing for necessary employer flexibility.

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[54] See Kate Andrias & Alexander Hertel Fernandez and Roosvelt, *Ending At-Will Employment: A Guide for Just Cause Reform*, 8-18 (2021) <https://rooseveltinstitute.org/wp-content/uploads/2021/01/RIAtWillReport_202101 .pdf >.

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