

MP-404



Vardhaman Mahaveer Open University, Kota

Indian Labour Legislation

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Unit - 1 : The Industrial Disputes Act, 1947

Structure of Unit

- 1.0 Objectives
- 1.1 Introduction
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1.0 Objectives

After going through this unit students will be able to understand:

- The main causes of Industrial Dispute.
- The suitable machinery for the just, equitable and peaceful settlement of industrial disputes.
- The measures for securing and preserving amity and good relations between employers and employees.
- About strikes and lockouts and how to prevent illegal strikes and lockouts.
- About layoffs, retrenchment, wrongful dismissal and victimization of workers and how to provide relief to the workers.
- How to avoid unfair labour practices?

1.1 Introduction

Industrial disputes are the disputes which arise due to any disagreement in an industrial relation. The term 'industrial relation' involves various aspects of interactions between the employer and the employees; among the employees as well as between the employers. In such relations whenever there is a clash of interest, it may result in dissatisfaction for either of the parties involved and hence lead to industrial disputes or conflicts. These disputes may take various forms such as protests, strikes, demonstrations, lock-outs, retrenchment, dismissal of workers, etc. Need of provisions for investigation and settlement of industrial disputes and for providing certain safeguards to the workers were felt. The Act extends to the whole of India, including the states of Jammu and Kashmir. It came into operation on the first day of April, 1947. This Act replaced the Trade Disputes

Act of 1929. Though the Trade Disputes Act imposed certain restraints on the right of strike and lockout in Public Utility Services but no provision exist for the settlement of Industrial Disputes, either by reference to a Board of Conciliation or to a Court of Inquiry. In order to remove some of these deficiencies, the Industrial Disputes Act, 1947 was passed.

1.2 Scope and Objectives of the Act

1.2.1 Scope of the Act

The objects of the industrial relation's legislation in general are to maintain Industrial peace and, to achieve economic justice. The prosperity of any industry very much depends upon its growing production. Production is possible when the industry functions smoothly without any disturbances. This means industrial peace through harmonious relationship between labour and management is essential. Therefore every industrial relations, provisions and legislations necessarily aims at providing conditions congenial to the industrial peace.

Economic justice is another objective of industrial legislation. Almost all industrial interruptions in production are due to industrial disputes. Dissatisfaction with the existing economic conditions is the root cause of industrial disputes. The labour demands for fair return is expressed in varied forms; e.g. increase in wages, resistance to decrease in wages and grant of allowance and benefits etc. If a labourer wants to achieve these gains individually, he fails because of his weaker bargaining power against the strong economic management. Therefore, the economic struggle of labour with capital can be fought collectivity by organized labours. It is with this object to provide economic justice by ensuring fair return to the labour, the State, being the custodian of public interest, intervenes by 'State legislation' Economic justice has also been ensured to the people of India by our Constitution.

1.2.2 Objectives of the Act

The main object of all the labour legislation is to ensure fair wages to workers and to prevent disputes in industries so that the production might not be adversely affected. The principal objects of Industrial Disputes Act as analyzed and interpreted are as follows.

- The promotion of measures for securing and preserving amity and good relations between employers and workmen;
- The investigation and settlement of industrial dispute between employers and employees, employers and workmen, or between workmen and workmen with a right of representation by a registered Trade Union or Federation of Trade Unions or Association of Employers or a Federation of Association of Employers;
- The prevention of illegal strikes and lock-outs;
- The relief to workmen in the matter of lay-off, retrenchment and closure of an undertaking;
- The promotion of Collective bargaining.

1.2.3 Features of the Act

- Any industrial dispute may be referred to an industrial tribunal by mutual consent of parties to dispute or by the State Government, if it deems expedient to do so.
- An award shall be binding on both the parties to the dispute for the operated period, not exceeding one year;
- Strike and lockouts are prohibited during: The pendency of conciliation and adjudication proceedings. The pendency of settlements reached in the course of conciliation proceedings; *and* The pendency of awards of Industrial Tribunal declared binding by the appropriate government.
- In public interest or emergency, the appropriate Government has power to declare the transport (other than railways), coal, cotton textiles, food stuffs and iron and steel industries to be public utility services for the purpose of the Act, for a maximum period of six months.
- In case of lay-off or retrenchment of workmen, the employer is directed to pay compensation to them. This provision stands in the case of transfer or closure of an undertaking also.
- A number of authorities (Works Committees, Conciliation Officers, Board of Conciliation, Courts of Inquiry, Labour Courts, Tribunal and National Tribunal) are provided for settlement of Industrial disputes. Although the nature of powers, functions and duties of these authorities differ from each other, even then everyone plays important role in ensuring industrial peace.

1.2.4 Definitions of the Act (Sec-2)

(a) **Appropriate Government:** The Central Government as well as the State Government is vested with various powers and duties in relation to matters dealt with in this Act. In relation to some industrial disputes the Central Government and in relation to some others, the State Government concerned is the appropriate Government to deal with such disputes. Under sub-section [(i) (a)] and [(i)(b)] of the Act, Companies/Corporations/Trusts/Boards/ Authorities, etc. established under the Act of Parliament; the Central Government is the Appropriate Authority. In all other cases, the Appropriate Government is the State Government within whose territory the industrial dispute arises under Sub-section (ii).

(aa) **Arbitrator** - Arbitrator includes an umpire.

(aaa) **Average Pay** - "Average Pay" means the average of the wages payable to a workmen, Average pay in the case of workmen means:

(i) ***In the Case of monthly paid workman***- The average of monthly wages payable in three complete calendar months.

(ii) ***In the case of weekly paid workman*** - the average of the weekly wages payable in four complete weeks.

(iii) ***In the case of daily paid workman*** - the average of the wages for twelve full working days.

(b) **Award** - 'Award' means an interim or final determination of any industrial dispute or of any question relating thereto. The determination must be made by any Labour Court, Industrial Tribunal or National Tribunal.

Enforcement of an award - An award may be enforced in the following ways:

(1) The aggrieved party may apply to Appropriate Government for prosecuting the defaulting party under Sec. 29 or 31 of this Act.

(2) Where the work man is to claim money from the employer, the workman may move the Appropriate Government for recovery of the money due to him under the award.

(3) The party in whose favour the award has been granted may file a suit and obtain a decree, which shall be enforced extension under provisions of the Civil Procedure Code. Where the interim order did not determine any part of the industrial dispute or any other question relating there to, but only determined whether the Industrial Tribunal has been properly constituted to which the industrial dispute could be referred for adjudication, such order cannot be said to be an award as defined in Sec. 2(b)

(bb) **Banking Company** - 'Banking Company' means a banking company as defined in Sec.5 of the Banking Companies Act, 1949.

(c) **Board** - 'Board' means a Board of Conciliation constituted under this Act.

(cc) **Closure** - 'Closure' means the permanent closing down of a place of employment or part thereof.

Penalty for closure (Sec. 25R):

1. Any employer who closes down an undertaking without complying with the provisions of the Sub-Sec. (1) of Sec. 25-0 shall be punishable with imprisonment up to 6 months, or with fine up to Rs. 5,000 or with both.

2. Any employer, who contravenes a direction given under Sub-sec. (2) of Sec. 25-0 or Sec. 25-P, shall be punishable with imprisonment up to one year, or with fine up to Rs. 2,000 for every day during which the contravention continues after the conviction.

3. Any employer who contravenes the provisions of Sub Sec. 25-0 shall be punishable with imprisonment up to one month, or with fine up to Rs. 1000 or with both.

(d) **Conciliation Officer** - 'Conciliation Officer' means a conciliation officer appointed under the Act. .

(e) **Conciliation Proceeding** - 'Conciliation Proceeding' means any proceeding held by a Conciliation Officer or Board under the Act.

(ee) Controlled Industry - "Controlled Industry" means any industry the control of which, by the Union has been declared by any Central Act to the expedient in the public interest. That is, an industry which is controlled by the Central Government. But it must also be declared by the Central Act to be controlled by the Union.

(f) Court - "Court" means a Court of Inquiry constituted under this Act.

(g) Employer - "Employer" means, in relation to industries carried on by or under the authority of (i) Central Government, (ii) State Government, or (iii) Local Authorities.

(h) Executive - "Executive", in relation to a Trade Union means the body by whatever name called, to which by management of the affairs of the Trade Union is entrusted.

(i) Independent - Means, for the purpose of appointment of a person as Chairman or other member of a Board, Court or Tribunal. In order that a person may be eligible for his appointment to these bodies, he must possess the following qualifications:

(i) He must be unconnected with industrial dispute in question, or.

(ii) He must be unconnected with any industry directly affected by such dispute.

(j) Industry - "industry" means any systematic activity carried on by co-operation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not,--

(i) any capital has been invested for the purpose of carrying on such activity; or

(ii) such activity is carried on with a motive to make any gain or profit, and includes-- (a) any activity of the Dock Labour Board established under section 5A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948);

(b) any activity relating to the promotion of sales or business or both carried on by an establishment.

but does not include-

(1) any agricultural operation except where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this clause) and such other activity is the predominant one.

Explanation.--For the purposes of this sub-clause, "agricultural operation" does not include any activity carried on in a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951); or

(2) hospitals or dispensaries; or

(3) educational, scientific, research or training institutions; or

(4) institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service; or

(5) khadi or village industries; or

(6) any activity of the Government relating to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space; or

(7) any domestic service; or

(8) any activity, being a profession practised by an individual or body or individuals, if the number of persons employed by the individual or body of individuals in relation to such profession is less than ten; or

(9) any activity, being an activity carried on by a co-operative society or a club or any other like body of individuals, if the number of persons employed by the co-operative society, club or other like body of individuals in relation to such activity is less than ten;]

(k) Industrial Disputes - Industrial Dispute means any dispute or difference between employers and employees or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person; is : thus

(1) A dispute is a dispute or difference between (a) employers and employees, or (b) employers and workmen, (c) workmen and workmen;

(2) The dispute or difference should be connected with (a) employment or non-employment, or (b) terms of employment, or (c) conditions of labour of any person;

(3) The dispute may be in relation to any workman or workmen or any other person in whom they are interested as a body.

(ka) Industrial Establishment or Undertaking - It means an establishment or undertaking in which any industry is carried on; provided that, where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries:

(kk) Insurance Company - According to this sub-section, insurance is one, which company is defined in Sec. 2 of the Insurance Act, 1938, having branches or other establishments in more than one State.

(kka) Khadi - "Khadi" has the meaning assigned to it in clause (d) of Sec. 2 of the Khadi and Village Industries Commission Act, 1956.

(kkb) Labour Court- It means a Labour Court constituted under Sec. 7 of the Industrial Disputes Act, 1947.

(kkk) Lay Off - Means putting aside workmen temporarily. The duration of lay off should not be for a period longer than the period of emergency. The employer-employee relationship does not come to an end during the period of lay-off but is merely suspended during the period of emergency.

Any such refusal or failure to employ a workman may be on account of:

- (i) Shortage of coal, power or raw materials or
- (ii) The accumulation of stock; or
- (iii) The breakdown of machinery; or
- (iv) Natural calamity; or
- (v) Any other connected reasons.

(l) **Lock-out-** means the [temporary dosing of a place of employment], or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him;

(1a) "Major port" means a major port as defined in clause (8) of section 3 of the Indian Ports Act, 1908 (15 of 1908);

(1b) "Mine" means a mine as defined in clause (j) of sub-section (1) of section 2 of the mines Act, 1952 (35 of 1952);]

(ll) "National Tribunal" means a National Industrial Tribunal constituted under section 7B;]

(lll) "Office bearer", in relation to a trade union, includes any member of the executive thereof, but does not include an auditor;]

(m) **Prescribed -** means prescribed by rules made under this Act;

(n) **Public utility service -** means-

(i) any railway service [or any transport service for the carriage of passengers or goods by air];

(ia) any service in, or in connection with the working of , any major port or dock;

(ii) any section of an industrial establishment, on the working of which the safety of the establishment or the workmen employed therein depends;

(iii) any postal, telegraph or telephone service;

(iv) any industry which supplies power, light or water to the public;

(v) any system of public conservancy or sanitation;

(vi) any industry specified in the [First Schedule] which the appropriate government may, if satisfied that public emergency or public interest so requires, by notification in the Official Gazette, declare to be a public utility service for the purposes of this Act, for such period as may be specified in the notification:

Provided that the period so specified shall not, in the first instance, exceed six months but may, by a like notification, be extended from time to time, by any period not exceeding six months, at any one time if in the opinion of the appropriate government public emergency or public interest requires such extension;

(o) **Retrenchment** "retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or]

- (c) termination of the service of a workman on the ground of continued ill-health;

"settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen

arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to [an officer authorised in

this behalf by] the appropriate Government and the conciliation officer;

(p) Settlement" - a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to ⁴⁵[an officer authorized in this behalf by] the appropriate government and the conciliation officer;]

(q) "strike" means a cessation of work by a body of persons employed in any industry acting in combination or a concerted refusal, or a refusal under a common Understanding, of any number of persons who are or have been so employed to continue to work or to accept employment;

(qq) "trade union" means a trade union registered under the Trade Unions Act, 1926 (16 of 1926);

(r) "Tribunal" means an Industrial Tribunal constituted under section 7A and includes an Industrial Tribunal constituted before the 10th day of March, 1957, under this Act;]

(ra) "unfair labour practice" means any of the practices specified in the Fifth Schedule;

(rb) "village industries" has the meaning assigned to it in clause (h) of section 2 of the Khadi and Village Industries Commission Act, 1956 (61 of 1956) ;

(rr) "wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment, and includes--

(i) such allowances (including dearness allowance) as the workman is for the time being entitled to;

(ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food-grains or other articles;

(iii) any travelling concession;

(iv) any commission payable on the promotion of sales or business or both;]

but does not include--

(a) any bonus;

(b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force;

(c) any gratuity payable on the termination of his service;]

(s) "**workman**" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person--

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.

2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.- 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.

1.3 Authorities for Prevention and Settlement of Disputes

Authorities under the Act for prevention and settlement of disputes are:

1.3.1 Works Committee (Sec-3):

In the case of any industrial establishment in which one hundred or more workmen are employed or have been employed on any day in the preceding twelve months, the appropriate Government may by general or special order require the employer to constitute in the prescribed manner a Work Committee consisting of representative of employer and workmen engaged in the establishment, so however that the number of representatives of workmen on the Committee shall not be less than the number of representatives of the employer. The representatives of the workmen engaged in the establishment and in consultation with their trade union if any, registered under the Indian Trade Unions Act, 1927 (16 of 1927).

It Shall be the duty of the Works Committee to promote measure, for securing and preserving amenity and good relations between the employer and workmen and, to that end, to comment upon matters of their common interest or concern and, Endeavour to compose any material difference of opinion in respect of such matters.

1.3.2 Conciliation Officers(Sec-4):

(1) The appropriate Government may, by notification in the Official Gazette, appoint such number of persons as it thinks fit, to be Conciliation Officers, charged with the duty of mediating in and promoting the settlement of industrial disputes.

(2) A Conciliation Officer may be appointed for a specified area or for specified industries in a specified area or for one or more specified industries and either permanently or for a limited period.

1.3.3 Board of Conciliations (Sec-5):

(1) The appropriate Government may as occasion arises, by notification in the Official Gazette, constitute a Board of Conciliation for promoting the settlement of any industrial dispute.

(2) A Board shall consist of a Chairman and two or four other members, as the appropriate Government thinks fit.

(3) The Chairman shall be an independent person and the other members shall be persons appointed in equal numbers to represent the parties to the dispute and any person appointed to represent a party shall be appointed on the recommendation of the party:

Provided that if the appropriate Government notifies the Board that the services of the Chairman or of any other member have ceased to be available, the Board shall not act until a new Chairman or member, as the case may be, has been appointed.

1.3.4 Court of Inquiry (Sec-6):

(1) The appropriate Government may as occasion arises by notification in the Official Gazette, constitute a Court of inquiry for inquiring into any matter appearing to be connected with or relevant to an industrial dispute.

(2) A Court may consist of one independent person or of such number of independent persons as the appropriate Government may think fit and where a Court consists of two or more members, one of them shall be appointed as the Chairman.

(3) A Court, having the prescribed quorum, may act, notwithstanding the absence of the chairman or any of its members of any vacancy in its number :

Provided that, if the appropriate Government notifies the Court that the service of the Chairman has ceased to be available, the Court shall not act until a new Chairman has been appointed.

1.3.5 Labour Courts (Sec-7):

(1) The appropriate Government may, by notification in the Official Gazette, constitute one or more Labour Courts for the adjudication of industrial disputes relating to any matters specified in the Second Schedule and for performing such other functions as the case may be assigned to them under this Act.

(2) A labour Court shall consist of one person only to be appointed by the appropriate Government.

(3) A person shall not be qualified for appointment as the Presiding Officer of a Labour Court, unless -

(a) He is, or has been, a Judge of a High Court: or

(b) He has, for a period of not less than three years, been a District Judge or an Additional District Judge; or

(c) [omitted by Act 46 of 1982 S. 3]

(d) He has held any judicial office in India for not less than seven years; or

(e) He has been the Presiding Officer of a labour Court constituted under any Provincial Act or State Act for not less than five years.

1.3.6 Tribunals (Sec-7A):

(1) The appropriate Government may, by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the Second Schedule or the Third Schedule [and for performing such other functions as may be specified to them under this Act.]

(2) A Tribunal shall consist of one person only to be appointed by the appropriate Government.

(3) A person shall not be less qualified for appointment as the presiding Officer of a Tribunal unless -

- (a) He is, or has been, Judge of a High Court ; or
 - (aa) He has, for a period of not less than three years, been a District Judge or an Additional District Judge;
 - (b) [omitted by Act 46 of 1982 S. 4].
- (4) The appropriate Government may, if it so thinks fit, appoint two persons as assessors, to advise the Tribunal in proceeding before it.

1.3.6a National Tribunals (Sec-7B):

- (1) The Central Government may, by notification in the Official Gazette, constitute one or more National Industrial Tribunals for the adjudication of industrial disputes which, in the opinion of the Central Government, involve questions of national importance or are of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by such disputes.
- (2) A National Tribunal shall consist of one person only to be appointed by the Central Government.
- (3) A person shall not be qualified for appointment as the presiding Officer of a National Tribunals unless 3[he is or has been a Judge of a High Court.].
- (4) The Central Government may, if it so thinks fit, appoint two persons as assessors to advise the National Tribunals in the proceeding before it.

1.3.7 Disqualifications for the Presiding Officer of Labour Courts, Tribunals and National Tribunals (Sec-7C):

No person shall be appointed to, or continue in, the office of the presiding officer of a Labour Court, Tribunal or National Tribunal, if-

- (a) He is not an independent person; or
- (b) He has attained the age of sixty five years.

1.3.8 Filling of vacancies (Sec-8):

If, for any reason a vacancy (other than a temporary absence) occurs in the office of the Presiding officer of a Labour Court, Tribunal or National Tribunal or in the office of the Chairman or any other member of a Board or Court, then in the case of a National Tribunal, the Central Government, and in any other case, the appropriate Government, shall appoint another person in accordance with the provisions of this Act to fill the vacancy, and the preceding may be continued before the Labour Court, Tribunal, National Tribunal, Board or Court, as the case may be, from the stage at which the vacancy is filled.

1.3. 9 Finality of orders constituting Boards (Sec-9):

- (1) No order of the appropriate Government or the Central Government appointing any person as the Chairman or any other member of a Board or Court or as the presiding officer of a Labour Court Tribunal or National Tribunal shall be called in question in any manner; and no act or proceeding before any Board or Court shall be called in question in

any manner on the ground merely of the existence of any vacancy in, or defect in the constitution of, such Board or Court.

(2) No settlement arrived at in the course of conciliation proceeding shall be invalid by reason only of the fact that such settlement was arrived at after the expiry of the period referred to in sub-section (6) of section 12 or sub-section (5) of section 13, as the case may be.

(3) Where the report of any settlement arrived in the course of conciliation before a Board is signed by the Chairman and all the other members of the Board, on such settlement shall be invalid by reason only the causal or unforeseen absence of any of the members (including the Chairman) of the Board, during any stage the proceeding.

1.4 Notice of Change

(Sec-9-A & 9-B) provides that no employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the **Fourth Schedule**, shall affect such change-

(a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected ; or

(b) Within twenty one days of giving such notice.

Provided that no notice shall be required for effecting any such change -

(a) Where the change is effected in pursuance of settlement or award;

(b) where the workman likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defense Services, (Classification, Control and Appeal) Rules, or the Indian Railway Establishment Code or any other rules or regulation that may be notified in this behalf by the appropriate Government in the Official Gazette apply.

Power of Government to exempt

Where the appropriate Government is of opinion that application of the provisions of section 9-A to any days of industrial establishment or to any class of workmen employed in any industrial establishment affects the employees in relation thereto so prejudicially, that such application may, cause serious repercussion on the industry concerned and that, public interest so requires, the appropriate Government may, by notification in the Official Gazette, direct the provisions of the said section shall not apply or shall apply subject to such conditions as may be specified in the notification, to that class of industrial establishment or to that class of workmen employed in any industrial establishment.

1.5 Reference of Certain Individual Disputes (Sec-9-C)

(1) The employer in relation to every industrial establishment in which fifty or more workmen are employed or have been employed on any day in the preceding twelve months shall provide for, in accordance with the rules made in that behalf: under this Act, a Grievance Settlement Authority for the settlement of industrial disputes connected with an industrial workman employed in the establishment.

(2) Where an industrial dispute connected with an individual workman arises in an establishment, a workman or any trade union of workman of which such workmen is a member, refer, and in such manner as may be prescribed, such dispute to the Grievance Settlement Authority provided for by the employer under sub-section for settlement.

(3) The Grievance Settlement Authority shall follow such procedure and complete its proceeding within such-period as may be prescribed.

(4) No reference shall be made to boards, courts or tribunals with respect to any dispute referred to in this section unless such dispute has been referred to the Grievance settlement Authority concerned and the decision of the Grievance Settlement Authority is not acceptable to any of the parties to the disputes.

1.6 Reference of Disputes to Board, Courts or Tribunals (Sec-10)

Where the appropriate Government is of opinion that any industrial dispute exist or is apprehended, it may at any time, by order in writing:

(a) Refer the dispute to a Board for promoting a settlement thereof; or

(b) Refer any matter appearing to be connected with or relevant to the dispute, to a Court for inquiry; or

(c) Refer the dispute or any matter appearing to be connected with or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour court for adjudication; or

(d) Refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matters specified in the Second Schedule or the Third Schedule to a Tribunal for adjudication;

No proceeding pending before a Labour Court, Tribunal or National Tribunal in relation to an industrial dispute shall lapse merely by reason of the death of any of the parties to the dispute being a workman, and such Labour court, Tribunal or National Tribunal shall complete such proceedings and submit to the appropriate Government.

Note: Existence of alternative remedy is not bar to raising dispute regarding his termination of service: AIR 1984 SC 286. Central Government is the appropriate Government for disputes arising in Goa, Daman and Diu : Goa Sampling V. General Superintendence, AIR 1985 SC 357, Government acts in administrative capacity under section 10 (1) : Ram Avtar Sharma V. State of Haryana, AIR 1985 SC 915.

1.6.1 Voluntary reference of disputes to arbitration (Sec-10A).

(1) Where any industrial dispute exists or is apprehended and the employer and the workmen agree to refer to the dispute to arbitration, they may, at any time before the dispute has been referred under section 10 to a Labour Court or Tribunal or National Tribunal by a written agreement, after the dispute to arbitration and the reference shall be to such person or persons (including the presiding officer of a Labour Court or Tribunal or National Tribunal as in arbitrator or arbitrators as may be specified in the arbitration agreement.

(1-A) Where an arbitration agreement provides for a reference of the dispute to an even number of arbitrators, the agreement shall provide for the appointment of another person as umpire who shall enter upon the reference, if the arbitrators are equally divided in their opinion, and the award of the umpire shall prevail and shall be deemed to be the arbitration award for the purposes of this Act.

(2) An arbitration agreement referred to in sub-section (1) shall be in such form and shall be signed by the parties thereto in such manner as may be prescribed.

(3) A copy of the arbitration agreement shall be forwarded to the appropriate Government and the Conciliation Officer and the appropriate Government shall within one month, from the date of the receipt of such copy publish the same in the Official Gazette.

(3-A) Where an industrial dispute has been referred to arbitration and the appropriate Government is satisfied that the person making the reference represents the majority of each party, the appropriate Government may within the time referred to in sub-section (3), issue a notification in such manner as may be prescribed ; and when any such notification is issued, the employers and workmen who are not parties to the arbitration agreement but are connected in the dispute, shall be given an opportunity of presenting their case before the arbitrator/s.

(4) The arbitrator or arbitrators shall investigate the dispute and submit to the appropriate Government the arbitration award signed by the arbitrator or all the arbitrators, as the case may be.

(4-A) Where an industrial dispute has been referred to arbitration and a notification has been issued under sub-section (3-A), appropriate Government may, by order, prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of reference.

(5) Nothing in the Arbitration Act, 1940 (X of 1940), shall apply to arbitration under this section.

1.7 Procedure, Power and Duties of Authorities

1.7.1 Procedure and Power of Conciliation Officers, Boards, Courts and Tribunals (Sec-11):

(1) Subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think fit.

(2) A Conciliation Officer or a member of a Board or Court or the presiding officer of a Labour Court, Tribunal or National Tribunal, may for the purpose of inquiry into any existing or apprehended industrial dispute after giving reasonable notice, enter the premises occupied by the establishment to which the disputes relates.

(3) Every Board, Court, Labour Court, Tribunal or National Tribunal shall have the same power as are vested in a Civil Court under the Code of Civil Procedure , 1908 (V of 1980), when trying a suit in respect of the following matters, namely :

- (a) Enforcing the attendance of any person and examining him on oath;
- (b) Compelling the production of documents and material objects;
- (c) Issuing commission for the examination of witness;
- (d) In respect of such other matters as may be prescribed;

Every inquiry and investigation by a Board, Court, Labour Court, Tribunal and National Tribunal shall be deemed to be a judicial proceeding, within the meaning of section 193 and 228 of the Indian Penal Code, 1860.

(4) A Conciliation Officer 1[may enforce the attendance of any person for the purpose of examination of such person or call for] and inspect any document which he has ground for considering to be relevant to the industrial dispute or to be necessary for the purpose of verifying the implementation of any award or carrying out any other duty imposed on him under this Act, and for the aforesaid purposes Conciliation Officer shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (V of 1908) 1[in respect of enforcing the attendance of any person and examining him or of compelling the production of documents.]

(5) A Court, Labour Court, Tribunal or National Tribunal may, if it so thinks fit, appoint one or more persons having special knowledge of the matter under consideration as assessor or assessors to advise it in the proceeding before it.

(6) All Conciliation Officers, members of a Board of Court and the presiding officer of a Labour Court, Tribunal or National Tribunal shall be deemed to be public servants within the meaning of section 21 of Indian Penal Code (XIV of 1860).

(7) Subject to any made under this Act, the costs of , and incidental to, any proceeding before a Labour Court, Tribunal or National Tribunal shall be in the discretion of that Labour Court, Tribunal or National Tribunal and the Labour Court, Tribunal or National Tribunal, as the case may be, shall have full power to determine by and to whom and to what extent and subject to what conditions, if any, such costs are to be paid, and to give all necessary directions for the purpose aforesaid and such costs may, on application made to the appropriate Government by the person entitled, be recovered by the Government in the same manner as an rarer of land revenue.

(8) Every Labour Court, Tribunal or National Tribunal shall be deemed to be a Civil Court for the purpose of 1[section 345, 346 and 348 of the Code of Criminal Procedure, 1973 (2 of 1974).]

Note: Labour Tribunals should decide all the issues in dispute at the same time instead of trying some of them as preliminary issues.

1.7.2 Power of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen (Sec-11A):

Where an industrial dispute relating to the 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, if any, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such term 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.

Note: Relief to be given when reinstatement becomes impossible. (*Case: Delhi Cloth and General Mills V. S. N. Mukharjee*)

1.7.3 Duties of Conciliation Officers (Sec-12):

(1) Where any industrial dispute exists or is apprehended, the Conciliation Officer may, or where the dispute relates to a public utility service and a notice under section 22 has been given, shall hold conciliation proceedings in the prescribed manner.

(2) The Conciliation Officer shall, for the purpose of bringing about a settlement of the dispute delay investigate the dispute and all matter affecting the merits and the right settlement thereof, and may do all such things as he thinks fit for the purpose of indicating the parties to come to a fair and amicable settlement of the dispute.

(3) If a settlement of the dispute or of any of the matters in dispute arrived at in the course of the conciliation proceedings, the conciliation officer shall send a report thereof to the appropriate Government or an officer authorize in this behalf by the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute.

(4) If no such settlement is arrived at, the Conciliation Officer shall as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and, for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reason on account of which in his opinion a settlement could not be arrived at.

(5) If, on a consideration of the report referred to in sub-section (4) the appropriate Government is satisfied that there is a case for reference to a Board, Labour Court, Tribunal or National Tribunal it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefore.

(6) A report under this section shall be submitted within fourteen days of the commencement of the conciliation proceeding or within such shorter period as may be fixed by the appropriate Government;

Provided that subject to the approval of the Conciliation Officer the time for the submission of the report may be extended by such period as may be agreed upon in writing by all the parties to the dispute.

1.7.4 Duties of Boards (Sec-13):

(1) Where a dispute has been referred to a Board under this Act it shall be the duty of the Board to Endeavour for being about a settlement of the same and for this purpose the Board shall in such manner as it thinks fit and without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as it thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(2) If a settlement of the dispute or any of the matters in dispute is arrived at in the course of the conciliation proceedings, the Board shall send a report thereof to the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute.

(3) If no such settlement is arrived at, the Board shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth proceedings and steps taken by the Board for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full settlement of such facts and circumstances, its findings thereon the reasons on accounts of which, in its opinion, a settlement could not be arrived at and its recommendations for the determination of the dispute.

(4) If on the receipt of the report under sub-section (3) in respect of a dispute relating to a public utility service, the appropriate Government does not make a reference to a Labour Court, Tribunal or National Tribunal under section 10, it shall record and communicate to the parties concerned its reasons therefore.

(5) The Board shall submit its report under this section within two months of the date on which the dispute was referred to it or within such shorter period as may be fixed by the appropriate Government. Provided that the appropriate Government may, from time to time, extend the time for the submission of the report by such further periods not exceeding two months in the aggregate. Provided further that the time for the submission of the report it may be extended by such period as may be agreed on in writing by all the parties to dispute.

1.7.5 Duties of Courts of Inquiry (Sec-14):

A Court shall inquire into the matters referred to it and report thereon to the appropriate Government ordinarily within a period of six months from the commencement of its inquiry.

1.7.6 Duties of Labour Courts, Tribunals and National Tribunals (Sec-15):

Where an industrial dispute has been referred to a Labour Court, Tribunal or National Tribunal for adjudication, it shall hold its proceeding expeditiously and shall, within the period specified in the order referring such industrial dispute or the further period extended under the second provision to sub-section (2-A) of section 10, submit its award to the appropriate Government.

Note: Labour Court should decide all the issues at the same time instead of trying some of them as preliminary issues.

1.7.7 Form of report or award (Sec-16):

(1) The report of a Board or Court shall be in writing and shall be signed by all the members of the Board or Court as the case may be :

Provided that nothing in this section shall be deemed to prevent any member of the Board or Court from recording any minute of dissent form a report or from any recommendation made therein.

(2) The award of a Labour Court or Tribunal or National Tribunal shall be in writing and shall be signed by its presiding officer.

1.7.8 Publication of reports and awards (Sec-17):

(1) Every report of a Board or Court together with any minute of dissent recorded therewith. Every arbitration award and every award of a Labour Court, Tribunal or National Tribunal shall, within a period of thirty days from the date of its receipt by the appropriate Government, be published in such manner as the appropriate Government thinks fit.

(2) Subject to the provisions of section 17-A, the award published under sub-section (1) shall be final and shall not be called in question by any court in any manner whatsoever.

1.7.9 Commencement of the award (Sec-17A):

(1) Any award (including an arbitration award) shall become enforceable on the expiry of thirty days from the date of its publication under **Section 17:**

Provided that –

(a) If the appropriate Government is of opinion in any case where the award has been given by a Labour Court or Tribunal in relation to an industrial dispute to which it is a party; or

(b) If the Central Government is of opinion in any case where the award has been given by a National Tribunal that it will be expedient on public grounds affecting national economy or social justice to give effect to the whole or any part of the award, the appropriate Government or as the case may be, the Central Government may, by notification in the Official Gazette, declare that the award shall not become enforceable on the expiry of the said period of thirty days.

(2) Where any declaration has been made in relation to an award under the provision to sub-section (1) the appropriate Government or the Central Government may, within ninety days from the date of publication of the award under section 17, make an order rejecting or modifying the award, and shall, on the first available opportunity, lay the award together with a copy of the order before the Legislature of the State, if the order has been made by a State Government, or before Parliament, if the order has been made by the Central Government.

(3) Where any award is rejected or modified, by an order made under sub-section (2) is laid before the Legislature of State or before Parliament such award shall become enforceable on the expiry of fifteen days from the date on which it so laid; and whole or no order under sub-section (2) is made in pursuance of a declaration under the proviso to sub-section (1), the award shall become enforceable on the expiry of the period of ninety days referred in sub-section (2).

(4) Subject to the provisions of sub-section (1) and sub-section (3) regarding the enforceability of an award, the award shall come into operation with effect from such date as may be specified therein, but where no date is so specified, it shall come into operation on the date when the award becomes enforceable under sub-section (1), or sub-section (3), as the case may be.

1.7.10 Payment of full wages to workman pending proceeding in higher court (Sec-17B):

Where in any case, Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceeding against such award in High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such court :

Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court Shall order that no wages shall be payable under this section for such period or part, as the case may be.

1.7.11 Persons on whom settlement and awards are binding (Sec-18):

(1) A settlement arrived at by agreement, between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

(2) Subject to the provisions of sub-section (3), an arbitration award which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.

(3) A Settlement arrived at in the course of conciliation proceedings under this Act or an arbitration award in a case where a notification has been issued under sub-section (3-A) or section 10-A or an award or a Labour Court, Tribunal or National Tribunal, which has become enforceable shall be binding on -

(a) All parties to the industrial dispute;

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, records the opinion that they were so summoned without proper cause ;

(c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;

(d) where a party referred to in clause (a) or clause (b) is composed of workman, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute, and all persons who subsequently become employed in that establishment or part thereof.

Note: settlement arrived at outside conciliation proceedings, is binding on all persons mentioned in sub-section (3) *Tata Chemicals V workman, 1978 (SC)*. Settlement by negotiations how for binding: *New Standard Engineering Co. V N. L. Abhyankar, 1978 SC 982* Binding nature of settlement arrived at in the course of conciliation proceeding: *Jaswant Singh V. Union of India, 1980*

1.7.12 Period of operation of settlement and awards (Sec-19):

(1) A Settlement shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute.

(2) Such settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon for a period of six months, from the date on which the memorandum of settlement is signed by the parties to the dispute, and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement.

(3) An award shall, subject to the provisions of this section, remain in operation for a period of one year from the date on which the award becomes enforceable under section 17-A.

Provided that the appropriate Government may reduce the said period and fix such period as it thinks fit. Provided further that the appropriate Government may, before the expiry of the said period, extend, the period of operation by any period not exceeding one year at a time as it thinks fit, so however, that the total period of operation of any award does not exceed three years from the date on which it came into operation.

(4) Where the appropriate Government, whether of its own motion or on the application of any party bound by the award, considers that since the award was made, there has been a

material change in the circumstances on which it was based, the appropriate Government may refer the award or a part of it, to a Labour Court, if the award was that of a Labour Court, or to a Tribunal, if the award was that of a Tribunal, or of a National Tribunal, for decision whether the period of operation should not, by reason of such change, be shortened and the decision of Labour Court or the Tribunal as the case may be, on such reference shall be final.

(5) Noting contained in sub-section (3) shall apply to any award which by its nature, terms or other circumstances does not impose, after it has been given effect to any continuing obligation on the parties bound by the award.

(6) Notwithstanding the expiry of the period of operation under sub-section (3), the award shall continue to binding on the parties until a period of two months has elapsed form the date on which notice is given by any party bound by the award to other party or parties intimating its intention to terminate the award.

(7) No notice given under sub-section (2) or sub-section (6) shall have effect, unless it is given by a party representing the majority of persons bound by the settlement or awards, as the case may be.

1.7.13 Commencement and conclusion of proceedings (Sec-20):

(1) A conciliation proceeding shall be deemed to have commenced on the date on which a notice of strike or lock-out under Section 22 is received by the conciliation Officer or on the date of the order referring the dispute to a Board, as the case may be.

(2) A conciliation proceeding shall be deemed to have concluded -

(a) Where a settlement is arrived at, when a memorandum of the settlement is signed by the parties to the dispute;

(b) Where no settlement is arrived at, when the report of the Conciliation Officer is arrived by the appropriate Government, or when the report of the Board is published under Section- 17, as the case may be; or

(c) When a reference is made to a Court, Labour Court, Tribunal or National Tribunal under section 10 during the pendency of conciliation proceedings.

(3) Proceedings before the arbitrator under Section 10-A or before a Labour Court, Tribunal or National Tribunal, shall be deemed to have commenced on the date of the reference of the dispute for arbitration or adjudication, as the case may be, and such proceedings shall be deemed to have concluded on the date on which the award become enforceable under Section 17-A

Note: A Tribunal cannot interfere with the management's right to decision of disclosure of business: Tata Oil Mills V Workmen, 1980.

1.7.14 Certain matters to be kept confidential (Sec-21):

There shall not be included in any report or award under this Act any information obtained by a Conciliation Officer, Board, Court, Labour Court, Tribunal or National Tribunal or an arbitrator in the course of any investigation or inquiry a s to a trade union

or as to any individual business (whether carried on by a person, firm or company) which is not available otherwise than through the evidence given before such Officer, Board, Court, Tribunal or National Tribunal or arbitrator if the trade union, person, firm or company, in question has made a request in writing to the Conciliation Officer, Board, Court, Labour Court, Tribunal or National or arbitrator, as the case may be, that such information shall be treated as confidential ; not shall such Conciliation Officer or any individual member of the Board or Court or the Presiding Officer of the Labour Court, Tribunal or National Tribunal or the arbitrator or any person present at or concerned in the proceedings disclose any such information without the consent in writing of the secretary of the trade union or the person, firm or company in question, as the case may be. Provided that nothing contained in that section shall apply to disclosure of any such information for the purpose of a prosecution under section 193 of the Indian Penal Code (XLV of 1860).

1.8 Strikes and Lock- Outs

1.8.1 Prohibition of strikes and lock-outs (Sec-22):

- (1) No person employed in public utility service shall go on strike in breach of contract:
 - (a) without giving to the employer notice of strike, as hereinafter provide, within six weeks before striking; or
 - (b) Within fourteen days of giving such notice; or
 - (c) Before the expiry of the date of lock-out specified in any such notice as aforesaid; or
 - (d) During the pendency of any conciliation proceedings before a Conciliation Officer and seven days after the conciliation of such proceedings.
- (2) Employer carrying on any public utility service shall lock-out any of his workmen:
 - (a) Without giving them notice of lock-out as hereinafter provided, within six weeks before lock-out ; or
 - (b) Within fourteen days of giving such notice; or
 - (c) Before the expiry of the date of lock-out specified in any such notice as aforesaid; or
 - (d) During the pendency of any conciliation proceedings before a Conciliation Officer a seven days after the conclusion of such proceedings.
- (3) The notice of lock-out or strike under this section shall not be necessary where there is already in existence a strike or, as the case may be, lock-out in the public utility service, but the employer shall send intimation of such lock-out or strike on the day on which is declared, to such authority as may be prescribed by the appropriated Government either generally or for a particular area or for a particular class of public utility services.

(4) The notice of strike referred to in sub-section (1) shall be given by such member of persons to such person or persons and in such manner as may be prescribed.

(5) The notice of lock-out referred to in sub-section (2) shall be given in such manner as may be prescribed.

(6) If on any day an employer receives from any person employed by him any such notice as are referred to in sub-section (1) or gives to any persons employed by him any such notice as are referred to in sub-section (2), he shall within five days thereof report to the appropriate Government or to such authority as that Government may prescribe, the manner or such notices received or given on that day.

1.8.2 General prohibition of strikes and lock-outs (Sec-23):

No workman who is employed in any industrial establishment shall go strike in breach of contract and no employer of any such workmen shall declare a lockout:

(a) During the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings;

(b) During the pendency of proceeding before a Labour Court, Tribunal or National Tribunal and two months after the conclusion of such proceedings ;(bb) During the pendency of arbitration proceedings before an arbitrator and two months after conclusion of such proceedings, where a notification has been issued under sub-section (3-A) of section 10-A; or

(c) During any period in which a settlement or award is in operation in respect of the matters covered by the settlement or award.

1.8.3 Illegal strikes and lock-outs (Sec-24):

(1) A strike or a lock-out shall be illegal if:

(i) It is commenced or declared in contravention of section 22 or section 23; or

(ii) It is continued in contravention of an order under sub-section (3) of section 10 or sub-section (4-A) of section 10-A.

(2) Where a strike or lock-out in pursuance of an industrial dispute has already commenced and is in existence at the time of the reference of the dispute to a Board, an arbitrator, a Labour Court, Tribunal or National Tribunal, the continuance of such strike or lock-out shall not be deemed to be illegal. Provided that such strike or lock-out was not at its commencement in contravention of the provisions of this Act or continuance thereof was not prohibition under sub-section (3) of section 10 or under sub-section (4-A) of section 10-A.

(3) A lock-out declared in consequence of an illegal strike or a strike declared in consequence of an illegal lock-out shall not be deemed to be illegal.

1.8.4 Prohibition of financial aid to illegal strikes and lock-outs (Sec-25):

No person shall knowingly expend or apply any money in direct furtherance or support of any illegal strike or lock-out.

1.9 Lay Off and Retrenchment

1.9.1 Application of sections 25-C to 25-E (Sec-25-A):

(1) Section 25-C to 25-E inclusive shall not apply to industrial establishment to which Chapter V-B applies, or

(a) To industrial establishment in which less than fifty workmen on an average per working day have been employed in the preceding calendar month ; or

(b) To industrial establishments which are of a seasonal character or in which work is performed only intermittently.

(2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.

Explanation - In this section and in section 25-C, 25-D and 25-E industrial establishment' means -

(i) A factory as defined in clause (m) of section 2 of the Factories Act, 1948; or

(ii) A mine as defined in clause (j) of section 2 of the Mines Act, 1952; or

(iii) A plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951.

1.9.2 Definition of Continuous service (Sec-25-B):

(1) A workman shall be said to be a continuous service for a period if he is for that period in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or cessation of work which is not due any fault on the part of the workman;

(2) Where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer -

(a) For a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, actually worked under the employer for not less than –

(i) One hundred and ninety days in the case of a work man employed below ground in a mine

(ii) Two hundred and forty days in any other case

(b) For a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than -

(i) Ninety five days, in the case of a workman employed below ground in a mine;

(ii) One hundred and twenty day, in any other case.

Explanation - For the purposes of clause (2) the number of days in which a workman has actually worked under an employer shall include the days on which -

(i) He has been laid-off under an agreement or as permitted by standing orders made under the industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment ;

(ii) He has been on leave with full wages, in the previous year;

(iii) He has been absent due to temporary disablement caused by accident arising out of and in the course of his employment ; and

(iv) In the case of a female, she has been on maternity leave; so however that the total period of such maternity leave, does not exceed twelve weeks.

1.9.3 Right of workman laid-off for compensation (Sec-25-C):

Whenever a workman (other than badli workman or a casual workman) whose name is borne on the muster-rolls of an industrial establishment and who has completed not less than one year of continuous service under an employer is laid-off, whether continuously or intermittently, he shall be paid by the employer for all days during which he is so laid-off, except for such weekly holidays as may intervene, compensation which shall be equal to fifty percent of the total of the basic wages and dearness allowance that would have been payable to him had he not been so laid-off :

Provided that if during any period of twelve months, a workman is so laid-off for more than forty-five days no such compensation shall be payable in respect of any period of the lay-off after the expiry of the first forty-five days, if there is an agreement to that effect between the workman and the employer:

Provided further that it shall be lawful for the employer in any case falling within the foregoing proviso to retrench the workman in accordance with the provisions contained in section 25-F at the time after the expiry of first forty-five days of the lay-off and when he does so, any compensation paid to the workman for having been laid-off during the preceding twelve months may be set off against the compensation payable for retrenchment.

Explanation - "Badli Workman" means a workman who is employed in an industrial establishment in the place of another workman whose name is born on the muster-rolls of the establishment, but shall cease to be regarded as such for the purpose of this section, if he has employed one year of continuous service in the establishment.

1.9.4 Duty of an employer to maintain muster-rolls of workmen (Sec-25-D):

Notwithstanding that workman to any industrial establishment have been laid-off it shall be the duty of every employer to maintain for the purposes of this chapter, a muster roll, and to provide for the making of entries by workmen who may present themselves for work at the establishment at the appointed time during normal working hours.

1.9.5 Workman not entitled to compensation in certain cases (Sec-25-E):

No compensation shall be paid to a workman who has been laid-off-

(i) If he to accept any alternative employment in the same establishment from which he has been laid-off, or in any other establishment belonging to the same employer suitable in the same town or village or situate within a radius of five miles from the establishment to which he belongs, if, in the opinion of the employer, such alternative employment does not call for any special skill or previous experience and can be done by the workman:

Provide that the wages which would normally have been paid to the workman are offered for the alternative employment also;

(ii) If he does not present himself for work at the establishment at the appointed time during normal working hours at least once a day;

(iii) If such laying-off is due to a strike or showing down of production on the part of workmen in another part of the establishment.

1.9.6 Conditions precedent to retrenchment of workmen (Sec-25-F):

No workman employed in an industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until

(a) The workman has been given one month's notice in writing including 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 the notice;

(b) The workman has been paid at the time of retrenchment, compensation which shall be equivalent fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months;

(c) Notice in the prescribed manner is served on the appropriate Government or such authority as any is specified by the appropriate Government by notification in the Official Gazette.

1.9.7 Compensation to workmen in case of transfer of undertakings (Sec-25-FF):

Where the ownership of management of an undertaking transferred whether by agreement or by operation of law, from the employer in relation to that undertaking to a new employer, every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-FF as if the workman had been retrenched:

Provided that nothing in this section shall apply to a workman in any case where there has been a change of employers by reason of transfer, if -

(a) The service of the workman has not been employed by such transfer;

(b) The terms and conditions of service applicable to the workman after such transfer are not in any way less favorable to the workman than those applicable to him immediately before the transfer ; and

(c) The new employer is, under the terms of such transfer or otherwise legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by the transfer.

1.9.8 Sixty days notice to be given of intention to close down any undertaking (Sec-25-FF):

(1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice in the prescribed manner, on the appropriate Government stating clearly the reason for the intended closure of the undertaking:

Provided that nothing in this section shall apply to -

(a) An undertaking in which -

(i) Less than fifty workmen are employed, or

(ii) Less than fifty workmen were employed on an average per working day in the preceding twelve months.

(b) An undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.

(2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident to the undertaking or death of the employer or the like it is necessary so to do, by order, direct the provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order. Compensation to workmen in case of closing down of undertaking-

Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2) be entitled to notice and compensation in accordance with the provisions of section 25-F as if the workman has been retrenched.

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer the compensation to be paid to the workman under clause (b) of section 25-F shall not exceed average pay for three months.

Explanation- An undertaking which is closed down by reason merely of –

(i) financial difficulties including financial loss, or

(ii) accumulation of indisposed off stocks; or

(iii) the expiry of the period of the lease or license granted to it ; or

(iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on, shall not be deemed to have been closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-sections.

Closure of an undertaking means closure of a separate and distinct business or commercial or trading industrial activity. (Avon Service Production Agencies V. Industrial Tribunal (1979))

1.9.9 Procedure for retrenchment (Sec-25-G):

Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

1.9.10 Re-employment of retrenched workman (Sec-25-H):

Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as any be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for the employment and such retrenched workmen who offer themselves for re-employment shall have preference over other persons.

1.9.11 Omitted by the Industrial Dispute (Amendment) Act, 1956 (Sec-25-I):

1.9.12 Effect of laws inconsistent with this Chapter (Sec-25-J):

(1) The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law including standing orders made under the Industrial Employment (standing orders) Act, 1946:

Provided that where under the provisions of any other Act or rules, orders or notifications issued there under or under any standing orders or under any award, contract or service or otherwise, a workman is entitled to benefits in respect of any matter which are more favorable to him than those to which he would be entitled under this Act, the workman shall continue to be entitled to the more favorable benefits in respect of other matters under this Act.

(2) For the removal of doubts, it is hereby declared that nothing contained in this Chapter shall be deemed to affect the provisions of any other law for the time being in force in any state in so far as that law provides for the settlement of industrial disputes but the rights and liabilities of employers and workmen in so far as they relate to lay-off and retrenchment shall be determined in accordance with the provisions of this Chapter.

1.10 Penalties

1.10.1 Unfair Labour Practices

A Prohibition of unfair labour Practice (Sec-25-T):

No employer or workman or a trade union, whether registered under the Trade Unions Act, 1926 or not, shall commit any unfair labour practice.

B Penalty for committing unfair labour practices (Sec-25-U):

Any person who commits any unfair labour practices shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or both.

1.10.2 Penalty for illegal strikes and lock-out (Sec-26):

(1) Any workman who commences continues or otherwise acts in furtherance of, a strike which is illegal under this Act shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both.

(2) Any employer who commences continues, or otherwise acts in pursuance of a lock-out which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

1.10.3 Penalty for instigation (Sec-27):

Any person who instigates or incites others to take part in, or otherwise acts in furtherance of, a strike or lock-out which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

1.10.4 Penalty of giving financial aid to illegal strikes and lock-outs (Sec-28):

Any person who knowingly expends or applies any money in directly furtherance or support of any illegal strike or lock-out shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.

1.10.5 Penalty for breach of settlement or award (Sec-29):

Any person who commits, a breach of any term or any settlement or award which is binding on him under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine or with both, and where the breach is a continuing one, with a further fine, which may extend to two hundred rupees for every day during which the breach continues after the conviction for the first, and the Court trying the offence, if it fines the offender, may direct that the whole or any part of the fine realized from him shall be paid, by way of compensation, to any person who, in its opinion, has been injured by such breach.

1.10.6 Penalty for disclosing confidential information (Sec-30):

Any person who willfully discloses any such information as is referred to in section-21 in contravention of the provision of that section shall, on complaint made by or on behalf of the trade union or individual business effected, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

1.10.7 Penalty for closure without notice (Sec-30-A):

Any employer who closes down any undertaking without complying with provisions of section 25-FFA shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees or with both.

1.10.8 Penalty for other offences (Sec-31):

(1) Any employer who contravenes the provisions of section 31 shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(2) Whoever contravenes any of the provisions of this Act or any rule made there under shall, if no other party is elsewhere provided by or under this Act for such contravention, be punishable with fine which may extend to one hundred rupees.

Note: Section 31(2) is applicable when there is an illegal change without any notice (Workmen V. Food Corporation of India.)

1.10.9 Offences by companies, etc (Sec-32):

Where a person committing an offence under this Act is a company, or other body corporate, or an association of persons (whether incorporated or set), every director, manager, secretary, agent or other officer or person concerned with the management thereof, shall unless he proves that the offence was committed without his knowledge or consent, be deemed to be guilty of such offence.

1.10.10 Conditions of service, etc. to remain unchanged under certain circumstances during pendency or proceedings (Sec-33):

(1) During the pendency of any conciliation proceeding before a Conciliation Officer of a Board or of any Proceeding before 1[an arbitrator or a Labour Court or Tribunal or National Tribunal] in respect of an industrial dispute, no employer shall -

(a) in regard to any matter connected with the dispute, alter to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings; or

(b) For any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceedings is pending.

(2) During the pendency of any such proceeding in respect of nay industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman -

(a) Alter, in regard to any matter not connected with the dispute the conditions of service applicable to the workman immediately before the commencement of such proceeding; or

(b) For any misconduct connected with the dispute, discharge or punish whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged, or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

(3) Notwithstanding anything contained in sub-section (2), no employer shall, during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman connected in such dispute -

(a) By altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceedings; or

(b) By discharging or punishing whether by dismissal or otherwise, such protected workman; save with the express permission in writing of the authority before which the proceeding is pending.

Explanation - For the purposes of this sub-section, a "protected workman", in relation to an establishment means a workman who, being 1[a member of the executive or other office bearer] of a registered trade union connected with the establishment, is recognized as such in accordance with rules made in this behalf.

(4) In every establishment, the number of workmen to be recognized as protected workmen for the purposes of sub-section (3) shall be one percent, of the total number of workmen employed therein subject to a minimum number of five protected workmen and a maximum number of one hundred protected workmen and for the aforesaid purpose, the appropriate Government may make rules providing for the distribution of such protected workman among various trade unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognized as protected workmen.

(5) Where an employer makes an application to Conciliation Officer, Board, an arbitrator, a Labour Court, Tribunal or National Tribunal under the proviso to sub-section (2), for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass, 2[within a period of three months from the date of receipt of such application] such order in relation thereto as it may think fit:

Provided that where any such authority considers it necessary or expedient so to do, it may, for reasons to be recorded in writing, extend such period by such further period as it may think fit.

Provided further that no proceedings before any such authority shall lapse, merely on the ground that nay period specified in this sub-section had expired without such proceeding being completed.

1.10.11 Special provision for adjudication as to whether conditions of service, etc. changed during pendency of proceedings (Sec-33-A):

Where an employer contravenes the provisions of Section 33 during the pendency of proceedings before a conciliation officer Board, an arbitrator, a Labour Court, Tribunal or National Tribunal] any employee aggrieved by such contravention, may make a complaint in writing in the prescribed manner -

(a) to such conciliation officer or Board, and the conciliation officer or Board shall take such complaint into account in mediating in, and promoting the settlement of, such industrial dispute; and

(b) to such arbitrator, Labour Court, Tribunal or National Tribunal and on receipt of such complaint, the arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, shall adjudicate upon the complaint as if it were a dispute has referred to or pending before it, in accordance with the provisions of his this Act and shall submit his or its award to the appropriate Government and the provisions of this Act shall apply accordingly.

1.10.12 Power to transfer certain proceedings (Sec-33-B):

(1) The appropriate Government may by order in writing of reasons to be stated therein, withdraw any proceedings under this Act pending before a Labour Court, Tribunal or National Tribunal and transfer the same to another Labour Court, Tribunal or National Tribunal, as the case may be, for the disposal of the proceeding and the Labour Court, Tribunal or National to which the proceeding is so transferred may, subject to special direction in the order of transfer proceed either day novo or from the stage at which it was so transferred :

Provided that where a proceeding under section 33 or section 33-A is pending before a Tribunal or National Tribunal the proceeding may also be transferred to a Labour Court,

(2) Without prejudice to the provisions of sub-section (1), any Tribunal or National Tribunal, if so authorized by the appropriate Government may transfer any proceeding under section 33 or section 33-A pending before it to any one of the Labour Courts specified for the disposal of such proceedings by the appropriate Government by notification in the Official Gazette, and the Labour Court to which proceeding is so transferred shall dispose of the same.

1.10.13 Recovery of money due from an employer (Sec-33-C):

(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of 3[Chapter V-A or Chapter V-B] the workman himself or any other person authorized by him in writing in this behalf or in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, makes an application to the appropriate Government for the recovery of money due to him and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for the amount to the Collector who shall proceed to recover the same in the same manner as an arrears of land revenue :

Provided that every such application shall be made within one year from the date of which the money became due to the workman from the employer.

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government satisfied that the applicant have sufficient cause for not making the application within the said period.

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount form which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in the behalf by the appropriate Government, 1[within a period not exceeding three months]:

Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be record in writing, extend such period by such further period as he may think fit.

(3) For the purposes of computing the money value of a benefit, the Labour Court may, if it so thinks fit, appoint a Commissioner who shall after taking such evidence as may be necessary submit a report to the Labour Court, and the Labour Court shall determine the amount after considering the report of the Commissioner and other circumstances of the case.

(4) The decision of the Labour Court shall be forwarded by it to the appropriate Government and any amount found due by the Labour Court may be recovered in the manner provided for in sub-section (1).

(5) Where workmen employed under the same employer are entitled to receive form him any money or any benefit capable of being computed in terms of money, then, subject to such rules as may be made in this behalf, a single application for the recovery of the amount due may be made on behalf of or in respect of any number of such workmen.

Explanation - In this section "Labour Court" includes any Court constituted under any law relating to investigation and settlement of industrial disputes in force in any State.

1.10.14 Cognizance of offences (Sec-34) :

(1) No Court shall take cognizance of any offence punishable under this Act or of the abetment of any such offence, save on complaint made by or under the authority of the appropriate Government.

(2) No Court inferior to the Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

1.10.15 Protection of persons (Sec-35):

(1) No person refusing to take part or to continue to take part in any strike or lock-out which is illegal under this Act shall, by reason of such refusal or by reason of any action taken by him under this section, be subject to expulsion from any trade union or society or to any fine or penalty, or to deprivation of any right or benefit of which he or his legal representatives would otherwise be entitled, be liable to be placed in any respect either

directly or indirectly, under any disability or at any disadvantage as compared with other members of the union or society, anything to be contrary in rules of a trade union or society notwithstanding.

Nothing in this rules of a trade union or a society requiring the settlement of dispute in any manner shall apply any proceeding for enforcing any right or exemption secured by this section, and in any proceeding the Civil Court may in lieu of ordering a person who has been expelled from membership of a trade union or society to be restored to membership, order that he be paid out of the funds of the trade union or society, such sum by way of compensation or damages as that Court thinks just.

1.10.16 Representation of the parties (Sec-36):

(1) A workman who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by –

- (a) Any member of the executive or other office bearer of a registered trade union of which he is a member;
- (b) Any member of the executive or other office bearer of registered trade unions to which the trade union referred to in clause (a) is affiliated;
- (c) Where the worker is not a member of any trade union, by any member of the executive or other office bearer of any trade union connected with or by any other workman employed in, the industry in which the worker is employed and authorized in such manner as may be prescribed.

(2) An employer who is party to a dispute shall be entitled to be represented in any proceeding under this Act by-

- (a) An officer of an association of employers of which he is a member;
- (b) An officer of a federation of association of employers to which the association referred to in clause (a) is affiliated;
- (c) Where the employer is not a member of any association of employers by an officer of any association of employers connected with, or by any other employer engaged in the industry in which the employer is engaged, and authorized in such manner as may be prescribed.

(3) No party to a dispute shall be entitled to be represented by a legal practitioner in any conciliation proceedings under this Act or in any proceeding, before Court.

(4) In any proceeding before a Labour Court, Tribunal or National Tribunal a party to a dispute may be prescribed by a legal practitioner with the consent of the other parties to the proceeding and with the leave of the Labour Court, Tribunal or National Tribunal, as the case may be.

1.10.17 Power to remove difficulties (Sec-36-A):

(1) If, in the opinion of the appropriate Government, any difficulty or doubt arises as to the interpretation of any provision of an award or settlement, it may refer the question to such Labour Court, Tribunal or National Tribunal, as it may think fit.

(2) The Labour Court, Tribunal or National Tribunal to which question is referred shall, after giving the parties an opportunity of being heard, decide such question and its decision shall be final and binding on all such parties.

1.10.18 Power to exempt (Sec-36-B):

Where the appropriate Government is satisfied in relation to any industrial establishment or undertaking or any class of industrial establishments or undertakings carried on by a department of that Government that adequate provisions exists for the investigation and settlement of industrial disputes in respect of workmen employed in such establishment or undertaking or class of establishments or undertakings, it may, by notification in the official Gazette, exempt, conditionally or unconditionally such establishment or undertaking or class or establishments or undertakings from all or any of the provisions of this Act.

1.10.19 Protection of action taken under the Act (Sec-37):

No suit, prosecution or other legal proceedings shall be against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rules made the under.

1.10.20 Power to make rules (Sec-38):

(1) The appropriate Government may, subject to the condition of previous publication, make rules for the purpose of giving effect to provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power such rules may provide for all or any of the following matters, namely:

(a) The power and procedure of Conciliation Officers, Boards, Courts, Labour courts, Tribunals and National Tribunals including rule as to the summoning of witnesses, the production of documents relevant to the subject matter or an enquiry or investigation, the number of members necessary to form a quorum and the manner of submission of reports and awards;

(aa) The form of arbitration agreement, the manner in which it may be signed by the parties, the manner in which a notification may be issued under sub-section (3-A) of section 10-A, the powers of the arbitrator named in the arbitration agreement and the procedure to be followed by him;

(aaa) The appointment of assessors in proceedings under this Act;

(ab) The constitution of Grievance Settlement Authorities referred to in section 9-C, the manner in which industrial disputes may be referred to such authorities for settlement, the procedure to be followed by such authorities in the proceedings in relation to disputes referred to b them and the period within such proceedings shall be completed;

(b) The constitution and functions of and the filling of vacancies in Works Committees, and the procedure to be followed by such Committees in the discharge of their duties;

(c) The allowance admissible to members of Courts, and Boards and presiding officers of Labour Courts, Tribunals and National Tribunals and to assessors and witnesses;

(d) The ministerial establishment which may be allotted to a Court, Board, Labour Court, Tribunal or National Tribunal and the salaries and allowances payable to members of such establishments;

(e) The manner in which and the persons by and to whom notice of strike or lock-out may be given and the manner in which such notice shall be communicated;

(f) The conditions subject to which parties may be represented by legal practitioners in proceedings under this Act before a Court, Labour Court, Tribunal or National Tribunal

(g) Any other matters which is to be or may be prescribed.

(3) Rules made under this section may provide that a contravention thereof shall be punishable with fine not exceeding fifty rupees.

(4) All rupees made under this section shall, as soon as after they are made, be laid before the State legislature or, where the appropriate Government is the Central Government, before each Houses of Parliament.

(5) Every rule made by the Central Government under this section shall be laid, as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in 1[two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid] both Houses agree in making any modification in the rule, or both the Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

1.10.21 Delegation of powers (Sec-39):

The appropriate Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act or rules made there under shall in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also, -

(a) where the appropriate Government is the Central Government, by such officer or authority subordinate to the Central Government or by the State Government or by such officer or authority subordinate to the State Government, as may be specified in the notification; and

(b) Where the appropriate Government is a State Government, by such officer or authority subordinate to the State Government, as may be specified in the notification.

1.10.22 Power to amend Schedule (Sec-40):

(1) The appropriate Government may, if it is of opinion that it is expedient or necessary in the public interest so to do by notification in the Official Gazette, and to the First Schedule any industry, and on any such notification being issued, the First Schedule shall be deemed to be amended accordingly.

(2) The Central Government may, by notification in the Official Gazette, add to or alter or amend the Second Schedule or the Third Schedule, and on any such notification being issued, the Second Schedule or the Third Schedule, as the case may be, shall be deemed to be amended accordingly.

(3) Every such notification shall, as soon as possible after it is issued, be laid before the Legislature of the State, if the notification has been issued by a State Government, or before Parliament, if the notification has been issued by the State Government.

1.11 Summary

An industrial dispute may be defined as a conflict or difference of opinion between management and workers on the terms of employment. It is a disagreement between an employer and employees' representative; usually a trade union, on pay and other working conditions and can result in industrial actions. When an industrial dispute occurs, both the parties, that is the management and the workmen, try to pressurize each other. The management may resort to lockouts while the workers may resort to strikes, picketing or gheraos. As per **Section 2(k) of Industrial Disputes Act, 1947**, an industrial dispute is defined as any dispute or difference between employers and employees, or between employers and workmen or between workmen which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person. This definition includes all the aspects of a dispute. It, not only includes the disagreement between employees and employers, but also emphasizes the difference of opinion between worker and worker. The disputes generally arise on account of poor wage structure or poor working conditions. This disagreement or difference could be on any matter concerning the workers individually or collectively. It must be connected with employment or non-employment or with the condition of the labour. From the point of view of the employer, an industrial dispute resulting in stoppage of work means a stoppage of production. This results in increase in the average cost of production since fixed expenses continue to be incurred. It also leads to a fall in sales and the rate of turnover, leading to a fall in profits. The employer may also be liable to compensate his customers with whom he may have contracted for regular supply. Apart from the immediate economic effects, loss of prestige and credit, alienation of the labor force, and other non-economic, psychological and social consequences may also arise. Loss due to destruction of property, personal injury and physical intimidation or inconvenience also arises. For the employee, an industrial dispute entails loss of income. The regular income by way of wages and allowance ceases, and great hardship may be caused to the worker

and his family. Employees also suffer from personal injury if they indulge into strikes n picketing; and the psychological and physical consequences of forced idleness. The threat of loss of employment in case of failure to settle the dispute advantageously, or the threat of reprisal action by the employers also exists. Prolonged stoppages of work have also an adverse effect on the national productivity, national income. They cause wastage of national resources. Hatred may be generated resulting in political unrest and disrupting amicable social/industrial relations or community attitudes.

1.12 Self -Assessment Questions

1. State the important definitions under the Industrial Dispute Act, 1947.
2. What is the procedure of filling up vacancies under the Industrial Dispute Act, 1947?
3. What do you mean by notice of change? State the powers of the Government to exempt in this relation.
4. What is the way of setting up Grievance Settlement Authorities and how reference of certain individual disputes is made to such authorities?
5. What is the procedure and power of Conciliation Officers, Boards, Courts and Tribunals under the Act?
6. State the duties of Conciliation Officers and Boards under the provisions of the Act.
7. What do you mean by awards? Define the provisions regarding the awards under the Act.
8. Write a detail note on strikes and lockouts.
9. Briefly explain Lay Offs and retrenchment

1.13 Reference Books

- Joy Joseph Kodianthara: "Commentaries on Industrial Disputes Act, 1947", Published by DC Books & Co. Ltd.
- Saini, D.S.: "Delay in Conciliation Proceedings: a systemic malaise" Publication Indian Journal Of Social Work (1993)
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- G.B. Pai: "Labour Law in India" (2001)
- P.L. Malik: "K.D. Srivastava's Industrial Employment (Standing Orders) Act, 1946" 4th edition (2000)
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- S.C. Srivastava: "Labour Law and Labour Relations : Cases and Materials", 3rd edition, (2007)

Unit – 2 : The Factories Act, 1948

Structure of Unit

- 2.0 Objectives
- 2.1 Introduction
- 2.2 Definitions
- 2.3 Health, Safety and Welfare Provisions
- 2.4 Provisions for Hazardous Work
- 2.5 Employment of Child, Young Person and Woman
- 2.6 Working Hours and Annual Leave
- 2.7 Inspectors and Officers under the Act
- 2.8 Provisions for Penalties and Offences
- 2.9 Summary
- 2.10 Self Assessment Questions
- 2.11 Reference Books

2.0 Objectives

After going through this unit you will be able to understand the:

- Historical background of the Act.
- Definitions and their meanings provided in the Factory Act, 1948.
- What are the health, safety and welfare provisions for workers in the Act?
- What are the provisions in the Act regarding hazardous works in industry?
- Various provisions related with employment of child, young person etc.
- Provisions regarding working hours and leave etc. to workers.
- Penalties which can be imposed in case of breach of the provisions of the Act.

2.1 Introduction

Factories Bill having been passed by the Legislature received the assent on 23rd September 1948. It came into force on 1st April 1949 as THE FACTORIES ACT, 1948 (63 of 1948). It applies to factories, as defined in the Act, all over India, including the State of Jammu and Kashmir. In the British India the conditions of work and provisions for the safety, health and welfare of workers working in the factories were generally found to be inadequate and unsatisfactory and even such protection as is provided were also not extent to the large mass of workers employed in work places not covered by the Act. In view of tile large and growing industrial activities in the country, a radical overhauling of the Factories law was essentially called for and cannot be delayed as there were demands from various trade union and political leaders to improve it at that time. The Factory Act of 1948 is more comprehensive than the previous Acts. It contains detailed provisions regarding the health, safety and welfare of workers inside factories, and the hours of work, the minimum age of, workers, leave with pay etc. This Act was enacted to consolidate and amend the law regulating labour in factories. The Act was passed to make available, appropriate and beneficial provisions to the workers

in factories. It is codified with a view to regulating the working conditions in the factories and to provide them with the health, safety and welfare measures. The Act has been amended several times.

2.2 Definitions

The Act is applicable to the: -

- a. Factories using power and employing 10 or more workers on any working day of the preceding twelve months;
- b. Factories not using power and employing 20 or more workers on any working day of the preceding twelve months; and the
- c. Factories specially notified under Section 85 of the Factories Act by the State Governments or the Union Territories.

This section has been used to extend the coverage of the Act to workplaces like power looms, rice mills, flour mills, oil mills, saw mills, pesticide formulating units and other chemical units where hazards to health are considered to put workers at risk. The main objective of the Act is not only to ensure conditions of work and adequate safety measures but also to promote health and welfare of the workers employed in factories as well as to prevent haphazard growth of factories. In other words the Factories Act is to regulate the conditions of work and ensure applicability of provisions for the safety, health and welfare of workers working in the factories and in manufacturing establishments coming within the definition of the term "factory" as used in the Act.

Various definitions given in the Section 2 of the Act are as under:

- a) "**Adult**" means a person who has completed his eighteenth year of age;
- b) "**Adolescent**" means a person who has completed his fifteen year of age but has not completed his eighteenth year;

(bb) "Calendar year" means the period of twelve months beginning with the first day of January in any year ;

- c) "**Child**" means a person who has not completed his fifteenth year of age;
- (cb) "Hazardous process"** means any process or activity in relation to an industry specified to the First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, bye-products, wastes or effluents thereof would—

- (i) result in the material impairment to the health of the persons engaged in or connected herewith, Or
- (ii) result in the pollution of the general environment; Provided that the State Government may, by notification in the Official Gazette, amend the First Schedule by way of addition, omission or variation of any industry specified in the said schedule;

- d) "**Young person**" means a person who is either a child or an adolescent;

- (h) "**Prime mover**" means any engine, motor or other appliance which generates or otherwise provides power;
- (i) "**Transmission machinery**" means any shaft, wheel drum, pulley, system of pulleys, coupling, clutch, driving belt or other appliance or device by which the motion of a prime mover is transmitted to or received by any machinery or appliance;
- (j) "**Machinery**" includes prime movers, transmission machinery and all other appliances whereby power is generated, transformed, transmitted or applied;
- (k) "**Manufacturing process**" means any process for –

- (i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or
- (ii) pumping oil, water, sewage or any other substance; or;
- (iii) generating, transforming or transmitting power; or
- (iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding;
- (v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels;
- (vi) preserving or storing any article in cold storage(Section 2 (k) as amended in 1976)

Manufacturing process under the Act includes the following also:

1. Bidi making, transformation of raw cinematographic films into finished products.
2. Salt works consisting of converting sea-water into salt. The leading case on this point is A.H. Bhiwandiwala vs. State of Bombay.
3. Any foodstuffs or eatables prepared in the kitchen of a restaurant.
4. Any process of packing of tobacco leaves including its moisturing, stripping or trimming etc. a leading case on this point is Goplarao vs. Public Prosecutor.
5. Any activity of a petrol pump.
6. Book binding etc.

Establishment which prepared food and drinks for the use by the members of the public was held to be a factory in the case of Moosa Kazime vs. K.M. Shariff. A manufacturing process was carried on with the help of 7 (seven) persons working permanently and three working temporarily for repairing some parts of the machinery where power was being used. It was held in the case of Hari Kishan vs. State of U.P. that such premises are a factory. However, the crucial factor in deciding whether any process for trade or business is a manufacturing business or not, all the relevant circumstances are to be kept in view, i.e., some commercially known article which is different from which it has acquired shape.

(l) "Worker" means a person employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process but does not include any member of the armed forces of the union (Section 2 (1) as amended in 1976);

Thus, the essential elements of a worker are:

1. There should be an 'employed person'.
2. Employment should be direct or through some agency.
3. Employment should be in any manufacturing process etc.
4. Employment may be for remuneration or not
5. Any member of the armed force of the Union is excluded from the definition of worker.
6. Whether all employees are workers or not, as the term employee is not defined in the Act. All persons employed in or in connection with a factory whether or not employed as workers are entitled to the benefits of the Act.

(m) "Factory" is defined in section 2(m) of the Act, which includes any premises including the precincts thereof –

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on. But, it does not include a mine subject to the operation of the Mines Act, 1952 or a mobile unit belonging to the armed forces of the union, a railway running shed or a hotel, restaurant or eating place;

Explanation I: For computing the number of workers for the purposes of this clause all the workers in different groups and relays in a day shall be taken into account.

Explanation II: For the purposes of this clause, the mere fact that an Electronic Data Processing Unit or a Computer Unit is installed in any premises or part thereof, shall not be construed to make it a factory if no manufacturing process is being carried on in such premises or part thereof; Thus, the essential elements to decide a working unit as factory are:

1. There must be premises.
2. There must be a manufacturing process which is being carried on or is so ordinarily carried on in any part of such a premises,
3. There must be ten or more workers who are or were working in such a premises on any day of the last 12 months where the said manufacturing process is carried on with the aid of power. On the other hand, the required number of workers working should be twenty or more where the manufacturing process is carried on without the aid of power.

There are certain provisions regarding approval, licensing and registration of Factories in the Act. Sec. 6 of the Factories Act provides that before a site is used for a factory, previous permission of the State Government is required. The State may make rules under this Act for the submission of plan of the factories to the Chief Inspector or to the State Government and the previous approval for the construction or extension of the factory has to be obtained for the site on which the factory is to be situated. An application may be made to the State Government or the Chief Inspector accompanying there with certified plan and specification. Similarly, State Government may also make rules for registration license as also may prescribe fees payable for such registration, licensing, or renewal of license. Before granting such license a notice has to be given under Sec. 7 of the Factories Act. If an application has been made in this connection regarding the plan and nothing is heard within 3 months, permission is deemed granted such permission for site construction or extension of a factory as also for registration and licensing,

Notice by occupier Sec. 7. The occupier before occupying the factory or premises shall send a notice to the Chief Inspector at least 15 days before of so using or occupying the factory. The notice shall contain following particulars:

- a. The name and situation for the factory.
- b. The name and address of the occupier.
- c. The name and address of the owner of the premises or building.
- d. Address of communication regarding factory.
- e. The nature of manufacturing process which is likely to be carried on in next 12 months.
- f. Total installation of rated Horse Power.
- g. The name of the Manager of the factory.
- h. The number of workers likely to be appointed.
- i. Any other particulars as may be prescribed from time to time.

If factory engaged in a manufacturing process for less than 180 days in a year again re-starts, working, the occupier shall send a written notice to the Chief Inspector containing the particulars under Sec. 7 at least 30 days before the date of restarting the works. If nothing is heard within three months by Government or the Chief Inspector and appeal may be made to central government.

2.3 Health, Safety and Welfare Provisions

The Factories Act, 1948, deals with the provisions relating to the health, safety and welfare of the workers in a factory. Section 11 to 20 deal with provision of environmental sanitation that protect the worker from hazardous environment. Provisions for cleanliness of the working place, benches, stairs, wall etc. and light, water, dust, humidity, urinals etc. have been explained.

A) **Health Provisions:** Provisions related with **Health** are as under:

1. Cleanliness (Sec. 11): Section 11 of the act provides that: Every factory shall be kept clean and free from dirt. There should be effective drainage system that the floor of the manufacturing process should not remain wet and accumulation of dirt is easily getting removed through it. Use of disinfectants, detergents, painting and whitewashing shall be resorted to. All factories shall be kept clean from any effluvia arising from any drain or other nuisance and refuse collected there from shall be removed daily. The floor of all rooms shall be cleaned at least once in a week by washing using disinfectant. Where a floor becomes wet during any manufacturing process, it shall be removed by means of drainage.

2. Disposal of Wastes and Effluents (Sec.12): Section 12 of the act provides that: There should be such arrangement in the factory that the wastes and effluents easily disposed off. Arrangements shall be made in every factory for the disposal of wastes due to manufacturing process carried on there.

3. Ventilation and Temperature: Section 13 of the act provides that:

(1) Effective and suitable provision shall be made in every factory for securing and maintaining in every workroom

- (a) Adequate ventilation and the circulation of fresh air, and
- (b) Workers therein reasonable conditions of comfort and prevention from injury to health.

(2) Process producing high temperature to be separated:

The walls and roofs shall be made and designed with such material that such temperature shall not be exceeded but kept as low as practicable. Beside this, where the nature of the work carried on in the factory involves production of excessively high temperatures, adequate measures as are necessary shall be taken to protect the workers.

4. Dust and Fume (Sect. 14): Section 14 of the act provides that: In a factory, by reason of the manufacturing process carried on, there may be given off any dust or fume. Its inhalation by and anybody accumulation in any workroom is injurious or offensive to the workers employed therein. So, in order to prevent this- the point of origin of the dust, fume or other impurity, shall be enclosed as far as possible. On the other hand, in any factory no stationary internal combustion engine shall be operated unless the exhaust is conducted into the open air, and no other internal combustion engine shall be operated in any room unless, effective measures have been taken to prevent such

accumulation of fumes there from as they are likely to be injurious to workers employed in the room.

Where dust or fume is given off to such an extent which is likely to be injurious to the workmen as a result of the manufacturing process, effective steps shall be taken for the prevention of inhalation of dust and fume- exhaust appliance shall be installed which may be as near as possible to the point of origin of dust. Such point of dust or fume shall be enclosed by effective means. No internal combustion engine which is stationary shall be operated unless its exhaust is conducted into the open air. Non-stationary combustion engine shall also not be operated unless effective measures have been taken to prevent accumulation of fumes.

5. Artificial humidification (Sec. 15): Section 15 of the act provides that: In respect of all factories in which the humidity of the air is artificially increased, the State Government may make rules,-

- (a) prescribing standards of humidification;
- (b) regulating the methods used for artificially increasing the humidity of the air;
- (c) directing prescribed tests for determining the humidity of the air to be correctly carried out and recorded;
- (d) prescribing methods to be adopted for securing adequate ventilation and cooling of the air in the workrooms; the water used for the purpose shall be taken from a public supply, or other source of drinking water, or shall be effectively purified before it is so used. But if the water that used is not purified, he may serve on the manager of the factory an order in writing, specifying the measures which in his opinion should be adopted, and requiring them to be carried out before specified date.

In every factory in which humidity of air is increased artificially, the State Government may make rules about its standard. State may also make rules regarding the method of increasing artificial humidity of air. The water used for the purpose of increasing artificial humidity must be taken from public supply of drinking water or it shall be purified before its use in the humidification plant.

6. Overcrowding (Sec. 16): Section 16 of the act provides that: The overcrowding affects the workmen not only in the discharge of duties but also their health. The working space should be 14.2 cubic meters of space per worker in every workroom. No overcrowding shall be permitted in any room of the factory which is likely to cause injury to the health of the workmen. At least 350 cubic-feet space shall be provided in factories which are in existence before the commencement of this Act and in factories working after the commencement of this Act at least 500 cubic feet space must be available to every workman. In counting the space of 350 or 500 cy. ft. as the case may be, account shall not be taken of any space over 14 ft. above the floor level.

7. Lighting (Sec. 17): Section 17 of the act provides that:

The Factories Act makes following provisions in this respect,
(a) There shall be provided and maintained sufficient and suitable lighting, natural or artificial, or both, in every part of the factory.

(b) In every factory all glazed windows and skylights be used and workrooms shall be kept clean on both the inner and outer surface.

(c) In every factory effective provision shall, so far as is practicable, be made for the prevention of glare, either directly from a source of light or by reflection from a smooth or polished surface;

(d) The State Government prescribes standards of sufficient and suitable lighting for factories or for any class of description of factories or for any manufacturing process.

In every factory where the workers are working, there must be provided sufficient natural or artificial lighting. All windows and sky lights used for natural lighting must be kept clean both the sides. Provision shall also be made for the prevention of any glare through reflection or formation of shadows causing eye strain should be avoided to avert any accident.

8. Drinking water (Sec. 18): Section 18 of the act provides that:

The provisions in this respect under the Factories Act, are;

(a) Arrangements shall be made to provide and maintain sufficient supply of wholesome drinking water.

(b) Provision shall be made for cooling drinking water during hot weather by effective means and for distribution thereof in every factory wherein more than two hundred and fifty workers are ordinarily employed.

(c) Examine as prescribed by the authorities of the supply and distribution of drinking water in factories.

Effective arrangements must be made in every factory to provided and maintain sufficient supply of pure drinking water, which should be available at suitable place or point, Such place or point shall be already marked “ DRINKING” in the local language and such water point should be away at least 20ft. from urinal, latrine or washing place. Wherein more than 250 workers are working in any factory provision may be made for cool drinking water during hot weather.

9. Latrine and Urinal (Sec. 19): Section 19 of the act provides that:

The Factories Act makes following provisions in this respect,

1.(a) sufficient latrine and urinal accommodation of prescribed types shall be provided and conveniently situated to make them accessible to workers at all times while they are at the factory;

(b) separate enclosed accommodation shall be provided for male and female workers and there should be adequately lighted and ventilated;

(c) they shall be maintained in a clean and sanitary condition at all times;

(d) sweepers shall be employed whose primary duty would be to keep latrines, urinals and washing places clean.

(2) But in factory wherein more than two hundred and fifty workers are ordinarily employed-

- (a) all latrine and urinal accommodation shall be of prescribed sanitary types;
- (b) the floors and internal walls, up to a height of ninety centimeter , the sanitary blocks shall be laid in glazed tiles or a smooth polished impervious surface;
- (c) latrines and urinals shall be thoroughly washed and cleaned at least once in every seven days with suitable detergents or disinfectants or with both.

(3) The State Government may prescribe the number of latrines and urinals to be provided in any factory in proportion to the number of male and female workers ordinarily employed therein.

Separate arrangement for urinals and latrines for male and female shall be provided in any factory. Such accommodation shall be adequately lighted and ventilated and maintained in sanitary conditions. Adequate number of sweepers should be provided to clean latrines and urinals. Wherein more than 250 workers are working I any factory the floor and internal walls up to the height of 3 ft. of all urinals and latrines and sanitary blocks shall be laid in glazed tiles or other smooth surface. Latrines and urinals are thoroughly cleaned by washing at least once in a week by using disinfectants.

10. Spittoons (Sec. 20): Section 20 of the act provides that:

There shall be provided sufficient number of spittoons in convenient places and they shall be maintained in a clean and hygienic condition. The State Government may make rules prescribing the type and the number of spittoons to be provided and their location in any factory. No workman shall spit within the premises except in the spittoons. The employer shall provide notice in the premises to this effect that whoever spits in contravention shall be fined.

B) Safety measures:

Safety measures like fencing of machines, protection of eyes by use of goggles, precautions against fire, dangerous fumes, etc. are defined (Sections 21-40).

Important provisions related with Safety of the workers are as under:

1. Fencing of machinery (Sec. 21): Section 21 of Factories Act, 1948, provides that: in every factory, the dangerous parts of all machineries should be securely fenced. The section provides for fencing the following machineries while they are in use—

- (i) every moving part of a prime mover and every flywheel connected to a prime mover whether the prime mover or flywheel is in the engine house or not;
- (ii) the headrace and tailrace of every water-wheel and water turbine;
- (iii) any part of a stock-bar which projects beyond the head stock of a lathe; and
- (iv) the following should be securely fenced —
 - (a) every part of an electric generator, a motor or rotary convertor;
 - (b) every part of transmission machinery; and
 - (c) every dangerous part of any other machinery.

2. Work on or near machinery in motion (Sec. 22):

Section 22 of the act provides that: in any factory it becomes necessary to examine any part of machinery, while the machinery is in motion, or, lubrication or other adjusting operation; or , any mounting or shipping of belts or operation shall be made or carried out only by a specially trained adult male worker wearing tight fitting clothing (which shall be supplied by the occupier) whose name has been recorded in the register prescribed in this behalf and who has been furnished with a certificate of his appointment, and while he is so engaged,-

- (a) such worker shall not handle a belt at a moving pulley unless
 - (i) the belt is not more than fifteen centimeters in width;
 - (ii) the belt joint is either laced or flush with the belt;
 - (iii) the belt, including the joint and the pulley rim, are in good condition;
 - (iv) there is reasonable clearance between the pulley and any fixed plant or structure;
 - (v) secure foothold and, where necessary, secure handhold, are provided for the operator.

No woman or young person shall be allowed to clean, lubricate or adjust any part of a prime mover or of any transmission machinery while the prime mover or transmission machinery is in motion, or to clean, lubricate or adjust any part of any machine if the cleaning, lubrication or adjustment thereof would expose the woman or young person to risk of injury from any moving part either of that machine or of any adjacent machinery.

3. Employment of young person on dangerous machines (Sec.23):

Section 23 of the act provides that: young person shall be required or allowed to work at any machine to which he has been fully instructed as to the dangers arising in connection with the machine and the precautions to be observed and-

- (a) has received sufficient training in work at the machine, or
- (b) is under adequate supervision by a person who has a thorough knowledge and experience of the machine.

4. Striking gear and devices for cutting off power (Sec. 24):

Section 24 of the act provides that: Section 24 provides that suitable striking gear or other efficient mechanical appliance shall be maintained and used to move driving belts to and from fast and loose pulleys which form part of the transmission machinery, and such gear or appliances shall be so constructed, placed and maintained as to prevent the belt from creeping back on to the fast pulley. Further driving belts, when not in use, shall not be allowed to rest or ride upon shafting in motion. Besides these, in every factory suitable devices for cutting off power in emergencies from running machinery shall be provided and maintained in every work-room.

5. Self-acting Machines (Sec. 25):

Section 25 of the act provides that: Section 25 provides safeguard for workers from being injured by self-acting machine. This section provides that no traversing part of a self-acting machine in any factory and no material carried thereon shall, if the space over which it runs is a space over which any person is liable to pass, whether in the course of his employment or otherwise, be allowed to run on its outward or inward traverse within a distance of from any fixed structure which is not part of the machine.

6. Prohibition of employment of women and children near cotton-openers (Sec. 27):

Section 27 of the act provides that: In any part of a factory where a cotton-opener is at work for pressing cotton, no woman or child shall be employed. Provided that the Inspector may in any particular case specify in writing that the women and children may be employed on the side of the partition where the feed-end is situated.

7. Hoists and lifts (Sec. 28):

Section 28 of the act provides that: Every hoist and lift shall be of good mechanical construction, sound material and adequate strength, properly maintained ,protected by an enclosure fitted with gates, and shall be thoroughly examined by a competent person.

8. Lifting machines, chains, ropes and lifting tackles (Sec. 29):

Section 23 of the act provides that: Every lifting machine and every chain, rope and lifting tackle for the purpose of raising or lowering persons, goods or materials, all parts, including the working gear, whether fixed or movable, of every lifting machine and every chain, rope or lifting tackle shall be of good construction, sound material and adequate strength and free from defects. It should be properly maintained.

9. Protection of eyes (Sec. 35):

Section 35 of the act provides that: Prescribed process should be taken which involves risk of injury to the eyes from particles or fragments thrown off in the course of the process, or risk to the eyes by reason of exposure to excessive light. Effective screens or suitable goggles shall be provided for the protection of persons employed.

10. Precautions against dangerous fumes, gases, etc (Sec. 36):

Section 36 of the act provides that: No person shall be allowed to enter any chamber, tank, vat, pit, pipe, flue or other confined space in any factory in which any gas, fume, vapor or dust is likely to be present.

11. Safety Officers (Sec. 40B):

Section 40B of the act provides that the State Government may notify to the occupier to employ a number of Safety Officers in a factory (i) wherein one thousand or more workers are ordinarily employed. or (ii) wherein any manufacturing process or operation which involves the risk of bodily injury, poisoning, disease or any other hazard to health of the persons employed in the factory .

Provisions related with **Welfare** of the workers are as under:

Facilities for washing, and sitting, canteens, crèche (one for more than 30 women) and first aid appliances are provided (Sections 42-48). One Welfare Officer for 500 or more workers is prescribed (Sec. 49).

C) Welfare Provisions:

Provisions relating to welfare are provided as under in Sections 42 to 50 in the Factory Act, 1948.

1. Washing facilities (Sec. 42): Section 42 of the act provides that in every factory suitable and adequate facilities shall be provided separately for males and females and such facilities shall also be maintained by the employer regularly for the benefit and use of the workman working therein. Such facilities shall be kept clean as also they shall be conveniently approachable. Thus in every factory adequate washing facilities should be provided for both male and female workers. They should be conveniently accessible and kept clean. The State Government prescribes standards for adequate and suitable facilities for washing.

2. Facilities for drying and storing clothing (Sec. 43): Section 43 of the act provides that provision of suitable place for keeping cloths which are not worn during working hour shall be made. As also the provision for providing place for drying of wet clothes for the factory workers. The State Government has the power to make rules in this connection. Thus there should be suitable places for keeping the clothing not worn during working hours and for the drying of the wet clothing.

3. Facilities for sitting (Sec. 44): Section 44 of the act provides that: (a) Appropriate arrangements for sitting shall be provided and maintained for all works who are required to work in standing position so that the workers may take rest when such opportunity arise during the course of their work. (b) The Chief Inspector of Factories may ask the occupier of the factory to make arrangements for providing stools of such height which can be used by the workers for taking rest. Thus in every factory suitable arrangements for sitting as well as standing shall be provided and maintained for all workers for rest which they may require in course of their work.

4. First-Aid appliances (Sec. 45): Section 45 of the act provides that in every factory First Aid boxes and cupboard shall be provided and maintained by the occupier. Where at least 150 workers are working one first-aid be provided. The content of the boxes shall be regularly checked and kept in good condition. Such boxes shall be kept in charge of a responsible person who must hold a certificate in the first-aid treatment recognized by the State. Such person should always be available all the time during working hours.

However, where more than 500 workers are employed in any factory an ambulance room shall be provided and maintained containing the prescribed equipment. This ambulance room shall be kept in charge of properly trained and

nursing staff and this facility should always be available all the time during working hours. Factory should have readily accessible during all working hours the first-aid boxes or cupboards equipped with the prescribed contents, and the number of such boxes or cupboards to be provided and maintained shall not be less than one for every one hundred and fifty workers ordinarily employed . Each first-aid box or cupboard shall be kept in the charge of a separate responsible person

5. Canteens (Sec. 46): Section 46 of the Factory Act, 1948 provides that in any factory where more than 250 workers are employed a canteen shall be provided and maintained by the occupier of the factory for the benefit of the workmen. The State Government has the power to make rules prescribing the standard of construction, accommodation, furniture and other equipments. It may further provide for the foodstuffs and charge thereof. The management of the canteen shall be done by a committee consisting of the representatives of management and workmen. The expenditure in the running of the canteen shall be shared by the employer as may be prescribed by the State Government. The welfare officer shall be the ex-officio chairman of this committee. Besides the foodstuffs to be served therein, the construction, accommodation, furniture and other equipment of the canteen should be of good standards. The shelters or rest rooms or lunch rooms to be provided under sub-section (1) shall be sufficiently lighted and ventilated and shall be maintained in a cool and clean condition. Canteen is the integral part of the factory and its workers are employees of the occupier.

Rest Room Lunch Room (Sec. 47): Section 47 of the act provides that in every factory wherein more than 150 workers are working, provision shall be made for Rest/Lunch room workers can take their meals. These rooms shall be adequately ventilated and lighted and provision for drinking water shall also be made, where the lunch room exists no worker shall be allowed to tack the meal in the work room. These rooms shall be maintained in a cool, clean and hygienic condition. If there is any canteen maintained in accordance with the provision of the Factories Act, 1948, it shall be treated as a part of the requirement of these provisions.

6. Crèches (Sec.48): Section 48 of the Factory Act, 1948 provides that wherein more than 30 woman workers and working in any factory there shall be provided a suitable room for the use of the children of the working women below the age of 6 years. Such rooms shall provide adequate ventilation and lighting and shall be maintained in a sanitary condition. Such room shall be kept under the care of such trained woman who is expert in the care of infants. The State Government may also make rules for washing and changing the clothes of the infants, for free supply of milk or refreshment to the children and facility for allowing working mothers for feeding their children which may not exceed 2 intervals of 15 minutes each.

Wherein more than thirty women workers are ordinarily employed in a factory, there shall be provided and maintained a suitable room or rooms for the use of the children under the age of six years of such women. The rooms should be adequately lighted and ventilated, shall be maintained in a clean and sanitary condition and shall be under the charge of women trained in the care of children and infants.

7. Welfare Officers (Sec. 49): Section 49 of the act provides that wherein 500 or more workers are working in and factory, the employer shall engage such number of welfare officers as may be prescribed by the State Government. The qualification and service conditions, etc., of such officers shall also be prescribed by the State Government. If a factory is working for few months in the year, the occupier is still liable to employ sufficient number of welfare officers as may be prescribed by the State Government provided more than 500 workers are working.

8. Rule making power of state Government (Sec. 50): Section 50 of the Act provides that the State Government may make rules for exempting factory or factories from the compliance of the provision of Sec. 42 to 49 above. The State Government may also make rules thereby exempting factory or factories from the provision of welfare officers if it is satisfied that alternative arrangements made by the employer are not less beneficial. The State Government may also require any factory to send representatives of the workers to associate with the management of the welfare activities of the workers.

2.4 Provisions for Hazardous Work

There may be some Factories involve with some hazardous production activities. For such factories provisions are as under: For granting permission to them provisions of Site Appraisal Committees has been provided in the Act. Provisions related with that committee and protection from hazardous process are as under:

A. Constitution of Site Appraisal Committees (Sec. 41 A):

1. Granting permission for the initial location of a factory involving a hazardous process or for the expansion of any such factory The State Government may constitute a Site Appraisal Committee and advise to take application. The Site Appraisal Committee shall consist of—

- (a) the Chief Inspector of the State who shall be its Chairman;
- (b) a representative of the Central Board for the Prevention and Control of Water Pollution appointed by the Central Government under section 3 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);
- (c) a representative of the Central Board for the Prevention and Control of Air Pollution referred to in section 3 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981);

(d) a representative of the State Board appointed under section 4 of the Water (Prevention and Control of Pollution) Act, 1974; (6 of 1974).

e) a representative of the State Board for the Prevention and Control of Air Pollution referred to in section 5 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981);

(f) a representative of the Department of Environment in the State;

(g) a representative of the Meteorological Department of the Government of India;

(h) an expert in the field of occupational health; and

(i) a representative of the Town Planning Department of the State Government,

(j) not more than five other members who may be co-opted by the State Government who shall be—

(i) a scientist having specialized knowledge of the hazardous process which will be involved in the factory,

(ii) a representative of the local authority within whose jurisdiction the factory is to be established, and

(iii) not more than three other persons as deemed fit by the State Government.

(2) Within a period of ninety days of the receipt the Site Appraisal Committee shall examine an application for the establishment of a factory involving hazardous process and make its recommendation to the State Government in the prescribed form.

(3) If a factory is owned or controlled by the Central Government or by a corporation or by a company owned or controlled by the Central Government, the State Government shall co-opt in the Site Appraisal Committee a representative nominated by the Central Government as a member of that Committee.

(4) The Site Appraisal Committee shall have the power to call for any information from the person making an application for the establishment or expansion of a factory involving a hazardous process. Besides this, if the State Government has granted approval to an application for the establishment or expansion of a factory involving a hazardous process, it shall not be necessary for an applicant to obtain a further approval from the Central Board or the State Board established under the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974) and the Air (Prevention and Control of Pollution) A Act 1981 (14 of 1981).

B. Compulsory disclosure of information by the occupier (Sec. 41 B):

(1) The occupier of every factory involving a hazardous process shall disclose in the manner prescribed all information (information like the quantity, specifications and other characteristics of wastes) regarding dangers, including health hazards and the measures to overcome such hazards arising from the exposure to or handling of the materials or substances in the manufacture, transportation, storage and other processes, to the workers employed in the factory, the Chief Inspector, the local authority within whose jurisdiction the factory is situate and the general public in the vicinity. The occupier shall lay down a detailed policy at the time of registering the factory involving a hazardous process with respect to the health and safety of the workers employed therein.

(2) Every occupier shall, with the approval of the Chief Inspector, draw up an on-site emergency plan and detailed disaster control measures for his factory and make known to the workers employed therein and to the general public living in the vicinity of the factory the safety measures required to be taken in the event of an accident taking place.

(3) The occupier of a factory, which proposes to engage in a hazardous process, must inform the Chief Inspector regarding the nature and details of such process. The occupier must inform the Chief Inspector within a period of 30 days before the commencement of such process.

C. Specific responsibility of the occupier in relation to hazardous processes (Sec. 41 C):

Specific responsibility of the occupier in relation to hazardous processes. Every occupier of a factory involving any hazardous process shall—

- (a) maintain accurate and up-to-date health records or, as the case may be, medical records, of the workers in the factory who are exposed to any chemical, toxic or any other harmful substances which are manufactured, stored, handled or transported and such records shall be accessible to the workers subject to such conditions as may be prescribed;
- (b) appoint persons who possess qualifications and experience in handling hazardous substances and are competent to supervise such handling within the factory and to provide at the working place all the necessary facilities for protecting the workers in the manner prescribed: Provided that where any question arises as to the qualifications and experience of a person so appointed, the decision of the Chief Inspector shall be final;
- (c) provide for medical examination of every worker—
 - (a) before such worker is assigned to a job involving the handling of, or working with, a hazardous substance, and
 - (b) while continuing in such job, and after he has ceased to work in such job, at intervals not exceeding twelve months, in such manner as may be prescribed.

D. Power of Central Government to appoint Inquiry Committee (Sec. 41 D):

On the occurrence of an extraordinary situation involving a factory engaged in a hazardous process the Central Government may appoint an Inquiry Committee to inquire into the standards of health and safety observed in the factory. The Committee consists of a Chairman and two other members and the terms of reference of the Committee and the tenure of office of its member shall be such as may be determined by the Central Government according. The recommendations of the Committee shall be advisory in nature.

E. Emergency standards (Sec. 41E):

(1) Where the Central Government is satisfied that no standards of safety have been prescribed in respect of a hazardous process or class of hazardous processes, or where the standards so prescribed are inadequate, it may direct the Director-General of Factory Advice Service and Labour Institutes or any institution specialized in matters relating to standards of safety in hazardous processes, to lay down emergency standards for the enforcement of suitable standards in respect of such hazardous processes.

(2) The emergency standards laid down under sub-section shall, until they are incorporated in the rules made under this, be enforceable and have the same effect as if they had been incorporated in the rules made under this Act.

F. Permissible limits of exposure of chemical and toxic sub-stances:

(1) The maximum permissible threshold limits of exposure of chemical and toxic substances in manufacturing processes (whether hazardous or otherwise) in any factory shall be of the value indicated in the Second Schedule.

(2) The Central Government may, at any time, for the purpose of giving effect to any scientific proof obtained from specialized institutions or experts in the field, by notification in the Official Gazette, make suitable changes in the said Schedule.

G. Workers' participation in safety management (Sec. 41 G):

Safety Committee set up consisting of equal number of representatives of workers and management to promote cooperation between the workers and the management in maintained for proper safety and health at work where hazardous substances used or process takes place.

H. Rights of workers to warn about imminent danger are:

(1) Where the workers employed in any factory engaged in a hazardous process have reasonable apprehension that there is a likelihood of imminent danger to their lives or health due to any accident, they may bring the same to the notice of the occupier, agent, manager or any other person who is in-charge of the factory or the process concerned directly or through their representatives in the Safety Committee and simultaneously bring the same to the notice of the Inspector.

(2) It shall be the duty of such occupier, agent, manager or the person in-charge of the factory or process to take immediate action if he is satisfied about the existence of such imminent danger and send a report forthwith of the action taken to the nearest Inspector.

(3) If the occupier, agent, manager or the person in-charge referred to in subsection (2) is not satisfied about the existence of any such imminent danger as apprehended by the workers, he shall, nevertheless, refer the matter forthwith to the nearest Inspector whose decision on the question of the existence of such imminent danger shall be final.

2.5 Employment of Child, Young Person and Woman

The definitions of child, Young Person and the Adolescent are as under:

Child means any person who has not completed 15 years of age and Young person means any person who has not completed 15 years of age and also any person who has not completed 18 years of age, i.e., any person who is either a Child or an Adolescent comes within the category of Young person. Adolescent means any person who has completed 15 years of age but who has not completed 18 years.

The following are the restrictions on employment of young person's:

- i. Any child who has not completed his 14 year of age shall not be allowed to work in any factory. (Section 67).
- ii. Any child who has completed his 14 years of age or an adolescent shall not be allowed to work in any factory unless he has been granted a certificate of fitness issued by the certifying surgeon and such certificate is in the custody of the manager of the factory. The manager in such case shall issue a token with reference of such certificate to such child or adolescent and the token shall be kept by such person while at work (Section 68).
- iii. No child shall be employed in any factory for more than $4^{1/2}$ hours in a day. The child worker will not work in more than 2 shifts and such shift shall not overlap. Spread over of such persons limited to 5 hours each. Every child shall only be employed in one relay which shall not be changed more than once in 30 days except with the prior permission of the Chief Inspector. The provision of weekly holiday will be the same as for the adult.
- iv. No child shall be allowed to work in any other factory on the same day.

Notice of Work: The notice of work shall be displayed and maintained in every factory showing the period of work which the children are required to work (Section 72). The Manager should register of child workers and no child shall be required to be employed in any factory for any such period which is not entered in the register of child workers (Section 73).

Employment of Women:

Section 22 (2) of the Act provides that No woman or young person shall be allowed to clean, lubricate or adjust any part of a prime mover or of any transmission machinery while the prime mover or transmission machinery is in motion, or to clean, lubricate or adjust any part of any machine if the cleaning, lubrication or adjustment thereof would expose the woman or young person to risk of injury from any moving part either of that machine or of any adjacent machinery.

Section 27 of the Act provides for the **Prohibition of employment of women and children near cotton-openers:** No woman or child shall be employed in any part of a factory for pressing cotton in which a cotton opener is at work.

Provided that if the feed-end of a cotton-opener is in a room separated from the delivery end by a partition extending to the roof or to such height as the Inspector may in any particular case specify in writing, women and children may be employed on the side of the partition where the feed-end is situated.

Section 48 of the Act provides for the **Crèches:**

Provisions are: (1) In every factory wherein more than thirty women workers are ordinarily employed there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such women.

(2) Such rooms shall provide adequate accommodation, shall be adequately lighted and ventilated, shall be maintained in a clean and sanitary condition and shall be under the charge of women trained in the care of children and infants.

Section 51 of the act provides that no adult worker (Women also) shall be required or allowed to work in a factory for more than forty-eight hours in any week. Similarly Subject to the provisions of section 51, no adult worker (Women also) shall be required or allowed to work in a factory for more than nine hours in any day:

Section 66 of the Act provides for further restrictions on employment of women:

(1) The provisions, in their application to women in factories, be supplemented by the following further restrictions, namely:

(a) no exemption from the provisions of section 54 may be granted in respect of any woman;

(b) no woman shall be required or allowed to work in any factory] except between the hours of 6 A.M. and 7 P.M.: **Provided** that the State Government may, by notification in the Official Gazette, in respect of any factory or group or class or description of factories, vary the limits laid down in clause (b), but so that no such variation shall authorize the employment of any woman between the hours of 10 P.M. and 5 A.M.

(c) there shall be no change of shifts except after a weekly holiday or any other holiday.

(2) The State Government may make rules providing for the exemption from the restrictions set out in sub-section (1), to such extent and subject to such conditions as it may prescribe, of women working in fish-curing or fish-canning factories, where the employment of women beyond the hours specified in the said restrictions is necessary to prevent damage to or deterioration in, any raw material.

(3) The rules made under sub-section (2) shall remain in force for not more than three years at a time.

Effect of certificate of fitness granted to adolescent

(1) An adolescent who has been granted a certificate of fitness to work in a factory as an adult under clause (b) of sub-section (2) of section 69, and who while at work in a factory carries a token giving reference to the certificate, shall be deemed to be an adult for all the purposes of Chapters VI and VIII.

(1A) No female adolescent or a male adolescent who has not attained the age of seventeen years but who has been granted a certificate of fitness to work in a factory as an adult, shall be required or allowed to work in any factory except between 6 A.M. and 7 P.M.: Provided that the State Government may, by notification in the Official Gazette, in respect of any factory or group or class or description of factories,:-

(i) vary the limits laid down in this sub-section so, however, that no such section shall authorize the employment of any female adolescent between 10 P.M. and 5 A.M.

(ii) grant exemption from the provisions of this sub-section in case of serious emergency where national interest is involved.]

(2) An adolescent who has not been granted a certificate of fitness to work in a factory as an adult under the aforesaid clause (b) shall, notwithstanding his age, be deemed to be a child or all the purposes of this Act.

Where the State Government is of opinion that any manufacturing process or operation carried on in a factory exposes any persons employed in it to a serious risk of bodily injury, poisoning or disease, it may make rules applicable to any factory or class or description of factories in which the manufacturing process or operation is carried on-

(a) specifying the manufacturing process or operation and declaring it to be dangerous;

(b) prohibiting or restricting the employment of women, adolescents or children in the manufacturing process or operation;

2.6 Working Hours and Annual Leave

Sections 51 to 62 have provisions for the working hours for workers which are as under:

Weekly Hours (Sec 51): No adult worker shall be required or allowed to work in any factory for more than 48 hours in a week.

Weekly Holidays (Sec 52): Every worker in a factory shall be allowed one holiday during each week. No adult worker shall be required to work in any factory on the first day of week. i.e. Sunday. Unless the workman is given one holiday in any of the next 3 days, an employer shall display on the notice-board a notice to this effect sending copy of such notice to the Inspector of the Factories. However, in any case no worker will be allowed to work for more than 10 days continuously without a holiday.

Compensatory Holiday (Sec 53): Where a worker is required to work on weekly holiday, he shall be allowed compensatory holiday in equal number and such compensatory holidays shall be allowed either within the same month or within 2 months next.

Daily Hours (Sec 54): No adult workman shall be allowed to work in any factory for more than 9 hours in a day. However, with the previous approval of the Chief Inspector of Factories this limit may be exceeded in order to facilitate the change of shift.

Interval for Rest (Sec 55): No adult worker shall be allowed to work continuously for more than 5 hours, and at least half an hour rest is compulsory after a continuous working of 5 hours. However, the Chief Inspector or the State Government may exempt any factory, from this provision by issuing a written order and showing reasons there for. But in such cases also, the total number of hours worked continuously shall not exceed six.

Spread-over (Sec 56): The period of work of any adult worker shall not be spread-over for more than 10^{1/2} hrs in any day which will include his rest interval. However, the Chief Inspector may extend this period up to 12 hours by showing reasons in writing.

Night Shifts (Sec 57): Where a workman in a factory works in a shift which extends beyond mid-night. In such cases his weekly or compensatory holidays shall be counted up to the end of the shift. The next day for him shall be deemed to be the period of 24 hours when such shifts end the number of hours he worked after the mid-night shall also be counted in previous day.

Prohibition of over-lapping shifts (Sec 58): The system of shifts shall not be so arranged that more than one relay of worker is engaged in work of the same kind at the same time.

Extra wages for overtime (Sec 59): Where a worker works in a factory for more than 9 hours in any day and more than 48 hours in a week, he shall be paid

overtime at the rate of double his ordinary rates of wages. The term of ordinary rates of wages means the basic wages + other allowances including the cash equivalent to the concessional supply of food grains. But it will not include Bonus and over-time wages. The cash equivalent to the concessional supply of food grains, etc., is admissible.

Restriction on double employment (Section 60): No adult workman shall be allowed to work in any factory on any day in which he has already worked in any other factory.

No adult worker shall be required /allowed to work in any factory unless his name and other particulars are entered in the register of adult workers.

2.7 Inspectors and Officers under the Act:

The main responsibility for administration of the Act lies on the State Government. The State Government carries out the administration of the Act through:

i. The Inspecting Staff:

The State Government may appoint any person possessing the prescribed qualifications as Inspector under this Act. They may be assigned such limits as thought fit by the State Government by issuing the notification. The State Government shall also appoint Chief Inspectors, Additional Chief Inspector or Dy. Chief Inspectors as the case may be. The State Government may also appoint any public officers as Additional Inspectors for any of the provisions of this Act. Every District Magistrate shall be treated as an Inspector for the whole district under this Act. Every Chief Inspector and other Inspectors shall be deemed to be public servants within the meaning of IPC. Other detailed provisions are as under:

(1) The State Government may, by notification in the Official Gazette, appoint such persons as possess the prescribed qualification to be Inspectors for the purposes of this Act and may assign to them such local limits as it may think fit.

(2) The State Government may, by notification in the Official Gazette, appoint any person to be a Chief Inspector who shall, in addition to the powers conferred on a Chief Inspector under this Act, exercise the powers of an Inspector throughout the State.

(2A) The State Government may, by notification in the Official Gazette, appoint as many Additional Chief Inspectors, Joint Chief Inspectors and Deputy Chief Inspectors and as many other officers as it thinks fit to assist the Chief Inspector and to exercise such of the powers of the Chief Inspector as may be specified in such notification.

(2B) Every Additional Chief Inspector, Joint Chief Inspector, Deputy Chief Inspector and every other officer appointed under sub-section (2A) shall, in addition to the powers of a Chief Inspector specified in the notification by which he is appointed, exercise the powers of an Inspector throughout the State.

(3) No person shall be appointed under sub-section (1), sub-section (2) sub-section (2A) [ra-38] or sub-section (5), or having been so appointed, shall continue to hold office, who is or becomes directly or indirectly interested in a factory or in any process or business carried on therein or in any patent or machinery connected therewith.

(4) Every District Magistrate shall be an Inspector for his district.

(5) The State Government may also, by notification as aforesaid, appoint such public officers as it thinks fit to be additional Inspectors for all or any of the purposes of this Act, within such local limits as it may assign to them respectively.

(6) In any area where there are more Inspectors than one the State Government may, by notification as aforesaid, declare the powers, which such Inspectors shall respectively exercise and the Inspector to whom the prescribed notices are to be sent.

(7) Every Chief Inspector, Additional Chief Inspector, Joint Chief Inspector, Deputy Chief Inspector, Inspector and every other officer appointed under this section shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860), and shall be officially subordinate to such authority as the State Government may specify in this behalf.

Powers of Inspectors :

Subject to any rules made in this behalf, an Inspector may, within the local limits for which he is appointed, -

(a) enter, with such assistants, being persons in the service of the Government, or any local or other public authority, [or with an expert] as he thinks fit, any place which is used, or which he has reason to believe is used, as a factory;

[(b) make examination of the premises, plant, machinery, article or substance;

(c) inquire into any accident or dangerous occurrence, whether resulting in bodily injury, disability or not, and take on the spot or otherwise statements of any person which he may consider necessary for such inquiry;

(d) require the production of any prescribed register or any other document relating to the factory;

(e) seize, or take copies of, any register, record or other document or any portion thereof, as he may consider necessary in respect of any offence under this Act, which he has reason to believe, has been committed;

(f) direct the occupier that any premises or any part thereof, or anything lying therein, shall be left undisturbed (whether generally or in particular respects) for so long as is necessary for the purpose of any examination under clause (b);

(g) take measurements and photographs and make such recordings as he considers necessary for the purpose of any examination under clause (b), taking with him any necessary instrument or equipment;

(h) in case of any article or substance found in any premises, being an article or substance which appears to him as having caused or is likely to cause danger to

the health or safety of the workers, direct it to be dismantled or subject it to any process or test (but not so as to damage or destroy it unless the same is, in the circumstances necessary, for carrying out the purposes of this Act), and take possession of any such article of substance or a part thereof, and detain it for so long as is necessary for such examination; (i) exercise such other powers as may be prescribed :

Provided that no person shall be compelled under this section to answer any question or give any evidence tending to incriminate him.

ii. Certifying Surgeons :

(1) The State Government may appoint qualified medical practitioners to be certifying surgeons for the purposes of this Act within such local limits or for such factory or class or description of factories as it may assign to them respectively.

(2) A certifying surgeon may, with the approval of the State Government, authorize any qualified medical practitioner to exercise any of his powers under this Act for such period as the certifying surgeon may specify and subject to such conditions as the State Government may think fit to impose, and references in this Act to a certifying surgeon shall be deemed to include references to any qualified medical practitioner when so authorized.

(3) No person shall be appointed to be, or authorized to exercise the powers of, a certifying surgeon, or having been so appointed or authorized, continue to exercise such powers, who is, or becomes the occupier of a factory or is or becomes directly or indirectly interested therein or in any process or business carried on therein or in any patent or machinery connected therewith or is otherwise in the employ of the factory:

Provided that the State Government may, by order in writing and subject to such conditions as may be specified in the order, exempt any person or class of persons from the provisions of this sub-section in respect of any factory or class or description of factories.

(4) The certifying surgeon shall carry out such duties as may be prescribed in connection with -

(a) the examination and certification of young persons under this Act;

(b) the examination of persons engaged in factories in such dangerous occupations or processes as may be prescribed;

(c) the exercising of such medical supervision as may be prescribed for any factory or class or description of factories where -

(i) cases of illness have occurred which it is reasonable to believe are due to the nature of the manufacturing process carried on, or other conditions of work prevailing, therein;

(ii) by reason of any change in the manufacturing process carried on or in the substances used therein or by reason of the adoption of any new manufacturing process or of any new substance for use in a manufacturing process, there is a

likelihood of injury to the health of workers employed in that manufacturing process;

(iii) young persons are, or are about to be, employed in any work which is likely to cause injury to their health. Explanation : In this section "qualified medical practitioner" means a person holding a qualification granted by an authority specified in the Schedule to the Indian Medical Degrees Act, 1916 (7 of 1916) or in the Schedules to the Indian Medical Council Act, 1933 (27 of 1933).

iii. Welfare Officer: The factory wherein 500 or more workers are ordinarily employed, the occupier has to appoint welfare officer. His duties, qualification etc are prescribed by the State Government in Section 49 of the Act. An Assistant Personnel Officer of a factory cannot be held that he was in fact appointed as a Labour Welfare Officer simply because as a Assistant and Personnel officer he was looking after the problems of the labourers and the welfare of the labourers and when the number of labourers in the concerned factory was less than 100 and there was no statutory requirement to appoint a Labour Welfare Officer.

iv. Safety Officer: In the factory or manufacturing unit wherein 1000 or more workers are ordinarily employed and which involves risk of bodily injury, poisoning or disease or any other hazard to health of the persons employed the occupier has to appoint safety officer. His duties, qualification etc are prescribed by the State Government (Sec. 40-B).

2.8 Provisions for Penalties and Offences

General Penalty for Offences

Save as is otherwise expressly provided in this Act and subject to the provisions of section 93, if in, or in respect of, any factory there is any contravention of any of the provisions of this Act or of any rules made there under or of any order in writing given there under, the occupier and manager of the factory shall each be guilty of an offence and punishable with imprisonment for a term which may extend to [two years] or with fine which may extend to [one lakh rupees] or with both, and if the contravention is continued after conviction, with a further fine which may extend to [one thousand rupees] for each day on which the contravention is so continued:

Provided that where contravention of any of the provisions of Chapter IV or any rule made there under or under section 87 has resulted in an accident causing death or serious bodily injury, the fine shall not be less than [twenty-five thousand rupees] in the case of an accident causing death, and [five thousand rupees] in the case of an accident causing serious bodily injury.

Explanation : In this section and in section 94 "serious bodily injury" means an injury which involves, or in all probability will involve, the permanent loss of the use of, or permanent injury to, any limb or the permanent loss of, or injury to, sight or hearing, or the fracture of any bone, but shall not include, the fracture of bone or joint (not being fracture of more than one bone or joint) of any phalanges of the hand or foot.

Where an offence, which is punishable under section 92 of the Act, has been committed by an officer of the Railways and he is a public servant within the meaning of section 21 of the Indian Penal Code, the requirement of obtaining sanction to prosecute him is mandatory and taking cognizance of an offence in the absence of section cannot be allowed to stand; General Manager, Wheel and Axle Plant, Bangalore v. State of Karnataka, 1996(1) FLR 23 (Karn).

Liability of owner of premises in certain circumstances.—(1) Where in any premises separate buildings are leased to different occupiers for use as separate factories, the owner of the premises shall be responsible for the provision and maintenance of common facilities and services, such as approach roads, drainage, water supply, lighting and sanitation.

(2) The Chief Inspector shall have, subject to the control of the State Government, power to issue orders to the owner of the premises in respect of the carrying out of the provisions of sub-section (1).

(3) Where in any premises, independent or self-contained, floors or flats are leased to different occupiers for use as separate factories, the owner of the premises shall be liable as if he were the occupier or manager of a factory, for any contravention of the provisions of this Act in respect of -

- (i) latrines, urinals and washing facilities in so far as the maintenance of the common supply of water for these purposes is concerned;
- (ii) fencing of machinery and plant belonging to the owner and not specifically entrusted to the custody or use of an occupier;
- (iii) safe means of access to the floors or flats and maintenance and cleanliness of staircases and common passages;
- (iv) precautions in case of fire;
- (v) maintenance of hoists and lifts; and
- (vi) maintenance of any other common facilities provided in the premises.

(4) The Chief Inspector shall have, subject to the control of the State Government, power to issue orders to the owner of the premises in respect of the carrying out the provisions of sub-section (3).

(5) The provisions of sub-section (3) relating to the liability of the owner shall apply where in any premises independent rooms with common latrines, urinals and washing facilities are leased to different occupiers for use as separate factories:

Provided that the owner shall be responsible also for complying with the requirements, relating to the provisions and maintenance of latrines, urinals and washing facilities.

(6) The Chief Inspector shall have, subject to the control of the State Government, the power to issue orders to the owner of the premises referred to in sub-section (5) in respect of the carrying out of the provisions of section 46 or section 48.

(7) Where in any premises portions of a room or a shed are leased to different occupiers for use as separate factories, the owner of the premises shall be liable for any contravention of the provisions of - (i) Chapter III, except sections 14 and 15;

(ii) Chapter IV, except sections 22, 23, 27, 34, 35 and 36 :

Provided that in respect of the provisions of sections 21, 24 and 32 the owners liability shall be only in so far as such provisions relate to things under his control : Provided further that the occupier shall be responsible for complying with the provisions of Chapter IV in respect of plant and machinery belonging to or supplied by him;

(iii) section 42.

(8) The Chief Inspector shall have, subject to the control of the State Government, power to issue orders to the owner of the premises in respect of the carrying out of the provisions of sub-section (7).

(9) In respect of sub-sections (5) and (7), while computing for the purposes of any of the provisions of this Act the total number of workers employed, the whole of the premises shall be deemed to be a single factory.

Enhanced Penalty After Previous Conviction

(1) If any person who has been convicted of any offence punishable under section 92 is again guilty of an offence involving a contravention of the same provision, he shall be punishable on a subsequent conviction with imprisonment for a term which may extend to three years or with fine which shall not be less than ten thousand rupees but which may extend to two lakh rupees or with both:

Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a fine of less than ten thousand rupees:

Provided further that where contravention of any of the provisions of Chapter IV or any rule made there under or under section 87 has resulted in an accident causing death or serious bodily injury, the fine shall not be less than thirty-five thousand rupees in the case of an accident causing death and ten thousand rupees in the case of an accident causing serious bodily injury.

(2) For the purposes of sub-section (1) no cognizance shall be taken of any conviction made more than two years before the commission of the offence for which the person is subsequently being convicted.

Penalty for Obstructing Inspector

Whoever willfully obstructs an Inspector in the exercise of any power conferred on him by or under this Act, or fails to produce on demand by an Inspector any registers or other documents in his custody kept in pursuance of this Act or of any rules made there under, or conceals or prevents any worker in a factory from appearing before, or being examined by, an Inspector, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to ten thousand rupees or with both.

Penalty for Wrongfully Disclosing Results of Analysis Under Section 91

Whoever, except in so far as it may be necessary for the purposes of a prosecution for any offence punishable under this Act, publishes or discloses to any person the results of an analysis made under section 91, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to ten thousand rupees or with both.

Penalty for Contravention of the Provisions of Sections 41B, 41C and 41H

(1) Whoever fails to comply with or contravenes any of the provisions of section 41B, 41C or 41H or the rules made there under, shall, in respect of such failure or contravention, be punishable with imprisonment for a term which may extend to seven years and with fine which may extend to two lakh rupees, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention.

(2) If the failure or contravention referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to ten years.

Offences by Workers

(1) Subject to the provisions of section 111, if any worker employed in a factory contravenes any provision of this Act or any rules or orders made there under, imposing any duty or liability on workers, he shall be punishable with fine which may extend to five hundred rupees.

(2) Where a worker is convicted of an offence punishable under sub-section (1), the occupier or manager of the factory shall not be deemed to be guilty of an offence in respect of that contravention, unless it is proved that he failed to take all reasonable measures for its prevention.

Penalty for Using False Certificate of Fitness

Whoever knowingly uses or attempts to use, as a certificate of fitness granted to himself under section 70, a certificate granted to another person under that section, or who, having procured such a certificate, knowingly allows it to be used, or an attempt to use to be made, by another person, shall be punishable with imprisonment for a term which may extend to two months or with fine which may extend to one thousand rupees or with both.

Penalty for Permitting Double Employment of Child

If a child works in a factory on any day on which he has already been working in another factory, the parent or guardian of the child or the person having custody of or control over him or obtaining any direct benefit from his wages, shall be punishable with fine which may extend to one thousand rupees unless it appears to the Court that the child so worked without the consent or connivance of such parent, guardian or person.

2.9 Summary

The main objectives of the Indian Factories Act, 1948 are to regulate the working conditions in factories, to regulate health, safety welfare, and annual leave and enact special provision in respect of young persons, women and children who work in the factories. It is also intended to stop haphazard growth of industries. The Factories Act is meant to provide protection to the workers from being exploited by the greedy industrial and business establishments and it also provides for the improvement of working conditions within the factory premises. Hence, a beneficial construction should be given and the provisions of the Act should be so construed or interpreted so as to achieve its object, i.e., the welfare of the workers and their protection from exploitation and unhygienic working conditions in the factory premises. The State Governments carry out the administration of the Act through Inspecting Staff, Certifying Surgeons, Welfare Officers and Safety Officers. There are many provisions stipulated in the Act which have to be taken by the factories for health, safety, welfare provisions of the workers. Apart from these some provisions are also taken relating to working hours of child, young persons and female workers. Many penalty provisions are also entered in the Act which can be imposed on the owner and the occupier of the factories if any provisions contravene this Act or any rules made there under.

2.10 Self Assessment Questions

1. Explain the following according to the Indian Factories Act, 1948:
 - i) Hazardous process
 - ii) Worker
 - iii) Factory
 - iv) Manufacturing process
2. Explain the provisions of health and welfare of the workers under the Indian Factories Act, 1948.
3. Explain the provisions for the safety of the workers under the Indian Factories Act, 1948.
4. Explain the provisions of Indian Factories Act, 1948 for employment of child and young person.
5. Explain the provisions regarding working hours under the Indian Factories Act, 1948.
6. Who is a certifying surgeon? What are his duties?
7. Explain the penalties which can be imposed under the Indian Factories Act, 1948.

2.11 Reference Books

- Handbook of Industrial Law, by N. D. Kapoor, Sultan Chand & Sons, New Delhi
- Industrial Law, by P. L. Malik, Eastern Book Company, Lucknow
- 3. The Indian Factories Act, 1948; (Bare Act)..
- Factories Act, 1948, Kharbanda & Kharbanda, Jain Book Agency, New Delhi
- Factories Act, 1948 (with FAQs), Dr. J.P.Sharma, Jain Book Agency, New Delhi

Unit-3 : The Payment of Wages Act, 1936

Structure of Unit

- 3.0 Objectives
- 3.1 Introduction
- 3.2 Objectives and Scope
- 3.3 Responsibility for Payment of Wages
- 3.4 Presentation of Application
- 3.5 Recovery of Amount
- 3.6 Appeals
- 3.7 Miscellaneous Provisions
- 3.8 Self Assessment Questions
- 3.9 Reference Books

3.0 Objectives

The objective of this unit is to explain briefly:

- Definition of some important terms in the Act
- Scope and coverage of the Act
- Various provisions of the Act

3.1 Introduction

The payment of Wages Act 1936 is a Central legislation which applies to the person Employed in the factories and to person Employed in Industrial or other Establishment specified in sub - clauses (a) to (g) of section 2 of this Act. The payment of wages Act 1936 was passed to regulate the payment of Wages to certain classes of person employed in industry. It is essentially meant for the benefits of Industrial Employees not getting very high Salaries and the provision of the Act were enacted to safeguard their interest. It also provides against irregularities in payment of wages and unauthorized deduction therefore by the Employers. This Act is in three parts. Part I deals with the regulation and payment of Wages by the Employer. Part II specifies the heads under which deduction are to be made from Wages. Part III provides a machinery for enforcing specific claims arising out of delayed payment deduction from wages, appeals etc. It is a self contained Act and provides its own machinery for the disposal of the claim. This Act extends to the whole of India {Sec 1 (2)}. It was extended to Jammu and Kashmir by the Central Labour Laws.

3.2 Scope and Objectives

3.2.1 Silent features of the Act

1. This Act has been enacted with the intention of ensuring timely payment of wages to the worker and for payment of wages without unauthorized deductions.

2. The Salary in factories / establishments employing less than 1000 workers is required to be paid 7th of every month and in other cases by 10th day of every month.
3. A worker who either has not been paid wages in time or an unauthorized deduction have been made from his / her wages can file a claim either directly or through a Trade Union or through an Inspector under this Act, before with the Authority appointed under the payment of Wages Act. The power of hearing and deciding claims under this Act has been vested at present with the presiding officer of a Labour Court.

The object of the Act as specified in the preamble is "to regulate the payment of Wages to certain classes of Employed person at regular interval". Certain class of Employed means this Act does not apply on workers whose wages payable in respect of a wage period average Rs. 1600/- a month or more (by amendment Act, 1982). Further this Act applies to the payment of wages to :

1. Person Employed in any factory.
2. Person Employed upon any Railway by a Railway Administration, or by a person fulfilling a contract with Railway Administration.
3. Person Employed in an industrial or other establishment specified in section 2 (a) to (g)

However, the state Government arises authorized to extend all or any of the provisions of the Act to any industrial establishment but it cannot do so in relation to any industrial establishment owned by the Central Government with objects not confined to one state, without consulting the Central Government.

3.2.2 Definitions

1. Employed person [Sec. 2 (i)] 'Employed person' includes the legal representative of a deceased employed person.
2. Employer [Sec. 2 (ia)] Employer' includes the legal representative of a deceased employer When there is a manager who is entrusted with the affairs of a company, the directors of the company cannot be said to be employers [Superintendent & Remembrance of Legal Affairs v. B.C. Soha, (1974) -4 5F.J.R 489).
3. Factory. [Sec. 2 (ib)] It means a factory as defined in Sec. 2 (m) the Factories Act, 1948 and includes any place to which the provisions of the Factories Act, 1948 have been applied under Sec. 85 (1) of that Act.
4. Industrial or other establishment [Sec. 2(ii)] It means any -
 - (a) 'Tramway service' or motor transport service engaged in carrying passengers or goods or both by road for hire or reward ;
 - (aa) air transport service other than such service belonging to or exclusively employed In the military, naval or air force of the Union or the Civil Aviation Department of the Government of India ;

- (b) dock, wharf or Jetty;
- (c) inland vessel, mechanically propelled ;
- (d) mine, quarry or oil-field ;
- (e) plantation ;
- (f) workshop or other establishment In which articles are produced adapted or manufactured, with a view to their use, transport or sale ;
- (g) establishment in which any work relating to the construction development or maintenance of buildings, roads, bridges or canals or relating to operations connected with navigation. Irrigation or supply by water or relating to the transmission or distribution of electricity or any other form of power is being carried on ;
- (h) any other establishment or class of establishments which the Central Government or a State Government may, having regard to the nature thereof, the need for protection of persons employed therein and other relevant circumstances, specify, by notification in the official Gazette.

5. Mine [Sec. 2 (iia)]. It has the meaning assigned to it in Sec. 2[I] of the Mines Act 1952.

6. Plantation [Sec. 2 (iii)] It has the meaning assigned to It in sec of the Plantation Labour Act 1951.

7. Railway administration (Sec. 2 (v)). It has the meaning assigned to It in Sec. 2(32) of the Railways Act 1989.

8. Wages [Sec. 2 (vi)]. 'Wages' means all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment express or implied, were fulfilled, by payable to a person employed in respect of his employment or of work done in such employment. Simply stated, 'wages' means all remuneration due to any worker or employment the terms of contract of employment are fulfilled.

The definition of expression 'wages is made sufficiently wide by including within the expression :

- (a) any remuneration payable under any award or settlement between the parties or order of a Court ;
- (b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period ;
- (c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name) ;
- (d) any sum which by reason of the termination of employment of the non employed is payable under any law, contract or Instrument which wifes for the payment of such sum, whether with or without instruction, but does not provide for the time within which the payment is the made ;
- (e) any sum to which the person employed is entitled under any theme framed under any law for the time being in force.

3.3 Responsibility for Payment of Wages

To pay all the wages, required to be paid under the payment of Wages Act, to the worker is the responsibility of a Employer, who Employed them. The following persons are also responsible for the payment of wages:

- a. A person named as a Manager in a factory.
- b. In industrial establishments, the person who is responsible to the Employer for supervision and centre of Establishment.
- c. Upon Railway, the person nominated by the railway administration on this behalf for the local area, shall be responsible for such payment.

3.3.1 Authorized Deduction from Wages

Actions 7 to 13 of the Act deal with permissible and non-permissible deductions which can made from the wages of the worker.

Meaning of Authorized Deductions: As per Section 7(i) any loss of wages resulting from the imposition of the penalties of following nature are termed as authorized deductions

- (i) The withholding of increment or promotion including the stoppage of increment at an efficiency bar ;
- (ii) The demotion to a lower post or time scale or to a lower stage in scale; or
- (iii) Suspension.

The wages of an employed person shall be paid to him without deductions of any kind except those which are authorized by or under this Act. Every payment made by an employed; person to his employer or agent is deemed to be a deduction

The following deductions are permitted:

- (a) Fines: Deductions by way of the fine from the wages of an employed person shall be made only in accordance with the provisions of the Act, which are as follows;
 - (a) An employed person can be fined only for acts and omissions which are specified in a list which is approved by the State Government or the prescribed authority.
 - (b) The list must be exhibited in the place of work.
 - (c) Before the fine is imposed on an employed person he must be given an opportunity of showing cause for fine.
 - (d) The total amount of fine which can be imposed upon a person in any way period must not exceed an amount equal to three paise in the rupee of the wages payable to him during the wage period.

- (e) No fine can be imposed on a person who is below the age of 15 years.
- (f) No fine can be recovered by installments or after the expiry of sixty days from the days on which it was imposed.
- (g) Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it is imposed.
- (h) All fines and realization thereof shall be recorded in a register. All such realization shall be applied only to such purposes which are beneficial to the persons employed in the factory as are approved by the prescribed authority.

(b) Deductions for Absence from Duty : Deductions from wages are permitted for absence from duty. Absence from duty means "absence from the place where the employed person is required to work." If the employed person, though present at such place, refuses to carry out his work, in pursuance of a stay-in-strike or for any other cause which is not reasonable, he is deemed to be absent from duty. The ratio between the amount of such deduction and the wages payable must not exceed the ratio between the period of absence and the wage period.

In *Surendranathan Nair and Others v. Senior Divisional Personnel Officer, Railways*, Some railway employees applied for casual leave for participation in an agitation against Railway authorities. The leave was not granted but employees participated in agitation. The management deducted wages of the employees treating the period of leave applied as absence from duty. The rejection of leave under such circumstances was legal and proper. The absence from duty for the purpose of participating in an agitation is unauthorized; therefore the absentee employees had no right to compel payment of wages for the period of unauthorized absence.

In *Mineral Miners Union v. Kudrermukh Iron Ore Co., Ltd.* it was held by the Karnataka High Court that deduction of wages for the period of illegal strike is justified.

(c) Deductions for Damage or Loss : Deductions from wages are permitted for damage or loss of goods expressly entrusted to the employed person for custody, or for loss of money which he is required to account, where such loss is directly attributable to his person has been given an opportunity of showing cause against the deduction. A deduction shall not exceed the amount of damage or loss caused to the employer. All deductions and realization thereof must be recorded in a register.

(d) Deductions for Recovery of Advances and Overpayment of Wages/ Loans: Deductions are permitted for recovery of advances or for adjustments of over payment of wages: (a) Recovery of advance of money given before the employment began, shall be made from the first payment of wages in respect of a

complete wage-period. but no recovery shall be made of such advances given for travelling expenses; (b) Recovery of advances of wage not already earned shall be subject to rules made by the State Government, and (c) Deduction for recovery of loans granted under Clause (fff) of sub-Section (2) of Section 7 shall be subject to any rules made by the State Government.

(e) Deductions for Income-tax Payable by the Employed Person : Deduction can be made for income-tax payable by an employed person.

(f) Orders of the Court : If any deduction is directed by the Court, (e.g.. in execution a decree against the employed person) it must be done.

In *Municipal Corporation v. N.L. Abhyankar*, a representative union requested the employer to collect levies from the employee and remit the same to it. The employer refused to do so. The union made an application to the labour court requesting the court to order the employer to accept their request. The labour court ordered the employer to do so. In *Manager, Rajapalayan Mills Ltd. v. Labour Court, Madurai and Others*, an employee resigned from service. While in service, he took a house building loan. The employer after resignation of the employee adjusted the loan amount due from the employee's side, when the employee appealed against the decision of employer, it was held that after resignation employee ceases to be in the employment and therefore, the resignation will be governed by the Contract Act. Therefore, employer is at no fault in adjusting the amount due from the employee.

(g) Provident Fund : Deductions may be made of the contributions payable by the employed person to the provident fund.

(h) Deductions for Payments to Cooperative Societies and Insurance Scheme: Deductions may be made for payments to co-operative societies or to a scheme of insurance maintained.

(i) Deductions for House Accommodation: Deductions made for house accommodation supplied by the employer or by the government or any housing board set up under any law in force.

(j) Acceptance of Counterfeit Base Coin: Deductions for recovery of losses sustained by a railway administration on account of acceptance by the employed person of counterfeit or base coins or mutilated or forged currency notes

(k) Deductions for Recovery of Losses on Account of Failure to Invoice or to Collect: Deductions for recovery of losses sustained by a railway administration on account of the failure of the employed person to invoice, to bill, to collect or to account for the appropriate charges due to that administration whether in respect of fares, freight, demurrage, damage or in respect of sale of food in catering establishments or in respect of sale of commodities in grain shops or otherwise.

(l) Deductions for Incorrect Rebates or Refunds: Deductions for recovery of losses sustained by a railway administration on account of any rebates or refunds incorrectly granted by the employed person where such loss is directly attributable to his neglect or default.

(m) Other Deductions: (1) Deductions made with the written authorizations of : (i) the employed person, or (ii) the president or secretary of the registered trade union of which the employed person is a member, for contribution to the National Defense Fund or any Defense Savings Scheme.

(2) Deductions made with the authorization of the person employed for payment of any premium as his life insurance policy, or for the purchase of the securities of the Government of India, or for being deposited in the Post Office Savings Bank.

3.3.2 Inspectors and their Powers

1. The Administration and enforcement of the Act is the responsibility of the state inspector in respect of all factories for the purpose of payment of Wages Act.

2. State Govt. may appoint Inspector for this purpose in respect of all person employed upon by notification in official Gazette.

Authorities Under the Act

Under Section 14(4) : The inspector is empowered to:

(a) Make such examination and enquiry as he thinks fit, in order to ascertain whether the provisions of the Act or rules made there under are being observed;

(b) Enter, inspect and search any premises of any railway, factory or industrial establishment or any other establishment at any reasonable time for the purpose of carrying out the objects of the Act;

(c) Supervise the payment of wages to persons employed upon any railway, or any factory or industrial establishment;

(d) Require by a written order, the production of any register or record maintained in pursuance of the Act and take statement of any person which he may consider necessary for carrying out the purpose of the Act;

3.4 Presentation of Application

An application in respect of the following claims can be made to the aforesaid authority;

(a) Where contrary to the provision of the Act any deduction has been made from the wages of an employed person; or

(b) Where contrary to the provision of this Act, in any case if the payment of wages has been delayed an application can be made moved by the following:

(i) by employee himself;

(ii) any legal practitioner authorized in writing, to act on his behalf;

(iii) any official of a registered trade union authorized in writing to take action on his behalf;

Every such application shall be presented within twelve months from the date on which the deduction from wages has been made or from the date on which payment of wages was due to be made. However delayed application can also be entertained when the applicant satisfies the authority about the cause of delay. In Karnataka Central Co-operative Bank Lt& v. Karpi, pending disciplinary action an employee was kept under suspension and was paid one fourth of the basic salary as subsistence allowance. The employee filed an application alleging that he is entitled for full salary and the payment of one fourth of the basic salary amounted to unfair deduction from wages. It was held by the court that any loss of wages on account of suspension shall not be deemed to be a deduction from wages in the light of Act.

The subsistence allowance is given for enabling the employee to service. It is not given on account of services rendered to the employer and it is not given by the way, of wages. Therefore, subsistence allowance does not amount to any loss of wages or deductions from it.

3.5 Recovery of Amount

The Section 15(5) lays down that any amount required to be paid under Section 15 may be recovered:

- (i) If the authority is a magistrate, by the authority, as if it were fined imposed by him as magistrate: and
- (ii) If the authority is not a magistrate by any magistrate to whom authority made application for the recovery of the amount due as if it were a fine imposed by such a magistrate.

Obligation of Employers

Under the Payment of Wages Act, the employers have the following obligations:

- (i) To see that all his workmen are paid their wages regularly and in time as required under the Act.
- (ii) Not to make any unauthorized deductions and to impose fines only for permissible acts and omissions and also after the workers have been given adequate opportunity to show cause against the fines and deduction.
- (iii) To maintain a register with the personnel responsible for payment of wages, showing particulars about persons employed, the work performed by them, the wages paid to them and fines imposed and realizations made (Section 13A).
- (iv) To display an abstract of the Act and the Rules made thereunder at a prominent place in the establishment (Section 26).
- (v) To maintain every register and record for a period of three years after the date of the last entry made therein (Section 13A).

3.6 Appeals

An appeal may be preferred against the following:

- 1) An order dismissing either wholly or in part an application made on the ground that deductions are made contrary to the Act or payment of wages has been delayed.
- 2) A direction to refund the amount deducted from wages to the employed person.
- 3) A direction by the Authority to pay penalty to the employer from making malicious or vexatious application.

The appeal may be preferred before the Court of Small Causes in case of a Presidency town and before the District Court in other cases. The appeal must be preferred within 30 days of the date on which the order or direction was made. The Court may, if it thinks fit, submit any question of law for the decision of the High Court and, if it so does, shall decide the question in conformity with such decision. (Section 17)

Who may make an Appeal (Sec. 17). The appeal may be preferred by:

1. The employer or other person responsible for the payment of wages if the total sum directed to be paid by way of wage and compensation exceeds Rs. 300 or such direction has the effect of imposing on the employer or the other person a financial liability exceeding rupees one thousand, or
2. An employed person,
3. Any legal practitioner,
4. Any official of a registered trade union authorized in writing to act on his behalf,
5. Any inspector under this Act,
6. Any person permitted by the Authority to make an application under Sec. 15(2).
7. If the total amount of wages claimed to have been withheld from him exceeds twenty rupees or from the unpaid group to which he belongs or belonged exceeds fifty rupees.
8. Any person directed to pay a penalty under Sec. 15(4).

Conditions for an Appeal (Sec. 17). No appeal shall be made as aforesaid unless:

- a) The memorandum of appeal in accompanied by a certificate by the prescribed authority to the effect that the appellant has deposited the amount payable under the direction appealed against.

Where an employer prefers an appeal the authority against whose decision the appeal has been preferred may, and if so directed by the Court shall, pending the decision of the appeal, withhold payment of any sum in deposit with it. Any order dismissing either wholly or in part an application made under Sec. 15 (2) or a direction made under Sec. 15(3) or Sec. 15(4) shall be final save as provided in Sec. 17(1). The appeal under Section 17 must be governed by and disposed of according to the rules of practice and procedure prescribed by the code of Civil Procedure.

Conditional Attachment of Property (Sec. 17.A)

Where at any time after an application has been made under Section 15(2) or where at any time after an appeal has been filed under Sec. 17 and where the, Authority in the first instance and the court in the second instance, is satisfied that the employer or other person responsible for the payment of wages is likely to evade payment of any amount that may be directed to be paid, then the Authority or the Court may direct the attachment of so much of the property of the employer or other person responsible (or the payment of wages as is, in the opinion of the Authority or Court, sufficient to satisfy the amount which may be payable under the direction. Before giving such a direction, the employer or other person must be given an opportunity of being heard except when the Authority or Court is of the opinion that the ends of justice would be defeated by the delay. The provisions of the code of Civil Procedure, 1908 relating to attachment before judgment shall, so far as may, apply to any order of attachment.

Offences and Penalties (Sec. 20)

- 1) Whoever being responsible for payment of wages to an employed person:
 - a) fails to pay wages in time;
 - b) makes unauthorized deductions from wages;
 - c) imposes fines in contravention of Sec. 8;shall be punishable with fine which shall not be less than two hundred rupees but which may extend to rupees one thousand.
- 2) Whoever:
 - a) fails to fix wages periods or fixed wage periods exceeding one month;
 - b) fails to pay wages on a working day;
 - c) fails to pay wages in current coins or currency or both;
 - d) fails to record fines and all realizations in the register;
 - e) fails to apply all such realizations as per the provisions of Section 8(8).shall be punishable with fine which may extend to rupees five hundred for each offence.
- 3) Whoever being required under this Act to maintain any record or to furnish any information or return:
 - a) fails to maintain such registers or records; or
 - b) willfully refuses or without lawful excuse neglects to furnish such information or return; or
 - c) willfully furnishes or causes to be furnished any information or return which he knows to be false; or
 - d) refuses to answer or willfully gives a false answer to any question necessary for obtaining any information required to be furnished under this Act;shall, for each such offence, be punishable with fine which shall not be less than two hundred rupees but which may extend to one thousand rupees.

- 4) Whoever:
- a) willfully obstructs an Inspector in the discharge of his duties under this Act: or
 - b) refuses or willfully neglects to afford an Inspector any reasonable facility for making any entry, inspection, examination, supervision or inquiry authorized by or under the Act in relation to any railway, factory or industrial or other establishment; or
 - c) willfully refuses to produce on the demand of an Inspector any register or other document kept to pursuance of the Act; or
 - d) prevents or attempts to prevent any person from appearing before an inspector acting in pursuance of his duties under the Act;
- shall be punishable with fine which shall not be less than two hundred rupees but which may extend to one thousand rupees.

5) If any person who has been convicted of any offence punishable under the Act is again found guilty of an offence involving contravention of the same provision, he shall be punishable on a subsequent conviction with imprisonment for a term which shall not be less than one month but which may extend to three months, or with fine which shall not be less than five hundred rupees but which may extend to three thousand rupees, or with both. But no cognizance shall be taken of an earlier conviction made more than two years before the date of commission of the offence being punished.

6) If any person fails or willfully neglects to pay the wages of any employed person by the fixed date, he shall without prejudice to any other action that may be taken against him, be punishable with an additional fine which may extend to one hundred rupees for each day for which such failure or neglect continues.

Procedure for Trial of Offences (Sec. 21) : No court shall take cognizance of:

1. a complaint against any person for an offence arising out of non-compliance with the provisions of the Act relating to delay in payment of wages and unauthorized deductions from wages, unless an application in respect of the facts constituting the offence has been presented under Section 15 and has been granted wholly or in part and the Authority or the appellate court granting such application has sanctioned the making of the complaint;
2. a contravention of provision dealing with fixation of wage periods or with payment of wages in current coin or currency notes except on a complaint made by or with the sanction of an Inspector under the Act;
3. any offence punishable under Section 20 (3) and 20 (4) except on a complaint made by or with the sanction of an Inspector under the Act.

In imposing any fine for an offence under Sec. 21(1) above the Court shall take into consideration the amount of any compensation already awarded against the accused in

any proceedings taken under Section 12. Before sanctioning the making of a complaint against any person for an offence under Sec. 20(1), the Authority or the appellate court, as the case may be, shall give such person an opportunity of showing cause against the granting of such sanction. The sanction shall not be granted if such person satisfies the Authority or Court that his default was due to:

- a) a bonafide error or bonafide dispute as to the amount payable to the employed person;
- b) the occurrence of an emergency, or the existence of exceptional circumstances, such that the person responsible for the payment of the wages was unable, though exercising reasonable diligence, to make prompt payment, or
- c) the failure of the employed person to apply for or accept payment.

3.7 Miscellaneous Provisions

Bar on Suits (Sec. 22)

No Court shall entertain any suit for the recovery of wages or of any deduction from wages in so far as the sum so claimed:

- a) forms the subject of an application under Section 15 for claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims which has been presented by the plaintiff and which is pending before the authority appointed, or of an appeal under Section 17 ; or
- b) has formed the subject of a direction under Section 15 in favor of the plaintiff;
- c) has been adjudged, in any procedure under Section 15 not to be owed to the plaintiff; or
- d) could have been recovered by an application under Section 15;
- e) where an application has been presented after a period of twelve months from the date on which the deduction from the wages was made or from the date, on which the payment of the wages was due to be made, as the case may be without any sufficient cause.

The provisions of the Act and rules made under it do not bar a civil suit for recovery of arrears payable to a workman whose dismissal has been set aside.

Protection (Sec. 22-A).

No suit, prosecution or other legal proceeding shall be against the Government or any officer or the Government for anything which is in good faith done or intended to be done under the Act.

Contracting Out (Sec. 23)

Any contract or agreement whereby an employed person relinquishes any right conferred by the Act shall be null and void in so far as it purports to deprive him of such right.

Application of Act (Sec. 24)

In relation to railways, air transport services, mines and oil fields, the powers conferred upon the State Government by the Act shall be powers of the Central Government.

Display of Notice (Sec. 25)

The person responsible for the payment of wages to persons employed in a factory or an industrial or other establishment shall cause to be displayed a notice containing such abstract of the Act and of the rules made there under in English and in the language of the majority of the persons employed in the factory or an industrial or other establishment, as may be prescribed.

Payment of Wages in Case of Death (Sec. 25-A)

In case of death of an employed person or in case of his where about not being known, all amounts payable to him as wages, shall

- a) be paid to the persons nominated by him in this behalf in accordance with the rules made under the Act;
- b) be deposited with the prescribed authority;
 - i) where no nomination has been made, or
 - ii) where for any reasons such amounts cannot be paid to the person nominated.

The prescribed authority shall deal with the amounts deposited in the prescribed manner. Where the amounts payable by an employer as wages are disposed of in the manner referred to above, the employer shall be discharged of his liability to pay those wages. (Section 25-A).

Power to Make Rules (Sec. 26)

The State Government is empowered to make rules to regulate the procedure to be followed by Authorities and Courts. The State Government may by notification in the official Gazette, make rules for the purpose of carrying into effect provisions of the Act. In making any rule under Sec. 26, the State Government may provide that a contravention of the rule shall be punishable with fine which may extend to two hundred rupees. All rules made under Sec. 26 shall be subject to the condition of previous publication, and the date to be specified under Sec. 23(3) of the General Clause Act, 1897 shall not be less than three months from the date on which the draft of the proposed rules was published.

Every rule made by the Central Government under this Act shall be laid as soon as may be after it is made, before each House of the Parliament. If both House agree in making any modification in the rule, the rule shall thereafter have effect only in such modified form. If both Houses agree that the rule should not be made, it shall have no effect. But any such modification or annulment of the rule shall be without prejudice to the validity of anything previously done under that rule. (Section 26)

Obligations of Employers

Under the Act every employer is required:

1. to see that all his workmen are paid their wages regularly and in time as required under the Act (Sec. 3 & 5);
2. to fix wage periods which shall not exceed one month (Sec. 4);
3. to pay wages in current coin or currency notes or both (Sec. 6);
4. not to make unauthorized deductions (Sec. 7);
5. to impose fines only for permissible acts and omissions and after giving adequate opportunity to show cause against the fines and deductions (Sec. 8);
6. to maintain registers and records, giving particulars of persons employed the work performed by them, the wages paid to them and the deductions made from their wages, fines imposed and realizations made (Sec. 10, 13A);
7. not to enter into any agreement with an employed person where by the relinquishes any right conferred by the Act (Sec. 23); and
8. to display a notice containing abstracts of the Act and the rules made there under in English and in the language of the majority of the employed persons (Sec. 25).

Rights of Employers: Every employer has the right:

- a) to deduct from the wages of a worker an amount not exceeding his wages for 8 days as may, by any terms be due to the employer in lieu of due notice, if the worker together with 10 or more workers absents himself from duty without notice or without any reasonable cause, or go on strike or resort to stay-in strike [Sec.9(2)] ;
- b) to appeal to District Court against the directions made by the Authority appointed under the Act for payment of wages and compensation, if the amount of these sums exceed SJ Rupees three hundred.

Right of Employees: Every workman in entitled:

- i) To receive his wages in the prescribed wage period in cash or by cheque or by credit to his bank account (Sec. 3);
- ii) To refuse to agree to any deductions and fines other than those authorized under the Act. (Sec 7, 8);
- iii) To approach within six months the prescribed authority to claim unpaid or delayed wages, unauthorized deductions and fines along with compensation (Sec. 15,16); and
- iv) To appeal against the direction made by the authority if the amount of wages claimed exceeds rupees, one hundred (Sec.17).

3.8 Self Assessment Questions

1. What has been the object of passing payment of Wages Act, 1936?
Explain the provisions regarding
 - (i) Time of payment of wages
 - (ii) Deduction which may be made from the wages.
2. In what circumstances, an appeal may be permitted under Section 17 of the act to the Employee towards of Wage Payment?
3. Discuss the various provision of the payment of Wage Act, 1936?
4. State briefly how the deduction from wages for damages or loss occurred to the Employer by the neglect or default of the employed person may be made and to what extent.
5. Explain the miscellaneous provisions of the payment of Wages Act, 1936?

3.9 Reference Books

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- Labour Law - Chrones J.B. and Grime, R.P., Butterworth & Co. Ltd., London.
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Unit - 4 : The Minimum Wages Act, 1948

Structure of Unit

- 4.0 Objectives
- 4.1 Introduction
- 4.2 Salient features of the Act
- 4.3 Definitions
- 4.4 Fixation and Revision of Minimum Wages.
- 4.5 Procedure for Fixing and Revising Minimum Wages.
- 4.6 Advisory Boards
- 4.7 Fixing Hours for a Normal Working Day
- 4.8 Payment of Overtime
- 4.9 Authorities and Claims
- 4.10 Offences and Penalties
- 4.11 Compliances under the Act
- 4.12 Self - Assessment Questions
- 4.13 Reference Books

4.0 Objectives

The main objective of this unit is to acquaint you with:

- Objective and salient features of the Act.
- Need for fixing minimum wages by legislation.
- Various provisions of the Act.

4.1 Introduction

The object of the Act is to secure the Welfare of the Workers in a competitive market by fixing the minimum rates of wages in certain employment. The question of state regulating of wages by fixing minimum wages in the country was examined by the Royal Commission on Labour in 1931, who observed that in order to conform in both the letter and the spirit of Minimum Wages Convention of 1921 of the I L O. It would first be necessary to create machinery for fixing minimum rates of wages at lowest. The question of establishing statutory wages fixing machinery in India was, discussed at the third and fourth meeting of the standing labour committee held in 1943 and 1944 respectively and at the successive session of the Tripartite Labour Conference in 1943, 1944 and 1945. Last by the enactment of the minimum wages legislation was accepted in principle. Accordingly, the Minimum Wages Act was passed in March 1948 and it extends to the whole of India.

4.2 Salient Features of the Act

The Minimum Wages Act was passed to secure the welfare of workers in a competitive market by providing employment. Its main subjects include the following :

1. Prevent exploitation of the worker and for this purpose it aims at fixation of minimum wages which the employer must pay.
2. The Act contemplates that minimum wage rates must ensure not the mere physical needs of other worker which would keep him just above starvation but ensure for him not only his subsistence and that of his family but also preserve his efficiency as a workman.
3. Object of the Act is directed against exploitation of the ignorant, less organized and less privileged members of the society by the capitalists.

Some of the important features of the Act are as follows:-

This Act provides for fixation of:-

1. Minimum rate of wages.
 2. A minimum piece rate.
 3. A guaranteed time rate and
 4. An overtime rate for different occupations, locations or classes of work and for adults, adolescent children and apprentices.
1. The minimum rate of wages under the Act, may consist of
 - a. A basic rate of wages and cost of living allowance or
 - b. Basic rates of wages with or without the cost of living allowance and the cash value of the concessions in respect of essential commodities supplied at concessional rate; or on all inclusive rates
 2. The Act requires that wages shall be paid in case although it empowers the appropriate Government to authorize the payment of minimum wages either wholly or partly in kind; in particular cases.
 3. The Act provides for appointment of inspectors and authorities to hear and decide claims arising out of payment of wages at less than the minimum rates of wages or remuneration for days of rest of work done on such days or overtime wages.
 4. The Act lays down the cost of living allowance and cash value of concession in respect of supplies of essential commodities at concession rates shall be computed by the competent authority at certain interval.
 5. The provision also exists in the Act for dealing with complaints made of violation of the provision of the Act and for imposing penalties for offences committed under the Act.
 6. The Act empowers the appropriate Government to fix the number of hours of work per day to provide for a weekly holiday and the payment of overtime wages in regards to any scheduled employment in respect of which minimum rates of wages have been fixed under the Act.

4.2.1 Definitions

Various definitions provided under the Act are as under:

1. Adolescent [Sec.2(a)]. 'Adolescent' means a person who has completed his 14th year of age but not completed his 18th year.
2. Adult [Sec.2(aa)]. 'Adult' means a person who has completed his 18th year of age.
3. Appropriate Government (Sec.2(b)[]. Appropriate Government, in relation to any scheduled employment carried on by or under the authority of the Central Government or a railway administration, or in relation to a mine, oilfield or major port, any corporation established in a Central Act, means the Central Government [Sec.2(b)(i)].

In relation to any other scheduled employment (which means an employment specified in the Schedule to the Act). The appropriate government means the State Government (Sec.2(b)(ii)].

4. Child (Sec. 2(bb)). 'Child' means a person who has not completed his 14th year of age.
5. Competent authority [Sec.2(c)]. "Competent authority" means the authority appointed by the appropriate Government by notification in its Official Gazette to ascertain from time to time the cost of living index number applicable to the employees employed in the scheduled employments (i.e. employments specified in the Schedule to the Act) specified in such notification.
6. Cost of living index number [Sec. 2(d)]. 'Cost of living index number, relation to employees in any scheduled employment in respect of which minimum rates of wages have been fixed, means the index number ascertained and declared by the competent authority by notification in the official Gazette to be the cost of living index number applicable to employees in such employment.
7. Employer [Sec. 2(e)]. 'Employer' means any person who employs, further directly or through another person, or whether on behalf of himself or any other person, one or more employee, in any scheduled employment in respect of which minimum rates of wages have been under the Act, it includes: -
 - (i) In a factory where this is carried on any scheduled employment in respect of which minimum rates of wage have been fixed under the Act, any person named as manager of the factory under Sec (7) (1) (f) of the Factories Act 1948 ;
 - (ii) In Act scheduled employment under the control of any Government in India in respect of which minimum rates of wages have been fixed under the Act, the person or authority appointed by such Government for the supervision and control of employees or where no person or authority is so appointed, the head of the department;
 - (iii) In any scheduled employment under my local authority in respect of which minimum rates of wages have been fixed under the Act, the person

appointed by such authority for the supervision and control of employees or where no person is so appointed the Chief Executive Officer or the lock authority.

(iv) In any other case, where any scheduled employment is carried in respect of which minimum rate of wages has been fixed under the Act, any person responsible to the owner for the supervision and control of the or for the payment of wages.

(v) Scheduled Employment (Sec 2 (g)] it means an employment specified in the Schedule to the Act (reproduced below) or any process or branch of work forming part of such employment.

Minimum Wages

It is not possible to give one informal definition of Minimum Wages. This term is not defined even by their Act. But still it may explain in various manners. "The minimum amount of compensation an Employee must receive for performing labour. It is stabilized by contract or legislation".

"Wages as defined in the Act means all remuneration, capable of being expressed in terms of money which would, if the term of employment, expressed or implied, were fulfilled, be payable to a person employed in respect of his employment or work done in such employment. "Minimum wages is the lowest hourly, daily or monthly wages that employs may legally pay to employees or workers.

Living Wages

Justice Higgins of the Australian Commonwealth Court of Conciliation defined the living wages as one appropriate for the normal needs of the average employee, regarded as a human being living in a civilized society.

Fair Wages

Fair Wages means between the living wages and the bare minimum wages. It is related to fair work load and the earning capacity. Fair wages will grow with the growth and development of the national economy and the progress made by the industry must be approximate to the capacity of the industry to pay.

4.3 Fixation and Revision of Minimum Wages

The Appropriate Government may fix the minimum rates of wages payable to the employees of Scheduled employment either for the whole State, or a part of the State, or for any specified class or classes of such employment. Minimum rates of wages may be fixed both for time-rated and piece-rated workers; and also for over-time work. The minimum wages so fixed may be reviewed at such intervals as the Government may thinks fit, such intervals not exceeding five years. Until the rates are so revised the minimum rate in force immediately before the expiry of the said period of five years shall continue in force.

The minimum rates of wages may be fixed by the hour, by the day, by the week, by the month, or by any larger wage period as may be prescribed. Where such fates are fixed by

the month or the day, the manner of calculating wages for a month, or for a day, as the case may be, may be indicated.

In fixing or revising minimum rates of wages different rates may be fixed for (i) different scheduled employments; (ii) different classes of work in the same scheduled employment; (iii) adults, adolescents, children and apprentices; (iv) and different localities. Different rates of minimum wages may also be fixed by anyone or more of the following wage periods; by the hour, by the day, by the week, by the month or by a larger wage period as may be prescribed.

The Appropriate Government may refrain from fixing minimum rates of wages in respect of any scheduled employment in which there are in the whole state less than one thousand employees in such employment- But if at any time the appropriate Government comes to finding after an enquiry that the number of employees in any individual employment has risen to one thousand or more, it shall fix minimum rates of wages payable to employees in such employment as soon as after such finding. (Section 3).

4.3.1 Procedure for fixing and revising minimum wages

In fixing minimum rates of wages in respect of any scheduled employment for the first time or in revising minimum rates of wages, the appropriate Government can follow either of the two methods described below.

First Method [Section 5(1)(a)]

This method is known as the 'Committee Method'. The appropriate Government may appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision as the case may be. After considering the advice of the committee or committees, the appropriate Government shall, by notification in the Official Gazette fix or revise the minimum rates of wages. The wage rates shall come into force from such date as may be specified in the notification. If no date is specified, wage rates shall come into force on the expiry of three months from the date of the issue of the notification.

Note : It was held in *Edward Mills Co. v. State of Ajmer* (1955) A.I.R. SC, that Committee appointed under Section 5 is only an advisory body and that Government is not bound to accept its recommendations.

As regards composition of the Committee, Section 9 of the Act lays down that it shall consist of persons to be nominated by the appropriate Government representing employers and employee in the scheduled employment, who shall be equal in number and independent persons not exceeding 1/3rd of its total number of members. One of such independent persons shall be appointed as the Chairman of the Committee by the appropriate Government.

Second Method [Section 5(1)(b)]

The method is known as the 'Notification Method'. When fixing minimum wages under Section 5(1)(b), the appropriate Government shall by notification, in the Official Gazette publish its proposals for the information of persons likely to be affected thereby and

specify a date not less than 2 months from the date of notification, on which the proposals will be taken into consideration.

The representations received will be considered by the appropriate Government. It will also consult the Advisory Board constituted under Section 7 and thereafter fix or revise the minimum rates of wages by notification in the Official Gazette. The new wage rates shall come into force from such date as may be specified in the notification. However, if no date is specified, the notification shall come into force on expiry of three months from the date of its issue. Minimum wage rates can be revised with retrospective effect. [1996 II LLJ 267 Kar.]

4.4 Advisory Boards

The advisory board is constituted under Section 7 of the Act by the appropriate Government for the purpose of coordinating the work of committees and sub-committees appointed under Section 5 of the Act and advising the appropriate Government generally in the matter of fixing and revising of minimum rates of wages. According to Section 9 of the Act, the advisory board shall consist of persons to be nominated by the appropriate Government representing employers and employees in the scheduled employment who shall be equal in number, and independent persons not exceeding 1/3rd of its total number of members, one of such independent persons shall be appointed as the Chairman by the appropriate Government.

It is not necessary that the Board shall consist of representatives of any particular industry or of each and every scheduled employment; *B. Y. Kashatriya v. S.A.T. Bidi Kamgar Union A.I.R. (1963) S.C. 806*. An independent person in the context of Section 9 means a person who is neither an employer nor an employee in the employment for which the minimum wages are to be fixed. In the case of *State of Rajasthan v. Hari Ram Nathwani, (1975) SCC 356*, it was held that the mere fact that a person happens to be a Government servant will not divert him of the character of the independent person.

Central Advisory Board

Section 8 of the Act provides that the Central Government shall appoint a Central Advisory Board for the purpose of advising the Central Government and State Governments in the matters of fixation and revision of minimum rates of wages and other matters under the Minimum Wages Act and for coordinating work of the advisory boards. The Central Advisory Board shall consist of persons to be nominated by the Central Government representing employers and employees in the scheduled employment who shall be equal in number and independent persons not exceeding 1/3rd of its total number of members, one of such independent persons shall be appointed as the Chairman of the Board by Central Government.

4.5 Fixing Hours for a Normal Working Day

Fixing of minimum rates of wages without reference to working hours may not achieve the purpose for which wages are fixed. Thus, by virtue of Section 13 the appropriate Government may -

- (a) fix the number of work which shall constitute a normal working day, inclusive of one or more specified intervals;
- (b) provide for a day of rest in every period of seven days which shall be allowed to all employees or to any specified class of employees and for the payment of remuneration in respect of such day of rest;
- (c) provide for payment of work on a day of rest at a rate not less than the overtime rate.

The above stated provision shall apply to following classes of employees only to such extent and subject to such conditions as may be prescribed:

- (a) Employees engaged on urgent work, or in any emergency, which could not have been foreseen or prevented;
- (b) Employees engaged in work in the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working in the employment concerned;
- (c) Employees whose employment is essentially intermittent;
- (d) Employees engaged in any work which for technical reasons, has to be completed before the duty is over;
- (e) Employees engaged in any work which could not be carried on except at times dependent on the irregular action of natural forces. For the purpose of clause (c) employment of an employee is essentially intermittent when it is declared to be so by the appropriate Government on ground that the daily hours of the employee, or if these be no daily hours of duty as such for the employee, the hours of duty, normally includes period of inaction during which the employee may be on duty but is not called upon to display either physical activity or sustained attention. There is correlation between minimum rates of wages and hours of work. Minimum wages are to be fixed on basis of standard normal working hours, namely 48 hours a week; *Benode Bihari Shah v. State of W.B.* 1976 Lab I.C. 523 (Cal).

4.6 Payment of Overtime

Section 14 provides that when an employee, whose minimum rate of wages is fixed under this Act by the hours, the day or by such longer wage period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or part of an hour so worked in excess at the overtime rate fixed under this Act or under any other law of the appropriate Government for the time being in force whichever is higher. Payment for overtime work can be claimed only by the employees who are getting minimum rate of wages under the Act and not by those getting better wages. (1998 LLJ I SC 815).

Wages of A Worker Who Works Less Than Normal Working Day (section 15)

Where the rate of wages has been fixed under the Act by the day for an employee and if he works on any day on which he employed for a period less than the requisite number of hours constituting a normal working day, he shall be entitled to receive wages for that day as if he had worked for a full working day.

Provided that he shall not receive wages for full normal working day -

- (i) if his failure to work is caused by his unwillingness to work and not by omission of the employer to provide him with work, and
- (ii) such other cases and circumstances as may be prescribed.

Minimum Time - Rate Wages For Piece Work

Where an employee is engaged in work on piece work for which minimum time rate and not a minimum piece rate has been fixed, wages shall be paid in terms of Section 17 of the Act at minimum time rate. **Minimum Wages in Rajasthan w.e.f. May1, 2013.** Below mentioned minimum wage rates shall apply till next revision is announced.

Scheduled Employment	Total Minimum Wages (In Rs)			
	Unskilled	Semi-skilled	Skilled	Highly-Skilled
Agriculture	166	176	186	236
Automobile Workshop	166	176	186	236
Employment in Bricks Works Industries	166	176	186	236
Cabal operating and Related services	166	176	186	236
Cement Prostrated Project Industry	166	176	186	236
Cinema industry	166	176	186	236
Cold drinks soda & Allied Products	166	176	186	236
Cold Storage	166	176	186	236
Computer Hardware Industry & Services	166	176	186	236
Contingency & workers in all government offices	166	176	186	236
Cotton Dyeing, Printing and Washing factories	166	176	186	236

Cotton Ginning & Pressing Factories	166	176	186	236
Cotton Waste Spinning Factories	166	176	186	236
Employment in Construction & Maintenance of Roads	166	176	186	236
Handloom Industry	166	176	186	236
Hotel and Restaurants	166	176	186	236
Employment in Irrigation Departmental workers	166	176	186	236
Engineering Industries	166	176	186	236
Employment in Sugar Pan Industries without Mechanical Power	166	176	186	236
Employment in Institutions of Gota kinari and Lappa	166	176	186	236
Jute Patte Industry	166	176	186	236
Khadi Handicraft & Village Industry	166	176	186	236
Employment in Local Authority undertakings	166	176	186	236
L.P.G. distribution and related services	166	176	186	236
Marketing and Consumers Co-operating Societies	166	176	186	236
Metal Foundry & General Engineering Industry	166	176	186	236
Employment in Mica works	166	176	186	236
Non-Government Organization (N.G.O.) & Institutions	166	176	186	236
Oil Mills	166	176	186	236
Pesticide along with chemicals & Pharmaceuticals Industry	166	176	186	236
Petrol Pumps & related Services	166	176	186	236
Private Educational Institution	166	176	186	236
Private Hospitals & Nursing Homes	166	176	186	236

Power loom Factories	166	176	186	236
Printing Press	166	176	186	236
Employment in Production, Distribution and Supply of Electricity	166	176	186	236
Employment in Public Health Engineering Department	166	176	186	236
Public Motor Transport	166	176	186	236
Public Works Department	166	176	186	236
Rice Mill, Flour Mill & Dal Mill	166	176	186	236
STD, ISD, PCO & related Services	166	176	186	236
Shops and Commercial Establishments.	166	176	186	236
Small Scale Industry	166	176	186	236
Soap Stone Factories	166	176	186	236
Sweeper & Sanitary service not covered in other employment	166	176	186	236
Tailoring work & Garments Industry	166	176	186	236
Taxies Auto Rickshaw & Traveling Agencies	166	176	186	236
Textile Industry	166	176	186	236
Manufacturing of Tiles & Potteries Industry	166	176	186	236
Wool Cleaning and Pressing Factories	166	176	186	236
Woollen Spinning and Weaving Factories	166	176	186	236
Wood works & Furniture Industry	166	176	186	236
Factories registered under Factory Act	166	176	186	236

Minimum Wages for Household work			
Sr. No.	Type of Work	No. of Hours spent for work Per Day	Minimum Wage Rate Per Month (in Rs)
1	Washing clothes	60 minutes	605
2	Washing Utensils	60 minutes	605
3	Washing clothes and utensils	60 minutes	605
4	Washing clothes and utensils and cleaning the house	60 minutes	605
5	Other household work	60 minutes	605
6	Washing clothes and utensils, cleaning the house, doing other household work, childcare, dropping kids to school etc work.	One full day work	4836

4.7 Authorities and Claims

Under Section 20(1) of the Act, the appropriate Government, may appoint any of the following as an authority to hear and decide for any specified area any claims arising out of payment of less than the minimum rate of wages or in respect of the payment of remuneration for the days of rest or of wages at the rate of overtime work:

- (a) any Commissioner for Workmen's Compensation; or
- (b) any officer of the Central Government exercising functions as Labour Commissioner for any region; or
- (c) any officer of the State Government not below the rank of Labour Commissioner; or
- (d) any other officer with experience as a Judge of a Civil Court or as the Stipendiary Magistrate.

The authority so appointed shall have jurisdiction to hear and decide claim arising out of payment of less than the minimum rates of wages or in respect of the payment remuneration for days of rest or for work done on such days or for payment of overtime.

The provisions of Section 20 (1) are attracted only if there exists a disputed between the employer and the employee as to the rates of wages. Where no such dispute exists between the employer and employees and the only question is whether a particular payment at the agreed rate in respect of minimum wages, overtime or work on off days is due to an employee or not, the appropriate remedy is provided by the Payment of Wages Act, 1936.

4.7.1 Offences and Penalties

Section 22 of the Act provides that any employer who (a) pays to any employee less than the minimum rates of wages fixed for that employee's class of work or less than the amount due to him under the provisions of this Act or contravenes any rule or order made under Section 13, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or with both.

While imposing any fine for an offence under this section the court shall take into consideration the amount of any compensation already awarded against the accused in any proceedings taken under section 20.

It is further stipulated under Section 22A of the Act that any employer who contravenes any provision of this Act or of any rule or order made there under shall if no other penalty is provided for such contravention by this Act be punishable with fine which may extend to five hundred rupees.

4.8 Compliances under the Act

The establishment must ensure following compliances under the Act. These compliances are not exhaustive but illustrative.

1. The Establishment is covered by the definition "Scheduled Employment" or not (See Section 2(g) and 27 of the Act.)
2. The Government revised the minimum wages once/twice/ thrice during the financial year under reference and the Establishment has paid to all its employees minimum wages in accordance with the rates at respective point of time and at the respective rates specified in notification under Section 5 of the MWA.
3. The Establishment has issued wage slips to all its employees in respect of each of the wage period.
4. Where the services of any employee were terminated for any reason whatsoever, the wages were paid within two working days from the date of such termination.
5. The Establishment did not make any unauthorized deduction from the wages of any of its employees. Further, the deductions if any, made were within the limits of fifty percent (or seventy five percent in case of cooperatives) of wages earned by such employees during the period under reference.
6. Where the Establishment was constrained to impose any fine or deduct wages on account of damages caused by any employee, the latter was given an opportunity of being heard in the presence of a neutral person and was also communicated the amount of fine imposed or deduction made from the wages.
7. The Establishment has eight working hours per day, inclusive of half an hour of interval.
8. All claims under Section 20 of the MWA were paid within the time limit specified in the Order.

4.9 Self - Assessment Questions

1. Discuss the object and scope of the Minimum Wages Act?
2. Who is authorize to fix minimum wages and in what manner?
3. What points should be taken into consideration while fixing minimum wages?
4. Enumerate the procedure for fixing and revising the minimum wages?

4.10 Reference Books

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Unit – 5 : The Payment of Bonus Act, 1965

Structure of Unit

- 5.0 Objectives
- 5.1 Introduction
- 5.2 Application of the Act
- 5.3 Definitions
- 5.4 Meaning of Establishment
- 5.5 Calculation of Bonus
- 5.6 Eligibility for Bonus Payment
- 5.7 Summary
- 5.8 Self Assessment Questions
- 5.9 Reference Books

5.0 Objectives

After going through this unit you will be able to understand:

- What is Bonus?
- When and How Bonus is paid to the Workers.
- What is Set-off and Set-on for payment of bonus.

5.1 Introduction

Bonus is a payment made to employees in addition to wages. It is not an ex-gratia payment as it was early understood. Bonus differs from wages in that it does not rest on contract, but still payments for bonus are made because legally due, but which parties do not contemplate indefinitely. In our country bonus was for the first time granted to the employees in textile industry in July, 1917 which is known as "war bonus" because an increase in wages was allowed owing to war conditions. The question of payment of bonus had been one of the main causes of industrial disputes during post-independence days. The present Act is the outcome of the recommendations made by a Tripartite Commission, which was set up by the Government of India in 1961. The Commission was asked to consider the question of payment of bonus based on profits to employees employed in establishments. The recommendation of the Commission was received by the Government on January 24, 1964. On September 2, 1964 the Government implemented the recommendations, subject to certain modifications. With a view to accept these recommendations, the Payment of Bonus Ordinance, 1965 was promulgated on 26th May, 1965. The Ordinance later on was adopted by the Parliament and enacted as Payment of Bonus Act, 1965. Under the Act the payment of bonus has become a statutory obligation imposed upon the employers covered by the Act. The purpose of payment of bonus is to bridge the gap between wages paid and ideal of a living wage. The Payment of Bonus Act, 1965 applies to every factory as defined under the Factories Act, 1948; and every other establishment in which twenty or more persons are employed

on any day during an accounting year However, the Government may, after giving two months notification in the Official Gazette, make the Act applicable to any factory or establishment employing less than twenty but not less than ten persons. An employee is entitled to be paid by his employer a bonus in an accounting year subjected to the condition that he/she has worked for not less than 30 working days of that year. An employer shall pay minimum bonus at the rate of 8.33% of the salary or wages earned by an employee in a year or one hundred rupees, whichever is higher. The Act is to maintain peace and harmony between labour and capital by allowing the employees to share the prosperity of the establishment and prescribing the maximum and minimum rates of bonus together with the scheme of "set-off" and "set on" not only secures the right of labour to share in the profits but also ensures a reasonable degree of uniformity".

5.2 Application of the Act

According to Section 1 (2), the Act extends to the whole of India, and as per Section 1(3) the Act shall apply to : (a) Every factory; and (b) Every other establishment in which twenty or more persons are employed on any day during an accounting year.

Provided that the appropriate Government may, after giving not less than two months notice of its intention so to do, by notification in the Official Gazette apply the provisions of this Act with effect from such accounting year as may be specified in the notification to any establishment including an establishment being a factory within the meaning of sub-clause (ii) of clause (m) of Section 2 of the Factories Act, 1948 employing such number of persons less than twenty as may be specified in the notification; so, however, that the number of persons so specified shall in no case be less than ten.

Save as otherwise provided in this Act, the provisions of this Act shall, in relation to a factory or other establishment to which this Act applies, have effect In respect of the accounting year commencing on any day in the year 1964 and in respect of every subsequent accounting year. Provided that in relation to the State of Jammu and Kashmir, the reference to the accounting year commencing on any day in the year 1964 and every subsequent accounting year shall be construed as reference to the accounting year commencing on any day in the year 1968 and every subsequent accounting year.

Provided further that when the provisions of this Act have been made applicable to any establishment or class of establishments by the issue of a notification under the proviso to sub-section (3), the reference to the accounting year commencing on any day in the year 1964 and every subsequent accounting year, or, as the case may be, the reference to the accounting year commencing on any day in the year 1968 and every subsequent accounting year, shall, in relation to such establishment or class of establishments, be construed as a reference to the accounting year specified in such notification and every subsequent accounting year [Section 1 (4)].

An establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein falls below twenty, or, as the case may be, the number specified in the notification issued under the proviso to sub-section (3).

5.2.1 Act not to apply to certain classes of employees

Section 32 of this Act provides that the Act shall not apply to the following classes of employees:

- (i.) employees employed by any insurer carrying on general insurance business and the employees employed by the Life insurance corporation of India;
- (ii.) seamen as defined in clause (42) of Section 3 of the Merchant Shipping Act, 1958;
- (iii.) employees registered or listed under any scheme made under the Dock Workers (Regulation of Employment) Act, 1948 and employed by registered or listed employers;
- (iv.) employees employed by an establishment engaged in any industry called on by or under the authority, of any department of Central Government or a State Government or a local authority;
- (v.) employees employed by
 - a. the Indian Red Cross Society or any other institution of a like nature including its branches;
 - b. universities and other educational institutions;
 - c. institutions (including hospitals, chambers of commerce and social welfare institutions) established not for the purpose of profit;
- (vi) & (vii)..... (Omitted).
- (viii) employees employed by the Reserve Bank of India;
- (ix) employees employed by
 - a. the industrial Finance Corporation of India;
 - b. any Financial Corp. established under Section 3, or any Joint Financial Corporation established under Section 3A of the State Financial Corporations Act, 1951;
 - c. the Deposit insurance Corporation;
 - d. the National Bank for Agriculture and Rural Development;
 - e. the Unit Trust of India;
 - f. the industrial Development Bank of India;
 - f (a) the Small industries Development Bank of India established under Section 3 of the Small Industries Development Bank of India Act, 1989;
 - f (b) the National Housing Bank; .
 - g. any other financial institution (other than Banking Company) being an establishment in public sector, which the Central Government may by notification specify having regard to (i) its capital structure; (ii) its objectives and the nature of its activities; (iii) the nature and extent of financial assistance or any concession given to it by the Government; and (iv) any other relevant factor;
- (x) (omitted).

5.3 Definitions

In this Act, unless the context otherwise requires-

(1) **Accounting year.**- "Accounting year" means :

- (i) in relation to a corporation, the year ending on the day on which the books and accounts of the corporation are to be closed and balanced ;
- (ii) in relation to a company, the period in respect of which any profit and loss account of the company laid before it in annual general meeting is made up, whether that period is a year or not.
- (iii) in any other case-
 - (a) the year commencing on the 1st day of April ; or
 - (b) if the accounts of an establishment maintained by the employer thereof are closed and balanced on any day other than the 31st day of March, then, at the option of the employer, the year ending on the day on which its accounts are so closed and balanced . Provided that an option once exercised by the employer under paragraph (b) of this sub-clause shall not again be exercised except with the previous permission in writing of the prescribed authority and upon such conditions as that authority may think fit.

(2) **Agricultural income.**- "Agricultural income" shall have the same meaning as in the income-tax Act.

(3) **Agricultural Income-tax law.**- "Agricultural income-tax law" means any law for the time being in force relating to the levy of tax on agricultural income.

(4) **Allocable surplus.**- "Allocable surplus" means-

In relation to an employer, being a company other than a banking company which has not made the arrangements prescribed under the Income-tax Act for the declaration and payment within India of the dividends payable out of its profits in accordance with the provisions of Section 194 of that Act, sixty-seven per cent of available surplus in an accounting year;

(5) **Appropriate government.**- "Appropriate government" means-

- (i) In relation to an establishment in respect of which .the appropriate Government under the Industrial Disputes Act, 1947 is the Central Government, the Central Government ;
- (ii) In relation to any other establishment, the Government of the State in which that other establishment is situate.

(6) **Available surplus.**- "Available surplus" means the available surplus computed under Section 5.

(7) **Award.**- "Award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Tribunal constituted under the Industrial Disputes Act, 1947, or by any other authority

constituted under any corresponding law relating to investigation and settlement of industrial disputes in force in a State and includes an arbitration award made under Section 16-A of that Act or under that law.

(8) **Banking company.**- "Banking company" means a banking company as defined in Section 5 of the Banking Companies Act, 1949, and includes the State Bank of India, any subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959, any corresponding new Bank specified in the first Schedule to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, any corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, any Co-operative Bank as defined in clause b(ii) of Section 2 of the Reserve Bank of India Act, 1934, and any other banking institution which may be notified in this behalf by the Central Government.

(9) **Company.**- "Company" means any company as defined in Section 3 of the Companies Act, 1956, and includes a foreign company within the meaning of Section 59 1 of that Act.

(10) **Co-operative society.**- "Co-operative society" means a society registered or deemed to be registered under the Co-operative Societies Act, 1912, or any other law for the time being in force in any State relating to co-operative societies.

(11) **Corporation.**- "Corporation" means anybody corporate established by or under any Central, Provincial or State Act but does not include a company or a co-operative society.

(12) **Direct tax.**- "Direct tax" means-

(a) any tax chargeable under-

(i) the Income-tax Act ;

(ii) the Super Profit Tax Act, 1963 ;

(iii) the Companies (Profits) Surtax Act, 1964 ;

(iv) the Agricultural Income-tax law ; and

(b) any other tax which, having regard to its nature or incidence, may be declared by the Central Government, by notification in the Official Gazette, to be a direct tax for the purpose of this Act.

(13) **Employee.**-- "Employee" means any person (other than an apprentice) employed on a salary or wage not exceeding three thousand and five hundred rupees per month in any industry (Added by Amendment Act of 1995.) to be any skilled or unskilled manual, supervisory, managerial administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied. 1A person who is regularly employed for doing a regular work of sweeping is an employee and not a casual worker even though he is a part-time worker.

(14) **Employer.**- "Employer" includes-

(i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agents of such owner or occupier, the legal representative of

a deceased owner or occupier and where a person has been named as a manager of the factory under clause (f) of sub-section (1) of Section 7 of the Factories Act, 1948, the person so named; and

(ii) in relation to any other establishment, the person who or the authority which, has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to a manager; managing director or managing agent, such manager, managing director or managing agent.

A person in order to be an employer need not be a manager. Chairman or director of a company having control over the affairs of establishment is an employer.

(15) **Establishment in Private Sector.**- "Establishment in private sector" means any establishment other than an establishment in public sector.

(16) **Establishment in Public Sector.**- "Establishment in public sector" means an establishment owned, controlled or managed by-

(a) a Government company as defined in Section 617 of the Companies Act, 1956

(b) a corporation in which not less than forty per cent of its capital is held (whether singly or taken together), by-

(i) The Government ; or

(ii) The Reserve Bank of India: or

(iii) a corporation owned by the Government or the Reserve Bank of India.

An establishment engaged in any industry carried on by or under the authority of Central Government or State Government is not establishment in public sector.

(17) **Factory.**- "Factory" shall have the same meaning as in clause (m) of Section 2 of the Factories Act, 1948.

(18) **Gross profits.**-- "Gross profits" means the gross profits calculated under Section 4. In the case of companies other than banking company gross profits under Section 4 are to be computed in the manner laid down in the Second Schedule. The Schedule requires adding back to the net profits shown in the P. & L. account the amount of depreciation deducted in that account while computing gross profits. Obviously, the depreciation so to be added back is the one worked out by the company under Section 205(2) of the Companies Act for the purpose of distribution of dividend under Section 205(1) of that Act. Section 6 provides that having arrived at the gross profits under Section 4 read with the Second Schedule the company is entitled to deduct there from depreciation admissible under Section 32(1) of the Income Tax Act, that is such percentage on the written down value as may, in the case of each of the classes of assets, be prescribed.

Interest paid by one office of the company to its another office on advances received from that office has to be disallowed in calculating gross profit of the office even if such expenditure is accepted as a proper expenditure by auditors. Presumption under Section 23 of the Act is not available to justify such deduction.

An adjudication and an award for bonus which is based exclusively on the provisions of the Act has to be done in accordance' with the provisions laid down therein. After ascertaining the gross profits it is duty of the Tribunal to work out the available allocable surplus in accordance with the provisions of the Act. The calculation of the amount of gross profits should not be a gross work but must be based on relevant materials.

(19) **Income-tax Act.**- "Income-tax Act" means the Income-tax Act, 1961.

(20) **Prescribed.**- "Prescribed" means prescribed by rules made under this Act.

(21) **Salary or wage.**- "Salary or wage" means all remuneration (other than remuneration in respect of over-time work) capable of being expressed in terms of money, which would, if the terms of employment express or implied were fulfilled, be payable to an employee in respect of his employment or of work done in such employment and includes dearness allowance (that is to say, all cash payment, by whatever name called, paid to an employee on account of a rise in the cost of living), but does not include:

- (i.) any other allowance which the employee is for the time being entitled to ;
- (ii.) the value of any house accommodation or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food grains or other articles ;
- (iii.) any travelling concession ;
- (iv.) any bonus (including incentive, production and attendance bonus) ;
- (v.) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the employee under any law for the time being in force ;
- (vi.) any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex-gratia payment made to him ;
- (vii.) any commission payable to the employee

(22) **Words not defined.**- Words and expressions used but not defined in this Act and defined in the Industrial Dispute Act, 1947, shall have the meaning respectively assigned to them in that Act.

5.4 Meaning of Establishment

Section 3 of the Act provides that the word establishment shall include all its departments, undertakings and branches wherever it has so whether situated in the same place or in different places and the same shall be treated as parts of the same establishment for the purpose of computation of bonus under this Act.

Provided that where for any accounting year, a separate balance-sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking or branch then such department, undertaking or branches shall be treated as a separate establishment for the purpose of computation of bonus under this Act for that year, unless such department, or undertaking or branch was, immediately before the commencement of that accounting year treated as part of establishment for the purpose of computation of bonus.

Establishment in Private Sector

It means any establishment other than an establishment in public sector. [Section 2(15)]

Establishment in Public Sector

It means an establishment owned, controlled or managed by:

- (a.) a Government company as defined in Section 617 of the Companies Act, 1956;
 - (b.) a corporation in which not less than forty percent of its capital is held (whether singly or taken together) by:
 - (i.) the Government; or
 - (ii.) the Reserve Bank of India; or
 - (iii.) a corporation owned by the Government or the Reserve Bank of India.
- [Section 2(16)].

Salary or Wages

The "salary or wage" means all remuneration (other than remuneration in respect of overtime work) capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment or of work done in such employment and includes dearness allowance (that is to say, all cash payments, by whatever name called, paid to an employee on account of a rise in the cost of living) but does not include:

- (i.) any other allowance which the employee is for the time being entitled to;
- (ii.) the value of any house accommodation or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food grains or other articles;
- (iii.) any travelling concession;
- (iv.) any bonus (including incentive, production and attendance bonus);
- (v.) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the employee under any law for the time being in force;
- (vi.) any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex-gratia payment made to him;
- (vii.) any commission payable to the employee. [Section 2(21)]

The explanation appended to the Section states that where an employee is given in lieu of the whole or part of the salary or, wage payable to him, free food allowance or free food by his employer, such food allowance or the value of such food shall, for the purpose of this clause, be deemed to form part of the salary or wage of such employee.

The definition is wide enough to cover the payment of retaining allowance and also dearness allowance paid to the workmen. It is nothing but remuneration. Survival allowance given during suspension is not wages. However lay-off compensation is wages.

5.5 Calculation of Bonus

The Act has laid down a detailed procedure for calculating the amount of bonus payable to employees. First of all, Gross Profit is calculated as per First or Second Schedule. From this Gross Profit, the sums deductible under Section 6 are deducted. To this figure, we add the sum equal to the difference between the direct tax calculated on gross profit for the previous year and direct tax calculated on gross profit arrived at after deducting the bonus paid or payable to the employees. The figure so arrived will be the available surplus. Of this surplus, 67% in case of company (other than a banking company) and 60% in other, cases shall be the "allocable" surplus" which is the amount available for payment of bonus to employees. The details of such calculations are given below.

(i) Computation' of gross profits-

As per Section 4, the gross profits derived by an employer from an establishment in respect of any accounting year shall:

- (a) in the case of banking company be calculated in the manner specified in the First Schedule.
- (b) in any other case, be calculated in the manner specified in the Second Schedule.

(ii) Deductions from gross profits

According to Section 6, the sums deductible from gross profits include

- (a.) any amount by way of depreciation admissible in accordance with the provisions of Section 32(1) of the Income-tax Act, or in accordance with the provisions of the Agricultural Income-tax Law, as the case may be:

Provided that where an employer has been paying bonus to his employees under a settlement or an award or agreement made before the 29th May, 1965, and subsisting on that date after deducting from the gross profits notional normal depreciation, then, the amount of depreciation to be deducted under this clause shall, at the option of such employer (such option to be exercised once and within one year from that date) continue to be such notional normal depreciation.

What is deductible under Section 6(a), is depreciation admissible in accordance with the provisions of Section 32(1) of the Income- tax Act and not depreciation allowed by the Income-tax Officer in making assessment on the employer.

- (b.) Any amount by way of development rebate, investment allowance, or development allowance which the employer is entitled to deduct from his income under the Income Tax Act.
- (c.) Subject to the provisions of Section 7, any direct tax which the employer is liable to pay for the accounting year in respect of his income, profits and gains during the year.
- (d.) Such further sums as are specified in respect of the employer in the Third Schedule.

(iii) Calculation of direct tax payable by the employer

Under Section 7, any direct tax payable by the employer for any accounting year shall, subject to the following provisions, be calculated at the rates applicable to the income of the employer for that year, namely:

- (a.) in calculating such tax no account shall be taken of
 - (i) any loss incurred by the employer in respect of any previous accounting year and carried forward under any law for the time being in force relating to direct taxes;
 - (ii) any arrears of depreciation which the employer is entitled to add to the amount of the allowance for depreciation for any following accounting year or years under sub-section (2) of Section 32 of the Income-tax Act;
 - (iii) any exemption conferred on the employer under Section 84 of the Income-tax Act or of any deduction, to which he is entitled under sub-section (1) of Section 101 of that Act, as in force immediately before the commencement of the Finance Act, 1965;
- (b.) Where the employer is a religious or a charitable institution to which the provisions of Section 32 do not apply and the whole or any part of its income is exempt from tax under the Income-tax Act, then, with respect to the income so exempted, such institution shall be treated as if it were a company in which the public are substantially interested within the meaning of that Act;
- (c.) Where the employer is an individual or a Hindu undivided family, the tax payable by such employer under the Income-tax Act shall be calculated on the basis that the income derived by him from the establishment is his only income.

(iv) Computation of available surplus

The available surplus in respect of any accounting year shall be the gross profits for that year after deducting there from the sums referred to in Section 6.

Provided that the available surplus in respect of the accounting year commencing on any day in the year 1968 and in respect of every subsequent accounting year shall be the aggregate of :

- (a.) The gross profits for that accounting year after deducting there from the sums referred to in Section 6; and
- (b.) an amount equal to the difference between
 - (i.) The direct tax, calculated in accordance with the provisions of Section 7, in respect of an amount equal to the gross profits of the employer for the immediately preceding accounting year; and
 - (ii.) The direct tax calculated in accordance with the provisions of Section 7 in respect of an amount equal to the gross profits of the employer for such preceding accounting year after deducting there from the amount of bonus which the employer has paid or is liable to pay to his employees in accordance with the provisions of this Act for that year (Section 5).

5.6 Eligibility for Bonus Payment

(i) Eligibility for bonus

Every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of this Act, provided he has worked in the establishment for not less than thirty working days in that year. (Section 8)

(ii) Disqualification for bonus

An employee shall be disqualified from receiving bonus under this Act, if he is dismissed from service for:

- (a) Fraud; or
- (b) Riotous or violent behavior while on the premises or the establishment; or
- (c) Theft, misappropriation or sabotage of any property of the establishment. (Section 9)

This provision is based on the recommendations of the Bonus Commission which observed "after all bonus can only be shared by those workers who promote the stability and well-being of the industry and not by those who positively display disruptive tendencies. Bonus certainly carries with it obligation of good behavior".

(iii) Payment of minimum bonus

Section 10 states that subject to the other provisions of this Act, every employer shall be bound to pay to every employee in respect of any accounting year a minimum bonus which shall be 8.33 percent of the salary or wage earned by the employee during the accounting year or one hundred rupees whichever is higher, whether or not the employer has any allocable surplus in the accounting year.

Provided that where an employee has not completed fifteen years of age at the beginning of the accounting year, the provisions of this Section shall have effect in relation to such employee as if for the words one hundred rupees the words sixty rupees were substituted.

Section 10 of the Act is not violative to the Articles 19 and 301 of the Constitution. Even if the employer suffers losses during the accounting year, he is bound to pay minimum bonus as prescribed by Section 10 (State v. Sardar Singh Majithia (1979) Lab. I.C.).

(iv) Maximum bonus

Where in respect of any accounting year referred to in Section 10, the allocable surplus exceeds the amount of minimum bonus payable to the employees under that Section, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting year bonus which shall be an amount in proportion to the salary or wage earned by the employee during the accounting year subject to a maximum of twenty per cent of such salary or wage.

In computing the allocable surplus under this Section, the amount set on or the amount set off under the provisions of Section 15 shall be taken into account in accordance with the provisions of that Section. (Section 11)

(iv-A) Calculation of bonus with respect to certain employees

Where the salary or wage of an employee exceeds three thousand and five hundred rupees per month, the bonus payable under Section 10 or 11 shall be calculated as if his salary or wage were three thousand and five hundred rupees per month. (Section 12)

(v) Proportionate reduction in bonus in certain cases

Where an employee has not worked for all the working days in an accounting year, the minimum bonus of one hundred rupees or, as the case may be of sixty rupees, if such bonus is higher than 8.33 per cent of his salary or wage for the days he had worked in that accounting year, shall be proportionately reduced. (Section 13)

(vi) Computation of number of working days

For the purposes of Section 13, an employee shall be deemed to have worked in an establishment in any accounting year also on the days on which:

He has been laid off under an agreement or as permitted by standing orders under the Industrial Employment (Standing Orders) Act, 1946 or under the industrial disputes Act, 1947 or under any other law applicable to the establishment. He has been on leave with salary or wage. He has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and The employee has been on maternity leave with salary or wage, during the accounting year. (Section 14)

(vii) Set on and set off of allocable surplus

(1) Where for any accounting year, the allocable surplus exceeds the amount of maximum bonus payable to the employees in the establishment under Section 11, then, the excess shall, subject to a limit of twenty per cent of the total salary or wage of the employees employed in the establishment in that accounting year, be carried * forward for being set on In the succeeding accounting year and so on up to and inclusive of the fourth accounting year to be utilized for the purpose of payment of bonus in the manner illustrated in the Fourth Schedule. (Section 15)

(2) Where for any according year, there is no available surplus or the allocable surplus in respect of that year falls short of the amount of minimum bonus payable to the employees in the establishment under Section 10, and there is no amount or sufficient amount carried forward and set on under sub-section (1) which could be utilized for the purpose of payment of the minimum bonus, then, such minimum amount or the deficiency, as the case may be, shall be carried forward for being set off in the succeeding accounting year and so on up to and inclusive of the fourth accounting year in the manner illustrated in the Fourth Schedule.

(3) The principle of set on and set off as illustrated in the Fourth Schedule shall apply to all other cases not covered by sub-section (1) or sub-section (2) for the purpose of payment of bonus under this Act.

(4) Where in any accounting year any amount has been carried forward and set on or set off under this Section, then, in calculating bonus for the succeeding accounting year, the amount of set on or set off carried forward from the earliest accounting year shall first be taken into account.

Apart from the provisions contained in Section 15(1), there is no statutory obligation on an employer to set apart any part of the profits of the previous year for payment of bonus for subsequent years.

(viii) Adjustment of customary or interim bonus

Where in any accounting year (a) an employer has paid any puja bonus or other customary bonus to an employee or (b) an employer has paid a part of the bonus payable under this Act to an employee before the date on which such bonus becomes payable; then, the employer shall be entitled to deduct at the amount of bonus so paid from the amount of bonus payable by him to the employee under this Act in respect of that accounting year and the employee shall be entitled to receive only the balance. (Section 17)

(ix) Deductions of certain amounts from bonus

Where in any accounting year, an employee is found guilty of misconduct causing financial loss to the employer, then, it shall be lawful for the employer to deduct the amount of loss from the amount of bonus payable by him to the employee under this Act, in respect of that accounting year only and the employee shall be entitled to receive the balance, if any. (Section 18)

(x) Time limit for payment of bonus

(a) Where there is a dispute regarding payment of bonus pending before any authority under Section 22, all amounts payable to an employee by way of bonus under this Act shall be paid in cash by his employer, within a month from the date from which the award becomes enforceable or the settlement comes into operation, in respect of such dispute;

(b) In any other case, the bonus should be paid within a period of eight months from the close of the accounting year. However, the appropriate Government or such authority as the appropriate Government may specify in this behalf may, upon an application made to it by the employer and for sufficient reasons, by order, extend the said period of 8 months to such further period or periods as it thinks fits, or, however, that the total period so extended shall not in any case exceed two years. (Section 19)

(xi) Recovery of bonus from an employer

Where any money is due to an employee by way of bonus from his employer under a settlement or an award or agreement, the employee himself or any other person authorized by him in writing in this behalf or in the case of the death of the employee, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government or such authority as the appropriate Government may specify in this behalf is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

If may be noted that every such applications shall be made within one year from the date on which the money become due to the employee from the employer. Any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

Explanation: In this Section and in Sections 22, 23, 24 and 25, employee includes a person who IS entitled to the payment of bonus under this Act but who is no longer in employment. (Section 21) Mode of recovery prescribed in Section 21 would be available only if bonus sought to be recovered is under settlement or an award or an agreement Bonus payable under Bonus Act is not covered by Section 21 (1976-I Labour Law Journal 511).

5.6.1 Bonus Linked with Production or Productivity

Section 31A enables the employees and employers to evolve and operate a scheme of bonus payment linked to production or productivity in lieu of bonus based on profits under the general formula enshrined in the Act. However, bonus payments under Section 31A are also subject to the minimum (8.33 per cent) and maximum (20 per cent). In other words a minimum of 8.33 per cent is payable in any case and the maximum cannot exceed 20 per cent. (Section 31 -A)

5.6.2 Power of Exemption

If the appropriate Government, having regard to the financial position and other relevant circumstances of any establishment or class of establishments, is of opinion that it will not be in public interest to apply all or any of the provisions of this Act thereto, it may, by notification in the Official Gazette, exempt for such period as may be specified therein and subject to such conditions as it may think fit to impose, such establishment or class of establishments from all or any of the provisions of this Act. (Section 36). Government should consider public interest, financial position and whether workers contributed to the loss, before grant of exemption (J.K.Chemicals v. Maharashtra, 1996 111 CLA Bom. 12).

5.6.3 Penalties

If any person contravenes any of the provisions of this Act or any rule made there under; he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. Likewise if any person, to whom a direction is given or a requisition is made under this Act, fails to comply with the direction or requisition, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. (Section 28)

5.6.4 Offences by Companies

If the person committing an offence under this Act IS a company, every person who, at the time the offence was committed, was In charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Further, if an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or IS attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be proceeded against and punished accordingly (Section 29).

For the purpose of Section 29, 'company' means anybody corporate and includes a firm or other association of individual and 'director', In relation to a firm, means a partner in the firm.

5.7 Summary

The Payment of Bonus Act provides for payment of bonus to persons employed in certain establishments on the basis of profits or on the basis of production or productivity and for matters connected therewith. It extends to the whole of India and is applicable to every factory and to every other establishment here 20 or more workmen are employed on any day during an accounting year. The Act does not apply to certain classes of employees specified therein. The Act has laid down a detailed procedure for calculating the amount of bonus payable to employees. Every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of this Act, provided he has worked in the establishment for not less than thirty working days in that year. An employee shall be disqualified from receiving bonus under this Act, if he is dismissed from service, for fraud; or riotous or violent behavior while on the premises of the establishment; or theft; misappropriation or sabotage of any property of the establishment. Every employer shall be bound to pay to every employee in respect of any accounting year a minimum bonus which shall be 8.33 per cent of the salary or wage earned by the employee during the accounting year or one hundred rupees whichever is higher, whether or not the employer has any allocable surplus in the accounting year. In case of newly set up establishments provisions have been made under Section 16 for the payment of bonus. If there is a dispute regarding payment of bonus pending before any authority under Section 22, all amounts payable to an employee by way of bonus under this Act shall be paid in cash by his employer, within a month from the date from which the award becomes enforceable or the settlement comes into operation, in respect of such dispute. In any other case, the bonus should be paid within a period of eight months from the close of the accounting year.

If any dispute arises between an employer and his employee with respect to the bonus payable under this Act or with respect to the application of this Act to an establishment in public Sector, then, such dispute shall be deemed to be an industrial dispute within the meaning of the Industrial Disputes Act, 1947, or any corresponding law relating to investigation and settlement of industrial disputes in force in a State and provisions of that Act, shall, save as otherwise expressly provided, apply accordingly. The Act enable the employees and employers to evolve and operate a scheme of bonus payment linked to production or productivity in lieu of bonus based on profits under the general formula enshrined in the Act.

5.8 Self Assessment Questions

1. Describe the scope and object of the Payment of Bonus Act, 1965.
2. Write short notes on:
 - (a) Accounting year;
 - (b) Allocable surplus;
 - (c) Employee and employer;
 - (d) Salary and wages.
3. What is allocable surplus? How does it differ from available surplus?
4. Enumerate the categories of employees who are not covered under the Payment of Bonus Act.
5. What is the eligibility limit for payment of bonus? Who is disqualified from getting bonus under the Act?

5.9 Reference Books

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Unit – 6 : The Employees' Provident Fund and Miscellaneous Provisions Act, 1952

Structure of Unit

- 6.0 Objectives
- 6.1 Introduction
- 6.2 Application of the Act
- 6.3 Definitions
- 6.4 Schemes under the Act
- 6.5 Determination of Money Due
- 6.6 Compliance under the Act
- 6.7 Summary
- 6.8 Self Assessment Questions
- 6.9 References Books

6.0 Objectives

The main objective of this unit is to explain the:

- Objective and salient features of the Act.
- Meaning and Need for Provident Funds and Pension by legislation.
- Various provisions of the Act.

6.1 Introduction

The employee's Provident Funds and Miscellaneous Provisions Act, 1952 is a Social welfare legislation to provide for the institution of Provident Fund, Pension Fund and Deposit Linked Insurance Fund for employees working in factories and other establishments. The aims of the Act to provide Social Security. It also provides monetary assistance to industrial employees and their families when they are in distress. Accordingly, three schemes are in operation under the act these schemes taken together provide to the employees an old age and survivorship benefits, a long term protection and security to the employee and after his death to his family members and timely advances including advances during sickness and for the purchase/ construction of a dwelling house during the period of membership. The act is administered by the government of India through the Employees Provident Fund Organization (EPFO). EPFO is one of the largest provided fund intuitions in the world in terms of members and volume of financial transactions that it has been carrying on. The Central Government has been constituted Employees Provident Funds Appellate Tribunal to exercise the powers and discharge the functions conferred on such by Employees Provident Funds and Miscellaneous Provisions Act, 1952. The Tribunal consists of one person only and appointed by the Central Government.

Provident Fund schemes for the benefit of the employees had been introduced by some organizations even when there was no legislation requiring them to do so. Such schemes were, however, very few in number and they covered only limited classes/groups of employees. In 1952, the Employees Provident Funds Act was enacted to provide institution of Provident Fund for workers in six specified industries with provision for gradual extension of the Act to other industries classes of establishments. The Act is now applicable to employees drawing pay not exceeding **Rs. 6,500/- per month**. The Act extends to whole of India except Jammu and Kashmir. The term pay includes basic wages with dearness allowance, retaining allowance (if any), and cash value of food concession.

6.2 Application of the Act

According to Section 1(3), the Act, subject to the provisions of Section 16, applies:

- a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed; and
- b) to any other establishment employing twenty or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided that the Central Government may, after giving not less than two months notice of its intention to do so by notification in the Official Gazette, apply the provisions of this Act to any establishment employing such number of persons less than twenty as may be specified in the notification.

The Central Government can extend the provisions of the Act to any establishment including the co-operative society to which under Section 16(1) the provisions of the Act are not applicable by notification in Official Gazette when the employer and the majority of employees in relation to any establishment have agreed that the provisions of this Act should be made applicable to them [Section 1(4)].

However, before notification is made, parties can opt out of such an agreement (1996 20 CLA 25 Bom.). Once an establishment falls within the purview of the Act, it shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below twenty. [Section 1 (5)] Where an establishment to which this Act applied was divided among the partners' the Act would continue to apply to the part of each ex-partner even if the number of persons employed in each part is less than twenty (1986 2 LLJ 137). Where as a result of real and bona fide partition among the owners, an establishment was disrupted and separate and distinct establishments come into existence, allottees with no regular employee, cannot be saddled with liability to pay minimum administrative charges as before (1993 I LLN 698). For compliance with the Act and the scheme, for an establishment there should be an employer and one or more employees are required to be in existence at least. When there is not even one employee, it would be difficult to contend that the Act continues to apply to the establishment (199g LLJ I Kar. 780).

The constitutional validity of this Act was challenged on the ground of discrimination and excessive delegation. It was held that the law lays down a rule which is applicable to all the factories or establishments similarly placed. It makes a reasonable classification without making any discrimination between factories placed in the same class or group (Delhi Cloth and General Mills v. R.P.F. Commissioner A.I.R. 1961 All. 309).

The liability to contribute to the provident fund is created the moment the Scheme is applied to a particular establishment.

Section 1(3)(b) empowers the Central Government to apply the Act to trading or commercial establishments whether, such establishments are factories or not.

6.2.1 Non-applicability of the Act to certain establishments

Section 16(1) of the Act provided that the Act shall not apply to certain establishments as stated there under. Such establishments include:

- (a) establishments registered under the Co-operative Societies Act, 1912, or under any other law for the time being in force in any State relating to co-operative societies, employing less than 50 persons and working without the aid of power; or
- (b) to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits; or
- (c) to any other establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits.
- (d) to any other establishment newly set up, until the expiry of a period of three years (infancy period) from the date on which such establishment is, or has been set up.

According to Section 16(2), if the Central Government is of opinion that having regard to the financial position of any class of establishments or other circumstances of the case, it is necessary or expedient so to do, it may, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification, exempt that class of establishments from the operation of this Act for such period as may be specified in the notification.

The date of establishment of a factory is the date when the factory starts its manufacturing process. A change in the ownership does not shift the date of establishment. A mere change in the partnership deed, does not mean that a new business has come into existence for the purpose of Section 16(1) (P G- Textile Mills v. Union of India (1976) 1 LLJ 312).

6.3 Definitions

To understand the meaning of different Sections and provisions therefore it is necessary to know the meaning of important expressions used therein. Section 2 of the Act explains such expressions which are given below:

(i) Appropriate Government

a) In relation to those establishments belonging to or under the control of the Central Government or in relation to an establishment connected with a railway company, a major port, a mine or an oil field or a controlled industry, or in relation to an establishment having departments or branches in more than one State, the Central Government; and

b) In relation to any other establishment, the State Government. [Section 2(a)]

(ii) Basic Wages

"Basic Wages" means all emoluments which are earned by an employee while on duty or on leave or on holiday with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include:

a) The cash value of any food concession;

b) Any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house- rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;

c) Any presents made by the employer. [Section 2(b)]

(iii) Contribution

"Contribution" means a contribution payable in respect of a member under a Scheme or the contribution payable in respect of an employee to whom the Insurance Scheme applies. [Section 2(c)].

(iv) Controlled Industry

"Controlled Industry" means any industry the control of which by the Union has been declared by the Central Act to be expedient in the public interest. [Section 2(d)]

(v) Employer : Employer" means

a) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and where a person has been named as a manager of the factory under clause (f) of sub-section (1) of Section 7 of the Factories Act, 1948, the person so named; and

b) in relation to any other establishment, the person who or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a manager, managing director, or managing agent, such manager, managing director or managing agent. [Section 2(e)]

(vi) Employee

"Employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employer and includes any person.

a) employed by or through a contractor in or in connection with the work of the establishment;

b) engaged as an apprentice, not being an apprentice engaged under Apprentices Act, 1961 or under the standing orders of the establishment. [Section 2(f)]

The definition is very wide in its scope and covers person employed for clerical work or other office work in connection with the factory or establishment. The inclusive part of the definition makes it clear that even if a person has been employed through a contract in or in connection with the work of the establishment, he would yet fall within the description of employee within the meaning of the Act.

The dominant factor in the definition of 'employee in Section 2(f) of the Act is that a person should be employed in or in connection with the work of the establishment. Sons being paid wages are employees (Goverdhan Lal v. REPC 1994 II LLN 1354). In case of doubt whether a particular person is an employee or not, both the parties should be heard by the Commissioner before deciding the issue (1976-II Labour Law Journal, 309).

The definition of employee in Section 2(f) of the Act is comprehensive enough to cover the workers employed directly or indirectly and therefore, wherever the word employee is used in this Act, it should be understood to be within the meaning of this definition (Malwa Vanaspati and Chemical Co. Ltd. v. Regional Provident Fund Commissioner, M.P. Region, Indore, 1976-I Labour Law Journal 307).

The definition of "employee", includes a part-time employee, who is engaged for any work in the establishment, a sweeper working twice or thrice in a week, a night watchman keeping watch on the shops in the locality, a gardener working for ten days in a month, etc. (Railway Employees Co-operative Banking Society Ltd. v. The Union of India, 1980 Lab. IC 1212). The Government of India, by certain notification extended the application of Act and EPF scheme to beedi industry it was held that the workers engaged by beedi manufacturers directly or through contractors for rolling beedi at home subject to rejection of defective beedies by manufacturers, were employees (1986 1 SCC 32). But working partners drawing salaries or other allowances are not employees. When members of cooperative society do work in connection with that of society and when wages are paid to them, there would be employer-employee relationship and such member-workers would be covered under the definition (1998 LLJ I Mad. 827).

(vii) Exempted Employee

It means an employee to whom a Scheme or the Insurance Scheme as the case may be would but for the exemption granted under Section 17, have applied. [Section 2(ff)]

(viii) Exempted Establishment

It means an establishment in respect of which an exemption has been granted under Section 17 from the operation of all or any of the provisions of any Scheme or the insurance Scheme as the case may be whether such exemption has been granted to the establishment as such or to any person or class of persons employed therein. [Section 2(fff)]

(ix) Factory

It means any premises including the precincts thereof, in any part of which a manufacturing process is being carried on or ordinarily so carried on, whether with the aid of power or without the aid of power [(Section 2(g)].

(x) Fund

It means Provident fund established under the scheme. [(Section 2(h)]

(xi) Industry

It means any industry specified in schedule I, and includes any other industry added to the Schedule by notification under Section 4. [Section 2 (i)]

(xii) Insurance Fund

It means the Deposit-Linked insurance Fund established under sub-section (2) of Section 6-C. [Section 2(i-a)]

(xiii) Insurance Scheme

It means Employees Deposit- Linked insurance Scheme framed under sub-section (1) of Section 6-C. [Section 2(i-b)]

(xiv) Manufacture or Manufacturing Process

It means any process for making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, [Section 2 (i-c)]

(xv) Member

“Member” Means a member of the Fund. [Section 2 (j)].

(xvi) Occupier of a Factory

It means the person, who has ultimate control over the affairs of the factory, and where the said affairs are entrusted to a managing agent, such agent shall be demand to be the occupier of the Factory. [Section 2 (k)].

(xvii) Pension Scheme

“Pension Scheme” means the Employees Pension Scheme framed under sub-section (1) of Section 6A. [Section 2 (kB)].

(xviii) Scheme

It means the Employees ‘Provident Fund Scheme framed under Section 5.[Section 2 (1)].

(xix) Superannuation

"Superannuation", in relation to an employee, who is the member of the Pension Scheme, means the attainment, by the said employee, of the age of fifty-eight years. [Section 2(II)]

Different departments or branches of an establishment

Where an establishment consists of different departments or branches situated in the same place or in different places, all such departments or branches shall be treated as parts of the same establishment. (Section 2A)

6.4 Various Schemes under the Act

In exercise of the powers conferred under the Act, the Central Government has framed the following three schemes.

(a) Employees Provident Fund Scheme

The Central Government has framed a Scheme called Employees Provident Fund Scheme. The Fund vests in and is administered by the Central Board constituted under Section 5A.

Administration of the Fund

Board of Trustees or Central Board: Section 5A provides for the administration of the Fund. The Central Government may by notification in the Official Gazette constitute with effect from such date as may be specified therein, a Board of Trustees, for the territories to which this Act extends.

The Employees Provident Fund' Scheme contains provisions regarding the terms and conditions subject to which a member of the Central Board may be appointed and of procedure of the meetings of the Central Board.

Employees entitled for Provident Fund

Every employee employed in or in connection, with the work of a factory or other establishment to which this scheme applies, other than an excluded employee, shall be entitled and required to become a member of the fund from the date of joining the factory or establishment.

The Term “excluded employee” has been defined in para 2 (f) of the Employees’ Provident Fund Scheme, 1952 as follows:

'Excluded employee' means:

- (i) an employee who, having been a member of the Fund, withdraw the full amount of his accumulations in the Fund under clause (a) or (c) of sub-paragraph 69;
- (ii) an employee whose pay at the time he is otherwise entitled to become a member of the Fund, exceeds five thousand rupees per month.

Explanation: "Pay" includes basic wages with dearness allowance retaining allowance (if any) and cash value of food concession admissible thereon.

(iii) An apprentice.

Explanation: An apprentice means a person who, according to the certified standing orders applicable to the factory or establishment is an apprentice, or who is declared to be an apprentice by the authority specified in this behalf by the appropriate Government.

Contributions from both parties

As per Section 6, the contribution which shall be paid by the employer to the fund shall be 10%, of the basic wages, dearness allowance and retaining allowance, if any, for the time being payable to each of the employees whether employed by him directly or through a contractor and the employees contribution shall be equal to the contribution payable by the employer. Employees, if they desire, may make contribution exceeding the prescribed rate but subject to the condition that employer shall not be under any obligation to contribute over and above the contribution payable as prescribed by the Government from time to time under the Act. The Government has raised the rate of Provident Fund Contribution from the current 8.33% to 10% in general and in cases of establishments specially notified by the Government, from 10% to 12% with effect from September 22, 1997.

Each contribution shall be calculated to the nearest rupee, fifty paise or more to be counted as the next higher rupee and fraction of a rupee less than fifty paise to be ignored.

Dearness allowance shall include the cash value of any food concession allowed to an employee. Retaining allowance is the allowance payable to an employee for retaining his services, when the establishment is not working

The Provident Fund Scheme has made the payment of contribution mandatory and the Act provides for no exception under which a specified employer can avoid his mandatory liability.

Investment: The amount received by way of Provident Fund contributions is invested by the Board of Trustees in accordance with the investment pattern approved by the Government of India. The members of the Provident Fund get interest on the money standing to their credit in their Provident Fund Accounts- The rate of interest for each financial year is recommended by the Board of Trustees and is subject to final decision by the Government of India.

Advances/Withdrawals: Advance/Withdrawals Provident Fund can be taken for the following purposes subject to conditions laid down in the relevant paras of the Employees Provident Fund Scheme:

1. Non-refundable advance for payment of premium towards a policy or policies of life insurance of a member.
2. Withdrawal for purchasing on construction a dwelling house or flat or for construction of a dwelling house including the acquisition of a suitable site for the purpose, or for completing/continuing the construction of a dwelling house, already commenced by the member or the spouse and an additional advance for additions, alteration or substantial improvement necessary to the dwelling house;
3. Non refundable advance to members due to temporary closure of any factory or establishment for more than fifteen days.
4. (i) Non-refundable in case of:
 - a. Hospitalization lasting one month or more, or
 - b. major surgical operation in a hospital, or
 - c. suffering from T.B., Leprosy, Paralysis, Cancer, Mental derangement or heart ailment, for the treatment of which leave has been granted by the employer;(ii) Non refundable advance for the treatment of a member of his family, who has been hospitalized or requires hospitalization, for one month or more:
 - a. for a major surgical operation; or
 - b. for the treatment of T.B., Leprosy, Paralysis, Cancer, Mental derangement or heart ailment.
5. Non-refundable advance for daughter/sons marriage, education, the marriage of sister/brother or for the post matriculation education of son or daughter.
6. Non-refundable advance to members affected by cut in the supply of electricity;
7. Non-refundable advance in case property is damaged by a calamity of exceptional nature such as floods, earthquakes or riots;
8. Withdrawals for repayment of loans in special cases; and
9. Non-refundable advance to physically handicapped members for purchasing an equipment required to minimize the hardship on account of handicap.

Final Withdrawal: Full accumulations with interest thereon are refunded in the event of death, permanent disability, superannuation, retrenchment or migration from India for permanent settlement abroad/taking employment abroad, voluntary retirement, certain discharges from' employment under Industrial Disputes Act, 1947, transfer to an establishment/factory not covered under the Act.

In other cases, with permission of commissioner or any subordinate officer to him, a member is allowed to draw full amount when he ceases to be in employment and has not been employed in any establishment to which the Act applies for a continuous period of at least 2 months. This requirement of 2 months waiting period shall not apply in cases of female members resigning from service for the purpose of getting married.

(b) Employee's Pension Scheme

Under Section 6A, Government has introduced a new pension scheme styled Employees' Pension scheme 1995 w.e.f. 16.11.1995, in place of Family Pension Scheme' 1971 and the employers share of PF contribution representing 8.33% of the wage is being diverted to the said Fund. All accumulations of the ceased Family Pension Fund have been merged in the Pension Fund. The Central Government is also contributing to the Pension Fund at the rate of 1.16% of the wage of the employees.

The Scheme provides for payment of monthly pension in the following contingencies (a) Superannuation on attaining the age of 58 years; (b) Retirement (c) permanent total disablement; (d) Death during service; (e) Death after "retirement superannuation/permanent total disablement; (f) Children Pension; and (g) Orphan pension'. The amount of monthly pension will vary from member to member depending upon his pensionable salary and pensionable service.

The formula for calculation of monthly member's pension is as under:

$$\text{Members Pension} = \frac{\text{Pensionable Salary} \times (\text{Pensionable Service} + 2)}{70}$$

The Employees pension scheme is compulsory for all the persons who were members of the Family pension Scheme, 1971. It is also compulsory for the persons who become members of the Provident Fund from 16.11.1995 i.e. the date of introduction of the Scheme. The PF subscribers who were not members of the Family Pension Scheme, have an option to join this Pension Scheme. The scheme came into operation w.e.f. 16.11.1995, but the employees, including those covered under the Voluntary Retirement Scheme have an option to join the scheme w.e.f. 1.4.1993.

Minimum 10 year contributory service is required for entitlement to pension. Normal superannuation pension is payable on attaining the age of 58 years. Pension on a discounted rate is also payable on attaining the age of 50 years. Where pensionable service is less than, 10 years, the member has an option to remain covered for pensioner benefits till 58 years of age or claim return of contribution/ withdrawal benefits'

In case where the contributory service is less than 20 years but more than 10 years, monthly pension is required to be determined as if the member has rendered eligible service of 20 years. The Amount so arrived shall be reduced at the rate of 3 percent for every year by which the eligible service falls short of 20 years, subject to maximum reduction of 25 percent.

A separate formula for pension has been prescribed for the members of the ceased Family Pension Scheme, 1971. In the case of members who contributed to the Family Pension Scheme for 24 years, the minimum amount of pension will be Rs. 500 per month.

Depending upon the retirement date, the amount of pension for such members may go even beyond Rs. 800 per month. The Family Pension members retiring in November, 1995 after having membership of only 10 years will also get a minimum pension of Rs. 265 p.m. In addition such Family Pension members will get back their full provident fund including the employers share along with interest accumulated in their account upto 15.11.1995.

(a) The rate of minimum widow pension is Rs. 450 p.m. The maximum may go upto Rs. 2,500 p.m. payable as normal members' pension on completion of nearly 33 years of service. Family pension upto Rs. 1,750 p.m. is also payable to the widow of the member who has contributed only for one month to the pension fund.

(b) In addition to the widow pension, the family is also entitled to children pension. The rate of children pension is 25 percent of widow pension for each child subject to a minimum of Rs. 115 p.m. per child payable upto two children at a time till they attain the age of 25 years.

(c) If there are no parents alive, the scheme provides for orphan pension @ 75 percent of the widow pension payable to orphans subject to the minimum of Rs. 170 p.m. per orphan.

The scheme has been amended making dependent parents eligible for pension. Further disabled children are also made eligible for lifelong pension. Under the Pension Scheme, the employees have an option to accept the admissible pension or reduced pension with return of capital. In the case of employee opting for 10% less pension than the actual entitlement, the scheme provides for return of capital equivalent to 100 times of the original pension in the event of death of the pensioner. For example, if the monthly pension is Rs.2,000 p.m. and the employee opts for reduced pension of Rs. 1,800 the family will have refund of the capital amounting to Rs. 2,00,000 on death of the pensioner. In addition, the widow and two children will continue to get pension for life or upto the age of 25 years, as the case may be. Under the Scheme, neither the employer nor the employee is required to make any additional contribution. A Pension Fund has been set up from 16.11.95.

(c) Employee' Deposit-Lined Insurance Scheme

The Act was amended in 1976 and a new Section 68 was inserted empowering the Central Government to frame a Scheme to be called the Employees' Deposit linked insurance Scheme for the purpose of providing life insurance benefit to the employees of any establishment or class of establishments to which the Act applies.

The Central Government has accordingly framed the Employees' Deposits-Linked insurance Scheme, 1976. It came into force on the 1st August, 1976.

1. Application of the Scheme: The Employees Deposit-Linked insurance Scheme, 1976 is applicable to all factories/establishments to which the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 applies.
2. All the employees who are members of the Provident fund in both the exempted and the unexempted establishments are covered under the scheme.

3. Contributions to the insurance Fund: Employees do not contribute to the insurance Fund.
4. The employers are required to pay contributions to the insurance Fund at the rate of 1% of the total emoluments, i.e. basic wages, dearness allowance including, cash value of any food concession and retaining allowance, if any.
5. Administrative expenses: The employers of all covered establishments are required to pay charges to the insurance Fund, at the rate of 0.01% of the pay of the employee-members for meeting the administrative charges, object to a minimum of Rs. 2/- per month.
6. Nomination: The nomination made by a member under the Employee Provident Fund Scheme 1952 or in the exempted provident fund is treated as nomination under this scheme. Provisions of Section 5 have overriding effect and will override the personal laws of the subscriber in the matters of nominations.
7. Payment of assurance benefit: In case of death of a member, an amount equal to the average balance in the account of the deceased during the preceding 12 months or period of membership, whichever is less shall be paid to the persons eligible to receive the amount or the Provident Fund accumulations. In case the average balance exceeds Rs. 50,000, the amount payable shall be Rs. 50,000 plus 40% of the amount of such excess subject to a ceiling of Rs- one lakh.
8. Exemption from the Scheme: Factories/establishments, which have an Insurance Scheme conferring more benefits than those provided under the statutory Scheme, may be granted exemption, subject to certain conditions, if majority of the employees are in favor of such exemption?

6.5 Determination of Money Due

(i) Determination of Money Due from Employers

Section 7A vests the powers of determining the amount due from any employer under the provisions of this Act and deciding the dispute regarding applicability of this Act in the Central Provident Fund Commissioner, Additional Provident Fund Commissioner, Deputy Provident Fund Commissioner, or Regional Provident Fund Commissioner. For this purpose he may conduct such inquiry as he may deem necessary.

Central Government has already constituted Employees Provident Fund Appellate Tribunal, consisting of a presiding officer who is qualified to be a High Court Judge or a District Judge with effect from 1st July, 1997 in accordance with provisions of Section 7D. The term, service conditions and appointment of supporting staff are governed by Sections 7E to 7H. Any person aggrieved by order/notification issued by Central Government/authority under Sections 1(3), 1(4), 3, 7A(1), 7C, (except an order rejecting an application for review) may prefer an appeal. The tribunal shall prescribe its own procedure and have all powers vested in officers under Section 7A.

The proceedings before the tribunal shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 and for Section 196 of Indian Penal Code and Civil,

1908, it shall be deemed to be a Civil Court for all purposes of Section 195 and Chapter XXVI of Code of Procedure. The appellant can take assistance of legal practitioner and the Government shall appoint a presenting officer to represent it. Any order made by the Tribunal is final.

Mode of Recovery of Money due from employers

Section 8 prescribes the mode of recovery of moneys due from employers by the Central Provident Fund Commissioner or such officer as may be authorised by him by notification in the Official Gazette in this behalf in the same manner as an arrear of land revenue. Recovery of arrears of Provident Fund cannot be affected from unutilized part of cash-credit of an industrial establishment (1998 LAB IC Kar 3044).

(ii) Recovery of Moneys by employers and contractors

Section 8A lays down that the amount of contribution that is to say the employer's contribution as well as the employee's contribution and any charges for meeting the cost of administering the fund paid or payable by an employer in respect of an employee employed by or through a contractor, may be recovered by such employer from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

A contractor whom the amount mentioned above maybe recovered in respect of any employee employed by or through him, may recover from such employee, the employee's contribution under any Scheme by deduction from the basic wages, dearness allowance and retaining allowance, if any, payable to such employee However; notwithstanding any contract to the contrary, no contractor shall be entitled to deduct the employer's contribution or the charges referred to above from the basic wages, dearness allowance and retaining allowance payable to an employee employed by or through him or otherwise to recover Such contribution or charges from such employee.

(iv) Measures for recovery of amount due from employer

The authorized officer under this Act shall issue a certificate for recovery of amount due from employer to the Recovery officer. The Recovery officer has got the powers to attach/Sell the property of employer, call for arrest and detention of employer, etc. for effecting recovery. The employer cannot challenge the validity of the certificate. The authorized officer can grant time to the employer to make the payment of dues.

The central Provident Fund commissioner may require any person, from whom amount is due to the employer, to pay directly to the central Provident Fund commissioner/officer so authorized and the same will be treated as discharge of his liability to the employer to the extent of amount so paid. (Section 88 to 8G).

(v) Priority of payment of contributions over other debts

Section 11 of the Act provides that the contribution towards Provident Fund shall rank prior to other payments in the event of employer being adjudicated in solvent or where it is a company on which order of winding up has been made. The amount shall include:

(a) The amount due from the employer in relation to an establishment to which any Scheme or Insurance Scheme applies in respect of any Contribution payable to the Fund, or the Insurance, damages recoverable under Section 14B, accumulations required to be transferred under sub-section (2) of Section 15 or any Charges payable by him under any other provisions of this Act or of any provision of the Scheme or the Insurance Scheme; or

(b) the amount due from employer in relation to an exempted establishment in respect of any Contribution to the provident Fund or any insurance Fund in so far as it relates to exempted employees under the rules of the provident Fund, or any insurances Fund or any contribution payable by him towards the Pension Fund under sub-section (6) of Section 17, damages recoverable under section 13B or any charges payable by him to the appropriate Government under any provisions of this Act or any of the conditions specified under Section 17.

6.5.1 Employer not to reduce wages

Section 12 of the Act prohibits an employer not to reduce directly or indirectly the wages of any employee to whom the Scheme or the insurance scheme applies or the total quantum of benefits in the nature of old age pension, gratuity or provident fund or life insurance to which the employee is entitled under the terms of employment, express or implied, simply by reason of his liability for the payment of any contribution to the Fund or the insurance Fund or any charges under this Act or the Scheme or the Insurance Scheme.

(i) Transfer of Accounts

Section 17A (1) of the Act provides that where an employee employed in an establishment to which this Act applies leaves his employment and obtain re-employment in another establishment to which this Act does not apply, the amount of accumulations to the credit of such employee in the Fund, or as the case may be, in the Provident Fund of the establishment left by him shall be transferred within such time as may be specified by Central Government in this behalf to the credit of his account in the Provident Fund of the establishment in which he is re-employed, if the employee so desires and the rules in relation to that Provident Fund permit such transfer.

Sub-section (2) further provides that where as employee employed in an establishment to which this Act does not apply, leaves his employment and obtain re-employment in another establishment to which this Act applies, the amount of accumulations to the credit of such employee in the Provident Fund of the establishment left by him, may, if the employee so desires and also rules in relation to such Provident Fund permit, be transferred to the credit of his account in the Fund or as the case may be, in the Provident Fund of the establishment in which he is re-employed.

(ii) Protection Against attachment

Statutory protection is provided to the amount of contribution to Provident Fund under Section 10 from attachment to any Court decree. Sub-section (1) of Section 10 provides that the amount standing to the credit of any member in the Fund or any exempted

employee in a Provident fund shall not in any way, be capable of being assigned or charged and shall not be liable to attachment under any decree or order or any Court in respect of any debt or liability incurred by the member or the exempted employee and neither the official assignee appointed under the Presidency Towns insolvency Act, 1909 nor any receiver appointed under the Provincial insolvency Act, 1920 shall be entitled to or have any claim on any such amount.

It is further provided in sub-section (2) that any amount standing to the credit of a member in the Fund or of an exempted employee in a Provident Fund at the time of his death and payable to his nominee under the Scheme or the rules of the Provident Fund shall, subject to any deduction authorized by the said scheme or rules, vest in the nominee and shall be free from any debt or other liability incurred by the deceased or the nominee before the death of the member or of the exempted employee and shall also not be liable to attachment under any decree or order of any Court. There is a statutory vesting of the fund on dependents after the death of the subscriber which on such vesting becomes absolute property of dependent and cannot be held to have inherited by dependent. The above provision under the insurance Scheme as they apply in relation to any amount payable under the insurance Scheme, as they apply in relation to any amount payable out of the fund.

6.5.2 Power to Exempt

Section 17 authorizes the appropriate Government to grant exemptions to certain establishments or persons from the operation of all or any of the provisions of the Scheme. Such exemption shall be granted by notification in the official Gazette subject to such conditions as may be specified therein.

6.6 Compliance under the Act

1. The establishment has duly paid its contribution to all schemes under the Act during the financial year.
2. The establishment has set up a separate Provident Fund Trust and has complied with the provisions of the act during the financial year.
3. The establishment has sent a consolidated return with fifteen days of the commencement of the Employees' Provident Fund Scheme to the commissioner during the financial year.
4. During the year under review, the establishment has duly filed returns with the commissioner in respect of employees qualifying to become members of the Employees' Provident Fund and employees leaving the service during the financial year.
5. The establishment has sent a consolidated return within three months of the commencement of the Employees Pension Scheme to the commissioner.
6. There was no prosecution initiated against or show cause notices received by the company and no fines or penalties or any other punishment was imposed on the Company during the financial year, for offences under the Act.

6.7 Summary

The Employee's Provident Funds and Miscellaneous Provisions Act, 1952 is a welfare legislation enacted for the purpose of institute a provident fund for employees working in factories and other establishments. The act aims at providing social security and timely monetary assistance to industrial employees and their families when they are in distress and/or unable to meet family and social obligations and to protect them in old age, disablement, early death of the bread winner and in some other contingencies. The act is applicable to factories and other classes of establishments engaged in specific industries classes of establishments employing 20 or more persons. The Central government is empowered to apply the provisions of this act to any establishment employing less than 20 persons after giving not less than two months notice of its intent to do so by a notification in the official gazette. Once the act has been made applicable it does not cease to be applicable even if the number of employees falls below 20. Thus, membership of the fund is compulsory for employees drawing a pay not exceeding Rs. 6500 per month (at the time of joining). Statutory Protection is provided to the amount of contribution to provident fund under section 10 from attachment to any court decree. The act authorizes the appropriate Government to grant exemptions to certain establishments or persons from the operation of all or any of the provisions of the Scheme.

6.8 Self Assessment Questions

1. Describe the applicability and not-applicability of the Employee's Provident Funds and Miscellaneous Provisions Act, 1952 to establishments and the employees.
2. Explain the Schemes provided under the Employees' Fund and Miscellaneous Provisions Act.
3. Whether payment of contribution has priority over other debts?
4. Explain the scope and objective of Employees' Provident Fund and Miscellaneous Provisions Act.
5. Write Short notes on (i) Employer (ii) Employee.

6.9 Reference Books

- N.D. Kapoor (2011) : 'General and Commercial Law Sultan Chand and Sons, 2011, New Delhi.
- R.L. Nolakha, (2011) : 'Business Regulatory Framework', R.B.D. Publication, 2011.
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- Taxmann's Labour Laws, 2007

Unit – 7 : The Workmen’s Compensation Act, 1923

Structure of Unit

- 7.0 Objectives
- 7.1 Introduction
- 7.2 Scope and Coverage
- 7.3 Employer’s Liability for Compensation
- 7.4 Compensation
- 7.5 Obligations of Employers and Workmen
- 7.6 Authority
- 7.7 Appeals and Penalties
- 7.8 Self Assessment Questions
- 7.9 Reference Books

7.0 Objectives

The objectives of this unit are to:

- Know the objectives and scope of the Act.
- Familiarise with the important terminology and definitions.
- Discuss the salient features of the Act.

7.1 Introduction

The beginning of social security in India was effective with the passing of the Workmen's Compensation Act in 1923. Prior to 1923 it was almost impossibility on the part of an injured workman to recover damage or compensation for any injury sustained by him in the ordinary course of his employment. Of course, there were rare occasions when the employer was liable for the same under the common law for his own personal negligence. The dependents of a deceased workman could, in rare cases, claim damages under the Indian Fatal Accidents Act, 1885, if the accident was due to the wrongful act, neglect or fault of the person who caused the death. In 1921, the government made proposals for the grant of compensation and circulated them for opinion. The proposals received general support and as a result, the Workmen's Compensation Act was passed in March 1923 and was put into force on July 1, 1924. Subsequently, there were a number of amendments in the Workmen's Compensation Act. The Workmen's Compensation Act, 1923 has been renamed as "The Employees' Compensation Act, 1923" and the term "workman" or "workmen" as "employee" and "employees," for making the Act gender neutral. For the words "workman" and "workmen" in the Principal Act, the words "employee" and "employees" have been substituted respectively. The amendment has been brought about by the Workmen's Compensation (Amendment) Act; 2009 w.e.f January 18, 2010. The amendments applicable to this study lesson have been incorporated at relevant places.

7.2 Scope and Coverage

7.2.1 Scope

The object of the Act is to impose an obligation upon employers to pay compensation to workers for accidents arising out of and in the course of employment. The scheme of the Act is not to compensate the workman in lieu of wages but to pay compensation for the injury caused. The Act extends to the whole of India and applies to any person who is employed, otherwise than in a clerical capacity, in railways, factories, mines, plantations, mechanically propelled vehicles, loading and unloading work on a ship, construction, maintenance and repairs of roads and bridges, electricity generation, cinemas, catching or training of wild elephants, circus, and other hazardous occupations and employments specified in Schedule II the Act.

Under Sub-Section (3) of Section 2 of the Act, the state governments are empowered to extend the scope of the Act to any class of persons whose occupations are considered hazardous after giving three months' notice in the official gazette. The Act, however, does not apply to members serving in the Armed Forces of Indian Union, and employees covered under the provisions of the Employees' State Insurance Act, 1948 as disablement and dependents' benefit is available under this Act.

7.2.2 Definitions

Some important definitions are given below-

Dependant

Section 2(1)(d) of the Act defines "dependant" as to mean any of the following relatives of a deceased employee, namely:

- (i) A widow, a minor legitimate or adopted son, an unmarried legitimate or adopted daughter, or a widowed mother, and
- (ii) If wholly dependent on the earnings of the employee at the time of his death, a son or a daughter who has attained the age of 18 years and who is infirm; and
- (iii) If wholly or in part dependent on the earnings of the employee at the time of his death:
 - (a) A widower,
 - (b) A parent other than a widowed mother,
 - (c) A minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or illegitimate or adopted if married and a minor, or if widowed and a minor,
 - (d) A minor brother or an unmarried sister, or a widowed sister if a minor,
 - (e) A widowed daughter-in-law,
 - (f) A minor child of a pre-deceased son,
 - (g) A minor child of a pre-deceased daughter where no parent of the child is alive or
 - (h) A paternal grandparent, if no parent of the employee is alive.

Employee

The definition of workmen has been replaced by the definition of employee. The term "employee" has been inserted by the Workmen's Compensation (Amendment) Act, 2009 under a new clause (dd) in Section 2 of the Act. Clause (n) defining "workman" has been omitted.

Under Section 2(dd) "employee" has been defined as follows:

"Employee" means a person, who is-

- (i) A railway servant as defined in clause (34) of section 2 of the Railways Act, 1989 (24 of 1989), not permanently employed in any administrative district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II; or
- (ii)
 - (a) A master, seaman or other members of the crew of a ship,
 - (b) A captain or other member of the crew of an aircraft,
 - (c) A person recruited as driver, helper, and mechanic, cleaner or in any other capacity in connection with a motor vehicle.
 - (d) A person recruited for work abroad by a company, India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India; or
- (iii) Employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to any employee who has been" injured shall, where the employee is dead, include a reference to his dependants or any of them;
- (iv) Clause (n) shall be omitted.

Employer

The following persons are included in the definition of "employer":

- (a) Any body of persons incorporated or not;
- (b) Any managing agent of the employer;
- (c) Legal representative of a deceased employer. Thus, one who inherits the estate of the deceased is made liable for the payment of compensation under the Act. However, he is liable only upto the value of the estate inherited by him;
- (d) Any person to whom the services of a employee are temporarily lent or let on hire by a person with whom the employee has entered into a contract of service or apprenticeship. (Section 2(1)(e)]

Seaman

"Seaman" under Section 2(1)(k) means any person forming part of the crew of any ship but does not include the master of the ship.

Wages

According to Section 2(1)(m), the term "wages" include any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer to an employee towards any pension or provident fund or a sum paid to employee to cover any special expenses entailed on him by the nature of his employment.

Disablement

The Act does not define the word Disablement. It only defines the partial and total disablement. After reading the partial or total disablement as defined under the Act one may presume that disablement is loss of earning capacity by an injury which depending upon the nature of injury and percentage of loss of earning capacity will be partial or total. The Act has classified disablement into two categories, viz.

(i) Partial disablement

Partial disablement can be classified as temporary partial disablement and permanent partial disablement.

- (a) Where the disablement is of a temporary nature: Such disablement as reduces the earning capacity of an employee in the employment in which he was engaged at the time of the accident resulting in the disablement; and
- (b) Where the disablement is of a permanent nature: Such disablement as reduces for all time his earning capacity in every employment which he was capable of undertaking at the time. [Section 2(1)(g)] But every injury specified in Part II of Schedule I shall be deemed to result in permanent partial disablement.

(ii) Total disablement:

Total disablement can also be classified as temporary total disablement and permanent total disablement. "Total disablement" means, such disablement whether of a temporary or permanent nature, which incapacitates an employee for all work which he was capable of performing at the time of accident resulting in such disablement. Provided further that permanent total disablement shall be deemed to result from every injury specified in Part I of Schedule I or similarly total disablement shall result from any combination of injuries specified in Part II of Schedule I, where the aggregate percentage of loss of earning capacity, as specified in the said Part II against these injuries amount to one hundred per cent or more. [Section 2(1)(I)]

7.3 Employer's Liability for Compensation

(i) **Personal injury:**

There must be personal injury caused to an employee. Normally, Injury implies physical or bodily injury caused by an accident. However, such personal injury will also include nervous shock or break-down or mental strain.

(ii) **Accident :**

The personal injury must be caused by an "accident". The term "accident" has not been defined in the Act but its meaning has been sufficiently explained in number of decided cases. The expression accident must be construed to its popular sense. It has been defined as a mishap or an untoward event which is not expected or designed. What the Act intends to cover is what might be expressed as an accidental injury.

(iii) **Arising out of employment and in the course of employment :**

To make the employer liable, it is necessary that the injury is caused by an accident which must be raised out of and in the course of employment.

Arising out of employment :

The expression "arising out of employment" suggests some causal connection between the employment and the accidental injury. The cause contemplated is the proximate cause and not any remote cause. Thus, where a workman suffers from heart disease and dies on account of strain of work by keeping continuously standing or working, held that the accident arose out of employment (*Laxmibai Atma Ram v. Bombay Port Trust*, AIR 1954 Bom.180). Generally if an employee is suffering from a particular disease and as a result of wear and tear of his employment he dies of that disease, employer is not liable. But if the employment is contributory cause or has accelerated the death that the death was due to disease coupled with the employment, then the employer would be liable as arising out of the employment.

Arising in the course of employment :

The expression "in the course of employment" suggests the period of employment and the place of work. In other words, the workman, at the time of accident must have been employed in the performance of his duties and the accident took place at or about the place where he was performing his duties.

The expression "employment" is wider than the actual work or duty which the employee has to do. It is enough if at the time of the accident the employee was in actual employment although he may not be actually turning out the work. Even when the employee is resting, or having food, or taking his tea or coffee, proceeding from the place of employment to his residence, and accident occurs, the accident is regarded as arising out of and in the course of employment.

Employment - The word "employment" has a wider meaning than work. A man may be in course of his employment not only when he is actually engaged in doing something in the discharge of his duty but also when he is engaged in acts belonging to and arising out

of it (*Union of India v. Mrs. Noorjahan*, 1979 Lab. I.C. 652). For the expression "accident arising out of and in the course of employment" the basic and indispensable ingredient is its unexpectedness. The second ingredient is that the injury must be traceable within reasonable limits, to a definite time, place or occasion or cause. The Act should be broadly and liberally constructed in order to effectuate the real intention and purpose of the Act.

Theory of notional extension of employment

To make the employer liable it is necessary that the injury caused by an accident must have arisen in the course of employment. It means that the accident must take place at a time and place when he was doing his master's job.

It is well settled that the concept of "duty" is not limited to the period of time the workman actually commenced his work and the time he downs his tools. It extends further in point of time as well as place. But there must be nexus between the time and place of the accident and the employment. If the presence of the workman concerned at the particular point was so related to the employment as to lead to the conclusion that he was acting within the scope of employment that would be sufficient to deem the accident as having occurred in the course of employment (*Weaver v. Tredegar Iron and Coal Co. Ltd.*, (1940) 3 All, ER 15). It is known as doctrine of notional extension of employment; whether employment extends to the extent of accident depends upon each individual case.

A workman while returning home after duty was murdered within the premises of the employer. It was held that there was casual and proximate connection between the accident and the employment. Since the workman was on spot only for his employment and his wife is entitled for compensation (*Naima Bibi v. Lodhne Colliery (1920) Ltd.*, 1977 Lab. I.C. NOC 14). If an employee in the course of his employment has to be in a particular place by reason where he has to face a peril which causes the accident then the casual connection is established between the accident and the employment (*TNCS Corporation v. Poonamalai*, 1994 II LLN 950).

When employer is not liable

In the following cases, the employer shall not be liable:

- (i) When the injury does not result in disablement for a period exceeding 3 days.
- (ii) When the injury not resulting in death or permanent total disability is due to any of the following reasons:
 - (a) The employee was at the time of accident, under the influence of drink or drugs, or
 - (b) The employee willfully disobeyed an order expressly given or a rule expressly framed for the purpose of securing safety of workers, or
 - (c) The employee willfully disregards or removes any safety guards or safety devices which he knew to have been provided for the safety of the employee.

Thus, where a employee dies due to an accident arising out of and in the course of employment, it cannot be pleaded that death was due to any of the reasons stated from (a) to (c)(R.B. Moondra & Co. v. Mst. Bhanwari, AIR, 1970 Raj. 111).

Suit for damages in a Court barred

Under Section 3(5), an employee is not entitled to any compensation under the Workmen's Compensation Act, 1923, if he has instituted, in a Civil Court, a suit for damages against the employer or any other person.

Similarly, an employee is prohibited from instituting a suit for damages in any court of law, (a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or (b) if the employee and the employer have entered into an agreement for the payment of compensation in accordance with the provisions of this Act.

Employer's Liability when Contractor is Engaged

Section 12 of the Act envisages the employer's liability to pay compensation to a contractor.

(i) Sometimes, employer may engage a contractor instead of employing his own employee for the purpose of doing any work in respect of his trade or business. Such a contractor then executes the work with the help of the employee engaged by him. If any injury is caused by an accident to any of these employees, the employer cannot be held liable because they are not employed by him and hence are not his employees. But now Section 12(1) makes the employer liable for compensation to such employees hired by the contractor under following circumstances:

(a) The contractor is engaged to do a work which is part of the trade or business of the employer (called principal).

(b) The employees were engaged in the course of or for the purpose of his trade or business.

(c) The accident occurred in or about the premises on which the principal employer has undertaken or undertakes to execute the work concerned.

The amount of compensation shall be calculated with reference to the wages of the employee under the employer by whom he is immediately employed.

(ii) According to Section 12(2), where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor or any other person from whom the employee could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section, he shall be entitled to be indemnified by any person standing to him in relation of a contractor from whom the employee could have recovered compensation and all questions as the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

(iii) The above provision, however, does not prevent an employee from recovering compensation from the contractor instead of the employer, i.e., the Principal. [Section 12(3)]

(iv) This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken, or usually undertakes, as the case may be to execute the work or which are otherwise under his control or management. [Section 12(4)].

7.4 Compensation

(i) Meaning of compensation

"Compensation" has been defined under Section 2(1)(c) of the Act to mean compensation as provided for by this Act. The meaning of the term will be more clear in the following paragraphs.

(ii) Amount of compensation

Amount of compensation is payable in the event of an employee meeting with an accident resulting into temporary or permanent disability or disease as stated in Schedule II and III in terms of Section 4 of the Act, read with Schedule IV.

Schedule II contains a list of persons engaged in different employments/operations specified therein who are covered by the definition of employee and entitled to compensation e.g. a person employed for loading/unloading of materials in a factory or ship, persons employed in work incidental or connected with manufacturing process. Schedule III contains a list of occupational diseases which if contracted while in employment entitles a employee to compensation such as disease caused by lead, mercury, etc. Schedule IV lays down the relevant factor (a certain figure) related to the age of the employee at the time of death, injury or accident by which wages are multiplied to arrive at compensation.

(iii) Compensation to be paid when due and penalty for default

Time of payment of compensation: Section 4A of the Act provides that compensation under Section 4 shall be paid as soon as it falls due. Compensation becomes due on the date of death of employee and not when Commissioner decides it (Smt. Jayamma v. Executive Engineer, P.W.D. Madhugiri Division, 1982 Lab. I.C. Noc 61).

The employer is required to deposit or to make provisional payment based on the extent of liability which he accepts with the Commissioner or hand over to the employee as the case may be even if the employer does not admit the liability for compensation to the extent claimed.

Where an employer is in default in paying compensation, he would be liable to pay interest thereon and also a further sum not exceeding fifty percent of such amount of compensation as penalty. The interest and the penalty stated above is to be paid to the employee or his dependent as the case may be.

(iv) Method of calculating wages

Monthly wages mean the amount of wages deemed to be payable for a months service and calculated as follows:

(a) Where the employee has, during a continuous period of not less than 12 months immediately preceding the accident, been in the service of the employer who is liable to pay compensation, the monthly wages of the employee shall be 1/12th of the total wages which have fallen due for payment to him by the employer in the last 12 months of that period.

(b) Where the whole of the continuous period of service was less than one month, the monthly wages of the employee shall be the average monthly amount which during the 12 months immediately preceding the accident was being earned by an employee employed on the same work by the same employer, or, if there was no employee so employed, by an employee employed on similar work in the same locality.

(c) In other cases, including cases in which it is not possible to calculate the monthly wages under clause (b), the monthly wages shall be 30 times the total wages earned in respect of the last continuous period of service, immediately preceding the accident from the employer who is liable to pay compensation, divided by the number of days comprising such period. (Section 5). A period of service shall be deemed to be continuous which has not been interrupted by a period of absence from work exceeding 14 days.

(v) Review of half-monthly payment

Section 6 of the Act provides that any half-monthly payment payable under this Act, either under an agreement between the parties or under the order of a Commissioner may be reviewed by the Commissioner on the application either of the employer or of the employee accompanied by the certificate of a qualified medical practitioner that there has been a change in the condition of the employee or subject to rules made under this Act, an application made without such certificate.

Any half monthly payment, may on review, under the above provisions be continued, increased, decreased or ended, or if the accident is found to have resulted in permanent disablement, be converted to the lump sum to which the employee is entitled less any amount which he has already received by way of half-monthly payments.

(vi) Commutation of half monthly payments

Section 7 of the Act provides that any right to receive half-monthly payments may, by agreement between the parties or if the parties cannot agree and the payments have been continued for not less than 6 months on the application of either party to the Commissioner, be redeemed by the payment of a lump sum of such amount as may be agreed to by the parties or determined by the Commissioner as the case may be.

(vii) Distribution of compensation

No compensation has to be paid in respect of an employee whose injury has resulted in death and no payment of lump sum compensation to a woman or a person under a legal disability except by deposit with the Commissioner. The employer cannot make payment of compensation directly to the deceased legal heirs. It is the Commissioner who decides on the distribution of compensation to the legal heirs of the deceased employee. (Sec.8)

Right to claim compensation passes to heirs of dependant as there is no provision under the Act to this effect (AIR 1937 Cal. 496). Payment of ex-gratia or employment on compassionate grounds will not be employers' liability (LAB IC 1998 JK 767).

(viii) **Compensation not to be assigned etc.**

Save as provided by this Act, no lump sum or half-monthly payment payable under this Act can be assigned, or charged or attached or passed to any person other than the employee by operation of law nor can any claim be set-off against the same. (Section 9)

(ix) **Compensation to be first charge**

The compensation money shall bear the first charge on the assets transferred by the employer. It says that where an employer transfers his assets before any amount due in respect of any compensation, the liability whereof accrued before the date of transfer has been paid, such amount shall, notwithstanding any thing contained in any other law for the time being in force, be a first charge on that part of the assets so transferred as consists of immovable property. (Section 14A)

(x) **Contracting out of compensation**

Section 17 provides that any contract or agreement whereby an employee relinquishes any right of compensation from the employer for personal injury arising out of or in the course of the employment shall be null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under this Act. (Section 17)

7.5 Obligations of Employers and Workmen

Employers

1. Pay compensation for the employment injury or deposit the amount with the Commissioner for Workmen's Compensation as soon as it falls due.
2. Do not deduct from the compensation amount any expenses incurred by the workman for his medical treatment.
3. Notify to the Commissioner, or any other authority specified by the Government for this purpose, any accident occurring on his premises which results in death or serious bodily injury, explaining the circumstances attending death or serious injury within seven days of occurrence.
4. Submit an annual return to the government specifying the number of injuries in respect of which compensation has been paid by the employer during the previous year, and the amount of such compensation together with such other particulars as may be required by the authority concerned.
5. Arrange to get registered any agreement made with the worker or his dependents settling the amount of lump-sum payable as compensation, or by way of redemption of half-monthly payments on account of temporary disablement, with the Commissioner.

Workmen

2. Give notice of the accident and the occupational disease in the prescribed form for claiming compensation.
3. Submit to medical examination by a qualified medical practitioner and follow the treatment and instructions given by him.

7.5.1 Administration

The Act is administered by state governments which are required to appoint Commissioners for Workmen's Compensation. The functions of the Commissioner include:

- i) Settlement of disputed claims;
- ii) Disposal of cases of injuries involving death; and
- iii) Revision of periodical payments (Section 20).

The Commissioner may recover as an arrear of land revenue any amount payable by any person under this Act, whether under an agreement for the payment of compensation or otherwise (Section 31). The Act made provision for the framing of the rules by the State and Central Government and also their publication (Sections 32-36).

7.6 Authority

It is provided that all cases of fatal accidents should be brought to the notice of the Commissioner for Workmen's Compensation; and if the employer admits the liability, the amount of compensation payable should be deposited with him. Where the employer disclaims his liability for compensation to the extent claimed, he has to make provisional payment based in the extent of liability which he accepts: and such payment must be deposited with the Commissioner or paid to the workman. In such cases the Commissioner may, after such enquiry as he thinks fit; inform the dependants that it is open to them to prefer a claim and may give such other information as he thinks fit. Advances by the employers against compensation are permitted only to the extent of an amount equal to 3 months' wages. The employer is required to file annual returns giving details of the compensation paid, the number of injuries and other particulars (Section 4A, 8 and 16).

The amount deposited with the Commissioner for Workmen's Compensation is payable to the dependants of the workman. The amount of compensation is to be apportioned among the dependants of the deceased Workman or any of them in such proportion as the Commissioner thinks fit (Sections 2 and 8).

If an employer is in default, in paying the compensation within one month from the date it fell due, the Commissioner may direct the recovery of not only the amount of the arrears but also a simple interest at the rate of six per cent per annum on the amount due. If, in the opinion of the Commissioner, there is no justification for the delay, an additional sum, not exceeding 50 per cent of such amount, may be recovered from the employer by way of penalty (Section 4-A).

7.6.1 Notice and Claim

(a) No claim for compensation shall be entertained by a Commissioner unless the notice of the accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before him within two years of the occurrence of the accident or, in case of death, within two years from the date of death. (Section 10)

Provided that:

(i) Where the accident is the contracting of a disease the accident shall be deemed to have occurred on the first of the days during which the employee was continuously absent from work in consequence of the disablement caused by the disease;

(ii) In case of partial disablement due to the contracting of any such disease and which does not force the employee to absent himself from work, the period of two years shall be counted from the day the employee gives notice of the disablement to his employer;

(iii) If an employee who, having been employed in an employment for a continuous period specified under sub-section 3(2) in respect of that employment ceases to be so employed and develops symptoms of an occupational disease peculiar to that employment within two years of the cessation of employment, the accident shall be deemed to have occurred on the day on which the symptoms were first detected.

(iv) The want of or any defect or irregularity in a notice shall not be a bar to the entertainment of a claim:

(a) If the claim is preferred in respect of the death of an employee resulting from an accident which occurred in the premises of the employer, or at any place where the employee at the time of the accident was working under the control of the employer or of any person employed by him, and the employee died on such premises, or at such place, or on any premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurred, or

(b) If the employer or any one of several employers or any persons responsible to the employer for the management of any branch of the trade or business in which the injured employee was employed had knowledge of the accident from any other source at or about the time when it occurred.

(v) The Commissioner may entertain and decide any claim to compensation in any case notwithstanding that the notice has not been given, or the claim has not been preferred, in due time as provided in this sub-section, if he is satisfied that the failure to give the notice or prefer the claim, as the case may be, was due to sufficient cause.

(a) Every such notice shall give the name and address of the person injured and shall state in ordinary language the cause of the injury and the date on which the accident happened, and shall be served on the employer or upon any one of several

employers, or upon any person responsible to the employer for the management of any branch of the trade or business in which the injured employee was employed.

(b) The State Government may require that any prescribed class of employers shall maintain at their premises at which employees are employed a notice-book, in the prescribed form, which shall be readily accessible at all reasonable times to any injured employee employed on the premises and to any person acting bona fide on his behalf.

(c) A notice under this section may be served by delivering it at, or sending it by registered post addressed to the residence or any office or place of business of the person on whom it is to be served or, where a notice-book is maintained, by entry in the notice-book.

7.7 Appeals and Penalties

Appeals

An appeal shall lie to the High Court from the following orders of a Commissioner, namely:

- (a) An order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum;
 - (aa) An order awarding interest or penalty under Section 4A;
- (b) An order refusing to allow redemption of a half-monthly payment;
- (c) An order providing for the distribution of compensation among the dependants of a deceased employee or disallowing any claim of a person alleging himself to be such dependant;
- (d) An order allowing or disallowing any claim for the amount of an indemnity under the provisions of Sub-section (2) of Section 12; or
- (e) An order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions. (Section 30).

Penalties

Section 18A of the Act prescribes penalties for the contravention of the provisions of the Act which include fine up to Rs. 5,000. The following omissions attract this punishment under the Act:

- (a) Whosoever fails to maintain a notice book which he is required to maintain under Section 10(3); or
- (b) Whosoever fails to send to the Commissioner a statement of fatal accidents which he is required to send under Section 10A(1); or
- (c) Whosoever fails to send a report of fatal accidents and serious bodily injuries which he is required to send under Section 10B; or

- (d) Whosoever fails to make a return of injuries and compensation which he is required to make under Section 16.

No prosecution under Section 18A shall be instituted except by or with the previous sanction of the Commissioner and no court shall take cognizance of any offence under this section unless complaint is made within 6 months of the date on which the alleged commission of offence comes to the knowledge of the Commissioner.

7.8 Self-Assessment Questions

1. What is the object of the Workmen's Compensation Act, 1923?
2. What are the various benefits payable under the Act?
3. What are the circumstances under which the employer is not liable to pay compensation for injury to a workman?
4. What are the powers of the Commissioner for Workmen's Compensation?

7.9 Reference Books

- Bare Act on the Workmen's Compensation Act, 1923 (latest edition).
- Kumar, H.L., What Everybody Should Know About Labour Laws, Universal Book Traders, Delhi, 1995.
- Samant, S.R., Employer's Guide to Labour Laws, Labour Law Agency, Mumbai, 1999.
- O.P. Malhotra: "*The Law of Industrial Disputes*", 6th edition (2004)
- G.B. Pai: "*Labour Law in India*" (2001)
- P.L. Malik: "*K.D. Srivastava's Industrial Employment (Standing Orders) Act, 1946*" 4th edition (2000)
- P.L. Malik's: "*Industrial Law*", 21st edition (2008)
- S.C. Srivastava: "*Labour Law and Labour Relations : Cases and Materials*", 3rd edition, (2007)

Unit - 8: The Employees' State Insurance Act, 1948

Structure of Unit

- 8.0 Objectives
- 8.1 Introduction
- 8.2 Definitions
- 8.3 Contributions by Employers
- 8.4 Registration of Factories
- 8.5 Administration of Corporation
- 8.6 Benefits provided under the Act
- 8.7 Protection provided under the Act
- 8.8 Penalties and Damages provided under the Act
- 8.9 Case Law
- 8.10 Self-Assessment Questions
- 8.11 Reference Books

8.0 Objectives

The objectives of this unit are to:

- Know the object and scope of the Act
- How Act is providing Social Security to workers?
- Discuss the important provisions of the Act
- Know the selected case laws on the subject

8.1 Introduction

The Employees' State Insurance Act, 1948 provides for certain benefits to employees in case of sickness, maternity and employment injury and also makes provisions for certain other matters in relation to them. The Act has been amended by the Employees' State Insurance (Amendment) Act, 2010. The changes inserted in the Act by the aforesaid amendment have been incorporated at the relevant places in this study lesson.

The Act extends to the whole of India. The Central Government is empowered to enforce the provisions of the Act by notification in the Official Gazette, to enforce different provisions of the Act on different dates and for different States or for different parts thereof [Section 1(3)]. The Act applies in the first instance to all factories (including factories belonging to the Government) other than seasonal factories [Section 1(4)]. According to the provision of Section 1(4) of the Act, nothing contained in sub-section (4) of Section 1 shall apply to a factory or establishment belonging to or under the control of the Government whose employees are otherwise in receipt of benefits substantially similar or superior to the benefits provided under the Act. Section 1(5) of the Act empowers the appropriate Government to extend any of the provisions of the act to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise after giving one month's notice in the Official Gazette. However, this can be done by the appropriate Government, only in consultation with the Employees' State

Insurance Corporation set up under the Act and, where the appropriate Government is a State Government, it can extend the provisions of the Act with the approval of the Central Government. Under these enacting provisions, the Act has been extended by many State Governments to shops, hotels, restaurants, cinemas, including preview theatres, newspaper establishments, road transport undertakings, etc., employing 20 or more person.

8.2 Definitions

Appropriate Government (Sec 2) - Appropriate Government means the Central Government in respect of establishments under the control of the Central Government or a railway administration or a major port or oil-field and the State Government in all other cases.

Confinement - Confinement means labour resulting in the issue of a living child, or labour after twenty-six weeks of pregnancy resulting in the issue of a child whether alive or dead.

Contribution- Contribution means the sum payable to the corporation (i.e., Employees' State Insurance Corporation) by the principal employer in respect of an employee and includes any amount payable by or on behalf of the employee in accordance with the provisions of this Act.

Corporation - Corporation means the Employees² State Insurance Corporation set under this Act.

Dependant - There are three categories of dependants under the Act. The first category includes:

- (1) A widow;
- (2) A minor legitimate or adopted son;
- (3) An unmarried legitimate or adopted daughter;
- (4) A widowed mother.

For the above dependants It is not necessary that they should, in fact, be dependent upon the earnings of the deceased insured person.

For the dependants included in the second category, it is necessary that they must in fact, be wholly dependent upon the earnings of the insured person at the time of his death. The relatives include:

- (1) A legitimate or adopted son, who has attained the age of 18 years and is infirm;
- (2) A legitimate or adopted daughter who has attained the age of 18 years and is infirm.

Dependants of the third category may claim benefit under the Act provided they are wholly or in part dependant on the earnings of the deceased insured person at the time of his death.

The relatives include:

- (1) A parent other than a widowed mother,
- (2) A minor illegitimate son,
- (3) Unmarried illegitimate daughter.
- (4) Legitimate daughter if married and minor,
- (5) Adopted daughter if married and minor,
- (6) Illegitimate daughter if married and minor.
- (7) Legitimate daughter if widowed and minor,
- (8) Adopted daughter if widowed and minor
- (9) Illegitimate daughter if widowed and minor,
- (10) A minor brother.
- (11) An unmarried sister,
- (12) A widowed sister if a minor,
- (13) A widowed daughter-in-law,
- (14) A minor child of a predeceased son,
- (15) A minor child of a predeceased daughter where no parent of the child is alive, or.
- (16) A paternal grand-parent if no parent of the insured person is alive.

Duly appointment: Duly appointment means appointed in accordance with the provisions of this Act or with the rules or regulations made there under.

Employment Injury- The following are the ingredients of an employment injury:-

- (1) The injury must be personal to an employee.
- (2) The injury must be caused by an-
 - (i) Accident; or
 - (ii) Occupational disease.
- (3) The accident must arise out of and in the course of employment.
- (4) The employment must be insurable.

Employment - The concept of employment implies three essential elements: (i) Employer; (ii) Employee; and (iii) The contract of service. The employment is a contract of service the between the employer and employee where under the employee agrees to serve the employer subject to his control and supervision. Employment is not confined to actual work or place of work. It extends to all things which the workman is entitled by the contract of employment expressly or impliedly to do.

Employee - The definition of an employee as given in the Act is very comprehensive. The following are the ingredients of the definition of an 'employee' under the Act :

- (1) The employment of the person must be for wages and it should be :
 - (i) In an establishment;
 - (ii) In a factory; or
 - (iii) In connection with the work of the factory including any work connected with:
 - (a) Administration of the factory or establishment or any part, department or branch thereof; or

- (b) Purchase of raw materials for the factory or establishment; or
- (c) Distribution or sale of the product of a factory or establishment:

Employment - The expression 'employed' suggests two meanings (i) engaged or occupied, (ii) a contract of service between the workers and the owner of a factory, i.e., a relationship of master and servant. But the relationship of master and servant is not always necessary and there may be cases where there is no relationship of master and servant and yet such person would be an employee.

Factory - "Factory" means any premises including the precincts thereof;

- (a) Whereon ten or more persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing is being carried on with the aid of power or is ordinarily so carried on, or
- (b) Whereon twenty or more persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power or is ordinarily so carried on. But the following are not a factory: (a) A mine is not a factory; (b) A railway running shed.

Immediate Employer - Immediate employer in relation to employees employed by or through him means:

- (i) A person who has undertaken to execute work in the premises of factory or establishment to which this Act applies; or
- (ii) Who has undertaken to execute some work under the supervision of the principal employer or his agent.
- (iii) That the work undertaken must be either in whole or in part of any work-
 - (a) Which is ordinarily part of the work of the factory or establishment of the principal employer; or
 - (b) Which is preliminary to the work carried on in, or incidental to, the purpose of, any such factory or establishment?

Insured person - This definition has the following ingredients:

- (1) Any person who is or was an employee in respect of whom contributions are or were payable under this Act; and
- (2) Any person who is entitled to any of the benefits provided by this Act.

8.3 Contributions by Employers

The main sources of finance are the contributions from employers and employees and one-eighth share of expenses by State Governments towards the cost of medical care. Employees' contribution has to be calculated individually for each employee at 1.75 per cent of the wages' paid/payable for every wage period. The employers' contribution, however, may be calculated at the rate of 4.75 per cent of the total wages paid to all the employees covered under the ESI Scheme in each wage period, rounded to the next higher multiple of five paise. The total value of the combined employers' and the

employees' share has to be deposited in the State Bank of India or in any other authorised bank or branch through a challan in quadruplicate as per the Performa on or before the 21st of the month following the calendar month in which the wages fall due. An employer who fails to pay his contribution within the periods specified shall be liable to pay interest and damages for late payment under Section 85(B) of the Act. The Act has laid down the purposes for which the fund may be expended. The accounts of the Corporation shall be audited by auditors appointed by the Central Government. Employees whose average daily wages below Rs.40/- are exempted from payment of their contribution; only the employer's contribution will be payable at 4.75 per cent in respect of such employees.

"Contribution period" and "benefit period" is fixed for the purpose of paying contributions and deriving benefits under the Act. In respect of the contribution period from 1st April to 30th September, the corresponding benefit period shall be from 1st January of the year following, to 30th June, and in respect of the contribution period from 1st October to 31st March of the year following, the corresponding benefit period shall be from 1st July to 31st December of the year following. In the case of a newly employed person, the first contribution period shall commence from the date, of his employment, and the corresponding first benefit period shall commence on the expiry of 9 months from the said date (Rule 2 and Regulation 4). The daily rate at which sickness benefit is payable to an insured employee during the period of his sickness is called "standard benefit rate".

8.3.1 Registration of Factories and Establishments under this Act

Section 2A of the Act lays down that every factory or establishment to which this Act applies shall be registered within such time and in such manner as may be specified in the regulations made in this behalf.

Employees' State Insurance

Section 38 of the Act makes compulsory that subject to the provisions of the Act all the employees in factories or establishments to which this Act applies shall be insured in the manner provided by this Act. Such insured persons shall pay contributions towards Insurance Fund through their employers who will also pay their own contribution. Such insured persons are entitled to get certain benefits from that fund which shall be administered by the Corporation. Any dispute will be settled by the Employees' Insurance Court.

8.3.2 Administration of Corporation

The Scheme is administered by a corporate body called the Employees' State Insurance Corporation. It comprises members representing vital interest groups like employees, employers, the parliament, central and state governments and medical profession. This broad based body is primarily responsible for policy planning, decision making and oversees the functioning of the scheme through a Standing Committee drawn from the main corporate body. The Corporation is headed by Union Minister of Labour as its Chairman.

The chief executive officer of the Corporation is its Director General, who is also an ex-officio member of the Corporation and its Standing Committee. He is responsible for the formulation of policy, over-all supervision, co-ordination and liaison with Central and State Governments. The ESIC has set up a network of regional and local offices all over the country for the implementation of the Scheme. Each regional office is under the charge of Regional Director. The Regional Office maintains all the records of insured persons within its area and administers local offices. The medical benefit is administered by the concerned state governments except in Delhi and Noida area of Uttar Pradesh where the Corporation runs the medical units directly.

8.4 Benefits under the Act

All the Benefits are paid in cash except medical which is given in kind or treatment.

The Benefits provided under the scheme are:

(1) Sickness and Extended Sickness Benefit: For sickness occurring during any period, an insured person is entitled subject to contributory conditions to receive sickness cash benefits at the standard benefit rate for a period of 91 days in any two consecutive benefit periods. Sickness benefit is not paid for an initial waiting period of 2 days unless the insured person falls sick again and is certified sick within 15 days of the last spell in which sickness benefit was paid. An insured person suffering from any special long-term ailments like tuberculosis, leprosy, mental diseases, and so on is eligible for extended sickness benefit at the rate of 40 percent more than the sickness benefit rate rounded to the next higher multiple of 5 paise. After exhausting the sickness benefit upto 91 days an insured person suffering from tuberculosis, cancer, mental and malignant diseases, paraplegia, hemiplegic, and other specified long-term diseases is entitled to average daily wage for a further period of 124/309 days provided he has been in continuous employment for a period of 2 years or more in a factory or establishment to which the benefit provisions of the Act apply.

The Director General has been empowered to enhance the duration of extended sickness benefit beyond the present limit of 400 days (91 days of sickness benefit plus 309 days of extended sickness benefit) to a maximum period of two years in deserving cases duly certified by a medical board. An insured person is paid cash assistance at practically full wage rate for 7 days for vasectomy and 14 days for tubectomy operations. This is paid in addition to the usual sickness benefit.

(2) Maternity Benefit: For entitlement to maternity benefit the insured woman should have contributed for 80 days in the immediately preceding two consecutive contribution periods corresponding the benefit period in which the confinement occurs or is expected to occur. An insured woman is entitled to maternity benefit at double the standard benefit rate. This is practically equal to full wages for a period of 12 weeks of which not more than 6 weeks shall precede the expected date of confinement. Additional maternity benefit is given in case of miscarriage for a period of 6 weeks immediately following the date of miscarriage. In case of sickness arising out of pregnancy, confinement, premature

birth of child or miscarriage, an additional benefit is given for a period not exceeding one month. Where the insured woman dies during her confinement or during the period of 6 weeks immediately following her confinement for which she is entitled to maternity benefit and leaves behind, in either case the child, maternity benefit is payable for whole of that period; but if the child dies during the said period, then to the person nominated by the insured woman, for the days up to and including the day of death of the child. Failing such a nominee, the legal representative of the said deceased woman is entitled to the payment.

(3) Disablement Benefit: If a member suffers an injury in course of his employment, he will receive free medical treatment and temporary disablement benefit in cash which is about 70 per cent of the wages as long as temporary disablement lasts, provided that the temporary disablement has lasted for not less than 3 days, excluding the day of accident. In case of permanent total disablement, the insured person will be given life pension at full rate, i.e., about 70 per cent of his wages, while in cases of partial permanent disablement a portion of it will be granted as life pension. The benefit is paid for Sundays as well. At the option of the beneficiary the permanent disablement pension can be commuted to a lump sum payment. Beginning from 1.1.1980, rehabilitation allowance at standard benefit rate is paid to disabled insured persons for the period they remain admitted in the artificial limb centre for fixation, repair or replacement of the artificial limbs.

(4) Dependents' Benefit: The dependents' benefit consists of timely help to the eligible dependents of an insured person who dies as a result of an accident or an occupational disease arising out of and in the course of employment. Pension at the rate of 40 percent, more than the standard benefit rate shall be paid periodically to widow and his children. The rate is known as full rate. The widow/ widows share is 3/5th of the benefit and the legitimate or adopted son and daughter's share is 2/5th each of the benefits. If the total benefit so divided exceeds the full rate, there is a proportionate reduction in the respective shares of the beneficiaries. In their absence, a pension may be paid to other dependents. It will be available to the widow for life time or until she marries, to sons and unmarried daughters up to the age of 18 without any proof of education and to infirm or wholly dependent offspring as long as the infirmity lasts. Where neither a widow nor a child is left, the dependents' benefit is payable to a dependant parent or grandparent for life equivalent to 3/ 10ths of the full rate and if there are two or more parents or grandparents the amount payable to them shall be equally divided between them.

(5) Funeral Benefit: This benefit was introduced in the year 1968. Accordingly, an amount not exceeding Rs. 1,500 is payable as funeral benefit to the eldest surviving member of the family of the deceased insured person. When, however, the insured person did not have a family or was not living with his family at the time of his death, it is payable to the person who actually incurs the expenditure on the funeral of the deceased insured person. The time limit for claiming the benefit is three months from the death of Insured person.

(6) Medical Benefit: The kingpin of the scheme is medical benefit which consists of medical attendance and treatment of insured persons and their families. Outpatient medical care under the scheme is provided either through service system i.e., dispensaries administered by full-time staff of the state governments or through panel system, i.e., part-time private medical practitioners, called insurance medical practitioners. This benefit has been divided into three parts:

(a) **Restricted Medical Care:** It consists of outpatient medical care at dispensaries or panel clinics. In these institutions, facilities of consultation with medical officers, supply of drugs, prenatal and post-natal care, family planning and immunization services are available. The beneficiaries are also entitled to call a doctor to their house to see a serious case.

(b) **Expanded Medical Care:** This consists of consultation with specialists and supply of medicines and drugs as may be prescribed by them. This also includes facilities for special laboratory tests and X-ray examinations.

(c) **Full Medical Care:** It consists of hospitalization facilities, services of specialists and drugs and diet as are required for in-patients. An insured person and members of his family are entitled to medical care of all the above three varieties immediately on becoming insured under the scheme.

Medical care continues to be available for a period of about 9 months, if contributions have been paid for half the number of days in a contribution period. Insured persons suffering from chronic ailments of long duration like tuberculosis, leprosy are eligible for medical treatment for a further period of one year. An insured woman and an insured person in respect of his wife shall be paid a sum of rupees two hundred and fifty per case as medical bonus if confinement occurs at a place where necessary medical facilities under the ESI Scheme are not available. Insured persons are also provided artificial limbs. All benefits forming part of medical benefit are provided free of any extra charges. It is administered by the respective state governments except in Delhi where the Corporation has its own network of hospitals and dispensaries. 7/8th of the expenditure on medical benefit is borne by the Corporation and 1/8th by the state governments. Over the years, medical care is claiming an increasingly large share of the total funds of the ESIC.

8.4.1 Protection provided under the Act

The employer cannot dismiss, discharge or otherwise punish an employee during the period he/she is in receipt of sickness benefit or maternity benefit, or of disablement benefit, or is under medical treatment for sickness, or is absent from work as a result of illness which arises out of pregnancy or confinement. Any notice of dismissal, discharge or reduction during the period specified above is invalid and inoperative.

An employer can discharge or punish an employee on due notice if:

- i) He/she has received temporary disablement benefit and remained absent for six months or more continuously;

- ii) He/she is under medical treatment for sickness, otherwise than T.B. or a disease arising out of pregnancy, and has remained absent continuously for six months or more; and
- iii) He/she is under medical treatment for T.B. or a malignant disease and has remained absent continuously for 18 months or more (Section 73 and Regulation 98).

8.4.2 Penalties and Damages

The Act provides for penalties and damages for various offences. It also provides that if any person commits any offence after having been convicted by the court, he will be punishable, for every such subsequent offence, with imprisonment for a term which may extend up to Rs. 2,000 or both. If the subsequent offence is for failure to pay any contribution, then for every such subsequent offence a person is liable to punishment for a term of imprisonment which may extend up to one year and which shall not be less than 3 months; and he will also be liable to pay a fine up to Rs. 4,000.

Any contribution due under the Act and not paid can be recovered through the District Collector under Section 45-B of the Act as arrears of land revenue. The employer can raise any dispute for adjudication in the Employees' Insurance Court of the area, set up under Section 74 of the Act.

Under Regulation 31-A, the employer is liable to pay interest at the rate of 6 per cent per annum for each day of default or delay in the payment of his contribution. In addition, under Section 85-B of the Act, the Corporation is empowered to recover damages from the employer who fails to pay the contribution or delays payment. The amount of damages, however, cannot exceed the amount of contribution. The damages can also be recovered as arrears of land revenue.

8.5 Case Law

1. ESI Court has jurisdiction to decide whether the benefits availed by the employees were more advantageous than those available under the ESI Scheme (R.D. ESIC vs. Narayan Chandra Raj Khewoo 1998 I LLJ 678 SC).
2. The definition of "wages" under Section 2(22) of the ESI Act will include among others incentive bonus or allowance, and contributions have to be paid for that amount (R.D.ESIC and Anr. vs. Enfield India Ltd. 1998 I LLJ 1070 SC).
3. Equipment maintenance department of hospital where repairing work to use equipment is carried on amounts to manufacturing process. Therefore, such department of the hospital is covered by the term "factory" under the ESI Act (Christian Medical College vs. ESIC 2001 I LLJ 18 SC).
4. Shop includes premises where any economic activity is carried on having nexus with purchase or sale of goods. Administrative office and different branches constitute single entity. Administrative office being a controlling and supervising

office falls within the definition of ‘shop’ under the ESI Act (Southern Agencies, Rajamundry vs. ESIC 2001 I LLJ 161 SC).

5. Production incentive paid quarterly is not “wages” under Section 2(22) of the ESI Act as it does not fall either under the first part of the Section as there is no agreement between the parties or under third party thereof as the actual payment is made quarterly which means at intervals exceeding two months (Whirlpool India Ltd. vs. ESIC 2000 I LLJ 1101 SC).
6. It is a statutory obligation on the employer to insure his employees. That being a statutory obligation, the date of commencement has to be from the date of employment of the employee. Payment or non-payment of contributions and action or non-action prior to or subsequent to the date of accident is really inconsequential (Bharagath Engineering vs. Ranganayaki and Anr. 2003 102 FJR 374 SC).

8.6 Self-Assessment Questions

1. Discuss the object and scope of the Employees’ State Insurance Act,1948.
2. What are the different kinds of benefits provided under the E.S.I. Act.
3. How is the Employees’ Insurance Court constituted and what are the matters to be decided by such a Court?

8.7 Reference Books

- The Employees’ State Insurance Act, 1948 - Bare Act
- Industrial Law - P.L. Malik
- Handbook of Industrial Law - N.D.Kapoor
- Labour & Industrial Laws (Legal Manual 2007) - Universal

Unit - 9 : The Maternity Benefits Act, 1961

Structure of unit

- 9.0 Objectives
- 9.1 Introduction
- 9.2 Payment of Maternity Benefits
- 9.3 Claim for Maternity Benefits and Payment
- 9.4 Provisions for Inspectors
- 9.5 Penalties
- 9.6 Cognizance of Offence
- 9.7 Summary
- 9.8 Reference Books

9.0 Objectives

After going through this unit you will be able to understand:

- Objectives and applicability of the Act
- Provisions related to maternity leave under the Act
- Provisions related to maternity payment under the Act
- Provisions related to inspectors under this Act
- Other maternity benefits under the Act

9.1 Introduction

The number of women employees working in any establishment is growing in the modern era. Resultantly, the importance of maternity leave and other maternity benefits are also increasingly being recognized. The maternity Benefit Act, 1961 regulates the employment of women in certain establishments before and after the birth of her child and provides maternity and other benefits to her. It intends to provide social justice to women workers.

The Maternity Benefits Act, 1961 aims at regulating employment of women employees all over the country. The object of maternity leave and benefit is to protect the dignity of motherhood by providing for the full and healthy maintenance of women and her newborn child when she is not working. It enables the women worker to make up her dissipated energy, nurse her child, preserve her efficiency as a worker and maintain her level of output when she comes back to work.

According to Section 2 the Act applies to:

- Every factory, mine or plantation (including those belonging to Government),
- An establishment engaged in the exhibition of equestrian, acrobatic and other performances, irrespective of the number of employees, and
- Every shop or establishment wherein 10 or more persons are employed or were employed on any day of the preceding 12 months.

The Maternity Benefit Act, 1961 regulates the employment of women in factories, mines, the circus industry, plantations and shops or establishments employing 10 or more persons except the employees who are covered under the Employees' State Insurance (ESI) for certain periods before and after child-birth and provides for maternity and other benefits.

9.2 Payment of Maternity Benefits

Under this act the employer is prohibited from knowingly employing a woman, 6 weeks immediately following the day of her delivery or miscarriage. (Section 4)

No pregnant woman shall be required by her employer to do any work during the period of one month immediately preceding the period of 6 months before the date of her expected delivery or during the period of six weeks if she does not avail the leave of absence under Section 6:

- any work which is of arduous nature;
- any work that may involve long hours of standing;
- any work which in any way is likely to interfere with normal development of foetus or may cause her miscarriage or may adversely affect her health.

The Act lay down that any women employed, whether directly or through any agency, for wages in any establishment is eligible to claim maternity benefits if she is pregnant and has worked for her employer for at least 80 days in the 12 months immediately preceding the date of her expected delivery (Section 5). A woman looking forward to maternity benefits could ask the employer to give her light work for a month. Such request should be made atleast 10 weeks before the date of her expected delivery. At that time she needs to produce a certificate confirming her pregnancy. (Section 5)

9.3 Claim of Maternity Benefits and Payment

A woman needs to give a written notice to the employer about 7 weeks before the date of her expected delivery regarding her absence period pre and post delivery. (Section 6).

- 1) Any woman entitled to maternity benefit under the provisions of this Act shall give notice in writing in to her employer, stating that her maternity benefit and any other amount to which she may be entitled under this Act may be paid to her or to such person as she may nominate in the notice and that she will not work in any establishment during the period for which she receives maternity benefit.
- 2) the case of a woman who is pregnant, such notice shall state the date from which she will be absent from work, not being a date earlier than six weeks from the date of her expected delivery.
- 3) Any woman who has not given the notice when she was pregnant may give such notice as soon as possible after the delivery.
- 4) On receipt of the notice, the employer shall permit such woman to absent herself from the establishment during the period for which she receives the maternity benefit.
- 5) The amount of maternity benefit for the period preceding the date of her expected delivery shall be paid in advance by the employer to the woman on production of

such proof as may be prescribed that the woman is pregnant, and the amount due for the subsequent period shall be paid by the employer to the woman within forty-eight hours of production of such proof as may be prescribed that the woman has been delivered of a child.

- 6) The failure to give notice under this section shall not disentitle a woman to maternity benefit or any other amount under this Act if she is otherwise entitled to such benefit or amount and in any such case an Inspector may either of his own motion or on an application made to him by the woman, order the payment of such benefit or amount within such period as may be specified in the order.
- 7) Leave with average pay for 6 weeks upto the delivery, including the day of delivery and 6 weeks immediately following the day of delivery (Section 5B).
- 8) Medical bonus of at least Rs.1000 extending to Rs. 20000 if the employer is unable to provide free medical care to the women employee (Section 8) (Amended on 15-04-2008).

9.3.1 Other Benefits

Benefits in Case of Death of a Pregnant Employee

If the woman entitled to maternity benefit dies before receiving the benefit or amount, the employer should pay such benefit or amount to the person nominated by the woman and in case there is no such nominee, then her legal representative. (Section 7) In such case the maternity benefit shall be payable only for the days up to and including the day of her death. When a woman, having delivered a child or dies during her delivery or during the period immediately following the date of her delivery for which she is entitled for the maternity benefit, leaving behind in either case the child, the employer shall be liable for the maternity benefit for that entire period but if the child also dies during the said period, then, for the days up to and including the date of the death of the child.

Miscarriage and Tubectomy Operations

In case of miscarriage or Tubectomy operation , on production of such proof a woman employee shall be entitled to leave with wages at the rate of maternity benefit, for a period of 6 weeks for miscarriage, immediately following the day of her miscarriage (Section 9) and 2 weeks for Tubectomy operation, immediately following the day of her Tubectomy operation (Section 9A).

Illness Arising Out of Pregnancy

A woman suffering from illness on account of miscarriage, medical termination of pregnancy, delivery, premature birth, on production of such proof a woman employee is entitled for further leave for 1 month in addition to the leave with wages at the rate of maternity benefit (Section 10).

Nursing Breaks

Every woman employee who has delivered a child and returns to duty after such delivery shall, in addition to the interval for rest allowed to her, be allowed in the course of her daily work two breaks of the prescribed duration for nursing the child until the child attains the age of fifteen months.(Section 11).

Dismissal during absence from Employment due to pregnancy

The Act prohibits dismissal or discharge or variation in conditions of service to the disadvantage of any pregnant women, or while she is absent due to reason under the Act. (Section 12). If a woman is discharged or dismissed at any time during her pregnancy, but have been entitled to maternity benefit or medical bonus, shall not have the effect of depriving her of the maternity benefit or medical bonus.

She can claim maternity benefit or medical bonus, even if discharged or dismissed during pregnancy, within sixty days from the date on which order of such deprivation or discharge or dismissal is communicated to her, appeal to such authority as may be prescribed, and the decision of that authority on such appeal, whether the woman should or should not be deprived of maternity benefit or medical bonus, or both, or discharged or dismissed shall be final. However, this shall not be applicable in case of dismissal for gross misconduct (Section 12).

9.4 Provisions for Inspectors

Appointment of Inspectors

The appropriate Government may, by notification in the Official Gazette, appoint such officers as it thinks fit to be Inspectors for the purposes of this Act and may define the local limits of the jurisdiction within which they shall exercise their functions under this Act (Section 14).

Powers and duties of Inspectors

Section 15 confers powers upon an Inspector. exercise all or any of the following powers is subject to such restrictions or conditions as may be prescribed, namely:-

- (a) enter at all reasonable times with such assistants, if any, being persons in the service of the Government or any local or other public authority , as he thinks fit, any premises or place where woman are employed or work is given to them in an establishment, for the purposes of examining any registers, records and notices required to be kept or exhibited by or under this Act and require their production for inspection;
- (b) examine any person whom he finds in any premises or place and who, he has reasonable cause to believe, is employed in the establishment:

Provided that no person shall be compelled under this section to answer any question or give any evidence tending to incriminate himself;

- (c) require the employer to give information regarding the names and addresses of women employed, payments made to them, and applications or notices received from them under this Act; and
- (d) take copies of any registers and records or notices or any portions thereof.

Inspectors to be public servants

Section 16 lay that every Inspector appointed under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

Powers of Inspector

Under section 17 the Inspector can direct certain payment to be made to

1. Any woman claiming that-
 - (a) maternity benefit or any other amount to which she is entitled under this Act and any person claiming that payment due under section 7 has been improperly withheld;
 - (b) her employer has discharged or dismissed her during or on account of her absence from work in accordance with the provisions of this Act, may make a complaint to the inspector.
2. The Inspector may, of his own motion or on receipt of a complaint referred to in sub- section (1), make an inquiry or cause an inquiry to be made and if satisfied that-
 - (a) payment has been wrongfully withheld, may direct the payment to be made in accordance with his orders;
 - (b) she has been discharged or dismissed during or on account of her absence from work in accordance with the provisions of this Act, may pass such orders as are just and proper according to the circumstances of the case. May make a complaint to the inspector.
3. Any person aggrieved by the decision of the Inspector under sub-section (2) may, within thirty days from the date on which such decision is communicated to such person, appeal to the prescribed authority.
4. The decision of the prescribed authority where an appeal has been preferred to it under sub-section (3) or of the Inspector where no such appeal has been preferred, shall be final.
5. Any amount payable under this section shall be recoverable by the Collector on a certificate issued for that amount by the Inspector as an arrear of land revenue.

Forfeiture of maternity benefit

If a woman works in any establishment after she has been permitted by her employer to absent herself under the provisions of section 6 for any period during such authorised absence, she shall forfeit her claim to the maternity benefit for such period. (Section 18)

Abstract of Act and rules to be exhibited

An abstract of the provisions of this Act and the rules made there under in the language or languages of the locality shall be exhibited in a conspicuous place by the employer in every part of the establishment in which women are employed.(Section 19).

Registers

Every employer shall prepare and maintain such registers, records and muster-rolls and in such manner as may be prescribed.(Section 20)

9.5 Penalties

Penalty for contravention of Act by employer

Section 21 of the Act imposes punishment/penalty on employer in following conditions:

1. If any employer fails to pay any amount of maternity benefit to a woman entitled under this Act or discharges or dismisses such woman during or on account of her absence from work in accordance with the provisions of this Act, he shall be punishable with imprisonment which shall not be less than three months but which may extend to one year and with fine which shall not be less than two thousand rupees but which may extend to five thousand rupees:

Provided that the court may, for sufficient reasons to be recorded in writing, impose a sentence of imprisonment for a lesser term or fine only in lieu of imprisonment.

2. If any employer contravenes the provisions of this Act or the rules made thereunder, he shall, if no other penalty is elsewhere provided by or under this Act for such contravention, be punishable with imprisonment which may extend to one year, or with fine which may extend to five thousand rupees, or with both:

Provided that where the contravention is of any provision regarding maternity benefit or regarding payment of any other amount and such maternity benefit or amount has not already been recovered, the court shall, in addition, recover such maternity benefit or amount as if it were a fine and pay the same to the person entitled thereto.

Penalty for obstructing Inspector

Section 22 lay down that if Anyone fails to produce on demand by the Inspector any register or document in his custody kept in pursuance of this Act or the rules made there under or conceals or prevents any person from appearing before or being examined by an Inspector shall be punishable with imprisonment which may extent to 1[one year, or with fine which may extend to five thousand rupees], or with both.

9.6 Cognizance of Offence

Cognizance of offence

Section 23 of this act prescribes that no prosecution shall be made under this Act without previous sanction of the Inspector. The provisions are as under:

1. Any aggrieved woman, an office-bearer of a trade union registered under the trade Unions Act, 1926 (16 of 1926) of which such woman is a member or a voluntary organisation registered under the Societies Registration Act, 1860 (21 of 1860) or an Inspector, may file a complaint regarding the commission of an offence under this Act in any court of competent jurisdiction and no such complaint shall be filed after the expiry of one year from the date on which the offence is alleged to have been committed.
2. No court inferior to that of a Metropolitan Magistrate or a Magistrate of the first class shall try any offence Under this Act.

Protection of action taken in good faith

Section 25 provides that no suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or of any rule or order made there under.

Power of Central Government to give directions

The Central Government may give such directions as it may deem necessary to a State Government regarding the carrying into execution of the provisions of this Act and the State Government shall comply with such directions (Section 25).

Power to exempt establishments

If the appropriate Government is satisfied that having regard to an establishment or a class of establishments providing for the grant of benefits which are not less favorable than those provided in this Act, it is necessary so to do, it may, by notification in the Official Gazette, exempt, subject to such conditions and restrictions, if any, as may be specified in the notification, the establishment or class of establishments from the operation of all or any of the provisions of this Act or of any rule made there under (Section 26).

Effect of laws and agreements inconsistent with this Act

1. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the coming into force of this Act:

Section 27 provides that where under any such award, agreement, contract of service or otherwise, a woman is entitled to benefits in respect of any matter which are more favorable to her than those to which she would be entitled under this Act, the woman shall continue to be entitled to the more favorable benefits in respect of that matter, notwithstanding that she is entitled to receive benefits in respect of other matters under this Act.

2. Nothing contained in this Act shall be construed to preclude a woman from entering into an agreement with her employer for granting her rights or privileges in respect of any matter which are more favorable to her than those to which she would be entitled under this Act.

Appeals to Chief Inspector

Section 28 provides for power to make rules.

1. The appropriate Government may, subject to the condition of previous publication and by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

2. In particular, and without prejudice to the generality of the foregoing power, such rules may provide for-
- (a) the preparation and maintenance of registers, records and muster-rolls;
 - (b) the exercise of powers (including the inspection of establishments) and the performance of duties by Inspectors for the purposes of this Act;
 - (c) the method of payment of maternity benefit and other benefits under this Act in so far as provision has not been made therefore in this Act;
 - (d) the form of notices under section 6;
 - (e) the nature of proof required under the provisions of this Act;
 - (f) the duration of nursing-breaks referred to in section 11 ;
 - (g) acts which may constitute gross misconduct for purposes of section 12;
 - (h) the authority to which an appeal under clause (b) of sub-section (2) of section 12 shall lie; the form and manner in which such appeal may be made and the procedure to be followed in disposal thereof;
 - (i) the authority to which an appeal shall lie against the decision of the Inspector under section 17; the form and manner in which such appeal may be made and the procedure to be followed in disposal thereof;
 - (j) the form and manner in which complaints may be made to Inspectors under sub-section (1) of section 17 and the procedure to be followed by them when making inquiries or causing inquiries to be made under sub-section (2) of that section;
 - (k) any other matter which is to be, or may be prescribed.
3. Every rule made by the Central Government under this section shall be laid as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session [or in two or more successive sessions and if, before the expiry of the session immediately following the session or the successive sessions, aforesaid] both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Repeal

Section 30 provides for the application of this Act

- (i) to mines, the Mines Maternity Benefit Act, 1941 (19 of 1941); and
- (ii) to factories situated in the Union territory of Delhi, the Bombay Maternity Benefit Act, 1929 (Bombay Act VII of 1929); as in force in that territory, shall stand repealed.

9.7 Summary

Maternity Act lay down the provisions for maternity benefits to women that include leave and payment, with a view to provide social justice to women workers who have worked for eighty days in the twelve months in an establishment. The act provides for maternity leave of 12 weeks, maternity payment at a rate of average daily wages for the period of her actual absence. The act also provides other benefits like nursing breaks, leave for miscarriage or tubectomy operation, medical bonus etc.

9.8 Reference Books

- O.P. Malhotra: “The Law of Industrial Disputes”, 6th edition (2004)
- G.B. Pai: “Labour Law in India” (2001)
- P.L. Malik: “K.D. Srivastava’s Industrial Employment (Standing Orders) Act, 1946” 4th edition (2000)
- P.L. Malik’s: “Industrial Law”, 21st edition (2008)
- S.C. Srivastava: “Labour Law and Labour Relations : Cases and Materials”, 3rd edition, (2007)
- Press Information Bureau, Government of India, Labour & Employment, Promoting Welfare of Workers. Retrieved January 21, 2014, from PIB online via [access:pib.nic.in/release/rel_print_page1.asp?relid=46881](http://access.pib.nic.in/release/rel_print_page1.asp?relid=46881)

Unit - 10 : The Industrial Employment (Standing Orders) Act, 1946

Structure of Unit

- 10.0 Objectives
- 10.1 Introduction
- 10.2 Scope of the Act
- 10.3 Definitions
- 10.4 Certification of Draft Standing Orders
- 10.5 Posting of Standing Orders
- 10.6 Payment of Subsistence Allowance
- 10.7 Schedule
- 10.8 Summary
- 10.9 Self Assessment Questions
- 10.10 References Books

10.0 Objectives

After going through the unit you should be able to understand the:

- Applicability of the Act to Industrial Establishment
- Special features of the Act.
- Authorities for Certification of standing orders and their duties.
- Other provisions of the Act

10.1 Introduction

Standing Orders' defines the condition of recruitment, discharge, disciplinary action, holiday, leave, etc., go a long way towards minimize friction between the Management and workers in industrial undertakings. The Industrial Employment (Standing Orders) Act requires employers in industrial establishments to clearly define the conditions of employment by issuing standing orders duly certified. Model standing orders issued under the act deal with classification of workmen, holidays, shifts, payment of wages, leave termination etc. The Text of the standing orders as finally certified under the this act shall be prominently posted by the employer in English and in the language understood by the majority of his workmen on special boards to be maintained for the purpose at or near the entrance through which the majority of the workmen enter the industrial establishment and in all departments there of where the workmen are employed.

The absence of Standing Orders in establishment very often led to friction between the management and workers in industrial undertakings in our country. Before passing of this act the conditions of employment were governed by contract either express or implied between the employers and their employees in different industrial undertakings in many

cases these conditions were not well defined and suffered from doubt and ambiguity. With the advent of trade unionism and collective bargaining new problems of maintaining industrial peace and production for the society were created. It was then considered that the society had a vital interest in the settlement of terms of employment of industrial labour and thus the settlement of labour problems became tripartite and the state, representing the society entered on the scene.

The importance of making a law defining precisely the conditions of employment was emphasized during discussions in the tripartite labour conferences. To give effect to the new ideology the Industrial Employment act, 1946 was enacted by the Central Government. It is obligatory upon all employers covered by this Act to define conditions of employment under them. The conditions of employment must also be made known to workmen employed by such employers. The preamble of the Act makes it amply clear that the standing order shall deal with the “conditions of employments of worker in industrial establishment”. These words are wide enough to include acts which may be committed even out of the factory premises. The object of the Act is to regulate the conditions of recruitment, discharge, disciplinary actions, holidays, etc, of the workers employed in industrial undertakings. The Act has also introduced uniformity of terms and conditions of employment in respect of workmen belonging to the same category and discharging the same or similar work in an industrial establishment.

10.2 Scope of the Act

Act is to enforce uniformity in the conditions of services under different employers in different industrial establishments. Secondly the employer one have made the conditions of employment known to his employed workmen cannot change them to their detriment or to the prejudice of their rights and interests. Thirdly with the express or written conditions of employment, it is open for the prospective worker to accept them and join the industrial establishment. Fourthly, for maintaining industrial peace and continued productivity. The significance of the express written conditions of employment cannot be minimized or exaggerated.

The object of the Act is to have uniform standing orders in respect of matters enumerated in the schedule to the Act, Applicable to all workers irrespective of their time of appointment (Baranui Refinery Pragati Sheel Parishad V. Indian Oil Corporation Ltd. (1991)1 SCC 4).

The act extends to the whole of India and applies to every industrial establishment wherein 100 or more workmen are employed or were employed on any day during the preceding twelve months. Further, the appropriate Government may, after giving not less than 2 months notice of its intention to do so, by notification in the Official Gazette, extend the provisions of this Act to any industrial establishment employing such number of persons less than 100 as may be specified in the notification.

However, the Act does not apply to (1) any industry to which provisions of Chapter VII of the Bombay Industrial Relations Act, 1946, apply; or (2) any industrial establishment to which provisions of Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 apply. Notwithstanding anything contained in the said Act, the provisions of this Act shall apply to all industrial establishments under the control of the Central Government. Certified standing orders become part of the statutory and not contractual terms and conditions of service and are binding on both the employer and the employees. (1991)2 LLN 774).

Further, Section 14 provides that the appropriate Government may by notification in the Official Gazette exempt - conditionally or unconditionally any industrial establishment or class of industrial establishments from all or any of the provisions of this Act. Apart from the above stated provisions of Section 1 of the Act limiting the scope, extent and application of the Act, the following Sections further limit its application.

Section 13-B of the Act specifically exempts certain industrial establishments from the purview of the Act, viz., the industrial establishment in so far as the workmen employed therein are persons to whom the fundamental and supplementary rules, Civil Service Regulations, Civilians in Defense Service (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulation that may be notified in this behalf by the appropriate Government in the Official Gazette apply.

Further, Section 14 provides that the appropriate Government may by notification in the Official Gazette exempt conditionally or unconditionally any industrial establishment or class of industrial establishments from all or any of the provisions of this Act.

10.3 Definitions

Appellate Authority

It means an authority appointed by the appropriate Government by notification in the Official Gazette, to exercise in such area, as may be specified in the notification the functions of an appellate authority under this Act. [Sections 2 (a)]

Appropriate Government

"Appropriate Government" means in respect of industrial establishments under the control of the central Government or a Railways administration or in a major port, mine or oilfield, the central government, and in all other cases the state Government.

Provided that where any question arises as to whether any industrial establishment is under the control of the central government, that Government may, either on a reference made to it by the employer or the workman or the workman or a trade union or other representative body of the workmen or on its own motion and after giving the parties an opportunity of being heard, decide the question and such decision shall be final and binding on the parties. [Section 2(b)]

Certifying Officer

"Certifying Officer" means a Labour commissioner or a Regional Labour Commissioner and includes any other officer appointed by the appropriate Government by notification in the Official Gazette, to perform all or any of the functions of a certifying officer under this act. [(Section 2(c)]

Employer

"Employer" Means the owner of an industrial establishment to which this act applies and also includes the following persons:

- (i) A Manager so named under section 7(1)(f) of the Factories Act 1948.
- (ii) The Head of the department or any authority appointed by the Government in any Industrial establishment under control.
- (iii) Any person responsible to the owner for the supervision and control of any other industrial establishment which is not under the control of govt. [Section 2 (d)].

Industrial Establishment

It means

- an industrial establishment defined by Section 2(ii) of the payment of Wages Act, 1936, or
- a factory as defined by Section 2(m) of the Factories Act, 1948, or
- a railway as defined by Section 2(4) of the Indian Railways Act, 1890, or
- the establishment of a person who, for the purpose of fulfilling a contract with the owner of any industrial establishment, employs workmen. [Section 2(e)]

Standing Orders

"Standing Orders" means rules related to matters set out in the Schedule to the act [Section 2(g)]

Wages and Workmen

The terms "Wages" and "Workmen" have the meaning respectively assigned to them in clauses (rr) and (s) of Section 2 of the Industrial Disputes Act, 1947 [Section 2 (i)]

10.4 Certification of Draft Standing Orders

Submission of draft Standing Orders by employers to the certifying officer

Section 3 provides that within six months from the date on which this Act becomes applicable to an industrial establishment, the employer of that establishment shall submit to the Certifying Officer five copies of the draft Standing Orders proposed by him for adoption in that establishment.

Such draft standing orders shall be in conformity with the model standing orders if any and shall contain every matter set out in the Schedule which may be applicable to the industrial establishment.

The draft Standing Orders shall be accompanied by a statement containing prescribed particulars of the workmen Employee in the industrial establishment including the name of the trade union, if any, to which they belong.

If the industrial establishments are of similar nature, a group of employers owning that industrial establishment may submit a joint draft of Standing orders subject to such conditions as may be prescribed.

Conditions for certification of Standing Orders

According to Section 4 of the Act, Standing Orders shall be certifiable if

- a) Provision is made therein for every matter stated in the Schedule to the Act which is applicable to industrial establishment; and
- b) The Standing Orders are otherwise in conformity with the provisions of the Act.

Fairness or reasonableness of Standing Orders

It is further provided in Section 4 that it shall be the function of the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of the standing orders. The Act has imposed a duty on the Certifying Officer, to consider the reasonableness and fairness of the Standing Orders before certifying the same. The Certifying Officer is under a legal duty to consider that the Standing Orders are in conformity with the Act. If the Certifying Officer finds that some provisions, as proposed by the employer relate to matters which are not included in the Schedule, or if he finds some provisions are unreasonable he must refuse to certify the same. Certification of any such Standing Order would be without jurisdiction. The Certifying Officer has a mandatory duty to discharge and he acts in a quasi-judicial manner. Where a matter is not included in the Schedule and the concerned appropriate Government has not added any such item to the Schedule, neither the employer has a right to frame a Standing Order enabling him to transfer his employees nor does the Certifying Officer have jurisdiction to certify the same. The consent of the employees to such standing orders would not make any difference (*Air Gases Mazdoor Sangh, Varanasi v. Indian Air Gases Ltd., 1977 Lab. I.C. 575*).

Certification of Standing Order

Procedure to be followed by the Certifying Officer: Section 5 of the Act lays down the procedure to be followed by Certifying Officer. On receipt of the draft Standing Order from the employer, the Certifying Officer shall forward a copy to the trade union of the workmen or where there is no trade union, then to the workmen ' in such a manner as may be prescribed, together with a notice requiring objections, if any, which the workmen may desire to make in the draft Standing Orders. These objections are required to be submitted to him within 15 days from the receipt of the notice. On receipt of such objections he shall provide an opportunity of being heard to the workmen or the employer and will make amendments, if any, required to be made therein and this will render the draft Standing Orders certifiable under the Act and he will certify the same. A copy of the certified Standing Orders will be sent by him to both the employer and the employees association within seven days of the certification.

Effect of certification: The Act is a special law in regard to matters enumerated in the Schedule and the regulations made by the employer with respect to any of those matters. These are of no effect unless such regulations are notified by the Government under Section 13B or certified by the Certifying Officer under Section 5 of the Act.

Register of Standing Orders: Section 8 empowers the Certifying Officer to file a copy of all the Standing Orders as certified by him in a register maintained for the purpose in the prescribed form. He shall furnish a copy of the same to any person applying therefore on payment of the prescribed fee.

10.4.1 Appeals

According to Section 6 of the Act, the order of the Certifying Officer can be challenged by any employer, workman, trade union or any other prescribed representatives of the workmen, who can file an appeal before the appellate authority within 30 days from the date on which copies are sent to employer and the workers representatives. The appellate authority, whose decision shall be final, has the power to confirm the Standing Orders as certified by the Certifying Officer or to amend them. The appellate authority is required to send copies of the Standing Orders as confirmed or modified by it, to the employer or workers representatives within 7 days of its order.

10.5 Posting of Standing Orders

Standing Orders shall come into operation on the expiry of 30 days from the date on which the authenticated copies are sent to employer and workers representatives or where an appeal has been preferred, they will become effective on the expiry of 7 days from the date on which copies of the order of the appellate authority are sent to employer and workers representatives. (Section 7).

The text of the Standing Orders as finally certified under this Act shall be prominently posted by the employer in English and in the language understood by the majority of his workmen on special boards to be maintained for the purpose at or near the entrance through which the majority of the workmen enter the industrial establishment and in all departments thereof where the workmen are employed. (Section 9)

10.5.1 Duration and Modifications of Standing Orders

Section 10 prohibits an employer to modify the Standing Orders once they are certified under this Act except on agreement between the employer and the workmen or a trade union or other representative body of the workmen. Such modifications will not be affected until the expiry of 6 months from the date on which the Standing Orders were last modified or certified as the case may be. This Section further empowers an employer or the workmen or a trade union or other representative body of the workmen to apply to the Certifying Officer to have the Standing Orders modified by making an application to the Certifying Officer. Such application should be accompanied by 5 copies of the proposed modifications and where such modifications are proposed to be made by agreement between the employer and the workmen or a trade union or other respective

body of the workmen, a certified copy of such agreement should be filed along with the application.

Workmen are entitled to apply for modifications of the Standing Orders. (1977-II Labour Law Journal 503). Section 10(2) does not contain any time limit for making modifications application. It can be made at any time. [Indian Express Employees Union v. Indian Express (Madurai) Ltd. (1998) 1 Cur LR 1161 (Ker)].

10.5.2 Interpretation of Standing Orders

Section 13-A of the Act provides that the question relating to application or interpretation of a Standing Order certified under this Act, can be referred to any Labour Court constituted under the industrial Disputes Act, 1947 by any employer or workman or a trade union or other representative body of the workmen. The Labour court to which the question is so referred, shall decide it after giving the parties an opportunity of being heard. Such decision shall be final and binding on the parties.

10.5.3 Application of Model Standing Orders

Section 12-A provides that for the period commencing on the date on which this Act becomes applicable to an establishment and ending with the date on which the Standing Orders as finally certified under this Act into operation in that establishment, the prescribed model Standing Orders shall be deemed to be adopted that establishment and the provisions of Sections 9, 13(2) and, 13-A shall apply.

Where there are two categories of workers, daily rated and monthly rated but the certified Standing Orders are respect of daily rated workmen only, and then Model Standing Orders can apply to monthly rated workmen. In case where there are no certified Standing Orders applicable to an industrial establishment, the prescribed Model Standing Orders shall be deemed to be adopted and applicable (1981-II Labour Law Journal 25).

10.6 Payment of Subsistence Allowance

Statutory provision for payment of subsistence allowance has been made under Section 10A of the Act which was inserted by the amending Act (No. 18) of 1982. Section 10A provides as follows:

Where any workman is suspended by the employer pending investigation or inquiry into complaints or charges of misconduct against him, the employer shall pay to such a workman the subsistence allowance.

- a) At the rate of fifty per cent of the wages which the workman was entitled to immediately preceding the date of such suspension, for the first ninety days of suspension: and
- b) At the rate of seventy five per cent of such wages for the remaining period of suspension if the delay in the completion of disciplinary proceedings against such workman is not directly attributable to the conduct of such workman.

Any dispute regarding subsistence allowance may be referred by the workman or the employer, to the Labour Court constituted under the industrial Disputes Act, 1947.

However, if the provisions relating to payment of subsistence allowance under any other law for the time being in force are more beneficial, then the provisions of such other law shall be applicable.

10.7 Schedule

[See Sections 2(g) and 3(2)]

Matters to be provided in Standing Orders under this Act

1. Classification of workmen, e.g., whether permanent, temporary apprentices, probationers or badlis
2. Manner of intimating to workmen periods and hours of work, holidays, pay-days and wage rates.
3. Shift working.
4. Attendance and late coming.
5. Conditions of, procedure in applying for, and the authority which may grant leave and holidays.
6. Requirement to enter premises by certain gates, and liability to search.
7. Closing and reopening of sections of the industrial establishment, and temporary stoppage of work and the rights and liabilities of the employer and workmen arising there from .
8. Termination of employment, and the notice thereof to be given by employer and workmen.
9. Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct.
10. Means of redress for workmen against unfair treatment or wrongful exactions by the employer or his agents or servants.
 - A. Additional matters to be provided in Standing Orders in coal mines.
 1. Medical aid in case of accident.
 2. Railway travel facilities.
 3. Method of filling vacancies.
 4. Transfers.
 5. Liability of manager of the establishment or mine.
 6. Service Certificate.
 7. Exhibition and supply of Standing Orders.
 - 10B. Additional matters to be provided in Standing Orders relating to all industrial establishments.
 1. Service record-matters relating to service card, token tickets, certification of services, change of residential address of workers and record of age.
 2. Confirmation.
 3. Age of retirement.

4. Transfer.
5. Medical aid in case of accidents.
6. Medical examination.
7. Secrecy.
8. Exclusive services.
9. Any other matter which may be prescribed.

In a significant judgment on gender justice, the Supreme Court has ordered that employers should include strict prohibitions on sexual harassment of employees and appropriate penalties against the offending employees in standing order.

10.8 Summary

The Act requires the employers in industrial establishment to define with sufficient accuracy the conditions of employment under them and make the said conditions known to workmen employed by them. It applies to every industrial establishment wherein 100 or more workmen are employed or were employed on any day during the preceding twelve months. The appropriate Government may, after giving not less than 2 months notice of its intention to do so, by notification in the Official Gazette, extend the provisions of this Act to any industrial establishment employed such number of persons less than 100 as may be specified in the notification. Within six months from the date on which this Act becomes applicable to an industrial establishment, the employer of that establishment shall submit to the Certifying Officer five copies of the draft Standing orders proposed by him for adoption in that establishment. On receipt of the draft Standing Orders shall be in conformity, with the Model Standing Orders if any, and, shall contain every matter set out in the Schedule which may be applicable to the industrial establishment. On receipt of the draft Standing Order from the employer, the Certifying Officer shall forward a copy thereof to the trade union of the workmen or where there is no trade union, then to the workmen in the prescribed manner together with a notice requiring objections, if any, which the workmen may desire in the draft Standing Orders. These objections are required to be submitted to him within 15 days from the receipt of the notice. On receipt of such objections, he shall provide an opportunity of being heard to the workmen or the employer and will make amendments, if any, required to be made therein and this will render the draft standing Orders certifiable under the Act and he will certify the same. A copy of the certified Standing Orders will be sent by him to both the employer and the employees association within seven days of the certification. The certifying Officer has been empowered to file a copy of all the Standing Orders as certified by him in a register maintained for the purpose in the prescribed form. He shall furnish a copy of the same to any person applying therefore on payment of the prescribed fee. Standing orders shall come into operation on the expiry of 30 days from the date on which the authenticated copies are sent to employer and workers representatives or where an appeal has been preferred, they will become effective on the expiry of 7 days from the date on which copies of the order of the appellate authority are sent to employer and workers representatives.

10.9 Self Assessment Questions

1. Define the term Standing Orders and explain their importance in the light of decided cases.
2. Explain the Object and Scope of the Industrial Employment (Standing Orders) Act, 1946.
3. Explain the procedure for certification of Standing Orders.
4. Whether the certified Standing Orders could be modified? Explain.
5. List out the matters to be provided in Standing Orders under the industrial Employment (Standing order) Act, 1946.

10.10 Reference Books

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Unit - 11 : The Contract Labour (Regulation and Abolition) Act, 1970

Structure of Unit

- 11.0 Objectives
- 11.1 Introduction
- 11.2 Definitions
- 11.3 Registration of Establishments Employing Contract Labour
- 11.4 Jurisdiction of Industrial Tribunals
- 11.5 Licensing of Contractors
- 11.6 Welfare and Health of Contract Labour
- 11.7 Rules Framed for Wages
- 11.8 Penalties and Procedure
- 11.9 Inspectors
- 11.10 Maintenance of Records and Registers
- 11.11 Summary
- 11.12 Self Assessment Questions
- 11.13 Reference Books

11.0 Objectives

After going through the unit you should be able to understand the:

- Applicability of the Act to Contract Labourers
- Special features of the Act.
- Authorities under the Act, their powers and duties.
- Other provision of the Act
-

11.1 Introduction

Contract labour is now a day is universal phenomenon. It is very significant and economical from the Employers' point of view but it is very exploitative in the country like India. It is prevalent in almost all industries and allied operation and also in service sector. It generally refers to workers engaged by a contractor for user enterprise. Contract labour have very little bargaining power, have little or no social security and are often engaged in hazardous occupation endangering their health and safety. Attention towards interest of Contract workers are protected in terms of wages hours of work, welfare, health and social security. Such as canteen, rest rooms, first aid facilities and other basic necessities at the work place like drinking water etc are also provided. To ensure payment of wages and other benefits is primarily liability that of the contractor and in case of default, that of the principal employer. The Contract Labour (Regulation and Abolition) Act, 1970 regulates the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith.

11.2 Definitions

The Act extends to the whole of India. According to Section 1(4), it applies:

- (a) to every establishment in which twenty or more workmen are employed or were employed on any day of the preceding twelve months as contract labour;
- (b) to every contractor who employs or who employed on any day of the preceding twelve months twenty or more workmen.

The appropriate Government may, after giving not less than two months notice of its intention to do so, by notification in the Official Gazette, apply the provisions of this Act to any establishment or contractor employing such number of workmen less than twenty as may be specified in the notification.

According to Section 1(5), the Act shall not apply to establishments in which work only of an intermittent or casual nature is performed. If a question arises whether work performed in an establishment is of an irregular or casual nature, the appropriate Government shall decide that question after consultation with the Central Board or, State Board as the case may be, and its decision shall be final.

- (a) **Appropriate Government :** "Appropriate Government" means
 - (i) In relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947 is the Central Government.
 - (ii) in relation to any other establishment, the Government of the State in which that other establishment is situated. [Section 2(1)(a)]
- (b) **Contract Labour**

A workman shall be deemed to be employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. [Section 2(1)(b)]

- (c) **Contractor**

"Contractor" in relation to an establishment, means a person who undertakes to produce a given result for the, establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. [Section 2(1)(c)]

- (d) **Controlled industry**

"Controlled industry" means any industry whose control by the Union and has been declared by any Central Act to be accelerate in the Public interest. Section 2(1)(d)].

- (e) **Establishment**

"Establishment" means

- (i) Any office or department of the Government or local authority, or
- (ii) Any place where any industry, trade, business, manufacture or occupation is carried on. [Section 2(1)(e)]

(f) Principal Employer

Principal Employer means

- (i) In relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the Government or the local authority, as the case may be, may specify in this behalf.
- (ii) In a factory, the owner or occupier of the factory and where a person has been named as the manager of the factory under the Factories Act, 1948, the person so named.
- (iii) In a mine, the owner or agent of the mine and where a person has been named as the manager of the mine, the person so named.
- (iv) In any other establishment, any person responsible for the supervision and control of the establishment. [Section 2(1)(g)]

(g) Workman

“Workman” means any person employed in or in connection with the work of any establishment to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied, but does not include any such person-

- (i) Who is employed mainly in a managerial or administrative capacity, or
- (ii) who, being employed in a supervisory capacity draws wages exceeding five hundred rupees per month or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

11.3 Registration of Establishments Employing Contract Labour

Central Advisory Boards

Section 3 requires the central Government to constitute a central Advisory contract Labour Board to advise the Central Government on such matter arising out of the administration of the act as may be referred to it and to carry out other function assigned to it under the act (Section 3).

State Advisory Boards

Section 4 similarly requires the State Government to constitute the State Advisory Contract Labour Board to advice the State Governments on such matters arising out of the Act as may be referred to it and to carry out functions assigned to it under the Act (Section 4). In order to secure its objectives and purposes the Act contains provisions for Registration of establishments employing contract labour.

Appointment of Registering Officer

Notification in the Official Gazette is given for appointment of persons being gazette officers of Government, to be registering officers and define the limits within which a registering officer shall exercise the powers conferred on him by or under the Act. (Section 6)

Registration of Certain establishments

Every establishment covered by the Act, if it wants to engage twenty or more persons through a contractor has to get itself registered' section 7 of the Act lays down that every principal employer of an establishment to which the Act applies shall make an application to the registering officer in the prescribed manner for registration of the establishment within the prescribed time limit. A registration fee varying from Rs. 20 to Rs. 500 which is related to the number of workmen employed as contractor labour. If the application is complete in all respect the registering officer shall register the establishment and issue to the principal employer of the establishment a certificate of registration in the prescribed form. (Section 7)

Revocation of registration in certain cases

The registration can be revoked in the following circumstances.

1. Registration obtained by misrepresentation or suppression of any material fact.
2. That the registration has become useless and become ineffective for any other reason and therefore required to be revoked.

In both the cases, the registering officer shall give an opportunity to the principal employer of the establishment to be heard. He will also obtain previous approval of the appropriate Government in case the registration is to be. (Section 8)

11.3.1 Effect of Non- Registration

No principal employer of an establishment to which the Act applies can employ contract labour, if

- (a) He has not obtained the certification of registration; or
- (b) A certificate has been revoked after being issued. (Section 9)

11.4 Jurisdiction of Industrial Tribunals

11.4.1 Prohibition of Employment of Contract Labour

This is the most significant provision in the Act. It empowers the appropriate Government to prohibit employment of contract labour in any process, operation or other work in any establishment by issuing a notification the Official Gazette. The following steps are, however, required to be taken before such a notification is issued.

- (i) The appropriate Government shall consult the central Board or as the case may be, the state Board.
- (ii) The appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors.
 - (a) Whether the process, operation or other work incidental to, or necessary for the industry trade, business, manufacture or occupation that is carried on in the establishment.

- (b) Whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry trade, business, manufacture or occupation carried on in that establishment;
- (c) Whether it is done ordinarily through regular workmen in that establishment similar thereto;
- (d) Whether it is sufficient to employ considerable number of whole time workmen. (Section 10).

It has been held by the Supreme Court in *Vegoils Private Ltd. v. The Workmen*, (1971)II-LLJ p. 567, that after enforcement of the Contract Labour (Regulation and Abolition) Act, 1970, the sole jurisdiction for abolition of contract labour in any particular operation vested with the appropriate Government and thereafter the Tribunals have no jurisdiction to abolish contract labour. Supreme Court cannot under Article 32 of the Constitution order for abolition of Contract Labour System in any establishment (1985 1, SCC 630).

In Gujarat Electricity board case, AIR 1995 SC 2942, the Supreme Court held that:

- (a) All undertakings on their own discontinue the contract labour who satisfy the factors mentioned in classes (a) to (d) of Section 10(2) of the Act, and abolish as many of the labour as is feasible as their direct employees.
- (b) Both the Central and State Governments should appoint a committee to investigate the establishments in which the contract labour is engaged and were on the basis of criteria laid down in clauses (a) to (d) of Section 10(2) of the Act, the contract labour system can be abolished and direct employment can be given to the contract labour.

The appropriate Government on its own should take initiative to abolish the labour contracts in the establishments concerned by following the procedure laid down under the Act.

- (c) The Central Government should amend the Act by incorporating a suitable provision to refer to industrial adjudicator the question of the direct employment of the contract workers of the ex-contractor in principal establishments, when the appropriate Government abolishes the contract labour.

11.5 Licensing of Contractors

Apart from registration of establishments employing contract labour, the Act contains provisions for licensing of contractors. Sections 11 of the Act empowers the appropriate Government to appoint Gazetted Officers to be licensing officers and define the limits of their jurisdiction. Orders regarding appointment of licensing officers and the limits of their jurisdiction are to be notified in the Official Gazette.

Licensing of Contractors

Under Section 12 of the Act, no contractor to whom the Act applies can undertake or execute any work through contract labour except under all in accordance with the license

issued in that behalf by the licensing officer. The license may contain such conditions including, in particular, conditions as to hours of work, fixation of wages and other essential amenities in respect of contract labours the appropriate Government may deem fit to impose in accordance with the rules framed under the Act. The license shall be issued on the payment of prescribed fee and on the deposit of security, if any, for the due performance of the conditions prescribed in the license. The licensee fee ranges from Rs. 5 to Rs. 125 depending on the number of workmen employed by the contractor. The license is not-transferable.

Grant of license

An application for the grant of license has to be made in the prescribed form. It should contain particulars regarding the location of establishment, nature of process, operation or work for which contract labour is to be employed and such other particulars as may be prescribed. The license is issued after necessary investigation by the licensing officer. It is valid for the period specified therein (12 months under the Central Rules) and may be renewed from time to time for such period and on payment of such fees and on such conditions as may be prescribed. (Section 13)

Revocation, suspension and amendment of license

If the licensing officer is satisfied, either on a reference made to him in this behalf or otherwise, that (a) the license has been obtained by misrepresentation or suppression of any material fact or that (b) the holder of license has, without reasonable cause, failed to comply with the conditions subject to which the license has granted or has contravened of any of the provisions of the Act or the rules made there under, the licensing officer may revoke or suspend the license. He has also the powers to forfeit the sum, if any, or any portion thereof deposited as security for the due performance of the conditions subject to which the license was granted. (Section 14).

However, before revoking or suspending the license or ordering forfeiture of the security deposit by the contractor, the licensing officer has to give the holder of the license an opportunity of showing cause. The Licensing Officer may vary or amend a license subject to the rules that be made in this behalf.

Appeals

The Act makes provision for appeals against orders relating to grant of registration to establishments, revocation of registration and revocation/suspension of licenses. The aggrieved person may within 30 days from the date on which the order is communicated to him prefer an appeal to an appellate officer who shall be a person nominated in this behalf by the appropriate government. The appellant officer may entertain an appeal even after the expiry of 30 days, if he is satisfied that there was sufficient cause for the delay. The appellant officer shall after giving the appellant an opportunity of being heard the as expeditiously as possible. (Section 15).

11.6 Welfare and Health of Contract Labour

The contractors are required to take certain specific measures for the welfare and health of contract labour. This of course, arises in those employments in which the system of contract labour has not been abolished. The relevant provisions are as follows:

(i) Canteens : As per Section 16, the appropriate Government has powers to make rules requiring that in every establishment to which the Act applies and wherein contract labour numbering 100 or more is ordinarily employed by a contractor and the employment of the contract labour is likely to continue for such period as may be prescribed, one or more canteens shall be provided and maintained by the contractor for the use of such contract labour. The rules may provide for the date by which the canteen shall be provided, the number of canteens and the standards in respect of construction, accommodation, furniture and other equipment of the canteens, the food stuffs which may be served therein and the charges which may be made therefore.

(ii) Rest Rooms: Section 17(1) makes the following provisions. In every place where contract labour is required to halt at night in connection with the work of an establishment to which the Act applies and in which work requiring employment of contract labour is likely to continue for such period as may be prescribed, there shall be provided and maintained by the contractor for the use of the contract labour such number of rest rooms or such of the suitable alternative accommodation within such time as may be prescribed. Section 17(2) says that the rest room or alternative accommodation to be provided under Sub-section (1) shall be sufficiently lighted and ventilated and shall be maintained in a clean and comfortable condition.

(iii) Other Facility : It shall be the duty of every contractor employing contract labour in connection with the work an establishment to which the act applies, to provide and maintain :

- (a) A sufficient supply of wholesome drinking water for the contract labour at convenient places;
- (b) A sufficient number of latrines and urinals of the prescribed types conveniently situated and accessible to the contract labour and
- (c) Washing Facilities (Section 18)

(iv) First Aid Facilities: The Contractor is required to provide and maintain a first aid box equipped with the prescribed contents at every place, where contract labour is employed by him. The first aid box should be readily accessible during work hours. (Section 19)

(v) Liability of the principal employer in certain cases: If the prescribed amenities (canteens, rest rooms and other facilities, first aid box) are not provided by the contractor within the prescribed time, then such amenities shall be provided by the principal employer within such time as may be specified. According to section 20(2), all expenses incurred by the principal employer in providing the amenity may be recovered by him from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor. (Section 20)

(vi) Responsibility for payment of wages : A common complaint against the contractors has been that some of them do not pay proper wages to the contract labourers or that payments are not made in time or that arbitrary deduction are made from wages. To take care of such malpractices, Section 21 of the Contract Labour (Regulation and Abolition) Act, 1970, lays down that the Contractor shall pay wages in the presence of the authorized representative of the principal employer. An obligation is also cast on the principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages.

The text of Section 21 is reproduced below:

- (1) A Contractor shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed.
- (2) Every principal employer shall nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.
- (3) It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer.
- (4) In case the contractor fails to make payment of wages within the prescribed period or makes short payment then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor”.

11.7 Rules Framed for Wages

Rules 63 to 73 of the Contract Labour (Regulation and Abolition) Central Rules, 1971 are as under:-

63. The contractor shall fix wage periods in respect of which wages shall be payable.
64. No wage period shall exceed one month.
65. The wage of every person employed as contract labour in an establishment or by a contractor where less than one thousand such persons are employed shall be paid before the expiry of tenth day after the last day of the wage period in respect of which wages are payable.
66. Where the employment of any worker is terminated by or on behalf of the contractor the wages earned by him shall be paid before the expiry of the second working day from the day on which his employment is terminated.
67. All payments of wages shall be made on a working day at the working premises and during the working time and on a date notified in advance and in case the work is completed before the expiry of the wage period, final payment shall be made within 48 hours of the last working day.

68. Wages due to every worker shall be paid to him direct or to other authorised by him in his behalf.

69. All wages shall be paid in current coin or currency or in both.

70. Wages shall be paid without any deductions of any kind except those specified by the Central Government by general or special order in this behalf or permissible under the payment of Wages Act, 1936.

71. A notice showing the wage-period and the place and time of disbursement of wages shall be displayed at the place or work and a copy sent by the contractor to the Principal Employer under acknowledgement.

72. The Principal Employer shall ensure the presence of his authorised representative at the place and time of disbursement of wages by the contractor to workmen and it shall be the duty of the contractor to ensure the disbursement of wages in the presence of such authorised representative.

73. The authorised representative of the principal employer shall record under his signature a certificate at the end of the entries in the Register of Wages-cum-Muster Roll, as the case may be in the following form:

"Certified that the amount shown in columns No.....has been paid to the workmen concerned in my presence on.....at....."

11.8 Penalties and Procedure

The Act refers to the following types of offences and provide for penalties as shown against each.

Section 22

(a) Obstructing an inspector in the discharge of his duties under the Act or refusal or willful neglect to afford the inspector any reasonable facility for making any inspection, examination, enquiry or investigation authorised by or under the Act in relation to an establishment to which, or a contractor to whom, this Act applies [Section 22(1)].

Imprisonment for a term which may extend to 3 months or fine which may extend to Rs. 500 or both.

(b) Willful refusal to produce on the demand of an inspector any register or other document kept in pursuance of this Act or prevention or attempted prevention or doing anything which the inspector has reason to believe is likely to prevent any person from appearing before or being examined by an Inspector acting in pursuance of his duties under the Act [section 22(2)].

Imprisonment for a term which may extend to 3 months or fine which may extend to Rs. 500/- or both.

Section 23

Contravention of any provision of the Act or any rule made there under prohibiting or restricting or regulating employment of contract labour or contravention of any condition of a license granted under the Act. Imprisonment for a term which may extend to 3 months or fine which may extend to Rs. 1,000 or both.

In case of a continuing contravention an additional fine which may extend to Rs. 100/- per day during which the contravention continues after conviction for the first such contraventions, may be imposed.

Section 24

Contravention of any of the provisions of the Act or of any rule made there under for which no penalty is elsewhere provided. Imprisonment for a term which may extend to 3 months or fine which may extend to Rs. 1,000/- or both.

Offences by companies

(1) If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against any punished accordingly.

Provided that nothing containing in this Sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section(1) where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of any director, manager, managing agent or any other officer of the company, such director, manager, managing agent or such other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation: For the purpose of this Section

- (a) "company" means anybody corporate and includes a firm or other association of individuals; and
- (b) "director", in relation to a firm means a partner in the firm.

Cognizance of offence: Section 26 provides that no Court shall take cognizance of any offence under this Act except on a complaint made by, or with the previous sanction in writing of, the inspector and no Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under this Act.

Limitation of prosecutions: Section 27 prescribing limitation of prosecutions stipulates that no Court shall take cognizance of an offence punishable under this Act unless the complaint thereof is made within three months from the date on which the alleged commission of the offence came to the knowledge of an inspector:

Provided that where the offence consists of disobeying a written order made by an inspector, complaint thereof may be made within six months of the date on which the offence is alleged to have been committed.

It has been held by the Patna High Court in *Padam Prasad Jain v. State of Bihar and another* (1979) 1 LLJ p. 111, that executing contract labour without a licensee, constituted a fresh offence every day on which it continued and, therefore, the limitation prescribed under Section 27 for taking cognizance of an offence does not apply.

11.9 Inspectors

Under Section 28 of the Act, appropriate Governments have been given powers to appoint inspectors for the purposes of the Act and to define the local limits within which they shall exercise their powers. Sub-section (2) of Section 28 dealing with powers of Inspectors, read as follows:

(2) Subject to any rules made in this behalf, an inspector may, within the local limits for which he is appointed:

(a) Enter, at all reasonable hours, with such assistance (if any), being in the service of the Government or any local or other public authority as he thinks fit, any premises or place where contract labour is employed, for the purpose of examining any register or record or notices required to be kept or exhibited by or under this Act or rules made there under, and require the production thereof for inspection;

(b) Examine any person whom he finds in any such premises or place and who, he has reasonable cause to believe, is a workmen employed therein;

(c) Require any person giving out work and any workmen, to give any information, which is in his powers to give with respect to the names and addresses of the persons to, for an from whom the work is given out or received, and with respect to the payments to be made for the work;

(d) Seize or take copies of such register, record of wages or notices or portions thereof as he may consider relevant in respect of an offence under this Act which he has reason to believe has been committed by the principal employer or contractor; and

(e) Exercise such other powers as may be prescribed.

Sub-section (3) of Section 28 provides that any person required to produce any document or thing to give any information required by an inspector under Sub-section (2) shall be deemed to be legally bound to do so within the meaning of Section 175 and Section '176 of the Indian Penal Code.

Sub-section (4) lays down that the provisions of the Code of Criminal Procedure shall, so far as may be, apply to any search or seizure under Sub-section (2) as they apply to any search or seizure under the authority of a warrant issued under the Code.

11.10 Maintenance of Records and Registers

Section 29 states that every principal employer and every contractor shall maintain such registers and records in such forms as may be prescribed. The registers and records to be maintained, the notices to be displayed and the returns to be submitted by the contractors and the principal employer to the registering officers or/and licensing officer are explained in detail in the rules framed under the Act by the Central Government and the State Government. The principal employers and the contractors are also required to keep exhibited in such manner as may be prescribed within the premises of the establishment where the contract labour is employed, notices in the prescribed form containing particulars about the hours of work, nature of duty and such other information as may be prescribed.

Labour Laws (Exemption from furnishing returns and maintaining Registers by certain Establishments) Act, 1988 provides for exemptions of employers in relation to establishments employing a small number of persons from furnishing returns and maintaining registers under certain labour laws including Contract Labour (Regulation and Abolition) Act, 1970 (as given in schedule I). The Act has come into effect on 1st May, 1989.

As per this Act "small establishments" (establishments employing not less than 10 persons and not more than 19 persons) are required to furnish a core Return in Form A and maintain Registers Form B, Form C, and Form D and "very small establishments" (establishments employing not more than g persons) are required to furnish return in Form A and maintain Register in Form E prescribed under this Act. This requirement is in lieu of furnishing of such returns/maintaining of such registers prescribed under various labour laws mentioned in Schedule I to this Act.

11.10.1 Compliance of the Act

The establishment must ensure following compliances under the Act. These compliances are not exhaustive but illustrative.

1. The factory/establishment is covered by the provisions of this Act with effect from.....(Date) or The factory/establishment is covered under the provisions of this Act by a notification dated.....(Date).given by the government in the official gazette.
2. The factory/establishment has number of workmen employed during the said financial year.
3. The factory/establishment has duly submitted all returns to the Commissioner/Regional Commissioner as per the provisions of the Act, regulations and rules made in this behalf.
4. The establishment has duly applied for and obtained the certificate of registration before the employment of any contract labour.
5. All the contractors engaged by the establishment to supply workmen do posses valid license.
6. The establishment has duly complied with the provisions of the Act in respect of welfare and health of contract labour during the financial year.
7. There was no prosecution initiated against or show cause notices received by the Company and no fines or penalties or any other punishment was imposed on the Company during the financial year, for offences under the Act.

11.11 Summary

The objective of the contract Labour (Regulation and Abolition) Act, 1970 is to regulate the employment of Contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith. The act empowers the Central or State Governments to prohibit the employment of contract labour in any process or operation. It applies to every establishment or contractor wherein 20 or more workmen are or where employed on any day of the preceding 12 months as contract labour. The appropriate government is empowered to extend the application of the Act to any establishment or contractor employing even less than 20 workers as contractor labour. The act is not applicable to an establishment in which work is only of an irregular or casual nature work performed in an establishment for more than 120 days in the preceding 12 months or worked of a seasonal nature and performed for more than 60 days in a year, shall not be deemed to be work of an irregular nature. The act provides for constitution of Contract Labour Advisory Board to advise the Government on such matter arising out of the administration of this act as may be referred to it, and to carry out other functions assigned under the act. The Act provides for grant of license to the contractors and registration to the Principal Employers. The penalty provided for violation of the provisions of the Act and Rules made there under, is the fine which may extend to Rs 1000/- or imprisonment for a term which may extend to three months or with both.

11.12 Self Assessment Questions

1. To which establishment the contract labour (Regulation and Abolition) Act, 1970 applies and which establishment are excluded.
2. Give the definitions of :
 - (a) Contract Labour
 - (b) Contractor
 - (c) Principal Employer
3. What amenities are to be provided by contractors to other workmen in terms of the Contract Labour (Regulation and Abolition Act, 1970? What are the liabilities of the Principal Employer if the Contractor fails to provide the above amenities?
4. Explain the powers of Inspectors appointed under the act.
5. What provisions have been made under the Act regarding Payment of wages to contract Labour ?

11.13 Reference Books

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Unit - 12 : The Trade Union Act, 1926

Structure of Unit

- 12.0 Objectives
- 12.1 Introduction
- 12.2 Meaning
- 12.3 Registration of Trade Unions
- 12.4 Powers and Role of Registrar in Registration of Trade Union
- 12.5 Amalgamation of Trade Unions
- 12.6 Withdrawal, Refusal and Cancellation of Registration
- 12.7 Funds of Trade unions
- 12.8 Outsider's Recognition and trade Unions
- 12.9 Appeals
- 12.10 Immunities to the Registered Trade Unions
- 12.11 Summary
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- 12.13 Reference Books

12.0 Objectives

After going through this unit student should be able to understand the:

- Concepts of trade unions and its Characteristic features;
- Outsider's role in a trade union;
- Role of Registrar in registration, withdrawal and Cancellation of Registration.
- Policies and Need for a trade union and the provisions for its regulation.

12.1 Introduction

During the Pre-Industrialization era workers were very weak in the bargaining for terms and conditions of work in industries. Workers were exploited and paid lowly. Some philanthropists aggrieved by the exploitations of the workers encouraged workers to make trade unions to have effective bargaining with their employers thus this led to the development of the concept of Trade union. Collective Bargaining is the main force of workers and trade unions. Trade Unions are the Organizations primarily formed for the purpose of protection of the rights of the poor and weak workers. Trade Union is the representation of organized workers in trade, business and industries. Now trade unions are the recognized force of workers in all over modern world. Unit will further explain you about its various funds i.e. general fund, political funds, required for its functioning and the procedure of registration, withdrawal and cancellation of registration and amalgamation of trade unions. This unit also explains the extent of involvement of outsider's in a registered trade union. It is further aimed at highlighting the immunities enjoyed by registered trade unions and their leaders as civil and criminal immunities. Unit will also apprise you with the provisions of various appeals provided in the Act. As evident from the structure of this unit it is intended to explain the above aspects of Trade Unions Act, 1926.

12.2 Meaning

“A (Trade) union is a continuing, long-term association of employees, formed and maintained for the specific purpose of advancing and protecting the interest of members in their working relationships.”- **Dale Yoder**.

“A union is a continuous association of persons in industry-whether employees or independent workers- formed primarily for the purpose of the pursuit of the interests of its members of the trade they represent.”- **S.D. Punekar**.

Yoder and Punekar regard trade unions as long-term continuous association of the working class people formed to protect their interests against the employers, who exploit them. Webbs’ definition is a popular one but it is not considered to be a comprehensive one as trade unions are not merely concerned with “improvement of working conditions” but also cover other activities. As Milney Barley observes, “The definition of Webbs is somewhat out of date and too limited and too static because a union may combine any class of employed workers: its purpose may extend outside the working lives of the members and its functions may be wider than merely maintaining and improving working conditions if such conditions relate only to wages, hours and conditions of the working lives in their places of employment”.

“An trade union is a monopolistic combination of wage-earners who as individual producers are complementary to one another but who stand to employers in a relation of dependence for the sale of their labour and even for its production, and that the general purpose of association is in view of that dependence to strengthen their power to bargain with the employers or bargaining collectively.”- **J. Cunison**. Cunison has emphasized on trade union’s powers for collective bargaining. By collective action the unions pressurize the owners to grant more favorable working conditions.

“A trade union means an association of workers in one or more professions-an association carried on mainly for the purpose of protecting and advancing the members economic interests in connection with their daily work.”- **G.D.H. Cole**. Cole considers ultimate control of industry as the object of a trade union, in his opinion, “the control of industry is the future destiny of the trade unions.

“It is a continuous voluntary association of wage, salary and fee earners for (i) maintaining and improving conditions of their working lives (through the regulation of their relations with employers) and provision of services and benefits; (ii) regulating the relation of the two groups with the State in matters of mutual concerns; and (iii) for the participation of wage and salary earners as an organized group of producers into the life of nation.”- **N. Baruo**.

The British Ministry of labour has defined Trade Union as “all organizations of employees including those of salaried and professional workers, as well as those of manual wage earners which are known to include among their functions that of negotiating with employers with the object of regulating conditions of employment.

“Trade union is a combination with the main objective of the regulation of the relation between workmen and masters or between workmen and workmen or between masters

and masters for imposing of restrictive conditions on the conduct of any trade or business and also provision of benefits to members.” – **The British Trade Union Act, 1953**. The British Act includes organizations either of work people or of employers whereas in ordinary parlance, the term trade union is applied only to the organizations of the work people. This definition is defective because it allows even non-workers to form a trade union and because it is narrow and vague about the aims and purposes of forming such an organization.

“It is an organization, incorporated or otherwise consisting of employees. The organization acts in the collective interests of the employees in negotiating with employers, particularly in matters of wages and working conditions.” – **Solan and Zurcher**.

“Trade unions are essentially associations of manual and/or non-manual work people, including professional grades, formed to safeguard and improve the working conditions of their members and more generally to raise their status and promote their vocational interests.” **J.H. Richardson**.

“A trade union is any combination whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen between employers and employers or for imposing restrictive conditions on the conduct of any trade or business, and include any federation of two or more trade unions.”- **Indian Trade Union Act, 1926**.

Section 2 (h) of the Trade Union Act, 1926 explains the trade unions as “any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions”.

Provided that the Act shall not affect-

- (i) any agreement between partners or to their business:
- (ii) any agreement between an employer and those employed by him as to such employment; or
- (iii) any agreement in consideration of the sale of the goodwill of a business or of instruction in any profession, trade or handicraft.”

A trade union should be a combination, it may be temporary or permanent, whose “statutory purpose” (or primary purpose) is to regulate the relations between (i) workmen and employers, or (ii) workmen and workmen, or (iii) employers and employers, or and for imposing restrictive conditions on the conduct of any trade or business. The expression “trade union” includes any federation of two more trade unions.

The definitions in Section 2(h) shall have no effect on agreement detailed in the proviso therein. The definition emphasizes on the purpose for which the trade union is constituted. It is not necessary the members of the union should be workmen or

employers though in normal case they will be one or the other. The main test of the trade union is its statutory or primary purpose. However, the persons who are not workmen in an “industry or trade” cannot form a trade union because the definition of “trade dispute” in Section 2(g) and of “trade union” in Section 2(h) cannot be applied in their case because they can neither raise a “trade dispute” nor form a “trade union”. Further, the primary purpose of a union should be statutory purpose. Though it may have many ancillary purposes which might be described as statutory but that will not make it a trade union unless it includes the primary purposes mentioned in the definition given above.

Scope of Trade Union:

The scope of trade unions is very large and wide. Existence of the employer and the workmen engaged in a trade or business or industry is a pre required condition of Trade Union. Trade or business or industry includes, generally speaking, any gainful occupation. It covers all workmen. The term “workmen” has been defined in Section 2(g) of the Act. It covers industries, trade or business and, for the purposes of the meaning of “trade union” industry should be one that would amount to a trade or business, i.e., a commercial undertaking.

The Supreme Court has given two distinctive features of an industry: (i) that the employer as well as the employees should be engaged in the industry, however wide the meaning of the term might be; and

(ii) there should be co-operation between both of them for achieving the particular result. If there is no co-operation between the employer and the employee, a dispute between them would not be a “trade or industrial dispute” which is defined in Section 2(g).

Trade union is a Combination of Workers:

Section 2(h) of the Act provides a wider connotation to the word “combination” used in the definition of Trade Union. It includes not only associations with formal rules but also any two or more persons if act together for an agreed object and form a union shall also come within its purview. Such an agreement may be written or oral, made on the spur of the moment, for example, an agreement between a group of workmen in a factory who decide to strike upon the suspension of a fellow workmen, or the agreement may be implied as where the workmen, moved by common indignation, find unnecessary to put their intentions into words and strike pursuant to a tacit agreement between them. All these are combinations and if their principal object or purpose is statutory, they would be trade unions. The real purpose of a combination is to defend trade or business interest of trade union.

It is formed for the Regulation of Relations:

The primary purpose of a trade union is to regulate relations between workmen or employers or both engaged in the conduct of any trade or business or industry. Therefore, the union of servants rendering services purely of personal nature at a government house was not held by the court to be a trade union, within the meaning of Section 2(h). Further, the sovereign activities of the government are outside the scope of “industry or trade” hence the association of person engaged in sovereign activities of the State is outside the

purview of the term trade union. Sovereign activities are the functions which a constitutional government can and must undertake for the government and which no private person/citizen can undertake. The Supreme Court and also the Madras High Court, have held that the civil servants engaged in the task of sovereign functions of the government, which are its inalienable functions, can not form a trade union and their union can not be recognized within the meaning of Section 2(h) of the Act.

Trade union is formed to Imposing Restrictive Conditions:

Imposing Restrictive Conditions means a restraint on trade or industry in pursuance of a contract to restrict the manner in which one can work or earn a living. Any regulations made for the regulations of relations of the employment would amount to imposing restrictive conditions. However, to come within the statutory definition, restrictive conditions imposed must be in respect of trade or business in general and the imposition of such conditions on particular members of a trade or business is not enough. The real purpose of a combination is to defend trade or business interest and if the restrictive conditions imposed on the trade or business that are necessary to secure results beneficial to such trade or business that shall not prevent the combination from coming within the definition of “trade union”. However, the protection of the process of collective bargaining, welfare and livelihood of members and action taken in furtherance to obtain them are considered legitimate restrictions.

12.3 Registration of Trade Union

For registration of trade Union an application can be made by any seven or more members of a trade union after complying with the provisions of the Act with respect to registration. Application for registration of a trade union shall be made to the Registrar, Trade Unions under Sec. 5 of the Act. Registrar is appointed by Government. The provisions are: State government appoints a person to the Registrar of the Trade Union for the State, it may also appoints as many additional and deputy registrars of the trade union for the state The state government also defines the local limits within which they shall exercise and discharge the powers and functions so specified if any such additional or deputy registrar is appointed and exercises and discharges the powers and functions if a registrar in an area he shall be deemed to be registrar for the purposes of this act. In case members applying for registration dissociate themselves from the application by giving a written notice to the Registrar or cease to be members of the union after the date of application, but before the registration of the union, and their number is not less than half of the total number of persons applying, the application will not become invalid. The Registrar will register the union if he is satisfied that the application is in accordance with Section 5 & 6 which lay down certain requirements to be fulfilled before registration.

Application and Conditions for Registration: When an application is made to the Registrar for the registration of trade union, it should contain certain essential details, besides being, accompanied with a copy of the rule of the trade union. The details should have:

- (a) names, occupations and addresses of members making the application;
- (b) name of the trade union and the address of its head office ; and
- (c) titles, names ages, addresses and occupations of the officers of the trade union.

In case a trade union has been in existence for more than one year, the application must contain a statement of its assets and liabilities.

Besides containing these details in the application, there are certain conditions, which must be fulfilled before a trade union becomes entitled to registration. These conditions are:

- (1) that the executive of the trade union is formed in accordance with the provisions of the Act, and
- (2) that the rules of the trade union contain the details relating to the matters enumerated in Section 6 of the Act.

The term “executive” has been defined in Section 2(a) of the Trade Unions Act, which is a body to which the management of the affairs of the trade union is entrusted. Without the constitution of the executive, the trade union shall not be registered. The executive has to be constituted in accordance with the provisions of the Act. Clause (h) of Section 6 requires that the rules of the trade union must provide the manner in which the members of the executive shall be appointed and removed. Section 22 of the Act requires that not less than one half of the total number of the office-bearers (the term includes the members of the executive : vide Section 2(b) of every registered trade union shall be persons actually engaged or employed in an industry with which the trade union is connected. Rest of them may be from amongst the outsiders. However, the appropriate government may declare that this provision regarding the proportion of office-bearers from amongst the employees and outsiders shall not apply.

The rules must be related to the :

- (a) name of the trade union;
- (b) objects for which the union is established;
- (c) purposes for which the general funds of the union shall be applicable and these purposes shall be in accordance with the Act;
- (d) maintenance of a list of the members of the trade union and facilities for the inspection thereof by the office-bearers and members of the union;
- (e) admission of ordinary members who shall be persons actually engaged or employed in an industry with which the trade union is connected as also the admission of honorary or temporary members as office-bearers under Section 22 to from the executive of the union;
- (ee) payment of subscription by members of the trade union which shall not be less than twenty-five Naye paise per month per members;
- (f) the conditions under which any member shall be entitled to any benefit assured by the rules and under which any fine or forfeiture may be imposed on the members;

- (g) conditions related to a member's entitlement to benefits and imposition of fine or forfeiture on him;
- (h) manner of amendment and modification of rules;
- (i) manner of appointment and removal of the members of the executive and office-bearers;
- (j) manner of annual auditing of the union's accounts and adequate facilities for the inspection of the account books by the office-bearers and members of the trade union;&
- (k) manner of the dissolution of the trade union.

The primary object of a trade union for which it can be formed is stated in the definition of the "trade union" under Section 2(b) of the Act. This is to regulate the relations between

- (i) workmen and employers, or
- (ii) workmen and workmen, or
- (iii) employers and employers or
- (iv) for imposing restrictive conditions on the conduct of any trade or business.

The Act does not define or limit the objects for which a trade union can be formed but the objects must include the primary objects enumerated in Section 2 (h) and may have other incidental objects. A trade union cannot be registered if any of its objects is unlawful. Similarly, in the case of general funds, Section 15 of the Act specifies the objects for which the funds can be spent and is an indicator for which a trade union is intended to be formed. These funds cannot be spent for political purposes for which the Act authorizes the union to constitute separate funds (Section 16). It must be noted, however, that though Section 6 provides that no union can be registered unless its constitution provides for the matters enumerated therein, there is no authority for the proposition that these rules acquire any statutory force. It is merely a condition precedent for registration that the constitution of the union must provide for matters given in Section 6 of the Act. Further, rules framed for these matters are only in the nature of a contract binding on the members of the union and that violation cannot be enforced by writ of mandamus under Article 226 of the Constitution. If a member has been aggrieved by violation of any of these rules, the remedy lies by way of a suit.

12.3.1 Powers and Role of Registrar in Registration:

Registrar's powers in relation to registration of the trade unions are lucidly provided in the Act. After an application has been filed with the Registrar for registration in accordance with the requirements as listed above, he shall scrutinize the application. If he finds the application wanting in any manner and the information furnished regarding the compliance with Section 5 and 6 of the Act insufficient he may require the applicant to provide further information. He may refuse to register the trade union until such information is provided to them. [Section 7(1)] . Further, the Registrar can also require the applicant to change the name of the union if its proposed name is identical, or so nearly resembles with any existing registered trade union, which is likely to deceive the public or the members of other trade unions [Section 7(2)]. It is only after examining the

application and satisfying himself that all the requirements regarding registration has been complied with, he shall register the trade union.

The Registrar's satisfaction is confined to the compliance with the requirements of Sections 5 and 6 as such he cannot go into the question if the union could be described as an unlawful association. He should look at the objects for which the union is formed as also the destination and use of the general funds of the union. If he finds that the objects are apparently lawful, legitimate and intravires the trade union and if he further finds that the funds are only to be used in furtherance of those objects, then he has no option but to register the trade union.

In one case Registrar refused to register the trade union on the ground that the application was an attempt to seek registration under a new name of another Trade union which had been earlier registered and declared unlawful association. On appeal against this order the Calcutta High Court held that the duties of the Registrar were to examine the application and to look at the objects for which the union was formed. If these objects are according to the Act and if all the requirements of the Act and Regulations made there under had been complied with, it was his duty to register the trade union. At that stage, he was not entitled to go into the question whether the trade union was another union which had been proscribed and which was seeking the registration under a different name.

Further, there is nothing wrong to form a rival union by workers in a particular industry, In case such a union seeks registration, it must ensure that the provisions of the Trade Union Act (Section 5 and 6) and rules and regulations there under have been complied with. If that has been done, the Registrar is obliged to register the union.

It is statutory duty of the Registrar to register a trade union after being satisfied that it has complied with all the requirements. If he fails to comply with this duty within a reasonable time, he may be commanded by the court under Article 226 of the Constitution to perform this statutory duty imposed upon him under Sections 7 and 8 of the Act. However, what is a "reasonable time" is nowhere defined. The Registrar shall, as a result of the order of registration enters the particulars relating to the trade union in a register maintained in the prescribed form. He shall issue a certificate of registration in consequence thereof. The issuance of this certificate shall be the conclusive evidence that the trade union has been duly registered under the Act.

12.4 Amalgamation of Trade Unions

Section 24 of the Trade Unions Act provides a statutory method for amalgamation of two or more registered trade unions. For amalgamation, the dissolution of the unions or division or their funds is not a pre-requisite. Amalgamation does not involve the passing over of all the property of the amalgamated unions. But, before amalgamation is effected, it is statutorily required that voting should be held in each of these trade unions. At least one-half of the members of each of the trade union entitled to vote must record their votes and at least sixty percent of the votes recorded should be in favor of the proposed amalgamation.

Further, the Registrar must be given a notice of the amalgamation in writing. Such a notice must be signed by the Secretary and seven members of each and every union that is a party to the amalgamation. When the head office of the amalgamated trade union is situated in a different state, the notice must be sent to the Registrar of such State. The Registrar of the State in which the head-office of the amalgamated union is situated must satisfy himself that the statutory provisions in respect of amalgamation have been complied with and that the trade union formed thereby is entitled to registration. He may refuse to register a trade union if its name is identical with any other registered trade union, after satisfying himself, the Registrar shall register the trade union in the manner provided under the Act. The amalgamation will be effective from the date of its registration. An amalgamation shall be invalid without its registration.

The registration, however, is not conclusive proof of the validity of the amalgamation. Notwithstanding the registration, a member of an amalgamating union may obtain a declaration that the amalgamation is invalid on the ground of failure to obtain requisite number of votes. An illegal amalgamation may be restrained by an injunction.

The amalgamation does not prejudice the rights of any trade union which is party to amalgamation or the rights of a creditor of any of such trade unions. Further, the change in the name of a registered trade union does not affect the rights or obligations of the trade union or render defective any legal proceeding by or against it, which may commence or continue by or against it by its new name (Section 26).

12.5 Withdrawal, Refusal or Cancellation of Registration

As has been stated earlier, the Registrar has wide powers in matters of registration. If he is not satisfied with the application for its non-compliance with Section 5 and 6 of the Act, he may refuse to register the Union. Further, if he seeks any additional information regarding the rules for the union and that is not forthcoming, he is not obliged to register the union. Once he has registered the trade union, he may still withdraw or cancel the registration. This power of withdrawal or cancellation is vested in him by virtue of Section 10 of the Act, which corresponds to Section 8 of the English Trade Unions Act, 1876.

The withdrawal or cancellation may be either voluntary i.e., when the trade union applies for it, or involuntary, i.e., when the Registrar, on his satisfaction of certain factors, cancel the registration. The Registrar is empowered to withdraw or cancel the registration under the following cases:

1. Where the certificate of registration has been obtained by fraud or mistake;
2. Where the Trade Union has ceased to exist;
3. Where the trade union has willfully and after notice from the Registrar allowed any rule to continue in force which is inconsistent with the provisions of the Trade Unions Act;
4. Where the trade union has rescinded any rule providing for any of the compulsory matters required under Section 6 of the Act.
5. When the primary objects of the union are no longer statutory objects.

“Fraud” has not been defined under the Act and there is no comprehensive definition of fraud under any other statute, including Section 17 of the Indian Contract Act. Like-wise the meaning and scope of “mistake” and “willfully” have not been indicated under the Act. But wherever a charge of fraud or mistake is made, whether in criminal or civil proceeding, it must be established beyond reasonable doubt.

For the purpose of the Act, mistake or fraud must be on the part of the applicant for the withdrawal or cancellation of the certificate of registration. In one case the Registrar issued the certificate of registration to the Mysore State Provident Fund Employees Union by mistake, since the Provident Fund Organization, whose employees were the members of the Union, was neither a trade nor an industry and thus was not entitled to registration. The Registrar withdrew the certificate, after receiving the reply from the union. The District Judge as well as the Karnataka High Court observed that the Registrar had no jurisdiction to withdraw the registration certificate on the ground that he had committed a mistake in registering the union, fraud or mistake. It is only when the fraud or mistake is attributable to the applicant that the certificate can be withdrawn or cancelled. Since, in this case, the mistake was committed by the Registrar and not by the applicant; Section 10(b) could not be invoked.

Procedure for Withdrawal or Cancellation of Registration: In the case of voluntary withdrawal or cancellation of registration, according to Section 10(a) of the Trade Union Act, 1926 and Regulation 6 of the Central Trade Union Regulation, 1938, the Registrar, after received an application for cancellation or withdrawal or registration and before granting the application for cancellation, must satisfy himself that the withdrawal or cancellation was approved by the general meeting of the trade union and if it is not so approved, then it had the approval of the members of the trade union. For this purpose, he may call any further particulars as he may deem necessary and may also examine them in any office of the union. However, were the proposed withdrawal or cancellation is on any of the grounds mentioned above, it is required that the Registrar must give to the trade union not less than two months previous notice in writing specifying the ground on which it is proposed to take action (Section 1(b) proviso). No notice is, however, necessary when the union requests withdrawal or cancellation *suomoto*.

Further, before the registration is revoked or withdrawn, the Registrar must give a fair hearing to the trade union. Normally there should be sufficient time to meet the charge. It is the duty of the Registrar that while acting under Section 10, he should act judicially, since the proceeding are of judicial or quasi-judicial nature. This requires him to the follow the principles of natural justice in the matter of withdrawal or cancellation.

Order of withdrawal or cancellation of registration should be a speaking order. In appealable cases, the courts, the courts below should, as far as may be practicable, pronounce their opinion on all the important points. No fee is payable on withdrawal of cancellation of registration.

Effect of Withdrawal or Cancellation: After the withdrawal or cancellation of registration, the trade union ceases to enjoy the privileges of a registered trade union. If the combination still exists, its status becomes that of an unregistered trade union,

provided it satisfies the statutory definition. So long the registration is in force and is not withdrawn or cancelled, it is conclusive evidence that the trade union is duly registered. In pursuance of this fact, the union can sue and be sued in its registered name notwithstanding that its registration is or has become void by reason of the illegality of any of the objects of the trade union.

12.6 Funds of Trade Unions

For their day to day activities trade unions require funds. Thus the Act has made some provisions for the funds of the trade unions. Trade Unions can maintain two types of funds namely (i) General Fund and (ii) Political Fund.

12.6.1 General Fund: Every registered trade union shall have the general funds which shall be spent on specified purposes or objects. Section 15 of the Act enumerates the objects on which the funds of the union can be spent. Section 15 does not allow the funds to be spent on objects other than those mentioned therein. Contrary to that Section 1(1) of the English Trade Union Act, 1913 empowers British trade union to spend its general funds in furtherance of any lawful object or purpose for the time being authorized by its constitution. The objects for which general fund can be spent are as follows:

- (a) the payment of salaries, allowances and expenses to office bearers of the Trade union;
- (b) the payment of expenses for the administration of the union, including audit of its general funds accounts;
- (c) the prosecution or defense of any legal proceeding to which the trade union or any member thereof is a party and when it is for the purpose of protecting the rights of the union or of its member arising out of the relations with his employer or with a person whom the member employ;
- (d) the conduct of trade disputes on behalf of the union or any member thereof;
- (e) the compensation of members for loss arising out of trade disputes;
- (f) allowances to members or their dependents on account of death, old age, sickness, accidents or unemployment of such members;
- (g) the issue of , or the undertaking of liability under, policies of assurance on the lives of members, or under policies insuring members against sickness, accident or unemployment;
- (h) the provision of educational, social or religious benefits for members (including the payment of expenses of funeral or religious ceremonies for deceased members) or their dependents;
- (i) the upkeep of a periodical published mainly for the purpose of discussing questions affecting employers or workmen as such;
- (j) the payment in furtherance of any of the objects on which the general funds of the union may be spent, of contributions to any cause intended to benefit workmen in

general, provided that the expenditure in respect of such contributions shall not be in excess of one-fourth of the total income accrued to the general funds, including the balance of the credit, in any financial year.

(k) any other object notified by the appropriate government in the official gazette.

Section 15(d) does not make it obligatory upon a trade union to spend any portion of its general funds on the conduct of trade dispute; it merely renders such expenditure lawful. A union can be restrained by injunction from using its funds for an unauthorized object or for an unlawful purpose. If funds are spent on such an object the expenditure will be ultra-virus and can be restrained upon court's order.

12.6.2 Political Funds: A registered trade union under Section 16 of the Act is authorized to raise a separate fund for political purposes from contribution separately levied or made to that fund. A trade union may have certain political and other objects which are not inconsistent with the primary objects of trade union or opposed to any law. The union cannot use its general funds for its political objects. The fund, however, is not confined merely to the separate political levy and it's added by interest on investments from political fund, donations, and subscriptions also.

The contribution towards the fund is voluntary and it cannot be made a condition for admission to the trade union. A member, who does not contribute to the said fund, shall not be excluded from any benefits of the trade union or put under any disability or disadvantage directly or indirectly as compared with other members of the union. But a member who does not contribute to political fund may be excluded from its control or management and shall not have the voting right in such matters. However, it shall not render non-members of political fund completely ineligible from performing those functions of an office which involve control or management of the fund unless the office is solely or mainly involved in such control. Selection of the trade union's political candidate is an essential part of the control or management of the political fund which can be restricted to the members of that fund.

The object of Section 16 is to ensure complete separation of the political fund from the general fund so that the money subscribed for general purposes should not be spent on political objects. It is not permissible to allot any amount of the general fund for political activities. Section 16(2) specifies the objects on which the money may be spent out of this fund by the union in furtherance of civic and political interests of its members. The objects specified under Section 16(2) are as follows:

- (a) the payment of any expenses incurred, either directly or indirectly, by a candidate or prospective candidate for election as a member of any legislative body constituted under the Constitution, or of any local authority during, or after the election in connection with his candidature or election; or
- b) the holding of an meeting or distribution of any literature or documents in support of such candidate or prospective candidate; or
- (c) the maintenance of any person who is a member of any legislative body constituted under the Constitution or of any local authority; or

- (d) the registration of electors or the selection of a candidate for any legislative body constituted under the Constitution or for any local authority; or
- (e) the holding of political meetings of any kind, or the distribution of political literature or political documents of any kind.

These funds are confined to the purposes of representation on local or legislative bodies and are not applicable to foreign or international elections.

(a) Election Expenses: Section 16(2) (a) relates to expenses incurred to help a person to get into a public office. The provision is very wide and covers expenses from the moment of initiation of election process till the completion of incidental expenses after the election is over. It is not limited to candidates representing a political party, but an independent candidate is also covered if he has been selected by the union.

(b) Election Meetings or Distribution of Literature: This clause is related to expenses incurred in the holding of meetings or distribution of literature or documents of whatever description and whether or not they are political in nature in support of a candidate. Thus, candidates come within this provision. The payment of the delegates' expenses for the meeting or the costs of hiring a hall is similarly included.

(c) Maintenance of a Member of Legislative Body, etc.: This provision is not concerned with candidates but with persons who have been elected to political or civic bodies. It covers housing, clothing or feeding of any such person while occupying office and also the payment of traveling allowances but does not include the payment of any salary or any other strike benefit normally provided by a trade union to its members.

(d) Registration of Electors, etc: It is related to expenditure in connection with registering electors or selecting a candidate prior to an election. Expenses on the issue of posters, circulars, notices or loudspeaker announcements to ensure the registration of electors or on canvassing for this purpose are covered by this provision. The salary of an election agent engaged as "registration agent" is also covered and must be paid out of the political fund. Further, the money spent by the union for securing the selection of a candidate is within the purview of this provision. For this, the expenses incurred in the holding of selection conference and on the issue of information by leaflet or in any other manner recommending the selection of any particular candidate will be charged on the political fund.

(e) Political Meeting and Literature Publication and Distribution: Section 16(2) (e) deals with political meeting, literature and documents which are not covered by clause (b), i.e., they are not held or distributed in support of a candidate. The word "distribution" in Section 16(2) (b) and (e) is meant distribution to the public at large or to the members of the trade union. However, mere circulation of political document within the office of a trade union would not amount to "distribution". But it is not clear whether expenses related to writing, preparing, printing or publishing of literature or documents is covered by the word "distribution". However, "distribution" is not limited to free distribution.

12.7 Outsider's Recognition and Trade Unions

The Act or the rules made there under do not confer absolute right upon a person to be admitted as a member of a particular trade union. A trade union incorporated under the Act has a right to make any person it likes as member unless deprived by its object or charter. However, by virtue of Section 16(e) primarily, the trade union is confined to ordinary members who should be persons actually engaged or employed in an industry with which a trade union is concerned and persons who are not so engaged or employed in an industry are the outsiders. They may be admitted as honorary or executive of the trade union. The formation of an executive is essential in accordance with the provisions of the Act and the rules thereof. Unless the executive is so constituted, the registration of the trade union is not possible.

Section 20 of the Act provides that the proportion of the persons engaged in the industry as the office-bearers of the union would not be less than one-half; the other half may be from the members who are outsiders. But the application of this provision may be excluded by an exemption granted to the trade union by the appropriate government, in which case, the outsiders may not be admitted to the trade union at all. The term "office-bearer" is defined in the Act [Section 2(a), which includes besides the officer of a trade union, the members of the executive of the union, but excludes an auditor.

Section 21-A of the act provides that a person may not be elected as a member of the executive or as an office-bearer of the union if he has not attained the age of 18 years or if he has been sentenced to imprisonment for the offence of moral turpitude. However, this disqualification will cease to exist after a lapse of five years from the date of his release. Section 20 and 6 of the act provides that as the members of the executive, the outsiders have the right to inspect the account books of the trade union as also the list of members.

12.8 Appeals

Section 11 of the Trade Unions Act provides the provisions of appeal against the decision of the Registrar. An appeal can be made by any person who is aggrieved by the refusal of the Registrar to register a trade union or by the withdrawal or cancellation of the certificate of registration. The appeal is to be made within such period as may be prescribed. Regulation 10 of the Central Trade Union Regulations, 1938 provides a period of sixty days from the date on which the Registrar passed the order within which an appeal is to be filed.

The appellate court may dismiss the appeal or pass an order directing the Registrar to register the union and issue it a certificate of registration. It may also set aside the order for withdrawal or cancellation of the certificate of registration. The Registrar is bound to comply with such order [Section 12(2)]. The procedure to be followed and the powers to be exercised by the appellate court are those prescribed under the Code of Civil Procedure, 1908 for the trial of suits. These include the power to summon witnesses, compel production of documents, of making orders for discovery and inspection directing

interrogatories etc. The court may direct by whom the whole or any part of the costs of appeal shall be paid. The costs so awarded can be recorded as if they had been awarded in a suit under the Code of Civil of Civil Procedure [Section 11 (3)].

The appropriate court in which an appeal can be filed is to be determined according to the head office of the trade union. Where the head office of the trade union is situated in a Presidency Town, the appeal would lie to the High Court exercising its original jurisdiction. Where the head office is situated in any other area, the appeal shall lie to the court to be appointed by the appropriate government, but such a court should not be inferior to the court of an additional or assistant judge or a principal Civil Court of Original jurisdiction [Section 11(1) (a) & (b)].

Where the appeal was heard and decided by a court appointed by the government, the person aggrieved can file a second appeal before the High Court challenging the decision of the Registrar. In such a case, the High Court can exercise for the purpose of such appeal all the powers of an appellate court [Section 11(4)]. However, no period of limitation is provided for a second appeal to the High Court [Section 11(4)]. It shall be governed by the Limitation Act and the rules of the particular High Court.

It may be pointed out that Section 11 of the Act create some anomaly, in the matter of second appeal. While in the case of trade unions established in the Mofussil areas, the right of second appeal is clearly incorporated in clause (4) of Section 11. But in case of a trade union having its head office within the limits of a Presidency Town, there is apparently only one opportunity of challenging the decision of the Registrar, by an appeal directly to the High Court. However, this anomaly was judicially noticed in Registrar of the Trade Unions, West Bengal V. Mihir Kumar Gooha (1963) 1 Lab L.J. 100). The High Court, agreed that a second appeal is not maintainable. It is now an established law.

12.9 Immunities of Registered Trade Unions and Office Bearers

Trade Union Act grants certain exemptions to the office-bearers and members of a registered trade union from criminal and civil processes, while the scope of immunity is limited in the case of criminal matters (Section 17), it is wider in its ambit in civil cases (Section 18).

Immunity from Criminal Offences: The office-bearers or the members of a registered trade union are not liable to punishment under Sub-Section (2) of Section 120-B of the Indian Penal Code, dealing with criminal conspiracy. If the offence arises out of any agreement entered into between members whose purpose is to further the objects lay down under Section 15 of the Trade Unions Act. No other offence is covered by the Section. Indeed, any agreement to commit an offence would under Section 17, make the members liable for criminal conspiracy.

Section 15 deals with the objects on which the general funds of the union can be spent, but they should be in furtherance of over-all objects of the trade union Accordingly, the purpose of any trade union shall not, by reason merely that it is in restraint of trade, be deemed to be unlawful, so as to render any member of such trade union liable to criminal

prosecution for conspiracy. To constitute a criminal conspiracy there must be an agreement of two or more persons, to do an act which is illegal or which is to be done by illegal means.

Trade unions have the right to declare strikes, boycott, picket lines, and far to do certain acts in furtherance of trade disputes. These activities are lawful so far they fall within the purview of Section 15. Strike is a recognized instrument in the hands of labour, which aids them in any concerted movement to improve their position vis-à-vis the management. Mere absence from work does not amount to strike. The pen-down strike and tool-down strike etc. are similarly strikes within the meaning of Section 2(9) of the Industrial Disputes Act, 1947. Under Section 17, there is no immunity against violence, intimidation or molestation in furtherance of trade disputes. In the case of “gherao” if accompanied by wrongful confinement under Section 340 of the Indian Penal Code, no immunity exists for the members of the registered trade union, even if the offence was committed in an attempt to enforce their power of collective bargaining (Jay Eng. V. State AIR 1968 Cal. 407).

Immunity from Civil Suits: Section 18 provides immunity from civil action to any registered trade union, or any office-bearer, or any member thereof for any action done in contemplation of trade dispute, or in furtherance of a trade dispute to which a member of a trade union is party. The immunity under the Section is available only to the registered trade union and not to all union like under Section 8 of the English trade disputes Act.

The immunity, however, is for an action which could be made only on the group (1) that such act induces some other person to break a contract of employment; or (ii) that it is an interference with the trade, business or employment of some other person; or with the right of some other person to dispose of his capital or his labour as he desires. [Section 18(1)]

Further, the immunity is granted to a registered trade union for any tortious act done by an agent of the trade union in contemplation or furtherance of a trade dispute, if it is proved that such person acted without the knowledge of or contrary to express instruction given by the executive of the trade union [Section 18 (2)].

The protection under this Section is limited. The important and significant words in the Section are “on the ground only”. The Section does not afford immunity to a trade union or an office-bearer thereof in legal proceeding on any other ground, such as for an act of deliberate trespass. This Section also does not provide immunity in case where there is a threat or violence or where, as a result of inducement a contract for the sale or purchase of goods is broken, since it is clearly outside the ambit of the contract of employment.

However, the participation simpliciter by the trade union or any officer or member thereof in any illegal strike can not deprive the union or its members of the immunity granted under the Act. In other words, the legality of the strike has no bearing on the question of immunity granted by Section 18 of the Act. If the dominant purpose of the workmen in resorting to the act complained of is in contemplation or the furtherance of trade dispute, they shall not incur any civil liability.

12.10 Summary

In this unit, the various aspects of the trade union has been defined and explained. The definition of the trade union as given in the Trade Union Act, 1926 has not only been explained but it's essential features have also been explained. The application for registration has to be made to the Registrar, who also has the powers to refuse, withdraw or cancel the registration. Under what condition, the Registrar can do so, has also been explained. An appeal can be made against decisions of the Registrar. Which are the competent courts and where an appeal can be filed or where the provisions is for second appeal are has been explained further. The funds of trade union (general funds, political funds), outsider's recognition in the trade union and amalgamation of two or more registered trade unions have also been explained. Every registered trade union must have general funds which they shall spend for specific objects and purposes. A union cannot spend the money for any other purpose. A trade union is primarily concerned with the person actually engaged in an industry. Outsiders can only be appointed as office-bearers and their representation should in no case be more than half of the total number of the office-bearer of a trade union. It has also been explained as to who are entitled to be appointed as an office-bearer and what their rights are? The procedure of amalgamation of two or more registered trade unions has also been discussed. The rights and liabilities of trade union parties to amalgamation, grounds of refusal for registration or an amalgamated union etc. have been explained. This unit also appraises students with the procedure of registration of trade unions, refusal, withdrawal or cancellation of registration by the Registrar and the right to appeal against such a decision of the Registrar. Unit also explains the immunity of registered trade unions. The registration of trade union is not compulsory, but if it desires to have registration, the procedure as laid down in Section 4 to 9 of the Trade Unions Act is followed or complied with. A registered trade union enjoys many advantages and immunity from certain criminal and civil wrongs. What are those wrongs which entitle a registered trade union to immunity have also been explained. Suit against an officer-bearer or a member of a trade union cannot be filed in a civil court for anything done in the course of a trade dispute alleging that the act has interfered with the contract of employment, trade, business, etc.

12.11 Self Assessment Questions

Define Trade union and discuss its salient features.

1. Describe the procedure of registration of a trade union.
2. Describe the role of the Registrar of Trade Unions for withdrawal or cancellation of a certificate of registration.
3. Explain briefly the procedure of amalgamation of trade union, How far amalgamation affects the legal proceedings by or against a trade union?
4. Explain the objects for general funds of a registered trade union. How the political funds are created? What are its benefits? State briefly the purposes of political funds.
5. Give the details of the right of appeal of a trade union.
6. Discuss the immunities of a registered trade union in criminal and civil Wrongs.

12.12 Reference Books

- Srivastava K.D. Law Relating to Trade Unions in India S. Chand & Company
- Sethi. R.B. Dwivedi R.N., Law of Trade Unions Book Company, Allahabad.
- Dhyani S.N., Trade Unions and the Right to Strike, S. Chand & Company.
- Karnik V.B., Indian Trade Unions
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Unit 13 - The Shops and Establishments Act, 1953

Structure of Unit

- 13.0 Objectives
- 13.1 Introduction
- 13.2 Definitions
- 13.3 Registration of Establishments
- 13.4 Hours of Work
- 13.5 Annual Leave with Wages
- 13.6 Employment of Children and Women
- 13.7 Summary
- 13.8 Self Assessment Questions
- 13.9 Reference Books

13.0 Objectives

After going through this you will be able to understand:

- Development of Shops and Establishment Act
- Object and Application of the Act
- The people who are exempted from the Act
- Process of Registration of Establishments
- Provisions related to hours of work and overtime work

13.1 Introduction

The Shops and Establishment Act is a state legislation act and each state has to frame its own rules for the Act. There was no Act prior to the enactment of Shops and Establishment Act to regulate the conditions of service in shops and establishments. 'The Bombay Shops and Establishment Act' was passed in 1939. After reviewing the applicability of this act 'The Bombay Shops and Establishment Act, 1948 was enacted. The Shops and Establishment Act for other states have been developed on the lines of The Bombay Shops and Establishment Act, 1948. Government of Rajasthan has also passed an Act namely Rajasthan Shops and Commercial Act, 1958. (Act No. 31 of 1958) and the provisions of this Act are quite same as they are in the Shops and Establishment Act, 1953. The Shops and Establishments Act extends to whole of the state as the State Government may notify from time-to-time. The provisions of the state acts are more or less similar in all the states. Besides the State Acts, there is also a Central Act namely, Weekly Holiday Act 1942, which provides for weekly holidays to persons employed in shops and commercial establishments, etc., but the act applies only to those states which desired its implementation. The rules framed under the shops and establishment act regulate the condition of employment of persons employed in shops and establishments. This Act is applicable to all the individuals employed in an establishment with or without wages, except the members of the employer's family .

13.2 Definitions

This Act provides statutory obligation and rights to employees and employers in the unauthorized sector of employment, i.e., shops and establishments in the respective state. Although it applies to the areas specified in the Schedule attached to the Act. But the Government is authorized to bring in other areas under the operation of the act.

The definitions of important terms of the Act are as follows:

Commercial Establishment -According to this Act Commercial Establishment [Section 2] means:

- i) A commercial or trading or banking or insurance establishment, or
- ii) An establishment or administrative service in which persons employed or mainly engaged in office work, or
- iii) A hotel, restaurant, boarding or eating house, a cafe or any other refreshment house, or
- iv) A theatre or any other place of public amusement or entertainment. and includes such establishments as the State Government may by notification declare to be a commercial establishment for the purposes of this Act.

Employee - Employee[Section 2(g)] means a person wholly or principally employed in or in connection with, any establishment whether working on permanent, periodical, contract or piece rate wages, or on commission basis, even though he receives no reward for his labor and includes an apprentice, any clerical or other member of the staff of a factory or industrial establishment who falls outside the scope of the Factories Act, 1948.

Employer – Employer [Section 2(h)] means a person in charge of or owning or having ultimate control over the affairs of an establishment. It also includes members of the family of an employer, a manager, agent or other person acting in the general management or control of an establishment;

Establishment – Establishment [Section 2(i)] means a shop or a commercial establishment.

Shop - Shop [Section 2(u)] means any premises where any trade or business is carried on or where services are rendered to customers, and includes offices, storerooms, godowns, or warehouses used in connection with such trade or business, but does not include a commercial establishment or a shop attached to a factory where the persons employed in the shop fall within the scope of the Factories Act, 1948.

13.2.1 Exemptions (Section 3)

The following persons/establishments are exempted from inclusion in this act.

- 1) Officers of or under the Central or State Governments or local authorities, except commercial undertakings;

- 2) Any railway service, water transport service postal telegraph or telephone service, any system of Public conservancy or sanitation or any industry, business or undertaking which supplies power, light or water to the public;
- 3) Railway dining cars;
- 4) Establishments for the treatment or care of the sick, infirm, or the mentally unfit;
- 5) Establishments of the Food Corporation of India.
- 6) Offices of legal practitioners and medical practitioners in which not more than three persons are employed;
- 7) Officers of a banking company;
- 8) Any person employed about the business of any establishment.
- 9) Person occupying positions of management in any establishment
- 10) Persons whose work is inherently intermittent such as drivers, caretakers, watch and ward staff, or canvassers; and
- 11) Persons directly engaged in preparatory or complementary work, such as clearing and forwarding clerks responsible for the dispatch of goods. Section 3(2) of the Act gives a list of establishments for which Sections 11 (which deals with opening and closing hours of establishments) and sub-section (1) of Section 12 (dealing with weekly holidays) are not applicable.

13.3 Registration of Establishments

The employer of every establishment shall send to the Inspector of the area concerned a statement in the prescribed form, together with a prescribed fee within the period 30 days [Section 4(3)] containing-

- the name of the employer and the manager, if any;
- the postal address of the establishment;
- the name, if any, of the establishment; and
- such other particulars as may be prescribed.

The Inspector on receiving the statement and the fees, on being satisfied about the correctness of the statement, shall register the establishment in the Register of Establishments in the manner prescribed and shall issue, in a prescribed form, a registration certificate to the employer. The registration certificate shall be prominently displayed at the establishment [Section 4(2)]. A registration certificate shall be valid for five years from the date of registration and shall be renewed before the expiry of the period of registration certificate.

Change to be Communicated to Inspector (Section 5) – In order to keep the information of the establishment up to date with the registrar Section 5 of the act prescribes that if any change in any information contained in the statement given earlier

by the employer is made then he shall have to notify the Inspector, in the prescribed form, within seven days after the change has taken place. The Inspector shall make the changes in the register of establishments and shall amend the registration certificate or issue a fresh registration certificate only if he is satisfied with its correctness.

Closing of Establishment to be Communicated to Inspector (Section 6) – If the establishment closes down due to any reason then the employer should notify to the Inspector in writing the date of such closure and return the registration certificate within ten days of closing the establishment. The Inspector shall, on receiving the information and being satisfied about correctness could remove such establishment from the register of establishments and cancel the registration certificate.

Issue of Appointment Orders [Section 6(A)]: An appointment order in writing is issued by the employer within 30 days from the date of appointment of any person in his establishment or in connection with it. The appointment order shall indicate the name, designation, wage scale of the employee and the terms and conditions of his employment.

13.4 Hours of Work

According to the Shops and Establishment Act, the provisions related to daily and weekly working hours are as follows:

Working Hours - The working hours shall not be more than nine hours in any establishment. Moreover, an employee shall not work for more than forty-eight hours in any week [Section 7(1)].

Hours of Work including Overtime - The total hours of work including overtime shall not exceed ten hours in any day. Work in excess of these hours is permitted only on prescribed occasions such as annual Closing of Accounts or the days of stock taking. The limitation as to working hours per day and per week is imposed in the interest of the health of the employee concerned. [Section 7(2)].

Total number of overtime hours - The total number of overtime hours worked by an employee shall not exceed fifty in a Quarter (three continuous months) [Section 7(3)].

Hours of work for a child – No child between the age of 12-15 years shall not work for more than three hours in a day in any establishment [Section 7(4)].

13.4.1 Over-time work – Wages, Hours of Work and Rest

Overtime Wages - An employee shall be entitled to wages at the rate of one and a half times the normal wages. [Section 8].

Interval of Rest - The period of work of an employee in a shop or an establishment each day has been fixed in such a manner that hours of work shall not exceed five hours in one stretch. The rest period of one hour has been prescribed by the act after continuous five hours of work. In other words, a person shall not work continuously for more than five hours before he has had an interval of rest of at least one hour [Section 9].

Spreadover - Section 2(v) defines 'spreadover' as the period between the commencement and the termination of the work of an employee on any day. According to Section 10 the periods of work of an employee in an establishment shall be so fixed that it shall not be more than twelve hours in any day including the interval for rest.

13.4.2 Opening and Closing of Establishment

Every establishment would remain closed for one day of the week (Section 11). According to Section 12(1) the employer shall fix such date and notify it to the Inspector and specify it in a notice displayed in a conspicuous place in the establishment

The State Government may allow an establishment to remain open throughout the week if it is satisfied that the establishment employs additional staff for meeting the requirements of sub-section (3) related to overtime hours. According to the act one whole day in a week shall be given as a holiday for rest to every employee in an establishment. On a day on which such establishment remains closed an employer cannot call an employee at, or oblige an employee to go to, his establishment or any other place for any work in connection with the business.

13.5 Annual Leave with Wages

According to Section 14 every employee in an establishment shall be entitled to take leave with wages if he has worked for 240 days or more and shall avail such leave for the number of days calculated at the rate of:

- i) One day for every twenty days works performed by an adult in previous calendar year;
- ii) One day for every fifteen days of work performed by him in case of a young person;

If an employee does not take the whole of the leave allowed to him in any one calendar year, any leave not taken by him shall be added to the leave allowed to him in the succeeding calendar year. However the total number of the days of leave that may be carried forward to a succeeding year shall not exceed 30 days in the case of an adult and 40 days in the case of a young person.

An employee may at any time apply in writing to the manager of the establishment, not less than ten days before the date on which he wishes his leave to begin, to take all the leave or any portion thereof allowable to him during the calendar year. However the number of times in which leave may be taken during any year shall not exceed three.

Every employee during the first twelve months of continuous service and during every subsequent twelve months of such service in any establishment shall also be entitled to leave with wages for a period not exceeding twelve days, on the ground of any sickness incurred or accident sustained by him or for any other reasonable cause. For this leave, prior notice/application may not be required.

According to Section 16 an employee who has been allowed leave for not less than four days in the case of an adult, and for not less than five days in the case of a child, shall before his leave begins, would be paid the wages due for the period of leave allowed.

13.6 Employment of Children and Women

According to the Section 21 no child under 12 shall be allowed to work in any establishment. According to Section 22 no woman, or a child shall be allowed to work whether as an employee or otherwise in any establishment during night. The State Government may, by notification exempt any establishment of Information Technology or Information Technology enabled service from the provisions of this section relating to, employment of women during night subject to the condition that the establishment provides facilities of transportation and security to such women employees and subject to any other condition as may be specified in the notification.

Prohibition of employment during certain periods (section 23)

No owner or manager of an establishment shall knowingly employ a woman, and no woman shall engage in employment in any establishment, during the six weeks following the day on which she is delivered of a child.

Right of absence in pregnancy (section 24)

If any woman employed in an establishment who is pregnant gives notice either orally or in writing in the prescribed form to the employer that she expects to be delivered of a child within six weeks from the date of such notice, the employer shall permit her, if she so desires, to absent herself from work up to the day of her delivery:

Provided that the employer may, on undertaking to defray the cost of such examination, require the woman to be examined by a qualified medical practitioner or midwife, and if the woman refuses to submit to such examination or is certified on such examination as not pregnant or not likely to be delivered of a child within six weeks, he may refuse such permission. The examination referred to in the proviso to sub-section (1) shall, if the woman so desires, be carried out by woman.

Maternity leave (section 25)

The absence of a woman, during the period she is entitled to maternity benefit under this Act or due to illness medically certified to arise out of pregnancy or confinement, shall be treated as authorized absence on leave.

Maternity Benefit (Section 26)

Every woman employed in an establishment who has been continuously employed in that establishment or in establishments belonging to the owner of that establishment for a period of not less than six months preceding the date of her delivery shall be entitled to receive and the employer shall be liable to make to her a payment of maternity benefit which shall be prescribed by the State Government for every day during the six weeks immediately preceding and including the day of her delivery and for each day of the six weeks following her delivery:

Provided that no such payment shall be made for any day on which she attends work and receives payment therefore during the six weeks preceding her delivery. The manner in which the maternity benefit shall be payable, may be prescribed by the State Government.

Intervals for nursing the child (section 27)

Any woman employed in an establishment who is delivered of a child shall, while she is nursing her child, be allowed half-an hour twice a day during her working hours for this purpose in addition to regular intervals for rest.

Prohibition of dismissal during or on account of absence from work owing to confinement (Section 28)

When a woman absents herself from work under section 25, it shall be unlawful for the employer to dismiss her during or on account, of such absence, or to give notice of dismissal on such a day that the notice will expire during such absence. The dismissal of a woman at any time within six months before she is delivered of a child, if the woman but for such dismissal, would have been entitled to maternity benefit under this Act, shall not have the effect of depriving her of that maternity benefit if the Inspector is satisfied that her dismissal was without sufficient cause.

Notice of dismissal or discharge by employer (Section 28 A)

No employer shall dismiss or discharge from his employment any employee who has been in such employment continuously for a period of not less than 6 months except for a reasonable cause and after giving such employee at least one month's prior notice or on paying him one month's wages in lieu of such notice:

Provided that such notice shall not be necessary where the services of such employee are dispensed with for such misconduct , as may be defined in the rules made by the State Government in this behalf, and supported by satisfactory evidence recorded at an enquiry held for the purpose in the prescribed manner.

Every employee so dismissed or discharged may make a complaint in writing in the prescribed manner to a prescribed authority within 30 days of the receipt of the order of dismissal or discharge on one or more of the following grounds, namely-

- (a) that there was no reasonable cause for dispensing with his services; or
- (b) that no notice was served upon him as required by sub-section (1); or
- (c) that he had not been guilty of any misconduct:

Provided that the prescribed authority may condone delay in filing such a complaint, if it is satisfied that there was sufficient cause for not making the complaint within the prescribed time.

- (3) The prescribed authority shall cause a notice to be served on the employer

relating to the said complaint, record briefly the evidence produced by the parties, hear them and make such enquiry as it may consider necessary and thereafter pass orders in writing giving reasons therefore.

- (4) While passing an order under sub-section (3), the prescribed authority shall have power to give relief to the employee by way of re-instatement or by awarding money compensation or by both. The decision of the prescribed authority under this section shall be final and binding both on the employer and the employee.

Notice of termination of employment by employee (Section 28 B)

No employee who has been in continuous employment of an employer for a period of not less than 6 months shall leave the service of such employer without giving him one month's notice in writing. Where an employee contravenes the provision of subsection (1), his employer may forfeit his unpaid wages for a period not exceeding one month or for the number of days by which the notice falls short of one month or he may apply to the prescribed authority appointed under section 28-A for awarding suitable money compensation against such an employee.

Enforcement and appointment of Inspectors (Section 29)

The State Government may, by notification, appoint such persons or such class of persons as it thinks fit to be Inspectors for the purposes of this Act within such local limits as it may assign to them respectively. The State Government may hand over the administration' of this Act, and with it the power to appoint Inspectors, to local authorities generally or to any particular local authority.

Powers and duties of Inspector (Section 30)

Subject to any rules made by the State Government in this behalf, an Inspector may within the local limits for which he is appointed-

- A. enter, at all reasonable times and with such assistants, if any, being persons in the service of the Government or of any local authority as he thinks fit, any place which is, or which he has reason to believe to be an establishment;
- B. undertake such examination of the premises and of any prescribed registers, records, and notices and take on the spot or otherwise evidence of any persons as he may deem necessary, for carrying out the purposes of this Act; and
- C. exercise such other powers as may be necessary for carrying out the purposes of this Act:

Provided that no one shall be required under this section to answer any question or give any evidence tending to criminate himself.

Inspector to be public servant (Section 31)

Every Inspector appointed under section 29 shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Employer to produce registers, records, etc. for inspection (Section 32)

Every employer shall on demand produce for inspection of an Inspector, all registers, records and notices required to be kept under and for the purposes of this Act.

Penalties (Section 33)

1. Whoever contravenes any of the provisions of sections 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 23, 24, 25, 26, 28, 28-A and 28-B shall, on conviction, be punishable with fine which, for a first offence may extend to two hundred and fifty rupees and, for a second or any subsequent offence, may extend to five hundred rupees.

2. Whoever contravenes any of the provisions of sections 8, 16, 21, 22, 27, 32 and 36 shall on conviction, be punishable with fine which may extend to fifty rupees.

Procedure (Section 34)

1. Prosecution under this Act or the rules or orders made there under shall be instituted by an Inspector appointed under section 29 or according to specifications of the State Government or the local authority as the case may be.
2. No court inferior to that of a Magistrate of a Second Class shall try any offence punishable under this Act or any rules or orders made there under.

Limitation of prosecutions (Section 35)

No court shall take cognizance of any offence under this Act or any rule or order made there under, unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed.

Maintenance of registers and records and display of notices (Section 36)

The State Government may prescribe an employer to maintain such registers and records and display on the premises of his establishment All such registers and records shall be kept on the premises of the establishment to which they relate.

Saving of certain rights and privileges (Section 37)

Nothing in this Act shall affect any rights or privileges which an employee in any establishment is entitled to on the date this Act comes into force under any other law, contract, custom or usage applicable to such establishment or any award, settlement or agreement binding on the employer and the employee in such establishment, if such rights or privileges are more favourable to him than those to which he would be entitled under this Act.

Application of the Workmen's Compensation Act, 1923 (Section 38)

The provisions of the Workmen's Compensation Act, 1923 (Central Act VIII of 1923) and the rules there under applies to every employee of a shop or commercial establishment.

Indemnity (Section 39)

No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

Power to make rules (Section 40)

1. The State Government may, by notification in the Official Gazette, make rules for the purpose of carrying in to effect the provisions of this Act.
2. In particular and without prejudice to the generality of the foregoing power, rules made under sub-section (1) may provide in respect of the health, safety and welfare of employees.
3. In making rules under this section, the State Government may provide that a contravention of the rules shall be punishable with fine, which may extend of fifty rupees.

4. The power to make rules conferred by this section is subject to the condition of the rules being made after previous publication.

Repeal (Section 41)

From the date of commencement of this Act in any area the enactments specified in the Schedule shall stand repealed in so far as they apply to such area. Provided that anything done in relation thereto under the enactments so repealed, which could have been done under this Act, if it had then been in force in that area, shall be deemed to have been done under this Act.

13.7 Summary

The Shops and Establishments Act lays down provisions related to the rights of employees and obligations of employers in the unauthorized sector of employment, i.e., shops and establishments in the respective state. These provisions are related to Working hours applicable for a day and a week. Provide guidelines with reference to spread-over, rest interval, opening and closing hours, closed days, national and religious holidays, overtime work. and annual leave, maternity leave, sickness and casual leave etc.

13.8 Self Assessment Questions

1. Discuss the development of Shops and Establishment Act. Explain its importance objects and applicability.
2. Discuss the different provisions related to women and child employees under the Act.
3. Discuss the provisions related to working hours and leave under the Shops and Establishments Act.
4. Discuss the provisions related to opening and closing hours of Shops and Establishments.

13.9 Reference Books

- O.P. Malhotra: “The Law of Industrial Disputes”, 6th edition (2004)
- G.B. Pai: “Labour Law in India” (2001)
- P.L. Malik: “K.D. Srivastava’s Industrial Employment (Standing Orders) Act, 1946” 4th edition (2000)
- P.L. Malik’s: “Industrial Law”, 21st edition (2008)
- S.C. Srivastava: “Labour Law and Labour Relations : Cases and Materials”, 3rd edition, (2007)