

**Course : PGDLL-02**



**Vardhaman Mahaveer Open University,  
Kota**

**Labour Welfare Legislations  
And  
Industrial Sociology**

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**Course Development Committee**

---

**Prof. (Dr.) Leela Ram Gurjar**  
**Director (Academic) Chairman**  
Vardhaman Mahaveer Open University, Kota

---

**Convener and Members**

---

**Dr. Yogesh Sharma**  
**Convener, Department of Law**  
Vardhaman Mahaveer Open University, Kota  
Kota

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Vardhaman Mahaveer Open  
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Deptt. Of Law  
Banaras Hindu University, Varanasi
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Himachal Prades University, Shimla

<b>Revision</b>	<b>1. Dr. Yogesh Sharma, VMOU, Kota</b> <b>2. Prof. V.K. Sharma, JNVU, Jodhpur</b> <b>3. Prof. C. M. Chaudhary, (Retd) UOR, Jaipur</b>
-----------------	--

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**Editing and Course Writing**

---

**Editors:**  
**Dr. Yogesh Sharma, Convener- Law**  
Vardhaman Mahaveer Open University, Kota

**Prof. S.C. Srivastava**  
**Kurushetra University, Kurukshetra**

---

**Course Writing**

---

1. Prof. S.L. Agarwal, ILI, Delhi  
2. Dr. N.H. Gupta, Uni. of Raj. Jaipur  
3. Dr. R.L. Rathi Uni. of Raj. Jaipur  
4. Dr. A.N. Chaturvedi K.U. Kurukshetra  
5. Dr. Y.K. Tiwari, JNVU, Jodhpur  
6. Mrs. K.N. Padliya, Udaipur  
7. Mrs. P. Kalpakkam, ILI, Delhi
8. Dr. R.L. Jain Su. Uni. Udaipur  
9. Mr. K. C. Mandot, Su. Uni. Udaipur  
10. Dr. M.B.L. Mathur, Jaipur  
11. Mr. H. R. Nagori, RJS  
12. Dr. B.K. Galchania  
**13. Dr. Yogesh Sharma, VMOU, Kota**

---

**Academic and Administrative Management**

---

**Prof. (Dr.) Leela Ram Gurjar**  
Director (Academic)  
Vardhaman Mahaveer Open University

**Prof. (Dr.) Karan Singh**  
Director (MP Division)  
Vardhaman Mahaveer Open University

**Dr. Yogesh Sharma**  
Convener - Law  
Vardhaman Mahaveer Open University

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# Vardhaman Mahaveer Open University, Kota

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## LL-2 Course Introduction

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This Course is conceived and produced for the students of PGDLL who need to study different aspects of Industries and Labour. It will provide understanding, skill and elementary knowledge of Labour and Industrial Laws along with Personnel Management. It will train learner for career as labour, industrial and personnel professionals. It will also inculcate the understanding of national and International dimensions of these fields.

This Block contains Fifteen Units. First Unit will introduce you with conceptual aspects of Labour Welfare. Unit is focused on meaning and nature of labour welfare and its need and importance in peaceful industrial relations. In second unit you will be able to appreciate the various theories of Labour Welfare. It discusses the philosophy underlying labour welfare, merits and demerits of these labour welfare theories. The third unit provides a perspective of various programs of labour welfare, agencies looking after the implementation of these programs. The fourth unit will introduce you with the problems of environmental pollution especially by the industries and the policies and programs, which should be involved in an industry, so that hazardous substances do not cause harm to human being, animals and properties.

Unit five and six covers the Factory Act, 1948, which covers various definitions, health and safety provisions provided to the workers against the various hazardous processes in a Factory. It will also introduce you with various welfare provisions provided to the workers of the Factory. The unit six will acquaint you with various provisions of the Act dealing with working hours of adults, employment of young persons, annual leave with wages, night shifts, employment of young persons and women in industries.

Unit seventh and eighth are related to The Mines Act, 1952. Unit provides for authorities which can take action in case of violation of rules and regulations in the mines. It will also introduce you with health and safety provisions applicable in mines. Unit eight will introduce you with wages payable, working hours, leave applicable and limitations of

employment in the mines. It will also acquaint you the penalties which can be imposed in of violation of the provisions of the Act.

Unit nine will introduce you with establishments where employment of children is prohibited. It provides for regulations, conditions of the work and penalties which can be imposed in violation of provisions of the Act. Unit tenth will acquaint you with provisions of Inter State, Migrant Workmen Act, 1979. It eliminates abuses of the worker recruited and taken to another state by contractors. Unit eleven is for Bonded Labour and their protection from exploitation. Unit twelve acquaint you with contract labour system. It provides for adequate protection of the contract workers and statutory obligations are imposed on contractors and employers to provide welfare and health measures.

Unit thirteen and fourteen will introduce you with various aspects of industrial sociology and its scope in industrial world. You will also come to know the impact of industrialization on various social institutions and how they can be protected. The fifteenth unit is case laws to appreciate judicial analysis with special reference to labour welfare and the last sixteenth unit is on Motor Transport workers. In this unit you will be meaning of "motor transport worker", and "Motor Transport Undertaking". Unit will apprise you about the welfare provisions provided for the Motor Transport Workers and to regulate the conditions of their work and also the working hours provisions provided for the Motor Transport Workers etc.

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# UNIT - 1

## Conceptual Aspects of Labour Welfare

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### Objectives:

After going through this unit you should be able to understand:

- The nature meaning and scope of Labour Welfare in India.
- Labour welfare and Directive Principles of Constitution of India
- Labour welfare and Directive Principles and Five years Plans

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### Structure

- 1.1 Definition, Meaning of the Labour Welfare
- 1.2 Directive Principal and Five Year Plans
- 1.3 Scope of Labour Welfare and Legislation.
- 1.4 Summary
- 1.5 Self Assessment Test
- 1.6 Further Readings

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### 1.1 Definition, Meaning & the Concept of Labour Welfare:

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Welfare is a broad concept. It connotes a condition of well-being, happiness, satisfaction, conservation and development of human resources. Labour is an important segment of general community. The term welfare applied to labour, therefore, refers to adoption of measures which aims at promoting the physical, psychological and general well-being of the working population. The basic aim of welfare services in an industry is to improve the workers' well-being cannot be achieved in isolation of the workers from his family.

The transference of rural population to the urban areas, as a result of industrialization, brought with it certain sociological problems. Having been uprooted from their rural moorings, the new class of industrial workers required welfare services to be provided to them in their new surroundings so as to enable

them to adapt themselves to changing situations. Originally conceived as a humanitarian approach, the employers realized the value of providing better working and living conditions to their employees. What was, therefore, essentially a humanitarian approach in the initial stages, gave rise to a utilitarian philosophy as motivating force for providing welfare amenities to the working population.

The early experiments in labour welfare did not seriously influence the social structure, partly owing to their limited scope and nature, and partly because the workers were not organized. On the whole, they represented essentially a historical stage of development for the emergence of a more popular and comprehensive concept of welfare. The lead given by the pioneers aroused consciousness which continued to gain momentum. Workers thereafter started considering the provision of welfare amenities, either as a matter of right, or as an integral part of service conditions. This also gave fillip to trade union activities. As welfare becomes an accepted feature of employment conditions, the state began to intervene in order to widen the area of its applicability.

Through set late in the 19<sup>th</sup> century, the pace of industrialization in India received considerable impetus after the First World War and especially after the grant of tariff protection. Simultaneously the trade union movement in India also gained ground. Those were the hectic days of intense political activity aimed at attainment of independence from foreign rule. Industrial labour in India was also influenced by the political awakening of the country. This awakening obviously gave rise to a series of demands on the part of labour by Mahatma Gandhi, through his considerable impact upon the concept of labour welfare in India.

The philosophy and concept of labour welfare came in for a generous mention in a resolution passed by the Indian National congress on Fundamental Rights and Economic Programme in its Karachi Session in 1931. The resolution demanded that the organization of economic life in the country must conform to the principals of justice in order to secure a decent standard of living. It also emphasized that the State should safeguard interest of industrial workers and should secure for them, by suitable legislation, a living wage, healthy conditions of work, limited hours of labour , suitable machinery for the settlement of disputes between employers and workmen and protection against the economic consequences of old age, sickness and unemployment.

The concept of labour welfare received new strength as a national objective in the wake of independence. In December, 1947, an Industrial Truce Resolution was adopted by representatives of the Governments (Central, Provincial and then Indian States) employers and workers, for the reconstruction of the country's economy. The Resolution emphasized that labour welfare was essential for industrial amity.

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## **1.2 Directive Principal and Five Year Plan:**

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The Directive Principles in the Indian Constitution are very important in governance of the country and it is the duty of every state to apply these principal of welfare in making laws. Article 38 provides that State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. Article 39 provides that the State shall, in particular, direct its policy towards securing that (a) the citizens, men and women equally, have the right to an adequate means of livelihood, (b) the ownership and control of the material resources of the community are so distributed as best to sub serve the common good ; (c) the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment; (d) there is equal pay for equal work for both men and women ; (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizen are not forced by economic necessity to enter avocations unsuited to their age or strength; (f) children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Article 39A provides that State shall secure the operation of the legal system to promote justice, on the basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.



Article 41 provides that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of underserved provisions.

Article 42 provides that the State shall make provision for securing just and humane conditions of work and for maternity relief.

Article 43 provides that State shall Endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall Endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

Article 43A provides that the State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organizations engaged in any industry.

In pursuance of these directives various state governments have adopted agrarian reforms, land distribution through legislation and penalization of tax evasion by confiscation of property as measures of welfare. Women and children are given opportunities and facilities to develop in a healthy manner and live in freedom and dignity. Bonded labour is abolished by legislation. Equal opportunities to women and the maternity benefits are also provided by legislation. The wage concept is adequately enlarged securing as far as possible, wages for proper living and maintenance of health and decency. It has been observed earlier that there is provision for free legal aid to ensure that the opportunities for securing justice are not denied to any citizen by reason of his economic or other disability, children are protected from hazardous employment under the recent legislation of 1986. The workers are also given opportunity to participate in the managerial functions at different stages.

The Planning Commission of the Government of India in its five year plans had laid emphasis from 1950 onwards till today on the need for labour welfare. The first five year plan (1950-1956) emphasized on increased production for equal distribution reducing inequalities of income, welfare and opportunity to raise standard of living through land tenure legislation. The second plan (1957-1961) laid emphasis on socialistic pattern of society. The third plan (1961-1966) emphasized on reduction of inequalities. For the first time in the fourth plan (1969-1974) the right to work and compulsory education for children, promotion of weaker sections and co-operative planning were taken into consideration. In the fifth plan (1974-1979) reduction of opportunity was the main target and social justice concept started developing. In the sixth plan (1978-1983) it was thought that the poverty could be removed through employment generation scheme and through rural reconstruction and development. In the 7<sup>th</sup> plan (1985-1990) 334 crores were allocated on the labour policy alone which included higher wages and higher productivity work in safety, removal of industrial sickness, workers rehabilitation and their training, better wages and social security, abolition of bonded labour and the child labour.

### **8th Five Year Plan 'LABOUR AND LABOUR WELFARE'**

**Objectives and Thrust:** Improvement in the quality of labour, productivity, skills and working conditions and provision of welfare and social security measures, especially of those working in the unorganized sector, are crucial elements of the strategy for quantitative and qualitative enhancement of employment opportunities. The programs in the sector " Labour and Labour Welfare', therefore, lay emphasis on skill formation and development, strengthening and modernization of employment service, promotion of industrial and mines safety, workers' education, promotion of self-employment, rehabilitation of bonded labour, enforcement of labour laws especially those relating to unorganized labour and women and child labour, promotion of a healthy industrial relations situation and encouragement of workers' participation in management.

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<sup>1</sup> <http://planningcommission.nic.in/plans/planrel/fiveyr/8th/vol2/8v2ch7.htm>

**Vocational Training: To men, women and apprentice.**

**Employment Service: Through** University Employment Information and Guidance Bureau, employment exchanges

**Manpower Planning and Research: Institute of Applied Manpower Research (IAMR)**, set up by Government of India to have detail reports and providing perspectives of requirements of trained manpower for economic development

**Labour Welfare:**

Adequate levels of earnings, safe and humane conditions of work and access to some minimum social security benefits are the major qualitative dimensions of employment which enhance quality of life of workers and their productivity. Institutional mechanisms exist for ensuring these to workers in the organised sector of the economy. These are being strengthened or expanded to the extent possible. However, workers in the unorganized sector, who constitute 90 per cent of the total workforce, by and large, do not have access to such benefits. Steps need to be taken on a larger scale than before to improve the quality of working life of the unorganized workers, including women workers.

A National Child Labour Programme has been taken up to make effective intervention to prevent exploitation of child labour in the unorganized sector

The Rural Workers' Education Programs, which cover landless labour, agricultural workers, marginal farmers, fisheries labour, tribal labour, forest labour and rural artisans, are intended to help rural workers to solve their problems through self-help and to develop their own organizations.

**Rehabilitation of Bonded Labour:** for identification, release and rehabilitation of bonded labour rests with the State Governments. An outlay of Rs.333.72 crores had been provided in the Seventh Plan for Labour and Labour Welfare and the actual expenditure during the Seventh Plan period was Rs.485.14 crores. An outlay of Rs.1315.39 crores has been provided for Labour and Labour Welfare in the Eighth Plan.

**Labour and Labour Welfare in 9<sup>th</sup> Five year plan**

A sum of Rs. 40 crores was provided for implementing various schemes

contemplated during the IX Five Year Plan period, out of which only a sum of Rs. 31.36 crores was utilized by various line departments. Apart from the Plan schemes, several schemes were also taken up and implemented by the line departments under the non-plan head of account.<sup>2</sup>

One of the major concerns of the Government has been the improvement of labour welfare with increasing productivity and provision of a reasonable level of social security. The planning process attempts to create conditions for improvement in labour productivity and for provision of social security to supplement the operations of the labour market. The resources have been directed through the Plan programs towards skill formation and development, exchange of information on job opportunities, monitoring of working conditions, creation of industrial harmony through an infrastructure for healthy industrial relations and insurance against disease and unemployment for the workers and their families. The achievements of these desirable objectives in the areas of labour and labour welfare have been determined primarily by the kind of labour market that exists. The situation of surplus labour, coupled with the employment of most of the workers in the unorganized segments of the economy, has given rise to unhealthy social practices like bonded labour, child labour and adverse working conditions faced by the migrant labour. Within the available resources, a limited effort at handling these problems has been feasible.

Many of the initiatives taken by the Government for labour welfare and the role of the Plan in supplementing the efforts of labour, employer and the Government have to be reviewed regularly in the context of an evolving economic and social background. The social, economic and political conditions that existed in the initial years of planning in the country have changed. The trends in demographic, social and economic developments, that have taken place, are not always the same as expected and the Government policies have to be adjusted to the changing situation.

The diversification of economy away from agriculture, as measured by the sectoral pattern of employment, has been much slower than expected. The Second Plan

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<sup>2</sup> [http://www.spc.tn.gov.in/tenthplan/CH\\_8\\_3.PDF](http://www.spc.tn.gov.in/tenthplan/CH_8_3.PDF)

had projected a decline in the workforce engaged in agricultural activities from 70 per cent in 1956 to about 60 per cent in 1976, i.e. by 10 percentage points over 20 year period, but the actual decline has been much slower. Even in 1991, 64.9 per cent of the workers were in the agriculture sector, representing a decline by only 5 per cent from 70 per cent of 1976.

The share of the organised sector in employment has continued to be low and has been declining, accounting for 7.82 per cent of total employment in 1991. Within the organised sector, the private sector's share in employment reduced from 42 per cent in 1961 to 30 per cent in 1995.

The proportion of self-employed in employment has reduced but still it accounts for 56 per cent of those employed in 1992. The proportion of casual labour has increased from 19.7 per cent in 1972-73 to 28 per cent in 1992 among the male employees and from 30.7 per cent to 36.4 per cent among the female employees. The regular salaried employees constituted only 16 per cent in the case of male employees and 6.8 per cent in the case of female employees.

Employment per enterprise, enumerated in the economic census, has reduced from 2.92 to 2.88 persons between 1980 and 1990. Nearly three-fourths of the establishments enumerated in the 1990 economic census had less than five employees each and 90 per cent had less than 10 employees each.

Given the large share of those employed in the primary industries, outside the organised sector, in very small establishments and at casual status of employment, the strategy for benefiting the workforce in general has to be based on an increase in productivity rather than on attempting labour welfare through a frame-work of multiple regulations.

The labour movement in the country took shape when textiles, mines and plantation industries were the principal employers in the organised sector and when these industries were almost entirely in the private sector. A mutually acceptable independent third party used to arbitrate in the case of disputes between the employees and the employers prior to independence. After independence, the role of the arbitrator has been assumed increasingly by the Government. A system of labour tribunals with associated fora came into existence. Such a system can be effective only in the case of labour in the organised sector.

With 70 per cent of organised employment being in the public sector, a peculiar situation has developed in which the Government assumes the role of an employer as also of an arbitrator. In the public sector, there exist very effective, industry-specific associations of workers, which negotiate directly with the managements of the public sector enterprises. The role of the Government as an arbitrator in the public sector industrial disputes should, therefore, reduce drastically. Both the employers and the employees can select a mutually acceptable arbitrator, independent of the Government, on a case to case basis. The resources of labour administration infrastructure should become available increasingly for studying the working conditions of the unorganized sector.

In recent years, following the initiation of economic reforms in 1991, the rate of expansion of employment in the private sector has been higher than in the public sector. The rate of growth in private sector organised employment during the period 1987-88 to 1993-94 was 1.18 per cent as compared to 1.00 per cent rate of growth in the public sector employment. This is a welcome reversal of the relative situation that prevailed in the eighties. The gains from economic growth accrue to the labour force from the expansion of all-round employment and an increase in the real output per worker. The labour market in India, being for the most part outside the regulatory frame-work, has adjusted itself without much strain to the process of reform of economic policies. In labour disputes, the settlement can be much quicker if the rewards are linked with productivity improvement that comes from cost reduction and higher output.

Changes in the work culture can sometimes bring in a much larger all-round benefit than resistance to such changes. For example, resistance to changes in the structure of an industry will not benefit the workers. The services segment of the organised sector covering insurance, finance, trade, communication, transport and a variety of public services concerning health and welfare, is the largest segment of organised workforce. The benefits from the reforms in trade and fiscal policy to the consumer depend very substantially on a more flexible structure of the firms in these industries. During the Ninth Plan it is envisaged that the Trade Unions will contribute to promoting changes in the work culture. The contribution from the Trade Unions is also required for creating an environment that encourages linking of rewards to labour with productivity improvement in a more flexible structure of

the firms that deliver such services. The trade unions have undertaken research studies on issues relating to improvement in labour productivity in the past utilizing the insights acquired by them through the labour movement. The forum of Indian Labour Conference, where the labour representatives, employers and the Governments at States and Centre mutually interact, can make useful contributions by guiding research focused at labour productivity.

The objective of Tenth Plan will be to increase the coverage of the labour market institutions. The essential condition for this is the provision of gainful employment to the entire labour force.

Thrust was on vocational training, Minimum Wages, State Level Worker Welfare Funds, Child Labour, Bonded Labour,

Tenth Five-Year Plan (2002-07) - During the Tenth Five Year Plan, an expenditure of Rs. 2988.22 lakhs would likely be incurred on the various sub-sectors of labour and labour welfare, as per details given below:

(Rs. in lakhs)	Craftsman training
2594.11	Employment
257.48	Labour commissioner's office
73.53	Factories and boilers
40.70	Bonded labour
2.90	Manpower
19.50	
Total	2988.22

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### **1.3 Scope of Labour Welfare and Legislation:**

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Being a dynamic subject, no rigid limits can be laid down regarding the scope of labour welfare for different industries on a permanent basis. It has to be flexible enough to include all the essential pre-requisites of life that a worker, as a human being, reasonably stands in need of. It can also be confined to the extremely limited domain of basic minimum amenities without which a worker cannot work. The subject is sensitive to political and social changes, and also gets inevitably tagged to developments in these fields. Primarily, because of the environment in

which he works and lives, a worker expects, and perhaps also stands in need of, more than what is available to him by way of social services as a citizen. This belief has also been shared by the Royal Commission on Labour. Way back, in 1931, the Commission commenting on this matter said that the concept of labour welfare "must necessarily be elastic, bearing a somewhat different interpretation in one country from another, according to the different social customs, the degree of industrialization and the educational development of the worker". Within the broad range mentioned above, the scope of labour welfare can be interpreted in different ways by different countries, with varying stages of economic development, political outlook and social philosophy. This has also been expressed in of its Reports by the International Labour Organization. While expressing its interpretation regarding the scope of labour welfare, the ILO has observed: "the term is one which lends itself various interpretations, and it has not always the same significance in different countries. Sometimes the concept is a very wide one and is more or less synonymous with conditions of work as a whole. It may include not only the minimum standard of hygiene and safety laid down in general labour legislation, but also such aspects of working life as social insurance schemes, measures for the protection of women and young workers, limitation of hours of work, paid vacations, etc. In other cases, the definition is much more limited, and welfare, in addition to general physical working conditions, is mainly concerned with the day-to-day problems of the workers and the social relationship at the place of work. In some countries the use of welfare facilities provided is confined to the workers employed in the undertaking concerned, while in other the workers' families are allowed to share in many of the benefits which are made available."

It is however, now well recognized on all hands that the scope of labour welfare cannot be confined to facilities within or near the undertaking, it has to be considered to be comprehensive so as to embrace the whole range of social welfare or social services. Accounting to some thinkers the line of demarcation cannot be precise in all cases, but a useful test would be to see whether a welfare measure ameliorates the working and living conditions of a worker and his family. The labour welfare will, according to them, include some of all of the amenities provided in or near the undertaking and related to working and living conditions such as canteens and nourishment facilities, and recreational services, sanitary and



medical facilities, transport arrangements and housing scheme, as well as, provision of adequate lighting and heating and ventilation, crèches and other child-care facilities , training and workers' education, personal counseling for workers and their families. There are many employers who subscribe to the view that legislation sets the pace and scope of labour welfare. It is the index of what, the quintessence of their wisdom, the law makers in this country, have thought fit, proper and adequate, within the context of the overall national objectives, at a particular stage of the country's social and economic development.

The Workmen's Compensation Act, 1923 provides for the liability of the employer to pay compensation to his workmen in cases of injuries by accident "arising out of" and "in course of employment." In the event of death the Supreme Court of India has observed that if the employment was a contributory case or it had accelerated the death or if the death had occurred not because of disease alone but because of disease occupied with employment that would be deemed to be an injury by accident arisen out and during the course of employment. There must be some casual connection between the death of the workmen and his employment. The Factories Act, 1948 provides for adequate steps for workmen safety, health and welfare. Then the Minimum Wages Act of 1948 was a great relief for labour welfare because it provided the payment of minimum wages irrespective of any consideration whatsoever. The Maternity Benefit Act, 1961 was a great relief to women workers. The contract labour (Regulation and Abolition) Act of 1970 regulated be employment of contract labour in certain establishments. It also provides for its abolition in certain circumstances as stated in the Act. The Bonded Labour System (Abolition) Act, 1976 abolished bonded labour to prevent economic and physical exploitation of the weaker sections of people. Equal Remuneration Act, 1976 provides for the payment of equal remuneration to men and women workers for same work and prevention of discrimination. The Interstate Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 provides for proper wages and welfare amenities to the migrant workmen. And lastly, the Child Labour (Prohibition and Regulation) Act, 1986 prohibits the employment of children in certain employments and regulates their conditions of work like the hours and period of work, weekly holidays, health and safety etc.

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## 1.4 Summary:

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Labour Welfare concept is basically based on human values where each citizen has a right to work in a congenial environment with no hazards to his health on reasonable wages and other terms and conditions of employment. The days are over when labour was considered to be a commodity. The policy was of hire and fire and it was purely a master servant relationship. The country's independence, our constitutional structure, the advice of the International Labour Organization, the efforts of the Planning Commission- all these factors have greatly contributed to labour welfare. The Directive Principles and the Five Year Plans have created a new image for labour and its welfare. Various legislation which have come up have greatly helped in raising their standard of living and have given them a place of respect welfare funds specially have been created in several industries for the benefit of labour. The labour welfare officers have the responsibility to look after proper enforcement of such measures.

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## 1.5 Self Assessment Test:

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1. What actually is the concept of labour welfare?
2. How the Constitution of India has helped in removing poverty of our working class?
3. What is the contribution of our Planning Commission in providing a dignified life to labour?
4. Welfare legislation has greatly helped in removing bottlenecks in the upliftment of working conditions of labour. What is your view?

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## 1.6 Further Readings:

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- G.M. Kothari and A.G.Kothari, A study of industrial Law, vol 2
- P.L.Malik, Industrial Law

- Kripa Dayal Srivastava, Commentaries on the Factories Act, 1948.
- S.C. SRIVASTAV, Labor Laws in Factories, Mines, Plantations, Shops and Industrial establishment, Prentice hall (India) Ltd, New Delhi

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# UNIT -2

## Theories of Labour Welfare

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### **Objectives:**

After going through this unit, you should be able to understand:

- the philosophy underlying the labour welfare,
- the merits and the demerits of each theory,
- the attitudes of employers, the workmen and sometimes the public towards labour welfare,
- the gains of labour welfare to all.

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### **Structure:**

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- 2.1 Introduction
- 2.2 The Policing Theory of Labour Welfare
- 2.3 The Religious Theory of Labour Welfare
- 2.4 The Philanthropic Theory of Labour Welfare
- 2.5 The Paternalistic or Trusteeship Theory of Labour Welfare
- 2.6 The Placating Theory of Labour Welfare
- 2.7 The Public Relations Theory of Labour Welfare
- 2.8 The Welfare Functional Theory of Labour
- 2.9 Summary
- 2.10 Self-Assessment Test
- 2.11 Key Words
- 2.12 Further Readings

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### **2.1 Introduction:**

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This unit has been prepared to acquaint you with the different approaches to labour welfare. In fact the labour welfare is designed not only to mitigate the

evil effects of industrialization but also as a means to efficiency & productivity of labour by giving a fair deal to the workers in terms of facilities and amenities inside and outside the workplace. The employers are motivated to provide for the labour welfare if it results in the prosperity and improvement of their organization, favorably affecting their profits and public image. The workers aspire for the labour welfare and the employers assess the return of labour welfare. Therefore the labour welfare is to be provided through a system based on rationality, beliefs, mutual behavior and responsiveness, sound and good human values, legal and religious sanctions, public image and functional aspects and so on. The discussion of various theories in this unit reveals the philosophy behind labour welfare right from the traditional era to the modern age, though the historical aspects have not been shown prominently in this presentation.

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## **2.2 The Policing Theory of Labour Welfare**

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Majority of people are inclined to follow impious path than to follow virtuous one. If a person is placed in an advantageous position he starts exploiting those under him by virtue of his authority or wealth.

This implication is nicely expressed in the Bible:

“It is easier for a camel to go through the eye of the needle, than for a rich man to enter into the Kingdom of God.”

This greedy nature of man provides ample opportunities to the person in authority in any factory or workplace to exploit the workers in an undesirable manner.

In a Welfare State such a situation can not be permitted to continue as any other evil is dangerous to the survival and progress of the State itself. Hence, welfare is to be provided under the supervision of the State which requires the following:-

- (1) Passing of laws requiring employers to provide for the welfare of the workers;
- (2) Periodical supervision to ascertain their application;

(3) Sanction of law providing for the penalty and punishment to ensure that employers do provide for labour welfare as a matter of obligation;

Hence, this theory lays down that hours of work, wages, safety, economic security, good working conditions and other measures or labour welfare are to be regulated by law; otherwise the employers shall not provide all these at their own.

### **Merits**

(1) It explains the true human nature; Persons in authority are amenable to pressures and fears only. They hardly care for requests, persuasion, submission etc.

(2) It is difficult for a modern industrial concern to run effectively through self-regulating mechanism. The State control is very essential to protect the interests of weaker sections of society; otherwise the resultant disruptive forces tend to endanger the security and stability of the State.

### **Demerits**

(1) Welfare measures executed under fear or force may hardly last for longer. Under such conditions employers tend to observe formality only and remain in search loopholes to escape their responsibility.

(2) Employers will not touch any other welfare scheme; not warranted by law, e.g. housing and recreation etc.

However, a few demerits cannot diminish the value of the theory as such. The employers may show resentment at the initial stage, but once they are accustomed to it, they may carry on spontaneously. As reluctant children are made to go to school by force for the first time, but they gradually get accustomed to it and start enjoying school life.

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## **2.3 Religious Theory of Labour Welfare:**

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Man can be defined as a religious creature. Religion consists of his actions and reactions guided by his sentiments and practices, beliefs, hopes and behavioral patterns as regards affairs in this life and the life beyond. Such traits are developed in an individual under the culture and discipline of the land. Since both the employer and the employees are human beings, they naturally subscribe to religious sentiments and beliefs.

In India a man's conduct is guided by the concept of religion (Dharm), action (Karma) and rebirth. It is a deep rooted belief that every action should have its reaction, either in this life or the life beyond. This compels them to adhere to the principle "work in worship"

To elucidate the point what Baan Bhatt says in Kadambari appears relevant in which King Sudraka explains to his queen, suffering for off-springs that it might be the result of the absence of certain good deeds in their former life over which they had no control. That's way they did not deserve to have children.

Such examples are numerous in our society and the employer may be inspired to do good to the employees by providing canteens, crèches and other facilities.

### **Merits:**

- (1) The cultural practice and religious belief compels the employer to look the welfare of his workers voluntarily.
- (2) Religious sentiments of atonement provide incentive to see the welfare of those under an employer.

### **Demerits:**

- (1) Inspiration of providing welfare to the labour rests in selfish motive.
- (2) No rational welfare programme is possible.
- (3) Thus there cannot be universal and perpetual welfare programs. The amount of welfare will differ upon the degree of religious sentiment.

In spite of a few disadvantages workers get benefits by welfare work done under such inspiration according this theory. However, the sentimental force of the present employers has been much influenced by western impact to refrain from sympathetic behavior.

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## **2.4 Philanthropic Theory of Labour Welfare:**

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Philanthropy means love for mankind. The philanthropy force or compassion is a powerful derives which compels a man to do not only the good and benevolent work, but calls forth from him acts of noblest sacrifice.

Explained from this point of view, labour welfare work, e.g. important of working conditions and provision of privileges and facilities of crèches, canteens etc., could be acts of sympathy by the employer interested in removing the disabilities of the workers. Originally the welfare schemes were launched by philanthropic feelings. Robert Owen of England, who worked for the welfare of his workers, was himself a philanthropic employer. Likewise Shapoorji Bengali, Lokhande, B.P. Wadia and Mahatma Gandhi though not employers of labour yet were well know philanthropists who strived hard to bring about the welfare of the workers.

### **Merits:**

- (1) Appeals to sentiments in a man.
- (2) Voluntary.

### **Demerits:**

It may not be continuous and universal as it depends on the will of the individual.

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## **2.5 Paternalistic or Trusteeship Theory of Labour Welfare:**

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According to this theory, the industrialist or an employer holds the total industrial estate, properties and profits accruing from them in trust with him is attached the benefit of workers also, as they are unable to look after their own interested due to ignorance. The relationship subsisting between an employer and workers is that of the Head of the family and members of a family.

The theory presupposes that the relation should be like father and children or like elder brother and the younger brothers. Out of natural love the elder is



bound to look after the welfare of the younger members. Mahatma Gandhi was the protagonist of the Trusteeship Theory of Industrial estate.

It is essentially Hindu ideology according to which possession of such power is justifiable only to the extent it is utilized for the advantage and well-being of others.

The words of Lord Krishna- "you should act having in view only the unity and well being of society" though addressed to all, but apply to persons in power and position of trust specially. Power and trust should be reciprocal. The high place granted to the King in the State, leader in the community, administrator in office, teacher in school, father in the family, merchant in the business and capitalist in industry, had its origin in this view and the ancient Indian society endowed them with power and trust. Thus the flow of welfare current originated from individual and running through the institutions could provide for the progress of all. It was in this spirit that Kalidaas described his ideal prince as the King, father and the guru. Thus, according to this theory the workers and employers the workers and employers belong to the same human and industrial family and the employers, being the trusted of the industrial estate, must provide for labour welfare.

### **Merits:**

- (1) The theory appeals to the noblest sentiments of employers.
- (2) Voluntary- hence sincere and natural.
- (3) May lead to goodwill between and labour and management. It depends entirely on faith. Existence of faith inculcates harmonious relationship between labour and management.
- (4) The theory inculcates ethical spirit and outlook amongst the employers. Mahatma Gandhi made some of the great industrialists to subscribe to this view.

### **Demerits:**

- (1) It makes labour welfare the special responsibility of the top management, who alone can take initiative. It does not explain how the capitalists came to be the trustees of the properties to be used for the benefit of workers.
- (2) Trustees are temporary guardians who cease to be so when their wards become major. This theory conceives workers to be perpetual minors.

(3) There is not legal sanction behind trusteeship idea and arrangement. No legal remedy, only moral responsibility.

The theory emphasizes the moral element in the employers so far as welfare is concerned. It also point out the workers' interest in the properties and profit of the concern and thus tempering in some measure rigorous of employers' proprietarily claim.

If the trust is carried out strictly according to the ideals of faith and belief systematically, it would lead to harmonious labour-management relations.

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## **2.6 Placating Theory of Labour Welfare:**

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Workers are conscious of their rights and privileges. They are developing powerful unicorns. In case welfare is denied, they may inflict injury not only on management, but entire scheme of capitalism. In such a case it is prudent to appease the workers. This is a necessary show of kindness and friendly gesture. It is thought that it would be best means of securing the workers' cooperation. As a barking dog can be brought off to silence by a piece of bone, so as too workers can be pacified by the welfare measures.

### **Merits:**

The workers will be pleased by welfare works and their discontentment will be pacified resulting in gaining their co-operation.

### **Demerits:**

The theory is based on fear on the part of the employer-fear of workers being conscious of their rights. Hence its solution is likely to lack sincerity and is not a durable solution.

The theory May work well amongst ignorant groups of workers who fail to perceive their perpetual interests. The theory can succeed only for a short period.

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## **2.7 Public Relations Theory of Labour Welfare:**

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This theory postulates a three-corner relationship. It necessitates the creation of goodwill between labour and management and between management and public. Industry exists in society to extend goodwill among members of society.

Excellent welfare facilities like clean and safe working conditions, good canteens, crèches and other amenities never fail to make a good impression on workers, visitors and public. Certain employers feel elated in showing the welfare facilities of their labour to distinguished visitors. Company wants to advertise its good welfare schemes, since it helps in the advertisement of the company as well.

The advertisement of the welfare work also propagates the name of the company. For example, crèches can be used for a baby show and the best child can be given a prize. Several companies arrange sports-activities, maintain and trains teams, e.g. football, volleyball, cricket, hockey, etc. periodical matches and competitions as city, State, Inter-State and even international level supported by the company concerned are advertised which gain popularity for the company also. The frequent presentation of company's name in the leading dailies creates a favorable image of the company in public mind.

It is highly probable that such propaganda may add to the sale of the firm's product resulting in prosperity of industry and improvement in industrial relations. Thus welfare activities become part of sales technique and perhaps, industrial relations.

### **Merits:**

Voluntary welfare programme: Programs having a bearing on employers' interest will inevitably be under taken by them.

### **Demerits:**

The theory appears to be self-deceptive. In the light of one major activity the company may possibly neglect really useful activity to the workers. Welfare programs may be under taken for mere show and window dressing.

If only one major defect of self deception is avoided, the theory may work well. Welfare programs are under taken enthusiastically. Advertisement of this aspect automatically propagates the name of the firm, thereby enhancing the

goodwill of the company, which may create market for the product of the industry. It is a double blessing, both to firm and the workers.

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## **2.8 Functional Theory of Labour Welfare:**

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According to this theory workers are described as operatives. They are productive group in an industry. They handle and prepare the raw material for manufacturing; they man the machines, process the products, pack and ship the commodities. In reality, it is the workers who deliver the goods. Therefore, as it is very essential to keep the machines in good condition for smooth operation. So should the operators (workers) be maintained in satisfactory, physical, emotional, mental and moral conditions for continuous and increasing production?

In other words, if workers are fed properly, clothed adequately and treated kindly, i.e. their condition is congenial; their working efficiency is increased manifold. Welfare work is a means of securing, preserving and increasing the efficiency of labour.

A wise owner of a bull or horse takes good care of his animal commensurate with the use he puts it to. Napoleon said that armies march on their stomachs, by which he meant that soldiers fight better if they are properly fed and taken care of. Similarly, a wise employer should care well for his working group.

Thus proper maintenance of labour leads to greater efficiency, thereby resulting in increased production. Ultimately everybody the employer, the worker and the country are benefitted by the prosperity of the industry thus secured.

### **Merits:**

The theory provides excellent basis of planning welfare programs. It easily appeals to the employer, as it promises to make workers efficient, thereby assuring more production and better industrial relations.

Employers provide welfare work voluntarily and sincerely as their own interest is attached and enhanced by it.

### **Demerits:**

As the ultimate object of providing for welfare is the realization of higher levels of production, welfare provisions here are used as means for selfish ends of employers.

The criticism leveled against this theory is neither valid nor sound argumentatively. For the workers' efficiency and greater production generated from this theory are gains both to the workers as well as the employers.

Through higher rates of the production workers may claim higher wages and even a share in profits. An efficient worker is an asset to himself, to his family, to the community and the country along with his employer.

The fact that welfare is treated as means in achieving workers' efficiency is neither obnoxious, nor mean. Welfare is not an end in itself. As a desirable condition of existence it must express itself in some form of useful action, useful to himself and useful to community. Welfare is something more than mere luxury or idle enjoyment of life. Welfare is dynamic and efficiency and welfare co-exist and appear to the two sides of the same coin.

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## **2.9 Summary:**

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The various theories mentioned in the preceding pages describe the basis of and approaches to labour welfare. For example, the policing Theory of Labour welfare points out that the Welfare State has the duty to make labour welfare a statutory obligation of employers as they have tendency to exploit the workers and avoid their welfare. Again the Functional Theory treats workers as operatives and labour welfare increases the efficiency of workers and thereby their productivity. In the ultimate analysis the narration of different theories does not suggest that one theory is exclusively good or superior. It is possible that in the policies of employer or management, two or three or even more approaches can be discovered to be combined. Again one theory may lead to or be substituted for another according to the changeable circumstances as well as various sentiments around.

Along with employer the worker should also subscribe to welfare philosophy, where both employer and workers subscribe to the same philosophical

approach, than the result are excellent every way. This state may exist more probably in trusteeship and functional theories of labour welfare.

In India, generality of approach is paternalistic, combined with policing theory. This may be for the reason of lack of trust and non-cooperation between the workers and the employer. The best remedial measure would be for both of them to cling to functional approach by which employer would plan constructively and willingly for labour welfare and the workers would render their services effectively and intelligently which only may produce the desired result. Any other approach may not be that much meaningful and result oriented for capital and labour and also for the society.

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## **2.10 Self-Assessment Test:**

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Answer the following questions so that you may know how much you have understood the subject discussed in this unit:-

1. Describe the theories of labour welfare which are peculiar to labour welfare activities in Indian industries.
2. Give a brief account of theories of Labour Welfare.
3. Labour Welfare though benefits the employers and the workers, yet it is the duty of the former'. Explain the above statement and point out the theories bearing on it.
4. Write short-notes on:
  - (a) The policing Theory of Labour Welfare
  - (b) Impact of attitudes and sentiments of Employers and Workers on Labour welfare.
  - (c) The Trusteeship Theory of Labour Welfare.
  - (d) The Functional Theory of Labour Welfare.

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## **2.11 Key Words:**

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**Policing**

: Use of some force or compulsory or the legal sanction opposed to spontaneity.

<b>Trusteeship</b>	: Possessing estate on behalf or other and for the benefit of others without his interest. No abuse of the estate is expected from the trustee.
<b>Functional</b>	: Means in the interest of efficiency the proper maintenance of personnel.
<b>Placating</b>	: Means the appeasement of another to ensure your existence and safety and also to beg co-operation as well as discipline.
<b>Religion</b>	: Consists of sentiments and practices. Beliefs and superstitions. Hopes about this life and the next developed in individuals in accordance with the culture and discipline of the land.

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## **2.12 Further Readings:**

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1. Report of National Commission on Labour
2. M.V. Moorti, Principles of Labour Welfare
3. K.N. Vaid, Labour Welfare in India
4. B.D. Rawat, Labour Welfare in India
5. Indian Labour Journal
6. S.D. Punekar, S.B. Deodhar and Saraswati Sankaran, Labour Welfare & Trust Unionismss

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# UNIT -3

## Agencies of Labour Welfare

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### Objectives:

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

- the various agencies which are busy to look after labour welfare programs & their implementation
- the various programs of labour welfare under taken through statutory and non-statutory founds.
- the programs and policies for improving the labour welfare, standards of living and working conditions in general, thereby improving productive efficiency of the workers.

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### Structure:

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- 3.1 Introduction
- 3.2 Welfare Work by the Central Government
- 3.3 Welfare Work by State Governments
- 3.4 Welfare Work by Employers
- 3.5 Welfare Work by Trade Unions
- 3.6 Role of Labour Welfare Officers
- 3.7 Summary
- 3.8 Self-Assessment Test
- 3.9 Further Reading

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### 3.1 Introduction:

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This unit has been prepared to acquaint you with the various agencies responsible for the administration of welfare activities. Labour Welfare is of vital importance in the industrial economy. It improves the productivity and efficiency



of workers. It brings about greater attachment towards human beings and strengthens human relationship. With the programme of industrialization on extensive scale undertaken by our Republic, devoted to the ideal of a welfare State as contemplated in Article 38 of our Constitution with the socialistic pattern of society, the issue of labour welfare has attained considerable momentum.

Industrial workers in India had, to go through many decades of privation since the early days of the factory system of production. In the early days workers were considered as a commodity which could be easily procured and readily replaced. Low wages, long working hours, insanitary working and living conditions, persecution of trade union activities and the policy of 'hire and fire' brought untold miseries to the working class. Industrial unrest assumed serious proportions and industrial relations were in bad shape. This brought an end to the laissez faire policy of labour. This policy was replaced by the active Governmental interference in labour matters.

After the formation of national Government and with the dawn of the planning era, labour received attention in the five year Plans. Promotion of labour welfare is primarily a responsibility of a State, and as such, State itself has to decide the appropriate agencies for promotion of labour welfare, the need and importance of labour welfare is being increasingly appreciated throughout the civilized world though it varies from country to country, depending on the degree of industrialization, and literacy among workers.

In India the need for labour welfare, is all the more important because it creates a healthy and cordial atmosphere in the work place and contentment helps in maintaining industrial peace thereby improving industrial productivity as well as efficiency of the workers. Labour welfare work in India is being conducted largely by the Government and employers both in public and private sectors and on a limited scale by the trade unions and voluntary agencies.

The need was recognized in various Five Year Plans, Welfare measures had been envisaged both at the Centre and State levels, for all the workers engaged in different agencies responsible for the administration of welfare activities are-

- (i) Central Government;
- (ii) State Government;
- (iii) Employer, and

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## **3.2 Welfare Work by the Central Government:**

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In India, schemes of Labour Welfare were introduced for the first time during the Second World War in Ordnance, ammunition and other factories engaged in war production. For a long time, the Central Government did nothing more in the field of labour welfare than to hold labour conferences and make recommendations on it. With the achievement of independence in 1947, and emergence of the country as a Republic wedded to the ideal of a welfare state, efforts in this direction were intensified. The Government therefore, intensified its efforts to achieve social welfare and enacted number of laws with direct bearing on labour welfare. A discernible feature of Government policy in this direction has been to bring matters connected with workers welfare more and more within the purview of legislation setting appropriate standards.

The Factories Act, 1948, the Plantation Labour act, 1951, the mines Act, 1952, the Beedi and Cigar Workers (Conditions of Employment), 1966, the Contract Labour (Regulation and Abolition) Act, 1970, Child Labour (Prohibition and Regulation) Act, 1986 and Dock Workers (Safely, health and welfare Act, 1986) contain elaborate provisions for health and welfare of workers. Thus, Chapter III of the Factories Act prescribes measures to protect the health of workers in factories. These measures include cleanliness, disposal of waste and effluents, ventilation, control of temperature, elimination of dust and fumes, artificial humidification, lighting, drinking water, latrines and urinals and spittoons. Chapter V of the Factories act contains provision for welfare of workers employed in factories. These cover washing facilities, for storing and drying clothing. Facilities for sitting, first aid appliances, canteens, shelter, rest room and lunch room and crèches are also provided in the Act.

Like Factories Act Mines Act, 1952 not only provides for measures to protect the health of workers but also provides for welfare amenities for workers at work sit in mines. These cover facilities like drinking water conservancy, medical appliances, first aid boxes, or cup-boards and first aid rooms, rest shelter, canteens and crèches.

Similarly the Plantation Labour Act, 1951 provides for health and medical facilities, supply of drinking water, provisions for latrines and urinals and provisions for canteens and crèches. Further the State Government is required under the Act to frame rules for the recreation facilities for the workers and their children and also educational facilities for the children of the workers. Moreover, the Act imposes an obligation upon the employer to provide for housing accommodation for every worker and his family residing on the plantation.

The Beedi and Cigar Workers (Conditions of Employment) Act, 1966, the Contract Labour (Regulation and Abolition) Act, 1970, Dock Workers (Safely, Health and Welfare) Act, 1986 and the Child Labour (Prohibition and Regulation) Act, 1986 provide several welfare facilities such as drinking water, washing facilities, canteen, first aid appliances etc. All these Acts prescribe the minimum standards for ensuring health and welfare of workers. The employers are free to improve upon these minimum standards. In the event of contravention on the part of the employers, these Acts provide for penal provisions. Besides, these statutory provisions, the Central Government has set up labour welfare funds to provide welfare amenities for the workers employed in coal, mica, iron ore, manganese ore, limestone and dolomite mines and in the Beedi industry. Separate welfare funds have also been formed for special services like Posts and Telegraphs, Ports, Dockyards and Railways etc.

In addition to the above welfare measures, the provisions of social security in the form of Provident Fund, gratuity and Pension under various laws some other welfare measures undertaken by the Central Government to promote welfare of the working class.

In 1946, the Government of India initiated a scheme on an experimental basis to finance welfare activities in industrial undertaking owned and managed by them, such as were outside the scope of the existing statutory provisions in this regard. Under the scheme, a fund was constituted to finance various welfare and recreational activities for the benefits of workers and their families. The fund has been created from contributions of workers, Government grants and receipts from various other sources like fines, canteen profit and yields from other welfare enterprise such as Cinema shows and dramatic performances etc. Originally, the Government intended to contribute its share for a period of four years only.

Thereafter, the fund was expected to be self supporting. However, the Government continued to contribute towards the fund from year to year, subject of course, to certain conditions.

### **Statutory Welfare Funds**

The Central Government set up statutory labour welfare funds to supplement the efforts of the employers and of the State Government for some industries, namely Coal, Mica, Iron ore, Manganese ore, Limestone and Dolomite, mines and the Beedi industry. The activities to be conducted and financed under these funds are discussed below in brief.

#### **(a) The Coal Mines Labour Welfare Fund**

The Coal Mines Labour Welfare Fund Ordinance was promulgated on January 31, 1944, with the object of constituting a fund for financing welfare activities for the workers in coal mines. The Ordinance was subsequently replaced by the Coal Mines Labour Welfare Fund Act, 1947, The Act provides for the levy of cess on coal and coke dispatched from collieries at such rate not less than twenty five paise and not more than seventy five paise per ton as may be fixed by the Central Government. The Act was amended in 1972 to provide for increasing the levy of cess at a rate of 75 paise per metric ton with effect from January 17, 1973, as against Rs. 49.21 per metric ton levied earlier. The work relating to the Coal Mines Labour Welfare Fund and the Coal Mines Labour Welfare Organization was transferred in 1979 to the Department of Coal under the Ministry of Energy. The principal activities financed out of the fund are divided in two broad categories, i.e. General Welfare, such as medical facilities, water supply, education and recreation, and the Housing. The total income of the fund during 1983-84 was Rs. 1200 lakh and the expenditure Rs. 1228.48 lakh. A major portion of the expenditure for General Welfare Account is increased in providing medical facilities to coal miners. In practice, the process have mostly been distributed in the ratio of 2:3 between the two accounts. With the liberation of the subsidy under scheme, it is expected that the response for construction of house will improve the working of Coal Mines Welfare Fund.

The fund maintained three Central Hospitals, one such at Dhabhi (Bihar) having 300 general beds and 100 T.B. beds, Kellar (West Bengal) having 300

general beds and 100 T.B. beds, and Manendragarh (Madhya Pradesh) having 100 general beds and 50 T.B. beds, and twelve Regional Hospitals, four at Jharia, two each at Hazaribagh, and Raniganj, three in Madhya Pradesh and one in Andhra Pradesh, for the treatment of workers and their families employed in various coal fields of the country. There are two dispensaries at Mugma and Bhuli, and a Convalescent home has been set up at Bhuli Construction of a ward for specialized treatment at Talcher was completed. The family welfare centers attached to each of the Central and Regional hospitals, and two independent units (one each in Assam and Orissa coal fields) continued to function during previous years. Thirty Ayurvedic dispensaries, one Ayurvedic pharmacy at Patherdin in Jharia and one mobile medical unit at Balmalia in Santhal Parganas were also functioning in different coal fields. Workers suffering from tuberculosis including indoor treatment, leprosy, cancer and mental diseases were treated in different hospitals where beds have been reserved by the Organization. Family Welfare Units and Mobile Family Welfare Centers, Child Welfare Centers, Static Family Welfare Units and Mobile Family Welfare units also continued to function.

In the field of education, the Fund was running 67 Multi-purpose Institutes, 4 Women Welfare-cum-Children Education Centers, 3 Adult Education Centers, 106 Feeder Centers for men and women and a boarding house for children. Scholarships were awarded to the deserving children of colliery workers. To provide recreation to colliery workers, film shows, games and sports were organized.

### **(b) The Mica Mines Labour Welfare Fund**

The study of the Labour Investigation Committee (1946) has revealed the deplorable working and living conditions of workers employed in mica and stressed the need for providing legislative protection to them, The Government of India took immediate steps for introducing a welfare scheme for the benefit of workers employed in the Mica mine. Accordingly, the Mica Mines Labour welfare Fund Act was passed in 1946 and the Rules came into force with effect from 1948. The act aims as to constitute a fund for financing of activities to promote the welfare of labour employed in the Mica Mining industry. The Act provides for the raising of a fund by the levy of an ad-valorem custom duty, not exceeding 6 1/4%

on all mica exported from India. The present rate is 3.5% ad-valorem with effect from July 15, 1974. The Cess is collected by the custom department and credited to the Fund after deduction of the expenses, if any, for collection and recovery. The Fund thus constituted is meant to meet the expenditure incurred on the various welfare measures provided to mica miners.

The income and expenditure of the fund during 1982-85 was as under:

The activities of the Fund are confined, mainly, to the three mica producing states, i.e. Andhra Pradesh, Bihar and Rajasthan. The collection in the Fund is allocated for expenditure on welfare measures like medical, educational and recreational facilities etc. in the various mica-producing areas of the country in proportion to their average production.

As regards medical facilities provided to mica miners and their families, it comprised at a 100-bed Central hospital at Karma (Bihar), 30-bed Central Hospital each at Gangapur (Rajasthan), Kalichedu (Andhra Pradesh), along with Regional Hospital at Tisori (Bihar), Telpur and Sydapuram (Andhra Pradesh). In addition, there were 28 medical dispensaries (14 Ayurvedic, 9 Allopathic, 5 mobile units) and 3 Maternity and Child Welfare Centers, and the nine multipurpose institutes for the benefit of mica miners and their dependants. The T. B. hospital of Karma continued to cater to the needs of mica miners.

Besides, there is also a 10-bed segregated ward in the Central Hospital at Gangapur for mica miners suffering from T.B. Some beds have also been reserved for mica miners at T.B. Hospital, Nellore, T.B. Sanatorium Ranchi and Madar (Ajmer). Arrangements have been made for the treatment of leprosy at Tatulmari leprosy hospital Bihar and for the treatment of Cancer patients at the Central hospital at Kalla (Asansol) and for mental diseases at Ranchi.

For the purpose of educational facilities, the Fund has also provided eleven primary/elementary schools (6 in Andhra Pradesh, 3 in Bihar and 2 in Rajasthan). Seven middle/high schools, 16 adult education centers, 4 boarding houses, tutorial centers and 10 library and reading rooms for the benefit of miners and their children. The schools provided mid-day meal and milk to the students in Andhra Pradesh.

## **(b) The Iron Ore and Manganese Ore Mines Labour Welfare Fund**

Since working in Iron ore manganese ore mines has gained importance with the development of mining industry, the Government of India appointed a working group in 1956, consisting of representatives of employers and workers, for enquiring into the working conditions of workers engaged in iron ore mining. It recommended that a welfare fund financed by a special cess should be set up in the case of iron ore mines on the pattern of coal mines labour welfare fund and mica mines labour welfare fund. The Tripartite Industrial Committee on Mines other than Coal Mines at its meeting held in April, 1961 also agreed to the proposal for setting up of a statutory fund for the benefit of workers in iron ore mines. To give effect to these recommendations, the Central Government enacted the Iron ore Mines Labour Welfare Cess Act in the Year 1961 which came into force in the year 1963. Later on a statutory fund for the manganese mine was also proposed and therefore, the Iron Ore Mines labour welfare Fund act, 1961 has been amended so as to extend the facilities to Manganese Ore Mines workers also and come into effect from the 1<sup>st</sup> September, 1976.

The act provided for levy and collection of a cess on all iron and Manganese ore, produced in any mine, for financing labour welfare facilities for labour employed in these mines. The maximum rate of welfare cess prescribed by the Act is 25 paise per metric ton of iron ore and rupee one per metric ton of manganese ore exported or internally consumed. The rates of cess on iron ore has been increased from Re. 0.25 per metric ton to Re. 0.50 per metric ton with effect from 1<sup>st</sup> July 1981.

The responsibility of collection of cess lies with the Regional Welfare Commissioners only as no cess is levied on export of Limestone and Dolomite.

The income and expenditure of the fund during 1982-85 was as under:

The Iron Ore and Manganese Ore mines Labour welfare Fund is utilized for the improvement of public health and sanitation, prevention of disease and provision of medical and recreational facilities, etc., for the workers employed in these mines. The Fund has adopted the pattern of Coal Mines Labour Welfare Organization in providing medical, educational, and housing facilities. A brief description of welfare activities conducted under this Fund is given below:

As regards medical facilities, there are four Central hospitals located at Kariganur (Karnataka), Tisco (Goa), Barajamda (Bihar), and Joda (Orissa). Thirty more beds have been added in the hospital at Tisco (Goa). In addition, there were 4 primary health centers at Naugaon, Joruri, Tamkai, and Silgora (Orissa) and one at Redi (Maharashtra). In addition, 13 dispensaries were functioning. 9 ambulance vans have been provided in various areas. 68 beds for patient suffering from tuberculosis were reserved in certain hospitals/sanatoria in various regions for specialized treatment of iron and manganese ore miners and their families. Those managements which maintain dispensaries to the prescribed standards are also given assistance for maintenance and improvement of dispensaries according to a prescribed scheme and Rs. 14.79 lakhs were provided in the budget for 1982-83. Subsidy is also given to the management for purchase of medical equipments required for the efficient working of the dispensaries. 6 public health centers and 1 maternity-cum-child welfare centers have also been established. An approval for 50 bed hospital at Balaghat has also been issued. In addition, two static-cum-mobile dispensaries have been sanctioned during 1984.

In order to improve educational and recreational facilities, a budget provision of Rs. 5.60 lakh for 1982-83 was made for providing scholarships to the children of the miners. Under this scheme, Rs. 10 to 75 per month is given as scholarship. Two school buses have been provided for transport of the school going children of miners in Madhya Pradesh. 39 multipurpose institutes, 3 welfare centers, 5 women-cum-children welfare centers, 13 cinema units, 159 radio sets, 9 central libraries and 14 feeder libraries provided the recreational facilities to miners, and grants-in-aid are also given for sports meet, foot-ball tournaments etc.

To provide adequate educational facilities, a scheme has been introduced to provide assistance the management up to 50% of the actual cost of the bus or Rs. one lakh in case of normal bus and Rs. 50,000.00 in case of mini-bus whichever is less for transportation of school going children of iron ore/manganese workers.

#### **(d) The Limestone and Dolomite Mines Labour Welfare Fund**

The Limestone and Dolomite Mines Labour Welfare Fund Act which received the assent of the President on December 2, 1972, came into force with effect from 1<sup>st</sup>



December, 1973. The Act provides for levy and collection of effect from 1<sup>st</sup> December, 1973. The Act provides for levy and collection of cess at the rate of 20 paise per metric ton on such limestone and dolomite as is consumed by iron and steel plants, cement and other factories or is used by mine owner himself for the above purposes. It was passed to provide welfare facilities on the workers employed therein.

While the cess on internal consumption is collected by the Welfare Commissioners, the cess on export is collected by the custom authorities.

A brief description of the welfare activities under the Act is as under:

As regards medical facilities, 30 Medical Dispensaries, (13 Ayurvedic, 6 mobile Dispensaries, 4 Static and 7 Static-cum-Mobile Dispensaries) and one maternity centre continued to cater to the needs of the miners. One maternity-cum-child welfare centre has also been established. In addition, one Static-cum-mobile dispensary was again sanctioned during 1984.

On the head of educational and recreational facilities, a sum of Rs. 9.36 lakh was provided in the Budget for the grant of scholarships to the children of miners. During 1982-83, 8 radio sets and 9 projectors were sanctioned in addition to the 10 mobile cinema units, 33 projectors and 29 radio sets provided in earlier years.

In the name of water supply, during 1982-83, grant-in-aid amounting to Rs. 2.83 lakh has been paid to two mine managements in Karnataka region.

For housing 203 houses are reported to have been constructed under the two housing schemes, namely type I and type II, during 1982-83.

#### **(e) Beedi Workers Welfare Fund**

The Beedi Workers Welfare Fund Act, 1976 was enacted to provide for the financing of measures to promote the welfare of persons engaged in Beedi establishments. The Act came into force on 15th February 1977. It has provided for the establishment of a fund 'called the Beedi Workers Welfare Fund. For this purpose, the Beedi Workers Welfare Cess Act, 1976 was also passed to provide for the levy and collection of a cess at the rate of 25 paise per kilogram of tobacco

issued from a warehouse to any person for the purpose of manufacturing Beedies. The collection of cess under Beedi Workers Welfare Cess Act was, however, stopped with effect from 1<sup>st</sup> March, 1979. Thereafter, the Beedi Workers Welfare Cess (Amendment) Act, 1981, provides for a levy of cess on manufactured Beedies at a rate not exceeding 50 paise and less than 10 paise for 1,000 manufactured Beedies. The cess at the rate of 10 paise per 1,000 manufactured beedies has been levied with effect from 1<sup>st</sup> January, 1982.

For financing the welfare activities for Beedi workers numbering about 3.5 million (approx.) cess is levied on manufactured Beedies only which is ten paise per thousand Beedies against the maximum ceiling fixed at fifty paise per thousand of manufactured Beedies. The cess on Beedi is collected by the Central Excise Department. The units manufacturing Beedies up to 20 laths per annum are exempted from payment of cess.

A cum of Rs. 3.11 crore was collected towards the Beedi Workers Welfare Fund during 1985-1986, as declared by the then Union Labour Minister in the Lok-sabha on March 9, 1987.<sup>12</sup>

Some of the welfare facilities provided to the Beedi workers are as under:

In order to provide medical facilities, a ten-bed hospital at Mysore and one chest Clinic at Nimitta (West Bengal) were set up to function for the benefit of Beedi workers. For Beedi workers, suffering from T.B. beds are reserved in hospital and T.B. Sanatoria. At present, 110 dispensaries for Beedi workers have been established. Two Static-cum-Mobile Dispensaries were sanctioned during 1984. Besides, administrative approval for establishment of three 50-bed hospitals, one each at Mysore (Kamatka), Mukkadal (Tamil Nadu) and Dhulion (West Bengal) was also communicated under the Beedi Worker Welfare Fund.

To provide educational facilities a scheme to provide scholarships to the children of Beedi workers has been in operation since 1975-76. This scheme is applicable to the children of workers whose income does not exceed Rs. 1250.00 Per month. The rate of scholarship ranges between Rs. 15.00 to Rs. 125.00 per month. Under the scholarship scheme, a sum of Rs. 37.50 lakh was provided in the budget estimates for payment of scholarships to the children of Beedi workers during 1982-83.

## **Housing**

Besides grants made by the Central Government in respect of housing, rents realized from the housing accommodation provided by the Fund, and any other amount received by the Housing Board are also to be credited to the housing account. The Coal Mines Labour Welfare Organization set up under the Coal Mines Labour Welfare Fund Act, 1947, supplements the efforts of the State Governments and the employers in coal mines to provide housing accommodation to coal miners and their dependents. For this purpose, 40 per cent of the amount which is collected as cess on the dispatches of coal from the coal mines constitutes the Housing Account of the Coal Mines Labour Welfare Fund. The estimated closing balance in the Housing Account of the Coal Mines Labour Welfare Fund Organization as on 31 March, 1979 was Rs. 989.51 lakh of which Rs. 651.45 lakh were under investment in Government securities and intermediary Treasury Bills, the face value of which was Rs. 755.19 lakh. About 77,929 houses were constructed with financial assistance of the Organization and about 14,849 houses were under construction till the end of the year 1978 under various housing schemes sponsored from time to time by the Organization. Besides, out of 535 barracks planned to be constructed since the inception of the scheme, 178 had been completed and 67 were under construction till 1978.

Efforts have also been made to provide housing facilities to mica miners under the Mica Mines Labour Welfare Fund on the same lines as provided for Coal Miners. All the housing schemes of the Coal Mines Welfare Organization were extended to the Mica Mines Welfare Organization. But none of these schemes made much headway in the Mica Mining areas of Bihar, Andhra Pradesh and Rajasthan, because of the short life of the Mica Mines and the consequent shifting nature of the employment of mica miners.

As far as Iron ore and Manganese ore workers are concerned, the owners of mines are also given grants-in-aid by way of subsidy for construction of houses for their workers under various schemes. Construction of 13,557 houses has been sanctioned so far under the different housing schemes. Of these, 11,857 houses have already been constructed. A provision of Rs. 44.47 lakh has been made in the revised budget estimates (1982-83) for housing of the workers.

Housing is one of the three priority items of the welfare programs for which assistance is given to mine owners from the Iron Ore Mines Labour Welfare Fund. On the advice of the Central Advisory Board of the fund 40% of the money constituting the Fund is spent on providing housing accommodation to iron ore miners.

Studies reveal that the approved schemes for providing housing accommodation to iron ore miners are (1) The New Housing Scheme (Type II); (2) The Low Cost Housing Scheme (Type I); and (3) Build Your Own House Scheme. These schemes are based on similar scheme prevalent on the coal mines side with negligible differences.

### **Non-Statutory Welfare Fund**

In 1946, the Government of India initiated<sup>13</sup> a scheme on an experimental basis to finance welfare activities in industrial undertakings owned and controlled by them, such as ordnance and ammunition factories and depots (excluding the establishments under the control of railway board and major ports). There were proposals for setting up welfare trust funds in private understandings also.

The scheme introduced such measures as were outside the scope of the existing statutory provisions in this respect. Under the scheme, a fund was constituted to finance various welfare and recreational activities such as sports, games, dramas, cinema shows, reading rooms and libraries etc., for the benefit of workers and their families. The fund has been built up from contributions of workers, Government grants and receipts from various other sources like fines, canteen profits and yield from other welfare enterprises such as cinema shows, dramatic performance etc. Originally, the Government intended to contribute its share for a period of four years only. Thereafter, the fund was expected to be self-supporting. In the first year, the Government contributed at the rate of Rupee one per worker, employed in the undertaking, during the second and third years, the Government grants was eight annas per worker per annum, plus an amount equal to the total employers' contribution, subject to a limit of eight annas per worker, during the fourth year the Government grant was equal to the employees' contribution or Rupee one per worker, whichever is less. This grant of the fifth year i.e. Re.1 per month was contained, as the scheme was entered from year to year. In view of the workers' keen interest in the working of funds, and also in order to strength the funds it has been decided by the Government that the grants from the year 1960-61 will be paid

equal to employers' contribution or Rs.2.00 per worker, whichever is less. The grants were subject to the condition that there would be Welfare Fund Committees consisting of representatives of the Government and the workmen to administer the Funds and to carry on welfare activities and the accounts will be utilised to meet the current and not capital expenditure.

The proposal for setting up Welfare Trust Funds in private undertakings was also discussed first at the eighth meeting of the Standing Labour Committee, held in March, 1946, and then many times in its subsequent meetings. The proposal has also been considered in the conferences of Labour Ministers. The Government of India first issued a letter to State Governments and then requested them in 1952 and 1954 twice, to include employers to organize Welfare Trust Funds in their undertakings. But the response from the employers has not been satisfactory. Welfare Funds in Central undertakings have been created on a voluntary basis since 1966.

The National Commission on Labour has suggested a General Miner's Welfare Fund as recommended<sup>14</sup> by Malviya Committee on Labour Welfare (1966) to undertake welfare activities in medical, educational and recreational fields in respect of all the workers in mines. Finance for the Fund should be arranged by the levy of cess based on the prices which the minerals fetched.

The government of India on October 15, 1984 framed new rules for the promotion of welfare of cine workers who have been connected with the production of at least five feature films and whose remuneration does not exceed Rs. 1000.00 per month or Rs. 5,000.00 if they get their remuneration in lump-sum. The rules framed under the Cine Workers Welfare Fund Act, 1981 came into force from November 1, 1984. The welfare measures provided under the rules include provision of dispensaries, maternity centers, educational and recreational facilities by the producers of films with the help of grant-in-aid from the Welfare Fund. The Government had enacted two legislations in the interest of cine workers. The Cine Workers Welfare Cess Act, 1981 was meant to provide for the levy of cess and collection of a cess in future films for financing the activities for the welfare of cine workers. Under the Act, every film produced is required to pay a cess of Rs.1000 per feature film, if he wants to get certificate from the Central Board of Film Certification. This cess will form the core of the Cine Workers Welfare Fund. The other legislation is the Cine Workers and Cinema Theater Workers

(Regulation of Employment) Act, 1981. This Act came into force on 1st October, 1984, along with the Cine Workers and Cinema Theater Workers (Regulation of Employment) Rules, 1984. Under this Act, a film producer cannot employ a cine worker unless he has entered into an agreement prescribed by the Government to safeguard the interests of the cine workers.

To do away the existing system of contractors to recruit the brick kiln labour, the Central Government asked the States to accept its proposal for creation of a Statutory Welfare Fund for brick kiln workers on the same line as those set up for the workers in the Iron ore, Manganese ore, Chrome ore, Limestone, Dolomite, Mica and Beedi industries. The new law will cover all establishments employing five or more workers. For the purpose a Tripartite Committee of 21 members has been constituted under the Chairmanship of Mr. RKA Subramaniya, Additional Secretary in the Labour Ministry.

The Central Government has constituted a 20 member tripartite study group to consider and formulate legislative and administrative proposals including setting up of a welfare fund, for improving the working conditions of workers in Handloom and Power loom industry and also established National Rural Welfare Fund with bipartite advisory administrative support to take care of such inexorable needs like accidents, old age, relief, support to organizations in over critical phases, seed and deposit money for organized enterprises of rural poor and organizations engaged in skill development schemes. Thus, keeping in view the difficulty in organizing industry-cum-labour welfare funds and the cost of administering such welfare funds, it would be better if one coordinating agency at the State level is entrusted with the responsibility of administering a welfare fund and for implementing a welfare plan for facilities and amenities other than those provided in various legislative enactments.

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### **3.3 Welfare Work by State Governments:**

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As regards the activities of the State Governments, welfare funds have been constituted under the Acts, namely, The Bombay Labour Welfare Fund Act, 1953; The Gujarat Labour Welfare Fund Act; The Assam Tea Plantation Employees Welfare Fund Act, 1959; The Mysore Labour Welfare Fund Act, 1965;

The U.P. (Sugar and Power Alcohol) Industries Labour Welfare and Development Fund Act, 1950; The Kerala Toddy Workers Welfare Fund Act, 1969; The Punjab Labour Welfare Fund Act, 1965; The Tamil Nadu Labour Welfare Fund Act, 1972; The Uttar Pradesh Labour Welfare Fund Act, 1965; and the West Bengal Labour Welfare Fund Act, 1974.

The labour welfare activities as detailed under the Bombay Labour Welfare Fund Act deserve attention. They are described in brief as under:

### **The Bombay Labour Welfare Fund**

With regard to labour welfare fund, an Act was enacted in 1953 to provide for the constitution of a fund for regular labour welfare activities in the State. The Act is applicable to every factory<sup>15</sup> as defined under the Factories Act, 1948, all transport undertakings covered under the Motor Transport Act, 1961, old establishment as defined under the Bombay Shops and establishments Act, 1948 which employ on any working day during the preceding 12 months 5 or more persons. This enactment marked an important milestone in labour welfare. The main object of the Act is to constitute a Fund for financing the activities for the promotion of welfare of labour in the State. According to information furnished by Maharashtra Labour Welfare Board, the fund inter alia consists of all fines<sup>16</sup> realized from the employees, all unpaid accounts,<sup>17</sup> voluntary donations tripartite contribution (six monthly contribution of Rs. 0.75 per employee and Rs.2.25 from the employer for each such employee and Governments contribution being equal to twice that of the employee, i.e. Rs.1.50) payable as on 30th June and 31st December each year; any sum borrowed under Section 8, any loan granted or subsidy paid by State Government. As per the tripartite contribution provided under Sec. 6 (33) of the Bombay Labour Welfare Fund Act, 1953, the State Government contribution delivered by the Board during 1984-85 was around Rs. 49 lakh.

The Maharashtra Labour Welfare Board, a corporate body, constituted under the Bombay Labour Welfare Fund Act, is responsible for conducting welfare activities for industrial workers and other employees including their dependents throughout the State of Maharashtra. The Board consists of 8 independent persons and six representatives of employers and employees each. The Welfare Commissioner is the Chief Executive Officer of the Board. The Board is reconstituted by

Government after every three years. The State Government has also appointed inspectors for effective enforcement of the Act. The Board has to utilize the Fund on the welfare measures like (a) community and social education centers including reading rooms and libraries; (b) community necessities; (c) games and sports; (d) excursions, tours and holiday homes; (e) entertainment and other forms of recreation; (f) home industries and subsidiary occupations for women and unemployed persons; (g) corporate activities of a social nature; (h) cost of administering the Act including the salaries and allowances of the staff appointed for the purposes of the Act; and (i) such other objects as would in the opinion of the State Government improve the standard of living and ameliorate the social conditions of labour. The Board may with the approval of the State Government make a grant-in-aid from the Fund to any employer, any local authority or any other body to carry out certain activities for the welfare of labour.

The welfare programs conducted by the Board consist of a variety of activities in the following four main divisions:

**(a) Recreation:**

It covers (i) entertainment such as dramatics, cinema programs, cultural programs and competitions, radio, T.V. sets etc. (ii) games and sports and physical culture including indoor games, outdoor games, gymnasium, wrestling athletic sports, best physique contests and expert coaching for sportsmen etc.

**(b) Community and Social Education:**

Reading-rooms, library and information centers, study facilities, talks, seminars, storytelling programs, observance of National days, special days and special weeks, social education classes, labour counseling, exhibitions, book-bank, and scholarship facility etc. are included under this head.

**(c) Health-Family Planning:**

This head includes child welfare and health, education, including social and nutritional guidance for workers' families, excursions etc.

**(c) Social Programs:**

Vocational classes for women such as 'sewing, handicraft, employment oriented training programs, demonstrations in nutritious recipes etc. are arranged, and for



children, Sishu Kendras (age group 2 years to 6 years), crèche (6 months to 2 ½ years) children's libraries, play apparatus, outings, mid-day meals programs etc. are managed.

It is stated that the Board conducted welfare programs through its welfare centers in various cities and towns. At present in all over 85 cities and towns, the welfare programs are conducted by the Board through 210 welfare centers (including 12 committees managed welfare centers under the joint auspices of M.L.W. Board and Co-operative sugar factories) functioning in the State as on June 30, 1985. These welfare centers are classified in six types depending on availability of premises, open grounds, and corresponding facilities. They are (i) Kamgar Kreedha Bhawan, Kamgar Kalyan Bhawan; (ii) Lalit Kala Bhawan, (iii) Vishistha Kendra; (iv) Kendra; (v) Upa Kendra; and (vi) Slum Kendra) Mumbai Gimi Kamgar Kreedha Bhawan had come up in 1971 with the co-operation of Government of Maharashtra, Bombay Municipal Corporation, Bombay Mill Owners' Association, and the Board. The main facilities provided, included a foot-ball ground with loan and stadium stands, a swimming pool of Olympic size, an open air theater, a pavilion building with indoor badminton court and facilities for table tennis, and other indoor games, gymnasium, mat wrestling, a well kept library and information centre, study room etc. Similarly, there is a multi-purpose welfare complex at Andheri, Bombay known as Kamgar Kalyan Bhawan. Similar such projects also exist at different places in Maharashtra.

### **Housing**

In the field of housing, many of the State Governments have set up Housing Boards to carry through the Central Government housing schemes and build their own houses for industrial workers. Some of the State Governments have enacted laws for the purpose.

To boost the welfare programs most of the State Governments have taken special care to include the workers to set up credit societies and consumers co-operatives. Some of the State governments have also adopted measures for controlling indebtedness among workers by regulating the activities of money lenders and the location of wine-shops. Holidays homes for the use of industrial workers have also been established in a few States.

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### **3.4 Welfare Work by Employers and Their Associations:**

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Many enlightened employers provide many more facilities than the statutory requirement. Their attitude is gradually changing. Many have realized that welfare-work has a direct bearing on the productivity & of workers. Big units and units with modern technology either voluntarily or under collective bargaining agreements provide a variety of services and amenities.

The labour welfare movement, however, has been pioneered by several employers who were partly motivated by philanthropy and partly by a desire for greater efficiency, and some-times, even by a desire to attract labour and keep it committed to themselves and with its loyalty.

At the beginning of the 20th century, a few employers took the initiative in welfare measures for the betterment of their workers. In 1915, the Calico Mills in Ahmadabad started medical services for their workers by appointing a doctor and a nurse. A year later, they started a maternity home. Women were offered an incentive of Rs.50.00 to go to the maternity home for their confinement. Calico Mills even opened a crèche for the benefit of the children of their women employees. In 1917, at Ahmadabad, a package of labour welfare activities was started by a mill owner' family, sanitation and medical relief, thrift and savings and abstinence from drinking. In Bombay the Tata started a medical unit in one of their mills in 1918 which has now become the Industrial health department. In Delhi Lala Shri Ram of the Delhi Cloths Mills started housing scheme for workers and a few other welfare activities were also started in 1920. In the early twenties, a school was started in Delhi by the Birla Mills. In these years, other employers, such as the British India Co-operation in Kanpur, the Express Mills in Nagpur, the Binny Mills in Madras and Tata Steel (TISCO) in Jamshedpur had initiated labour welfare programs which were mentioned even in the Report of the Royal Commission on Labour in India in 1931.

The main handicap, however, which has prevented the trade unions from taking interest in labour welfare, has been lack of funds<sup>18</sup>. Amongst the trade unions which undertake welfare programs for their workers, special mention may be made

of the Textile Labour Association, Ahmadabad, the Mill Mazdoor Union at Indore, and the Mazdoor Sabha of Kanpur.

The standards and scope of welfare work by employers are diverse in character because of differing conditions from industry to industry and from unit to unit in the same industry. However, while employers of larger and progressive undertakings have provided welfare amenities for their workers, the employers of smaller and medium sized undertakings have normally been able to offer only the barest minimum of welfare such as canteens, medical and nothing more. In many big enterprises, workers' canteens, medical care, housing and creational and cultural activities have developed quite well. Some of these have been described in detail in the Report of the Malviya Committee, 1969.

Many of the welfare activities which were originally provided by the employers on a voluntary basis e.g. canteens, crèches, lunch rooms, first-aid boxes, pit-head bath in mines, drinking water etc., have now become statutory obligations. Similarly, with the adoption of the Employees' State Insurance Scheme, the responsibility of the employers for providing medical services to their employees has further reduced. Thus, the scope of voluntary welfare work by employers has become narrower.

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### **3.5 Welfare Work by Trade Unions:**

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Labour welfare work by trade unions refers to the services or programs developed by unions for the benefits of their members. Obviously, these are provided out of their own resources and re-administered by them. Though limited in extent and scope, certain trade unions have devoted themselves to labour welfare work. Trade Unions in India are pre-occupied with inter-union rivalries, industrial disputes, political rivalries and leadership problems.

#### **(1) Textile Labour Association (Mazdoor Mahajan):**

Mahatma Gandhi established the Textile Labour Association (Mazdoor Mahajan) in 1916 as a model union and described it thus:

"The Ahmadabad Labour Union is a model for all India to copy. Its basis is non-violence, purity and simplicity. It has never had a set-back in its career. It has grown from strength to strength, without fuss and without show. It has its hospitals, for the children of mill hands, classes for adults, its own printing press and Khadi depot, and its own residential quarters."<sup>19</sup>

Gandhiji formulated a plan for 'constructive programme' and called upon all organizations including trade unions to adopt and implement the same. The programs included activities to promote communal unity, removal of untouchability, prohibition, education, health and hygiene, upliftment of women Harijans and the tribal communities etc. He called upon the trade unions to take up adult literacy work. In 1918 when he organized a strike in the textile mills in Ahmadabad, he told the striking workers that "they should not waste time in sleeping, gambling or visiting tea-shops. Those who are literate should spend time in reading books and increase their knowledge. They can also teach the illiterate". The Hindustan Mazdoor Seva Sangh which was formed in 1938 by Gandhian Trade Unionists undertook literacy work. Though limited in extent and scope some trade unions have undertaken social welfare programs. They have also organized adult literacy and leadership training programs. Trade Union colleges have been set up by INTUC and AITUC. In addition, they have undertaken publishing and printing of books and libraries.

The Textile Labour Association has celebrated its Diamond Jubilee after 60 years of its existence on December 4, 1976. The following are the services offered by the Association:

(1) Pre-maternal and maternal care through a maternity home and dispensary at Khanpur; (2) crèche for children of working mothers at Dispur; (3) 35 pre-nursery schools in hired building and even in open grounds in slum areas; (4) supply of free clothing to orphans in labour localities; (5) 25 game centers for school going children conducted by trained personnel; (6) 5 gymnasiums for workers and their children under the guidance of trained Physical Directors; (7) tuition class for workers' children before examinations; (8) 2 hostels for students for staying board and studies; (9) one girls hostel for backward communities with 60 inmates; (10)

educational help worth Rs. 300 to each medical and Engineering students coming from workers' family (11) encouragement of cultural and religious activities such as Bhajan, Kirtan, Musical training, Satyanarayan Katha, Mushairas etc.; (12) celebration of national festivals; (13) vocational training like typewriting, radio repairing and wireman's classes; (14) sewing classes numbering 30 for girls and women folk of workers and special classes for knitting and embroidery; (15) formation of mahila mandals and training in home craft and good housekeeping; (16) Workers' Education in mills as well as in residential localities, including adult education; (17) 25 libraries and 120 reading centers in working class areas; (18) legal aid to the members in civil as well as in criminal matters; (19) special cell to organize the unorganized agricultural worker, (20) arrangements for treatment of sick people in dispensaries and hospitals; (21) publication of a bi-weekly paper named "Mazdoor Sandesh", (22) management of Blood Bank and blood donation camps; (23) propagating family welfare schemes; (24) conducting consumer stores; (25) credit and housing societies; (26) a workers co-operative bank with 43,000 members and working capital of about one crore of rupees; and (27) appointment of inspectors and lady workers to solve their difficulties in the residential areas. The Mazdoor Mahajan has set up the Gujarat Khet Mazdoor Mahajan which started its work in villages near Ahmadabad. Its scope and activities are confined to farm workers and to such vital activities as enforcement of minimum wages, relief from indebtedness and creation of supplementary occupation to raise the income levels of such workers.

#### **(ii) Mill Mazdoor Sabha:**

The Mill Mazdoor Sabha was established in 1947 as an organization for textile workers. It is affiliated to Hind Mazdoor Sabha. It is a representative union under the Bombay Industrial Relations Act of Silk, Cotton Processing and Hosiery mills in Bombay. Some of its welfare activities include running of credit co-operative societies by the union for the members belonging to small factories which have no such facilities; grant of scholarships to members children on the basis of merit; running of reading room, a library and a dispensary for workers; having its own research wing; setting up a holiday home at Kandala for its members and issuing books to the needy students etc.

### **(iii) The Mill Mazdoor Union**

The Mill Mazdoor Union, Indore has started<sup>20</sup> a Labour Welfare Centre, which is working in three sections, the Bal Mandir (Children's Section); the Kanya Mandir (Girls Section), and Mahila Mandir (Women's Section). In the Bal Mandir, children between the ages of four and ten are taught reading etc. and attention is also given to games and physical training and there is a play-ground for children, dance, social gatherings and music classes are also arranged. In the Kanya Mandir, girls belonging to the working class families, between the ages of ten and sixteen, are given elementary education and are given training in hygiene and care of children. Similar lessons are given in the Mahila Mandir for women workers. Besides, the Union also runs night classes and a library and a reading room, and in the Mazdoor Club arrangements have been made for indoor and outdoor games.

### **(iv) Rashtriya Mill Mazdoor Sangh (RMMS)**

The Rashtriya Mill Mazdoor Sangh, Bombay was founded by late G.D. Ambedkar and was registered on August 26, 1941, under the Trade Unions Act, 1926 in the name of Rashtriya Kamgar Sangh. It changed its name to RMMS in September 1947 and got itself affiliated to 1NTUC. The Girni Kamgar Union affiliated to AITUC was the representative union for the textile mill in Bombay prior to 1945. RMMS was given the status of an approved union. In 1947, the Union applied for registration as a representative union under the Bombay Industrial Relations Act, and was recognized as such for all, the textile workers in Bombay. According to information furnished by the RMMS, the membership of the Sangh was 1,05,000 at the beginning of 1985. As regards some of the welfare activities undertaken by the Union, it has a workers education centre at Khandala and provides merit cum-need based scholarships and text books for needy students, and has a library with 8400 books and a research cell. The Ambedkar Institute of Labour Studies of the RMMS is an important landmark in research of pioneering service. The RMMS provides medical facilities to the union members in its allopathic and homeopathic clinics. It publishes a weekly known as 'KAMGAR' and other booklets of interest to its members. In its auditorium, dramas are staged and cinema shows are arranged. It has a holiday home at Ithandala known as 'Ambedkar Simriti'. It has six housing co-operative societies for the benefit of its members and constructed about 3,000 tenements. English and Marathi shorthand and typewriting classes for

workers' children and sewing classes for male and females are also arranged. There is also a central consumer's co-operative society with three shops.

### **(V) Transport and Dock Workers Union**

It was established in 1933 at Bombay by P.D. Mello, a clerk in Bombay Port Trust. In 1958, it became Federation of Dock and Transport Workers, under the able guidance of P.D. Mello. Its welfare facilities consist of housing, free medical treatment for family and dependents, schooling for children etc., workers get 150 rupees per year towards outdoor treatment. It has a credit co-operative society with branches in all residential localities. It grants scholarships to some of the needy students. It also provides consumer goods and other articles at a cheaper rate to its members through its consumer's co-operative stores. Employees' children are given scholarships and free education from P.D. Mello Trust.

In addition to the welfare activities provided by the above mentioned unions, there are some other unions like the Railways Union, the Indian Federation of Labour in U.P., and the Assam Branch of the INTUC of workers doing more or similar social welfare work for the benefit of their members, both in private and public sectors in the various parts of the country. The Railway Men's Union has allotted funds to meet unforeseen contingencies like retirement, unemployment sickness death etc. They also provide for legal defense and life insurance. Further, they have also organized co-operative societies for the benefit of its members.

However, in general, trade unions have not taken much interest in welfare work and the greatest limitation is the shortage of funds and proper leadership amongst the workers' organizations. There is no doubt that if the unions organize welfare activities, they will be strengthening their position considerably. The National Commission on Labour has suggested that to encourage unions for undertaking approved welfare activities subsidy should be given to them from the statutory labour welfare fund:

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## **3.6 The Role of the Labour Welfare Officer:**

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The organizational role of the Labour Welfare Officer is important with regard to the problems and the possibilities of more effective, utilization of manpower in Indian industries.

The Factories Act, 1948 requires every occupier of a factory employing 500 or more workers to appoint Welfare Officers<sup>21</sup>. The Act also provides for power to State Governments to make rules regarding their duties, qualifications and conditions of service.

In January 1957, the Ministry of Labour convened a Special Committee to consider whether any changes were necessary in the rules pertaining to the recruitment, conditions of service and the duties of Welfare Officers. The rules in question were those published in 1951 [Labour Officers (Central Pool) Recruitment and Conditions of service Rules] covering Government undertakings. Under these rules, the Labour Officer was to 'act as a negotiating officer with trade unions' while at the same time, he was required 'to maintain a neutral attitude during legal strikes or lock-outs and to help in bringing about a peaceful settlement'.

The success of Welfare Officer hinges round his situation, security, safety and settlement in the organization. His scope is as wide as the range of human relations, he being part of personnel department/management in an organization. His position is that of a buffer receiving kicks from both unless properly fortified by statutes creating him. Till then, he is the biggest ropedancer, in an organization.

Like ten Commandments of the Bible, there are also ten commandments for Welfare Officer, which may briefly be stated as under:

Ten Commandments for a Welfare Officer:-

- (1) Try to understand the personnel policy of a company/establishment.
- (2) If progressive, his works is already half-done or else pave the path with tact and caution.
- (3) Talk and Think in terms of well-being of industry at large.
- (4) Be not ultra-conscious about status/authority as nature always abhors status quo.
- (5) Ever, wait for the opportune time remembering Time is a great operator'.



- (6) Mediate if so needed when and where a conflict arises between two executives but never carry tales.
- (7) Try to convince top management/chief executive regarding helpfulness of trade unions.
- (8) Persuade supervisors to respect workers as respect begets respect.
- (9) Explain clearly the company's policies to workers if known, and in the reverse situation be not impatient. Be flexible to rules as men-made rules are ever elastic (changing).
- (10) Be dynamic and follow 'Rise to the occasion'.

If the above ten guiding lines be followed, he can very well play his part and perform his duties quite up to the mark which are very precarious, various and variegated as mentioned in rules enacted by different States like Maharashtra, Uttar Pradesh, Gujarat etc.

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### **3.7 Summary:**

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In this unit we have discussed the various agencies working in the administration and implementation of the welfare programs for the workers in the industries. Not only this, we have also discussed the various statutory and non-statutory labour welfare funds which are constituted by the respective appropriate Governments to cope with the needs of the workers who are in dire need, specially the Mine workers. At appropriate places, we have also mentioned the various labour welfare activities which are carried on by different industries as provided under the Factories Act and various other Statutes.

Thus, after studying the various agencies provided for the administration of labour welfare programme, including the Central Government, State Governments, Employers and Trade Unions as well as the role of a labour welfare officer, we are able to formulate the policies and programs of Labour Welfare by which industrial productivity and efficiency of workers can be maintained. In truth, it may be stated that welfare work should be looked upon as a joint liability of the employers, the State and the trade unions. If they all work with team spirit and shoulder-to-shoulder, it may be easy to see the standard of life of worker being raised.

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### **3.8 Self-Assessment Test:**

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Answer the following questions in brief, so that you may realize how you have understood the subject discussed in this unit-

1. What are the various agencies for labour welfare in India?
2. Discuss the various Statutory Labour Welfare Funds constituted by the Government and the Labour Welfare activities undertaken through these funds.
3. Discuss the role of a Labour Welfare Officer in a factory?
4. How far the Trade Unions in India are able to take the task of Labour Welfare programs at their own levels?

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### **3.9 Further Readings:**

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# UNIT - 4

## Labour Welfare and Environmental Pollution

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### **Objectives:**

After going through this unit, you should be able to appreciate the:

- Meaning of environmental pollution
- problem of environmental pollution and its effects not only on a few laborers while at work inside the four walls of an industrial plant, factory or establishment, but also on the inhabited area in the vicinity
- the policies and programs which should be evolved in the context of a factory, industrial plant operation, organization, establishment and employment, so that hazardous substance in handling, storing etc. may not cause harm to human beings, animals and properties.

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### **Structure:**

- 4.1 Introduction: Objectives and Perspectives
- 4.2 Objects and Reasons: Scope, Extent and Commencement
- 4.3 Definitions and Interpretations
- 4.4 Kinds of Environmental Pollution, Causes and Effect
- 4.5 General Powers of Central Government
- 4.6 Prevention, Control and Abatement of Environmental Pollution- A Governmental Mechanism
- 4.7 Miscellaneous
- 4.8 Judicial Decisions
- 4.9 Summary
- 4.10 Self-Assessment Test
- 4.11 Further Readings

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### **4.1 Introduction:**

This unit has been prepared to acquaint you with the problem of environmental pollution and its effects on the living world inhabited areas. Secondly, it will

acquaint you with the constitutional and legislative measures taken by the Government for protection and improvement of environment, vis-a-vis, with Governmental powers for prevention, control and abatement of environmental pollution. This gives effect to the constitutional injunction provided by Article 48-A of the Constitution.

### **Perspective**

Man has been responsible for degrading the quality of his environment ever since he appeared on this earth. The history of environmental contamination dates back with the origin and development of modern human civilization. The invention of steam engines, use of coal, water, wind, hydraulic power etc. brought about industrial revolution; and since then many new types of engines running on diverse sources of energy have been invented and used. This has proved to be both a boon as well as a bane to the humanity as a whole. Progressive use of natural materials and resources has posed a threat to their availability to man for substance of life. Secondly, with the advent of industrial revolution coupled with urbanization, all kinds of impurities began to be added to the natural air, water as well as soil causing almost irreparable damage to the environment.

Diverse range of pollutants such as gases, particulates, agricultural chemicals and radio-active materials in the atmosphere, oil spills, sewage and chemicals in the lakes and rivers, and solid wastes on land are affecting the organisms directly or indirectly. In fact, the problem of environmental pollution has assumed distressing dimensions for the present as well as future generations. The governments of almost all the countries of the world are forced to pay serious attention not only to conserve and improve the environment but also to prevent it from further deterioration.

The resources necessary for survival of living being on the earth are air, water and soil. Man's life depends on the use of the aforesaid resources and his invariable use of these elements has an impact on the concerned resource. For instance, as a result of our breathing in and out, the quantity of carbon dioxide in the surrounding air is bound to increase. As a result of our use of the resource the materials added to the resources may be harmful or harmless under ordinary circumstances. For example, of the two gases obtained by burning of coal, carbon monoxide is harmful and carbon dioxide is ordinarily harmless. The effects may even be useful in some cases, e.g. smoke from burning incense sticks. A judicious

use of the resources would take every care to maintain the quality of environment. Through careless use and neglect of proper precautions, the environment will gradually become more and more unfit for supporting life. Such deterioration is known as pollution.

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## **4.2 Objects and Reasons:**

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Concern over the state of environment has grown the world over since the sixties. The decline in environmental quality has been evidenced by increasing pollution, loss of vegetal cover and biological diversity, excessive concentrations of harmful chemicals in the ambient atmosphere and in food chains, growing risks of environmental accidents and threats to life support systems. The world community's resolve to protest and enhance the environmental quality found expression in the decisions taken at the United Nations Conference on the Human Environment held in Stockholm in June, 1972. Government of India participated in the, Conference and strongly voiced the environmental concerns. While several measures have been taken for environmental protection both before and after the conference, the need for a general legislation to implement the decisions of the conference has become increasingly evident on account of Bhopal Gas Tragedy which laid at rest thousands and several hundred suffered total and partial disability.

Although there are existing laws dealing directly or indirectly with several environmental matters, but it was considered necessary to have a general legislation for environmental protection vis-a-vis to prevent, control and abate environmental pollution. Existing laws generally focus attention on specific types of pollution or on specific categories of hazardous substances. Some major areas of environmental hazards are not covered. There also exist uncovered gaps in areas of major environmental hazards. There are inadequate linkages in handling matters of industrial and environmental safety. Control mechanisms to guard against slow, insidious build up of hazardous substances, especially new chemicals, in the environment are weak. Because of a multiplicity of regulatory agencies, there is need for an authority which can assume the leading role studying, planning and long term requirements of environmental safety and to

give direction to, and co-ordinate a system of speedy and adequate response to emergency situations threatening the environment.

In view of the above, a general legislation on environmental protection was enacted in 1986 which inter alia, provides for co-ordination of activities of the various regulatory agencies, creation of an authority or authorities with adequate powers for environmental protection, regulation of discharge of environmental pollutants and handling of hazardous substances. Speedy response in the event of accidents threatening environment and deterrent punishment to those who endanger human environment, safety and health are some of the salient features of this legislation which is called the Environment (Protection) Act. 1986.

**Constitution:**

The Constitution under Article 48-A has directed that the State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country. Further Article 51-A (g) seeks to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures. Thus, the Environment Protection Act gives effect to the Constitutional injunction.'

**Scope, Extent and Commencement of the Environment Protection Act**

Since the earlier legislative measures covered only workers and employees while on duty within the four walls of factory and plant operations but left uncovered other human beings animals, fauna and flora since those measures did not cover the gaps, they were inadequate.

The Environment (Protection) Act, 1986, is a mile-stone legislative measure of far reaching importance and consequences as it envisages protecting the entire fauna and flora. This Act extends to the whole of India including the State of Jammu and Kashmir. It received assent of the President of India on 23rd May 1986 and has been brought into force on different dates in different areas. However, the Act does not have retrospective effect.

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### **4.3 Definitions and Interpretations**

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Section 2 of this Act defines and interprets various words and clauses as follows:

**(a) Environment** includes "water, air and land and the interrelationship which exists among the elements like water, air and land and human beings, living

creatures, plants, Micro-organism and property". It means water, air and land and their inter-relationship in relation to the living being on the Earth.

**(b) Environmental Pollutant**

Means "any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to environment". Briefly, we can say that a substance, the presence of which causes pollution is known as pollutant. Heat is not substance but still it is considered to be pollutant because even small changes in overall temperature conditions of our earth may have disastrous effect on the quality of life.

**(c) Environmental Pollution**

means "the (undesirable) presence in the environment of any environmental pollutant". We can, briefly, define environmental pollution which means contamination of air, water, or soil with undesirable amounts of foreign material or heat.

**(d) Handling,**

In relation to any substance, means "the manufacture, processing, treatment, package, storage, transportation, use, collection, and destruction, conversion, offering for sale, transfer or the like of such substance". It is a very wide term and "handling" in relation to any substance means as aforesaid. It includes handling of human, mechanical or any other device or technique of any substance.

**(e) Hazardous Substance**

Means "any substance or preparation which by reason of its chemical or physico-chemical properties in handling of it is liable to cause harm to human beings, other living creatures, plants, microorganism, property or the environment".

**(f) Occupier**

"The word occupier in relation to any factory or premises, means a person who has control over the affairs of the factory or the premises and includes in relation to any substance, the person in possession of the substance".

Now, in this unit first of all, we shall, briefly point out different kinds of pollution, their causes and effect on the living beings and thereafter we shall appraise you with the legislative measures which not only aim to protect and improve the quality of our environment but also aim to prevent, control and abate environmental pollution.

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## **4.4 Kinds of Pollution, Causes and Effect**

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### **Air Pollution**

We live in an 'ocean' of air like fish in water. The air surrounding the Earth is called atmosphere. It is predominantly gaseous, and it also contains solid particles like, coal etc. and liquid droplets. The quality of air at any place and time may be rated in accordance with its fitness to support life. Let us imagine ourselves engaged in morning walk in a garden in contrast to a walk on a road at noon where vehicular traffic on the road is emitting lots of fumes. Likewise, in a thermal power house or a factory where chimneys are profusely giving out smoke, the quality of air shall be polluted at different rates because of lot of smoke in the air.

Some gaseous air pollutants are: Carbon Dioxide, Carbon Monoxide. Carbon Dioxide is a normal constituent of air and normally, not considered a pollutant. But its increase may have a serious effect on the climate and the atmospheric temperature may rise to such an extent that the glaciers may start melting and coastal plains may be flooded on a vast scale. Carbon Monoxide is produced by incomplete combustion of carbon or compounds of carbon. It is colorless and odorless but very toxic and serious to life. Compounds containing sulphur are: sulphur-di-oxide, sulphur trioxide and hydrogen sulphide; out of these three, hydrogen sulphide is more harmful and poisonous than carbon monoxide. The permissible limits of these pollutants for workers in factories and industries are fixed by the government. Pollutants containing nitrogen are nitric oxide and nitrogen dioxide which are produced in a very small amount when any combustion reaction takes place in the air and also as a result of some biological processes. Nitric Oxide is converted in air into nitrogen dioxide. It is a reddish-brown gas with pungent odor. Its effect on man varies with increasing concentrations. In larger concentrations it may lead to serious lung congestion and even death.

A major cause of atmospheric pollution is due to combustion engines using coal as fuel. The fuel of coal produces smoke in abundance which is released in atmosphere. Smoke is also released when fuels like, Kerosene, petrol or diesel oil are used as fuels. In major cities the main causes of air.

### **Soil Pollution**



Though old agricultural practices were not yielding enough crops to feed the increasing human population of the world, yet, were excellent in maintaining the quality of agricultural land and also of grains and vegetables. Excessive and repeated use of fertilizers for meeting the need of rising population results in degrading the quality of soil every day. Repeated and non-judicious use of chemical fertilizers in course of time will render the soil unfit for agriculture. Use of fertilizers also requires a large quantity of water for irrigating the land and in course of time water will make the soil saline unfit for rising crops.

Insecticides, pesticides and herbicides which are sometimes, applied to field and standing crops for killing insects, germs and bacteria may enter grains fruits and vegetables and ultimately enter human body when consumed. Thus, with the excessive and repeated use of chemical fertilizers, the soil becomes polluted. Our foods are also getting contaminated by soil pollution.

### **Noise Pollution**

Noise does not suit the ear-drums. It not only interferes with communication but also affects our peace of mind, health and behavior. It also affects our hearing faculties and causes headaches and irritability. The causes of noise pollution are, street vehicles, printing-press, industrial plants, aero planes, loud speakers etc. It is very difficult to get rid of this malady of noise pollution in this scientific age; however, its influence can be minimized by declaring major inhabited parts as silence zone in cities. Some other effective methods just as noise producing vehicles and loud speakers should be prevented from playing on roads, etc.

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## **4.5 General Powers of Central Government:**

**Power to Take Measures to Protect and Improve Environment:** Section 3(1) of the Act empowers the Central Government to take all such measures as it deems necessary and expedient for the purpose of protecting and improving the quality of environment and also for preventing, controlling and abating environmental pollution.

Section 3(2) enacts that in particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the following matters, namely,

- (i) Co-ordination of actions by State Governments, officers and other authorities, (a) under this Act or the rules made there under; or (b) under any other law for the time being in force and is relatable to the objects of this Act;
- (ii) planning and execution of a nationwide programme for prevention, control and abatement of environmental pollution.
- (iii) laying down standards for the quality of environment in its various aspects;
- (iv) laying down standards for emission or discharge of environmental pollutants from various sources whatsoever; Provided that different standards for emission or discharge may be laid down under this Clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources;
- (v) restriction of areas in which industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;
- (vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;
- (vii) laying down procedures and safeguards for the handling of hazardous substances;
- (viii) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;
- (ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution;
- (x) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;
- (xi) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;
- (xii) collection and dissemination of information in respect of matters relating to environmental pollution;

(xiii) preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;

(xiv) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act

(3) The Central Government may, if it considers it necessary or expedient so to do for the purposes of this Act, by order, published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such powers and functions (including the power to issue directions under Section 5) of the Central Government under this Act and for taking measures with respect to such matters referred to in Sub-Section (2) as may be mentioned in the order and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise the powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take such measures.

All the members of the authority constituted under Section 3(3) and all officers and other employees when acting or purporting of act under the provisions of this Act or the rules or orders or directions issued there under shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code. The Central Government may by notification delegate its powers excepting the power to constitute authority under Section 3(3) and of rule making powers under Section 25 of this Act.

**Power of Appointment of Officers and Their Powers and Functions:** Without prejudice to the, provisions of section 3(3) under Section 4(1) of the Act, the Central Government may appoint officers with such designations as it thinks fit for the purposes of this Act and may entrust to them such of the powers and functions under this Act as may be deemed fit by it. The officers appointed under section 4(1) of the Act shall be subject to the general control and direction of the Central Government, and also of the authority or authorities if any constituted under Section 3(3) of the Act or of any other authority or officer if so directed by the Central Government. By Section 5 of the Act Central Government has been empowered to issue directions in writing to any person, officer or authority and

they shall be bound to comply with such directions under the Act notwithstanding anything contained in any other law. The power to issue directions under this section includes to direct:

- (a) the closure, of prohibition or regulation of any industry, operation or process; or
- (b) stoppage or regulation of the supply of electricity or water or any other service.

#### **Power to Make Rules to Regulate Environmental Pollution:**

Under Section 6(1) of the Act the Central Government may, by notification in the official gazette make rules in respect of all or any matters referred to in section 3 of the Act, under Section 6(2) of this Act, the Central Government in particular and without prejudice to the generality of the foregoing power may provide rules for all or any of the following matters, namely,

- (a) the standards of quality of air, water or soil for various areas and purposes;
- (b) the maximum allowable limits of concentration of various environmental pollutants (including noise) for different areas;
- (c) the procedures and safeguards for the handling of hazardous substances;
- (d) the prohibition and restrictions on the handling of hazardous substances in different areas;
- (e) the prohibition and restrictions on the handling of hazardous substances in different areas;
- (f) the procedures and safeguards for the prevention of accidents which may cause environmental pollution and for providing for remedial measures for such accidents.

In the aforesaid chapter from Sections 3 to 6 of the Act, we have learnt the general powers of the Central Government regarding protection and improvement of environment. Now, in the next chapter we shall study Governmental measures for prevention, control and abatement of environmental pollution.

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### **4.6 Prevention Control and Abatement of Environmental:**

**Pollution- A Mechanism:** Chapter III of the Act provides a mechanism for prevention, control and Abatement of environmental pollution.

Duty Not to Allow Emission or Discharge of Environment Pollutants in Excess of Standards.

Section 7 of the Act casts a duty upon persons carrying on industry, operations, etc. It enacts that no person carrying on any industry, operation or process shall discharge or emit or permit to be discharged or emitted any environmental pollutant in excess of such standards as may be prescribed by the Central Government.

### **Duty in Handling Hazardous Substance**

Section 8 of the Act enacts that no person shall handle or cause to be handled any hazardous substance except in accordance with such procedure and after complying with such safeguards as may be prescribed.

### **Duty to Furnish Information to Authorities**

Section 9 enacts that where the discharge of any environmental pollutant in excess of the prescribed standards occurs or is apprehended to occur due to any accident or other unforeseen act or event, the person responsible for such discharge and the person in charge of the place at which such discharge occurs or is apprehended to occur shall be bound to prevent or mitigate the environmental pollution caused as a result of such discharge and shall also forthwith- (a) intimate the fact of such occurrence or apprehension of such occurrence; and (b) be bound, if called upon, to render all assistance to authorities or agencies as may be prescribed.

On receipt of the information of the fact of occurrence or apprehended occurrence, the authorities or agencies shall as early as practicable, because such remedial measures to be taken as are necessary to prevent or mitigate the environmental pollution.

The expenses, if any, incurred by any authority or agency with respect to remedial measures together with interest at reasonable rate from the date of demand until it is paid, may be recovered by such authority or agency from the person concerned as arrears of land revenue or of public demand.

### **Powers of Entry and Inspection**

Section 10 of the Act provides that any person empowered by the Central Government shall have a right to enter at all reasonable times, with such assistance as he considers necessary, any place,

(a) for the purpose of performing any of the functions of the Central Government entrusted to him;

(b) for the purpose of determining in what manner any such functions are to be performed or whether any provisions of this Act or rules made there under or

any notice, order direction, authorization served, made, given under this Act is being or has been compiled with;

(c) for the purpose of examining and testing any equipment, industrial plant, record, register or any other material object or conducting a search of any building in which he has reason to believe that an offence under this Act or the rules made there under has been or is being or is about to be committed and for seizing any such equipment industrial plant or material object if he has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act, or the rules made there under or that such seizure is necessary to prevent or mitigate environmental pollution.

Every person carrying on any industry, operation or process or handling any hazardous substance shall be bound to render all assistance to the person empowered by the Central Government for carrying out functions provided under sub-section 1 of this Section; and if he fails to do so without any reasonable cause or excuse, he shall be guilty of an offence under this Act. Further, if any person willfully delays or obstructs the person empowered by the Central Government in performing his functions under sub-section 1, shall be guilty of an offence under this Act.

For the purposes of any search or seizure, the provisions of the Code of Criminal Procedure, 1973 or provisions of any other corresponding law in force where the Code of 1973 is not applicable, shall apply for any search or seizure made under this section as they apply to any search or seizure made under the authority of a warrant issued under Section 94 of the Code of Criminal Procedure or of corresponding provisions of any other law (e.g. Cr. P.C. of J & K, Meghalaya, Mizoram etc.)

### **Power to Take Sample and Procedure thereafter**

Section 11 of the Act enacts that the Central Government or any officer empowered by it shall have power to take for the purpose of analysis, samples of air, water, soil or other substance from any factory, premises or other place in the prescribed manner.

The result of any analysis of a sample shall not be admissible in evidence in any legal proceeding unless the person taking the sample has served a notice in the prescribed form of his intention to have it so analyzed on the occupier or his agent or person in charge of the place. The sample must be collected in the presence of

the occupier or his agent and should be kept in containers which shall be marked, sealed and signed by both, the person taking the sample and the occupier or his agent; and the same shall be sent to the laboratory established or recognized by the Central Government.

Where the person taking the sample has given a notice of his intention in the prescribed manner upon the occupier or his agent, who willfully remains absent, and if present refuses to sign the container of sample, the person taking the sample shall collect it and place in a container which shall be sealed, marked and signed by the person taking the sample and the same shall be sent, without any delay, to the laboratory established or recognized for analysis. Such person shall also inform the Government analyst in writing about the willful absence of the occupier or his agent or, as the case may be, his refusal to sign the container.

### **Environmental Laboratories and Their Functions**

Section 12 of the Act empowers the Central Government to establish one or more environmental laboratories as environmental laboratories for carrying out the functions under this Act by notifications in the official gazette. It may also by notification in the official gazette make rules specifying the functions of the environmental laboratory and procedure for submission to the said laboratory of samples of air, water, soil or other substance for analyses, test, form of report and fee payable for such report.

### **Government Analysts**

Section 13 of the Act empowers the Central Government to appoint or recognize such persons having the prescribed qualifications as it may think fit to be Government Analyst for the purpose of analysis of samples of air, water, soil or other substance sent for analysis to any environmental laboratory. Any document purporting to be a report signed by a Government Analyst may be used as evidence of the facts stated therein any proceedings under this Act.

### **Penalty and Offences by Company and Department of Government**

Whoever fails to comply with or contravenes any of the provisions of this Act, or the rules made or orders or directions issued there under, shall, in respect of each such failure or contravention be punishable with imprisonment for a term which may extend to five years or with fine which may extend to one lakh rupees, or with both. In case the failure or contravention continues after conviction, he will be liable to pay an additional fine which may extend to five thousand rupees for

every day after such conviction. 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 seven years.

Where any offence under this Act has been committed by a company, any person who, at the time of offence committed, was directly in charge of, and was responsible to, the company for the conduct of the 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. Such person shall not be liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the Commission of such an offence.

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 is attributable to any neglect on the part of any director, manager, secretary or other officer of the company such person or officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Where an offence under this Act has been committed by any Department of Government, the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. However, such Head of the Department shall not be 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. Where an offence under this Act has been committed by a Department of Government 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 officer, other than the Head of the Department, such officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Persons are made vicariously liable for an offence when it is established that the offence was committed by a company or a department of Government and those persons had some means with the crime either because of their connivance with or due to their criminal negligence which has resulted in its commission (Bhopal Gas Tragedy under sub-judice, Delhi Municipal Corporation, Shri Ram Chemicals Gas



leakage in 1987-88, *Municipal Corporation Delhi v. Bhagwan Dass*, 1972, Cr. L.J. 1433; *Municipal Corporation Delhi v. Deepak Kumar*, 1974 FAC 496). Every person, in charge of conducting the affairs of the Company at the time the offence was committed, will be liable and it is not incumbent that the company and the partner should be prosecuted as a condition to the prosecution of the person in charge (Public Prosecutor v. Baggarappa Pullaiah, 1974 Cr. L.J. 155); But a different view was taken by the Madras High Court in *B.K. Verma v. Corp. of Madras*, 1971 Cr.L.J.). But where a company has been acquitted whatever the reasons for the acquittal may be, it is not possible to deem any person to be guilty of the offence because of his being in charge of the business of the Company (*Municipal Corp. Delhi v. Krishna Chand*, 1975 FAC 347).

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## **4.7 Miscellaneous:**

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### **Protection of Action Taken in Good Faith**

Section 18 enacts that no suit, prosecution, or other legal proceeding shall lie against the Government or any officer or other employee of the Government or any authority constituted under this Act or any member, Officer or other employee of such authority in respect of anything which is done or intended to be done in good faith in pursuance of this Act or the rules made or orders or directions issued there under.

### **Cognizance of Offences**

Section 19 of the Act enacts that no Court shall take cognizance of any offence under this Act except upon a complaint made by:

- (a) the Central Government or any authority or officer in this behalf by that Government; or
- (b) any person who has given notice of not less than sixty days in the prescribed manner of the alleged offence and of his intention to make a complaint to the Central Government or the authority or officer authorized as aforesaid.

### **Bar of Civil Jurisdiction**

Section 22 of the Act enacts that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of anything done, action taken or order or direction issued by the Central Government or any other authority or officer in pursuance of any power conferred by or in relation to its or his functions under this Act.

### **Effect of Other Laws**

Subject to the provisions of Sub-Section 2 of Section 24, the provisions of this Act and the rules or orders made therein shall have effect notwithstanding anything inconsistent there with contained in any enactment other than this Act.

Where any act or omission constitutes an offence punishable under this Act and also under any other Act then the offender found guilty of such offence shall be liable to be punished under the other Act and not under this Act.

### **Power to Make Rules**

Section 25 of the Act enacts that the Central Government may, by notification in the official gazette, make rules for carrying out the purposes of this Act. Section 26 of this Act requires that every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while in session and only after such modifications, if any, made, agreed and approved by the Houses of Parliament, the rules shall come into force. Such rules may provide for all or any of the following matters, namely,

- (a) the standard in excess of which environmental pollutants shall not be discharged or emitted under Section 7;
- (b) the procedure in accordance with and the safeguards in compliance with which hazardous substances shall be handled or cause to be handled under Section 8;
- (c) the authorities or agencies to which intimation of the fact of occurrence or apprehension of occurrence of the discharge of any environmental pollutant in excess of the prescribed standards shall be given and to whom all assistance shall be bound to be rendered under Sub-section (1) of Section 9;
- (d) the manner in which samples of air, water, soil or other substance for the purpose of analysis shall be taken under Sub-section (1) of Section 11;
- (e) the form in which notice of intention to have a sample analyzed shall be served under Clause (a) of Sub-section (3) of Section 11;
- (f) the functions of the environmental laboratories, the procedure for the submission to such laboratories of samples of air, water, soil and other substances for analysis or test; the form of laboratory report; the fees payable for such report and other matters to enable such laboratories to carry out their functions under Sub-section (2) of Section 12;

- (g) the qualifications of Government Analyst appointed or recognized for the purpose of analysis of samples of air, water, soil or other substances under Section 13;
- (h) the manner in which notice of the offence and of the intention to make a complaint to the Central Government shall be given under Clause (b) of Section 19;
- (i) the authority or officer to whom any reports, returns, statistics, accounts and other information shall be furnished under Section 20;
- (j) any other matter which is required to be, or may be, prescribed.

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## **4.8 Judicial Decisions:**

Through this unit you must have been acquainted with the problem of environmental pollution and its effects on the living world in general. Let us, now, see its legal consequences in a few cases decided on the point. As you know that the human prosperity depends upon sound health of the inhabitants of any country and for that a nation needs pollution less environment with clear air, water soil and good food-stuffs. In 1985 the Supreme Court, in *R.L. & E. Kendra, Dehradun v. State of U.P.* (A.I.R. 1985 S.C. 652) which is also known as Doon-Valley case, emphasized the need of environmental and ecological balance and directed the State of U.P. and the Government of India to compensate, by giving priority in the grant of leases in other areas, to those lessees of lime-stone quarries who closed down their lime-stone quarry operations permanently in the Dehradun-Mussoorie areas.

The Calcutta High Court, in *Rabin Mukherjee v. State* (A.I.R. 1985 Cal. 222) while, considering the impact of noise pollution on human beings, has observed that in the congested areas the impact of sudden blowing of electric horn instead of bulb-horn as required by rule 114 (d) of the Bengal Motor Vehicles Rules, 1940, produced a bad effect on various faculties of human life in general and particularly it caused blood pressure, mental and nervous shocks to the weak, infirm and indisposed persons and that posed serious threats to the residents as well as pedestrians. The Court has ruled that the Government should punish the transporters who violate the rule 114 (d) and no certificate of fitness should be

granted until the provision of the rule for eradication of noise pollution has been fully observed and ensured.

The Supreme Court, in *M.C. Mehta v. Union of India* (1987) 1 SCC 395, which is popularly known as *Shriram Oleum Gas leakage case* in which a Delhi Bar Advocate lost his life and several others living in the vicinity were badly affected, has held that an enterprise engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the society to ensure that no harm shall be caused to anyone. It is under an obligation to provide that hazardous or inherently dangerous activity in which it is engaged is conducted with highest standards of safety and if any harm is caused to anyone on account of any accident in operation of such activity resulting in an escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident as a part of social cost for carrying on such activity regardless of the fact that it is carried on carefully or not. Such liability is not subject to any one of the exceptions to the principle of strict liability as laid down in *Rylands v. Fletcher* (1868) LR 3 HL 330. Secondly, the Supreme Court has extended the liability and has held that all Government agencies and inspectorates who carry out routine inspections and certify worthiness and fitness of an industrial plant must necessarily be held liable for criminal negligence for their acts of commission and omission if a mishap occurs. But, where the inherent and possible dangers of the process are kept secret by the management or, are not fully disclosed to the licensing or regulatory agencies, such agencies shall not be liable. In addition to the above decided cases the Bhopal Gas tragedy i.e. the Union Carbide case is not unknown to anyone.

#### **Important Judicial Cases:**

##### **1. Ratlam Municipal Council Case:**

*Municipal Council, Ratlam v. Virdhichand*, AIR 1980 SC 1622

##### **2. Dehradun Quarrying Case:**

*Rural Litigation Entitlement Kendra v. State of U.P.*, AIR 1987 SC 2187

##### **3. Shri Ram Gas Leak Case:**

*M.C. Mehta v. Union of India*, AIR 1987 SC 965

*M.C. Mehta v. Union of India*, AIR 1987 SC 982

*M.C. Mehta v. Union of India*, AIR 1987 SC 1086

**4. Radiation Case or Irish Butter Case:**

Dr. Shiva Rao Shantram Wagle v. Union of India, AIR 1988 SC 952

**5. Ganga Pollution (Tanneries) Case:**

M.C. Mehta v. Union of India, AIR 1988 SC 1037

**6. Ganga Pollution (Municipalities) Case:**

M.C. Mehta v. Union of India, AIR 1988 SC 1115

**Bhopal Case**

Union Carbide Corporation v. Union of India, AIR 1990 SC 273

Charan Lal Sahu v. Union of India, AIR 1990 SC 1480

**Taj**

**Mahal**

**Case**

M.C. Mehta v. Union of India & Others, Writ petition (civil) no. 13381 of 1984  
Supreme Court decided on December 30, 1996 (Kuldip Singh, J. and Faizaluddin, J)

**Forests**

T.N. Godavarman Tirumulpad Vs Union of India and others: AIR 1997 SC 1233.

**Aqua**

**Culture**

S. Jagannath Vs Union of India (1997) 2 SCC 87: AIR 1997 SC 811.

**Tannery Pollution**

Vellore Citizens Welfare Forum Vs Union of India (1996) 5 SCC 647.

**Indiscriminate withdrawal of underground water**

M.C. Mehta Vs Union of India, (1997) 11 SCC 312.

**Shifting / Relocation / Closure of Hazardous / Noxious / Heavy / Large Industries from Delhi**

M.C. Mehta Vs Union of India, (1997) 11 SCC 327.

**Public Trust Doctrine**

M.C. Mehta Vs Kamal Nath, (1997) 1 SCC 388.

**Precautionary Principle and Principle of Sustainable Development**

M.C. Mehta (Badkhal and Surajkund Lakes Matter) Vs Union of India (1997) 3 SCC 715.

**Polluter Pays Principle, Precautionary Principle and Sustainable Development**

Vellore Citizens Welfare Forum Vs. Union of India (1996) 5 SCC 647.

S. Jagannath v. Union of India and Others, AIR 1997 (2) SCC 87

Dahanu Taluka Environment Protection Group v. Bombay Suburban Electricity Supply Company Ltd. with Bombay Environmental Action Group v. State of Maharashtra and Others, Supreme Court of India, 1991 (2) SCC 539

Bittu Sehgal v. Union of India, Supreme Court of India, W.P.(Civil) No. 231 of 1994.

Vellore Citizens' Welfare Forum vs. Union of India, AIR 1996 SC 2715

Godavarman vs Union of India & Ors., W. P. (C) 202/1995 before the Supreme Court of India.

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## 4.9 Summary:

The Environment (Protection) Act, 1986 is a general legislation enacted in 1986 and brought into force on different dates in different areas. Its territorial extent is whole of India including the State of Jammu & Kashmir. It aims at protecting and improving the quality of environment by planning, devising and evolving mechanisms for preventing, controlling and abating different pollutants which contaminate and degrade the quality of air, water and soil. Thus, it is not only a labour welfare measure limited to industrial but, is for plants and factory operations welfare of human beings, animals, creatures and plants. Briefly, it is for the welfare and well being of all fauna and flora of this Earth.

All powers under the Act are vested in the Central Government. However, the Central Government may delegate its powers to State Government or to an authority constituted by the Central Government for the purpose of implementing this Act. The Central Government's power of constituting the authority and its rule making powers cannot be delegated.

Contravention of any provisions of this Act or rules made or order or directions issued there under shall be deemed to be an offence committed by the persons in charge of the affairs of the company, corporation and Government Department. The Act provides for vicarious liability for the Commission of offences under this Act. Any person found guilty of an offence under this Act shall be punishable with fine of Rs. 10, 000 or with imprisonment up to 5 years or with both. Contravention after conviction will invite an additional fine of Rs. 5,000 for each day and if the offence continues for a year the guilty may be imprisoned up to seven years.

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## 4.10 Self-Assessment Test:

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1. Write a full note on the purpose of the Environmental Protection Act, 1986.
2. Discuss salient features of the Environment (Protection) Act, 1986.
3. Define and explain the terms: (a) Environmental pollutant; (b) Environmental pollution; (c) Occupier.
4. What are the different kinds of environmental pollution? Explain the causes and effects of air or soil pollution.
5. What punishment has been provided in the Act? And who will be liable for the punishment under this Act?

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### **4.11 Further Readings:**

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1. The Environment (Protection) Act; 1986.
2. Science and Law Journals and News Papers.
3. The Factories Act, 1948, and the Indian Mines, Metals, Metallurgic and Metaferous Activities Acts, rules, etc.

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# UNIT – 5

## The Factories Act, 1948 (Part I)

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### Objectives

- After going through this unit you should be able to understand :-
- the meaning of various definition as given in the Factory Act, 1948.
- the health and safety provisions provided to the workers against the various hazardous processes of a factory.
- the administration of the Act through the various authorities.
- the welfare provisions provided to the workers of a factory.

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### Structure

- 5.1 Introduction
- 5.2 Definitions; Analysis and case - law.
- 5.3 Self - assessment test.
- 5.4 Further readings.

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### 5.1 Introduction

This part of the unit has been prepared to acquaint the readers with definitions under the Factories Act of 1948. The study makes an analysis of the terms defined and also provides appropriate case Law, wherever necessary, Definitions are given in chapter I, section 2 of the act under the heading "interpretation". The factories (Amendment) Act 1987 has made vast changes in this section, and which have been incorporated in the present study. The study reveals the latest position under the Act. After reading this material you should be in a position to answer the questions given at the end, for the self - assessment test.

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### 5.2 Definition, Analysis and case - law

- S.2 (a) An "Adult" means a person who has completed his eighteenth year of age.
- (b) "Adolescent" means a person who has completed his fifteenth 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.

(Ca) "Competent person" in relation to any provision of this Act, means a person or an institution recognized as such by the chief inspector for the purpose of carrying out test, examination and inspections required to be done in a factory under the provisions of this Act, with regard to:

(1) The qualification and experience of the person and facilities available at his disposal,

(2) The qualifications and experience of the person employed in such institution and facilities available therein.

With regard to their conduct of such test, examination and inspections, more than one person or institution can be recognized as a competent person in relation to a factory. This case was inserted by the factories (Amendment) Act 1987.

(Cb) "Hazardous process" means any process or activity in relation to an industry, specified in the first schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, bye product, waste or effluents thereof would:

(1) Cause material impairment to the health of the persons engaged in or connected there with, or

(2) 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. This clause was, inserted by the Factories (Amendment) Act, 1987.

(d) "young person" means a person who is either a child or an adolescent.

(e) "Day" means a period of twenty four hours beginning at mid - night. The "workday" means a period of twenty four hours from mid - night to mid - night. No fractions of time are admissible in law except in case where it is necessary to be distinctive.

(f) "Week" means a period of seven days beginning at mid - night on Saturday night or such other night as may be approved of factories.

(g) "Power" means electrical energy or any other form of energy which is mechanically transmitted and is not generated by human or animal agency. The

definition includes energy produce by electrical or a like agency and plainly excludes all energy generated by human or animal agency.

**Case law.**

In Usha print V.E.S I.C (A.I.R.1963 Bombay.94) it was held by the high court of Bombay that if consistent pressure was maintained in the boiler which transmitted the steam along with the heat energy to the printing tables it followed that the definition was satisfied.

(h) "Prime mover" means any engine, motor other appliance which generates or otherwise provides power.

(1)"Transmission machinery" means any shaft, wheel, drum, pulley, system of pulley, coupling, clutch, driving belt or other appliance or device by which the motion of a prime mover is transmitted or received by any machinery or appliance.

(j) " Machinery' includes prime mover, transmission machinery and all other appliance whereby power is generated, transformed, transmitted or applied.

(k) "Manufacturing processes" means any process for:-

(1) 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, at, transport delivery or disposal, or

(2) Pumping oil, water or sewage or any other substance, or

(3) Generating, transforming or transmitting power, or

(4) Composing types for printing, printing by letter press, lithography, Photography & other similar processes or book binding;

(5) Constructing, reconstructing, repairing, refining, finishing or breaking-up ships or vel; (or)

(6) Preserving or storing up any article in cold storage.

**Case - laws:**

The following have been told to be manufacturing processes: -

(1) Bidi - making - see state of Bombay V. Ali saheb Kashim, Tamboli.(1955-2 L.1.J.182).

(2) The preparation of food stuff and other eatables in the kitchen of a restaurant - etc., New Tajinahal Cafe Ltd., Mangalore v Inspector of Factories, Mangalore (1956)

(3) Conversion of rave film into a finished product - See in the matter of K.V.V, Sharma (1953-11.1-1.29).

## Case law

State of Bombay.V Ali saheb Kashim Tamboli (1955-II.L.L.J.182).

**Held** The expression "employed" in the definition connote that the relationship of master and servant must exist. The "worker" must be engaged in a manufacturing process. It does not matter whether such a person is paid wages or not. See also, Dharangadhara Chemical Workers Ltd., V. State of Saurashtra (1957I.L.L.I.477).

(2) V.P.Gopala Rao V. Public prosecutor (91970 II L.L.J.59.C.).

**Held** It is a question of fact in each cases whether a person is a worker or not The nature and extent of control varied in different industries and if the operation was of a simple nature the control could be exercised at the end of the day by way of rejecting the beedis which could not come up to the proper standard

(3) In the matter of Chacklingam (1953-54) 5 FJR 581.

**Held** The fact that a person was employed not by the time wages system but by the piece work system would not make any difference.

(4) State of Kerala V. Disouza (1971-I. LLJ, 307 : AIR1971S.C.832 ).

**Held** Casual, heterogeneous, miscellaneous, irregular group of piece-rate women and girl brought for peeling prawns were not workers as many provisions of the Act could not be applied to them.

(5) M. K. P. Kdar Moiden V. The state (1952-53) FOR 1312: A.I.R. 1953 mad. 406.

**Held** A watchman will be called a worker only if the duties actually discharged by him go to prove that he is employed in some kind of work incidental to or connected with the subject of the manufacturing process.

(6) Central Railway Workshop V. Vishwanath (1970) I LLJ, 351 S.C.

**Held** The definition of worker in the factories Act does not exclude those employees who are entrusted solely with clerical duties, if they otherwise fall within the definitions of "Worker". Keeping this in view the court held that time-keeper who prepared the pay-sheets of the workshop staff, maintain lave account dispose of settlement case and maintain record for statistical purpose fall within the definition, of the word worker,

(m) "Factory" means any premises including precincts thereof -Wherein ten or more workers are working, in a manufacturing process which is carried on with the aid of power. In the case of premises not using power if twenty or more workers

are employed then it will be a factory. It does not include a mine subject to the operation of the mines Act,1953 or a mobile unit belonging to the Armed force or the union, a railway running shed or a hotel, restaurant or eating place.

**Explanation: 1**

Provides that for computing the number of workers all the workers of different groups and relay on a day shall be taken into account.

**Explanation: 2**

Provides that the mere fact that an electronic data processing unit or a computer unit is installed in any premises or part thereof, it shall not be construed to make it a factory if the manufacturing process is being carried on in such premises or part thereof (Explanation 2 was inserted by the factories (Amendment) Act, 1987.)

**Case - law**

(1) Nagpur Electric Light and Power Co V. E.S.I. Corporation (1967-2 L.L.J.40 S.C.).

**(a) A factory must occupy a fixed site**

**(b) Premises include land and buildings.**

In the matter of K.V.V. Sharma 1953 - 1 LLJ 29

**Held** The term precincts are usually understood as a place enclosed by wall or fence so any building within the enclosed space in which there are a number of workers, either ten or more, or twenty or more, depending on whether the manufacturing process in the premises is carried on with or without the aid of power, is a factory by itself.

(3) Workmen of Delhi Electric Supply Co. V. Delhi Electric Supply Co.Under taking (AIR 1973 SC.365.)

**Held** From the definition of "Factory" it is clear that it must be premises where a manufacturing process is carried on since the sub-station and the zonal-station had no part in a manufacturing process The court held that they are not factories.

(n) This clause has been amended by the factories (Amendment) Act, 1987. "Occupier" of a factory means the person who has ultimate control over the affairs of the factory provided that

(1) In the case of a firm or other association of individual, any one of the individual partners or members there of shall be deemed to be the occupier,

(2) In the case of a company, any one of the directors shall be deemed to be the occupier; (3) In the case of a factory owned or controlled by the central

government or any state government, Or any local authority, the person or persons appointed to manage the affairs of the factory by the central government, the state government or the local authority, as the case may be, shall be deemed to be the occupier. (This provision was inserted by the Factories (amendment) Act, 1987). Provided further that in the case of a ship which is being repaired, or on which maintenance work is being carried out, in a dry dock which is available for hire, the owner of the dock shall be deemed to be the occupier.

### **Analysis**

Occupier is always of a factory; having ultimate control over the affair. The expression occupier cannot be equated with owner.

### **Case law**

(1) State of Maharashtra V, Lamnabal Parshotam Asar (1968.II LLJ 12).

**Held** In the present case the premises were given over to partnership firms; in return for a periodic payment The court came to the conclusion that the partnerships Were independent of the control of the owner and held that the owner was not an occupier under the Acts Clause (O) relating to "managing agent" has been omitted by the Factories (amendment) Act, 1987,

(p) "Prescribe" means prescribed by laws made by the state government under thief net.

(q) This clause has been repealed by A.D.1950.

(r) "Relay and shift"-Where work of the same kind is carried out by two or more sets of workers working during different periods of the day, each of such sets is called a "group or relay" and each of such period is called a "shift"

## **B. The Inspector Staff**

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### **Objectives**

This part of the unit is prepared to acquaint the readers with the administration of the Act through the agencies of inspectors and certifying surgeons.

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### **Structure**

- 
- 1.1 Introduction
  - 1.2. Inspectors
    - (1) Appointment of (s 8)
    - (2) Powers of (s.9)
  - 1.3. Analysis

- 1.4. Case-law
- 1.5. Certifying surgeons
- 1.6. Duties of certifying surgeons

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## **1.1 Introduction**

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Chapter II of the Act (Sections 8-10) deals with the inspecting staff. Both the Central and the State Government are charged with duty of administering the Act. The central governments may give directions to the state governments for carrying out the provision of this Act. (See s.113) the state government discharges their functions through the agencies of inspectors and certifying surgeons.

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## **1.2 Inspectors**

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**Section 8: (1) Appointment of inspectors:** Persons with prescribed qualifications may be appointed by the state government as inspectors for defined local limits .s.8.(1)). The state Government may appoint a chief inspector, additional, joint and deputy chief inspector also [8 (2A) (2B)]. No inspector must be directly or indirectly interested in a factory or any process or Business carried on therein, or in any patent machinery connected there with [ s. 8 (3 ) ] Every District Magistrate shall be the inspector for his district [sec s. 8 (4) ] The State government may also appoint such public officers as it thinks fit to be additional inspectors for defined local limit [section 8 (5) ] If there are more than one inspectors in any area, their respective powers are to be specified by the state government [sec.8 (6).] Every inspector, including the chief inspector, shall be a public servant as defined under section 21 of the Indian penal code [sec.8 (7)]

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### **(2) Powers of inspectors:**

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This section has been amended by the Factories (Amendment) Act, 1987. Under section 9 an inspector may, within the local limits for which he is appointed,-

- (a) Enter, with such assistants from the Government, or from any local or other public body , 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) Examine 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 statement of any person which he may consider necessary for such inquiry;
- (d).Ask for 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, anything lying therein, shall be left undisturbed (whether generally or in particular respect) for so long as is necessary for the purposes 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 having caused or 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 a this Act), and take possession of any such article or substance or a part thereof, and detain it for so long as is necessary for such examination;
- (1) Exercise such other power 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 himself.

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### **1.3 Analysis:**

The newly amended section gives wider powers to the inspector compared to those under the principal act, such powers do not extend to compelling any person under this section to answer any question or give any evidence tending to incriminate him.

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### **1.4 Case-law:**

(1) Action of the District Magistrate as an inspector under section 8 (4) is an executive Act and a judicial act. See Gajadhar Lakshmi v. Emperor, A.I.R.1948

nag. 277. (2) Points of difference between an inspector and a chief. Inspector was pointed out by the court-in superintendent and legal remembrance of legal affairs, West Bengal v. P. Sen, A.I.R.1949 cal.604.

**Held:** It is clear from section 8 of the Factories Act, 1948 that the term "Inspector" and the term "Chief Inspector" in the act have definite meanings. The term "Inspector" in the Act have definite meanings. The term "Inspector" in section 105 of the act cannot therefore be construed as "Chief Inspector". It means the particular officer appointed to carry out the purposes of the Act in the-area.

(3) A chief inspector can act as an inspector. He can in addition to his powers as a chief inspector exercise the powers of an inspector throughout the state. See T.C. Devasashrini V.State of U.P. A.I.R.1960 A11.91 All. 91; Shahatuddin Khan V. State of U.P. A.I.R. 1960 All. 373.

(4) In State of Saurashtra V. Pitamber Sarjibhai (1954-I.L.LJ.138) it was held that the powers under section 9 are to be exercised when the factory inspector visits any factory and they do not contemplate an exercise of the powers outside the factory premises.

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### **1.5 Certifying surgeons:**

Section 10 deals with certifying surgeons and provides for the appointment of qualified medical practitioners to be certifying surgeons, by the state government for specified local limits. A qualified medical practitioner means a person holding a qualification granted by an authority specified in the schedule to the Indian Medical Degrees Act, 1916 or in the schedules to the Indian Medical Council Act, 1933.

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### **1.6 Duties of certifying surgeons:**

- (1) The examination and certification of young persons.
- (2) The examination of persons engaged in factories in such dangerous occupations or processes as may be prescribed under the rules by the state government.
- (3) The exercise of medical supervision - S.10 (4) (c)
  - (a) In cases of illness due to the nature of manufacturing process or other conditions of work prevalent in the factory.



(b) In case of likelihood of injury to health by any change in the adoption of a new manufacturing process.

(c) In any work likely to cause injury to the health of young person's employed or to be employed.

### **(c) Health, Safety provisions relating to Hazardous Processes and Welfare provisions. (Chapters III, IV, V-a & V)**

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#### **Introduction**

This part of the unit is prepared to acquaint the readers with the health, safety and welfare provisions under the Act, Important case - law is also provided. After reading this you should be in a position to answer the questions given at the end of the assessment test.

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#### **1. Health**

Provisions regarding health are given in chapter 3, sections 11-20. "Cleanliness" section 11 provides that every factory must be kept clean and free from effluent arising from any drain, privy or other nuisance. Non observation of cleanliness provisions is an offence under the Act.

The state government is empowered under sub - section (2), to grant exemption to a factory or class or description of factories from any of the provisions of sub - section (1) and specify alternative methods for keeping the factory clean. Disposal of wastes and effluents section 12 provides that effective arrangements must be made in every factory for the disposal of the wastes and effluents issuing from the manufacturing process being carried on therein, so as to render these innocuous, for their disposal [S12(1)].

#### **Ventilation and temperature**

Section 13 provides that effective and suitable provision must be made in every work -room of the factory for securing and maintaining

(a) adequate ventilation by the circulation of fresh air and

(b) such a temperature as will secure to workers rather in, reasonable conditions of comfort and protection against injury to health. (Section 13(2) and 3 have been amended by the factories (Amendment) Act, 1987) Under S.13 (2) - The [State]

Government is empowered to prescribe a standard of adequate ventilation and reasonable temperature for any factory or class or description of factories or parts thereof and direct that proper measuring instruments, at such place and in such position as may be specified, shall be provided and such records, as may be prescribed shall be maintained.

Under section 13 (3) - If it appears to the chief inspector that excessively high temperatures in any factory can be reduced by the adoption of suitable measures, he may, Without prejudice to the rules made under sub - section (2), serve on the occupier, an order in writing specifying the measures which, in his opinion, should be adopted, leaving it obligatory that the same be carried out before a specified date.

#### **Dust and Fume:**

S. 14 (1) lays down that in places where dust or fume or impurity of such nature is given off as a result of the manufacturing process, which is likely to be injurious, or offensive to the workers employed therein, effective measures must be taken to prevent its inhalation and accumulation in any workroom and if an exhaust appliance is necessary for this purpose, it shall be applied very near to the point of origin which must be enclosed.

Clause (2) of section 14 prohibits the operation of an internal combustion engine, which is stationary, unless the exhaust is conducted out into the open air. It also lays down that no other internal combustion engine shall be operated in any room unless effective measures have been taken to prevent accumulation of fume there from which are likely to be injurious to the workers employed there in.

#### **Case - law:**

The offence committed under this section is a continuing one. It was held by the court that the offence committed, Viz, the non - erection of a dust proof husk chamber was a continuing offence if it is an offence on the next day and so until the deficiency is rectified. See AIR 1953 mad.204.

#### **Artificial Humidification:**

With respect to factories in which the humidity of air is artificially increased section 15 (1) empowers the state government to make rules

- (a) Prescribing standards of modification
- (b) Regulating the methods used for increasing the humidity of air artificially

(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 air and the workrooms,

Clause (2) of the section provides that water used for the purpose of increasing the humidity of air artificially must be taken from a public supply or other source of drinking water or be effectively purified before its use.

Clause (3) of the section empowers an inspector to serve on the manager of the factory in which the water is not effectively purified, an order in writing specifying the measures which in his opinion should be adopted, and requiring them to be carried out before the specified date.

**Overcrowding:**

The factories (Amendment) Act 1987 has amended section 16 and made few changes in sub - section

(2) These changes have been inserted at the appropriate places while defining that subsection.

S16 (1) - No room in any factory shall be over crowded to an extent that is injurious to the health of the workers employed there in;

(2) Without prejudice to the generality of sub - (1), there shall be in every workroom of a factory in existence, on the day of the commencement of this act, at least 9.9 cubic meters (The words used in the principal Act before the Amendment were their hundred and fifty cubic feet) and of a factory built after the commencement of this Act, at least 142 cubic meters (the words used in the principal Act before the Amendment were five hundred, cubic feet) of space for every worker employed therein, and for the purposes of this sub - section no count shall be taken of any space which is more than 4.2 cubic meters ( the words used in the principal Act were fourteen feet) above the level of the floor of the room.

(3) If the chief inspector requires, there shall be posted in each work room of a factory a notice specifying the maximum number of workers who may be employed in that room.

(4) The chief inspector may, exempt, subject to such conditions, if any, as he may think fit to impose, any work room from the provisions of this section if he is satisfied that compliance therewith in respect of the room is necessary in the interest of the health of the workers employed therein.

**Lighting:**

S.17 (1) provides that in every part of a factory where workers are working or passing through sufficient natural or artificial light or both shall be maintained. S.17 (2) provides that all glazed windows, and sky - lights used for the lighting of the workrooms must be kept clean and free from obstruction. S.17 (3) Lays down that in every factory effective provision must be made so far as is practicable, for the prevention of (a) glare, either directly from source of light or by reflection from a smooth or polished surface and (b) the formation of shadows to such an extent as to cause eye strain or the risk of accident to any worker. S. 17 (4) empowers the state government to prescribe standards of sufficient and suitable lighting for factories or for any class or description of factories or for any manufacturing process.

**Drinking Water:**

Section 18 as amended by the Factories (Amendment) Act, 1987, provides that in every factory effective arrangements shall be made to provide and maintain at suitable points conveniently situated for all workers employed there is, a sufficient supply of wholesome drinking water.

(2) All such points shall be legibly marked "drinking water" in a language understood by a majority of the workers employed in the factory, and no such point shall be situated within six meters of any washing place, urinal, latrine, spittoon, open drain carrying silage or effluent or any other source of contamination unless a shorter distance is approved of in writing by the chief inspector.

(3) In every factory where in more than 250 workers are ordinarily employed, provisions shall be made for cooling drinking water during hot weather by effective means and for distribution thereof.

(4) In respect of all factories or any class or description of factories the state government may make rules for securing compliance with the provisions of sub-sections (1), (2) and (3) and for the examination by prescribed authorities of the supply and distribution of drinking water in factories.

**Latrines and Urinals:**

Section 19 was amended by the factories (Amendment) Act 1987. This section relates to provision for ladies of urinals in factories. It lays down that in every factory sufficient number of latrines and urinals of prescribed types should be provided at convenient places daily accessible to, the workers. There should be

separate provisions for male and female workers. These should be adequately lighted and ventilated and no latrine or urinal shall, unless specifically exempted by the chief inspector in writing, communicate with any workroom except through an intervening open space or ventilated passage. Such accommodation must be kept in a clean and sanitized condition and sweepers must be employed for keeping latrines, urinals and washing places clean Sub-section (2) of 5.19 provides that in factories wherein more than 250 workers are employed :

(a) all latrine and urinal accommodation shall conform to the prescribed sanitary types;

(b) the floors and internal walls, up to a height of ninety centimeters (under the principal Act the words used were "three feet".), of the latrines and urinals and sanitary blocks shall be laid in glazed tiles or otherwise finished to provide a smooth, polished and impervious service;

(c) without prejudice to the provision of clauses (d) and (e) of sub-section (1), the floors, portions of the walls and blocks so laid in or finished and the sanitary type of latrines and urinals shall be thoroughly washed and cleaned at least once in every seven days with suitable detergents or disinfectants or with both. s.19 (3) empowers the state government to prescribe the number of latrines and urinals to be provided in any factory, in proportion to the number of male and female workers employed therein.

### **Spittoons:**

Under section 20 in every factory there shall be provided a sufficient number of spittoons at convenient places and they shall be maintained in a clean and hygienic condition.

### **Case-law:**

The object of this section is to safeguard the health of the workers. The question of suitability or sufficiency of the sanitary arrangements as determined by the sanitary cannot be the subject matter of judicial enquiry. Tracey V. Preity, 1902, 1&8. 444; R.V. Stepeny Corporation, 1902, 1k.B. 317.

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## **2. SAFETY:**

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### **Introduction**

This part of the unit acquaints the readers with the safety measures which the factory occupier has to take for the safety of his work people. It also provides a

summary Of the safety provisions under the Act. Appropriate case-law is also provided wherever necessary.

### **Safety provisions (S21-41)**

(S.21: deals with the fencing of machinery," and provides that in every factory, every moving part of a prime, must be securely fenced, whether the prime movers or fly wheel is in the engine house or not.

### **Case-law:**

In *Carol V. Andrew Barclay & Sons Ltd.* , (1949-50) 1FJ.R. 1, it was held that this provision (s.21) imposes an absolute obligation, without any qualification whatsoever, to fence the said machinery not only against any dangers, foreseen or unforeseen, foreseeable or unforeseeable and whether) in the course of working or of accidental breaking of the machinery involved. The duty is not confined to shutting off the employee from danger, but includes shutting in the machinery so that it cannot fly out and strike the workman if it breaks. In *State V. L.C. Patel*, A.I.R. 1950 Bom. 1 it was held that section 21(1) does contemplate that the occupier of the factory should provide against danger arising by reason of the shifting or repairing of machinery.

See also the following case law.

- (1) *Employees State Insurance Corporation V. Hindustan Sheet Metal works*, 1966-1 L.L.J 280 (H.C. Bom.)
- (2) *E.S.I. Corpn. V. Indian Textile Mills*, 1966 I.L.L.J. 304 (H.C. Bom.)
- (3) *State of Gujarat V. Jethal* , A.I.R. 1964 S.C. 779 and
- (4) *Indian Central Tin Workers V. E.S.I. Corpn.* 1972 Lab. I.C. 949.

### **S.22: Work on or near machinery in motion:**

This section relates only to work-conditions and limitations under which such work -to be done-on road near a machinery in motion.

It relates to work only when an examination of a part of a machinery (which under 21 is required to be fenced), becomes necessary and as a consequence there of, it further becomes necessary

- (a) to carry out any mounting or shipping of belts,
- (b) lubrication or other adjusting operation while the machinery is in motion. Such operation can be carried out only by a specially trained adult male worker wearing light fitting clothing and whose name has been entered in the register prescribed

under the rules. The section further lays down some prohibitions under sub-clauses (a) and. (b) of sub-section

(1) Under sub-section (2) women and young persons are disallowed to work for cleaning or lubricating etc, any part of the transmission machinery in motion or any other machinery in motion involving risk of injury.

S.22 (3) empowers the state government to prohibit by notification in the official gazette the cleaning, lubricating or adjusting by any person of specified parts of machinery while in motion, in any specified class or description of factories.

**Case-Law: See under s.21.**

**S.23. Employment of young persons on dangerous machines.** This section has been amended by the factories (Amendment) Act, 1987. It provides that "no young person shall be required or allowed to work" at any machine unless 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 for working at the machine, or

(b) is under adequate supervision by a person who has a thorough knowledge and experience of the machine.

**S.24: Striking gear and devices for, cutting off power:**

This section provides for necessary and suitable striking gears and devise for cutting off power as an additional safeguard in connection with transmission machinery.

**S.25: Automatic machines:**

This section has been amended by the factories (Amendment) Act, 1987. This section provides additional safeguards for a worker working on automatic machines., It lays down that a traversing part of automatic machine in a factory and any material carried thereon shall not be allowed to run on its outward course within a distance of "forty five centimeters " (the words used in the principal Act were "eighteen inches") from any fixed structure which is not part of the machine if the space over which it runs is such as a person is liable to pass through.

An exception has been made under the provision in favor of the factories established before 1 April, 1949, i.e., the date of the commencement of the Act.

**S.26: Casing of new machinery:**

This section deals with the casing of new machinery installed after the commencement of the Act. The safeguards to be provided are laid down under

clauses (a) and (b) of subsection (1). They are: (a) In all machinery driven power, every set screw, belt or key on any revolving shaft, spindle, wheel or pinion shall be so sunk, encased or guarded as to prevent danger. (s.26 (1) (a), (b) All spur, worm and other toothed or friction gearing not requiring frequent adjustments while in motion shall be completely encased unless the same are safely situated. [s.26 (1) (b)]

S.27: This section deals with the "Prohibition of employment of women and children near cotton openers". The provision makes an exception 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 a height specified by the inspector. In such a case-women and children, may however, be employed on the side of the partition where the feed-end is situated.

### **S.28: Hoists and lifts:**

This section provides for safe-guards in the use of hoists and lifts, and lays down that the hoists and lifts must be of good mechanical construction, sound material and adequate strength. They must be properly maintained and thoroughly examined at least once in every six months Particulars of every such examination must be recorded in a register kept for that purpose. All hoist-ways and lift-ways must be sufficiently protected by an enclosure fitted with gates. They should be so constructed as to prevent any person or thing from being trapped between any part of the hoist or lift or a fixed structure or moving part. The maximum and safe carrying load must be marked plainly on the hoist or the lift and no load greater than that shall be carried there In the case of hoists and lifts used for carrying persons, interlocking or other devices must be fitted on to the gates of the cage so as to secure that the gate cannot be opened except when the cage is at the landing threshold and that the cage cannot be moved unless the gate is closed.

Sub-section (2) provides for additional requirements for lifts and hoists used for carrying persons, installed or reconstructed after the commencement of the Act. They are: where the cage is supported by rope chain, there shall be at least two ropes or chains separately connected with the cage and the balance weight, and each rope or chain with its attachments shall be capable of carrying the whole weight of the cage together with its maximum load E see S.28 (2) (a)]

Efficient devices shall be provided and maintained: capable of supporting the cage together with its maximum load in the event of breakage of the ropes or chains or



attachments sec s .28 (2) (b)]. Provisions for an automatic device to prevent the cage from over running the limits have been made under s.28 (2) (c).

Sub-section (3) empowers the chief inspector to the enforcement of the Act, and to lay down conditions for safety as deemed proper.

Under sub-section (4) the state govt. is authorized to give exemption against compliance of any provision of the section for any class or description of hoists or lifts.

The factories (Amendment) Act 1987 inserted the following "Explanation" at the end of section 28. It reads: For the purposes of this section, no lifting machine or appliance shall be deemed to be a hoist or lift unless it has a platform or cage, the direction or lift unless it has a platform or cage, the direction or movement of which is restricted by a guide or guides.

S.29 : This section deals with the safety measures necessary in the use of lifting machines, chains, ropes and lifting tackles. It lays down that parts thereof must be properly maintained and must be of good construction, sound, material, and adequate strength and free from defects.

Clause (a) of the explanation defines "Lifting machine to mean" a crane, crab, winch, testily block, gin wheel, transporter or runway. Clause (b) of the Explanation has been substituted with the following new clause by the Factories (Amendment) Act 1987. It reads: "lifting tackle" means any chain, sling, hook, shackle, swivel, coupling, socket, clamp tray or similar appliance whether fixed or movable, used in connection with the raising or lowering of persons, or loads by the use of lifting machines.

S.30: This section deals with additional safeguards for revolving machines. "sub-section (1) provides that in every factory in which the process of grinding is carried on, the maximum safe working peripheral speed of a grindstone or abrasive wheel, shaft or spindle, upon which the wheel is mounted, and the diameter of the puller on such a shaft or spindle must be indicated in a notice, permanently affixed near the machine in use. Sub-section (2) requires that the speed indicated in the notice shall not be exceeded. Sub-section (3) enjoins the adoption of effective measures so that the speed indicated in the notice is not exceeded, in the case of every revolving vessel, cage, basket, flywheel, pulley, disc or similar appliance driven by power.

S.31: By the factories (Amendment) Act 1987 subsection (1) in the principal Act has been substituted with the following sub-section. It reads as follows: If in any factory, any plant or machinery or any part thereof is operated at a pressure above the atmospheric pressure, effective measures shall be taken to ensure that the safe working pressure of such a plant or machinery or a part thereof not exceeded.

Sub-section (2) empowers the state government to make rules for the examination and testing of any such plant or machinery and for providing necessary additional safety measures for the same.

S.32: This section provides for construction and maintaining of "floors, stairs, and means of access, and lays down that all floors steps, stairs and passages and gangway, shall be of sound construction and properly maintained and be provided with handrails where it is necessary, All places where any person is required to work, have to be made accessible through safe means as far as it is reasonably practical (see s.32 (a) and (b). S 32 clause 3 has been amended by the factories (Amendment) Act 1987. The newly amended clause reads: "when any person has to work at a height from where he is likely to fall down, provision shall be, so far as is reasonably practicable by fencing be made, otherwise, to ensure the safety of the person so working,"

S33: This section requires that every fixed vessel, sump, tank, pit, or opening in the ground or in a floor which is dangerous by reason of its situation, construction or content shall be securely covered or fenced. Sub-section (2) empowers the state govt. to grant exemption from compliance with this provision.

### **Excessive weights**

Sec. 34 Sub-section (1) of this Act prohibits a person from lifting or carrying or moving weights which may be as heavy as on clause injury. Sub-section (2) empowers the state government to frame rules fixing the maximum weight to be lifted, carried or moved by adult men, adult women, adolescents and children employed in factories or in any class or description of factories or in carrying out any specified process.

S.35: This section deals with the "protection of eyes" from possible injuries from any manufacturing process in any factory as may be prescribed by rules, involving risk from (a) Particles of fragments thrown off in the course of the process, or (b) Exposure to excessive light.

The state government is empowered under the section to make rules for providing effective screens or suitable goggles for the protection of persons employed on or in the immediate vicinity of the process.

### **Case-Law**

The word "suitable" is not equivalent to perfect; it means well adapted for the process under consideration and that it must fit the worker. The words "to protect the eyes" describe the end which is sought to be achieved by the provision of the goggles. [See A.I.R. 1955 N.U.C.1933]

In *Finch V. Telegraph Construction and Maintenance Co. Ltd.*, (1949-All E.R.542) it was held that it was not enough if the goggles were hung in the office room, the workers must be informed of their where-about. In such a case only, it can be said that the requirements of this section are complied with.

Precautions against dangerous and fumes and gases etc.: The factories (Amendment) Act, 1987 substituted the following new section for section 36 of the principal Act. The newly amended section is as under

S.36: (1) "No person shall be required or 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 to such an extent as to involve risk to persons being overcome thereby, unless it is provided with a manhole of adequate size or other effective means of egress.

(2) No person shall be required or allowed to enter any confined space as is referred to in subsection (1) until all practicable measures have been taken to remove any gas, fume, vapor or dust, which may be present so as to bring its level within the permissible limits and to prevent any ingress of such gas, fume, vapor or dust, unless.

(a) A certificate in writing has been given by a competent person, based on a test carried out by himself that the space is reasonably free from dangerous gas, fume, vapor or dust; Or

(b) Such a person is wearing suitable reacting apparatus and a belt securely attached to a rope the free end of which is held by a person outside the confined space.

S.36-A: This section deals with precautions regarding the use of portable electric light" in any factory.

(a) No portable electric light or any other electric appliance of voltage exceeding twenty-four volts shall be permitted for use inside any chamber, tank, vat, pit, pipe, flue or other confined space unless adequate safety devices are provided";

(b) If any inflammable gas, fume, or dust is likely to be present in such a chamber, tank, vat, pit, pipe flue or other confined space, no lamp or light other than that of flame proof construction shall be permitted to be used therein.

S.37: This section deals with the measures of safety to be adopted against explosion of any inflammable dust, gas, etc. Where inflammable dusts are produced by grinding or other processes, the Act requires special precaution to be taken such as enclosing the plant, keeping the rooms free from dust and keeping naked lights away".

See Guide to Safety provisions.

S.38: The factories (Amendment) Act 1987 substituted a new section for section 38 of the principal Act. This section deals with "precautions in case of fire". The newly substituted section reads as follows;

(1) In every factory, all practicable measures shall be taken to prevent outbreak of fire and its spread both internally and externally and to provide and maintain.

(a) Safe means of escape for all persons in the event of a fire; and

(b) Necessary equipment and facilities for extinguishing the fire,

(2) Effective measures shall be taken to ensure that in every factory all the workers are familiar with the means of escape in the case of an outbreak and that they have been adequately trained in the routine to be followed in such cases.

(3) The State Government may make rules, in respect of any factory or class or description of factories, requiring the measures to be adopted to give effect to the provisions of sub-sections (1) and (2) .

(4) If the Chief Inspector is of the opinion that the measures provided in the factory are inadequate, he may by order in writing, require that such additional measures as he may consider reasonable and necessary, be provided in the factory before such date as is specified in the order.

S.39: This section empowers the inspector if it appears to him that any building or part of it, or any part of the ways, machinery or plant in a factory is in such condition that it may be dangerous to human life or safety, he may to serve an order in writing, to the manager of a factory to furnish the drawing, and

specifications or to carry out certain tests to ascertain if the building etc. as the case may be, can be used safely.

S.40: This section deals with the measures that could be adopted for the "safety of buildings and machinery". It authorizes the inspector, the formalities under section 39 have been gone into, if it appears to him that any building or part of it, or any part of the ways, machinery or plant in factory is in such a condition that it may be dangerous to human life or safety, he may issue an order in writing to the manager or occupier or both of the factory to adopt particular measures with respect to building, ways, etc. which are dangerous to human life or safety, or prevent danger, within a specified time, In case of imminent danger the inspector is empowered to prohibit the use of such buildings etc. until it is properly repaired or altered.

S.40-A: This section deals with the "maintenance of buildings". If it appears to the inspector that any building or part of a building in a factory is in such a state of disrepair as is likely to lead to conditions detrimental to the health and welfare of the workers, he may serve on the occupier or the manager or both, of the factory, an order in writing specifying the measures which in his opinion should be taken and requiring the same to be carried out before such date as is specified in the order.

S.40-B: This section deals with "safety officers" sub section (1) lays down that in every factory where in one thousand or more workers are ordinarily employed, or wherein in the opinion of the state Government, any manufacturing process or operation is carried on, which involves any risk of bodily injury, poisoning or disease, or any other hazard to the person employed in the factory, the occupier shall employ such number of safety officers as may be specified by the state Government.

S.41: This section gives power to the state Government to make rules to supplement this chapter; the rules will tend to provide further devices for securing the safety of persons employed in any factory.

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### **(3) Provisions relating to hazardous processes:**

The factories (Amendment) Act, 1987 inserted Chapter IV-A (S.41 Act.41-H ) entitled "provisions relating to Hazardous processes" in the principal Act after Chapter IV. This Amendment makes provision for the constitution of a site

appraisal committee by the state government to act as an advisory body;<sup>3</sup> requires compulsory disclosure of information by the occupier regarding dangers including health hazards and the measures to overcome the same;<sup>4</sup>

Provides for specific responsibility of the occupier in relation to hazardous processes,<sup>5</sup> Give power to the event of the occurrence of an extra ordinary situation involving a factory engaged in a hazardous process, to inquire into the standards of health and safety observed in the factory for the prevention and recurrence of such extra ordinary situation in future,<sup>6</sup> If the central government is satisfied that no standards of safety have been prescribed in respect of a hazardous process or where such standards so prescribed are inadequate, it, may direct the Director-General of factory Advice service and Labour Institutes or institutions specialized in matters relating to standards of safety in hazardous processes, to lay down emergency standards for enforcement of suitable standards in respect of such hazardous processes which shall until they are incorporated In the rules made under this Act be enforceable and have the same effect as if they had been incorporated in the rules made under the Act.<sup>7</sup>

Permissible limits of exposure to chemical and toxic substances in manufacturing processes (whether hazardous or otherwise) in any factory shall be of the value indicated in the second schedule,<sup>8</sup>

The central govt. is empowered to make suitable changes in the schedule. An important feature of the Amendment is providing for worker's participation of the safety management;<sup>9</sup>

and the right of the workers to warn about imminent danger.<sup>10</sup>

The first schedule, inserted by the Amendment contains a list of industries involving hazardous processes.

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## 4. Welfare Provisions:

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### Introduction

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<sup>3</sup> See Section 41 A as inserted by the Factories (Amendment Act), 1987

<sup>4</sup> Id; Sec. 41-B

<sup>5</sup> Id; Sec. 41-C

<sup>6</sup> Id; Sec. 41-D

<sup>7</sup> Id; Sec. 41-E

<sup>8</sup> Id; Sec. 41-F

<sup>9</sup> Id; Sec. 41-G

<sup>10</sup> Id; Sec. 41-H

Chapter V of the Act (se.42-45) enumerates the welfare provisions. This part of the unit is prepared to acquaint the readers with the welfare provisions under the Act. Appropriate case-law is also provided wherever necessary.

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## **1.1. Summary of Welfare Provisions:**

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S.42: This section deals with the provision of 'washing facilities' in the factory. It requires the facilities to be

- (1) adequate and suitable;
- (2) well maintained;
- (3) separate and adequately screened for male and female workers;
- (4) kept clean and
- (5) daily accessible. Under sub-section (2) the state, Government is authorized to prescribe standards of adequate and suitable facilities for washing.

S.43: This section deals with "facilities for storing and drying clothing". It empowers the state government to make rules in respect of facilities for keeping clothing not worn during working hours and for drying of wet clothing.

### **S.44: Facilities for sitting;**

This section makes provision for supply of sitting arrangements for workers while on duty.

### **S.45: First-aid appliances;**

This section deals with providing first- aid appliances in every factory, and lays down that a first-aid box or cupboard must be provided and maintained for every 150 workers ordinarily employed at any time in the factory. Nothing except the prescribed contents must be kept in a first aid box or cupboard. Sub-section (3) provides that a separate, responsible person who is trained in first aid treatment shall be given charge of each box or cupboard. Such person should always be available during the working hours of the factory under sub-section (4) it is necessary to provide and maintain an ambulance room of the prescribed size, with prescribed equipment and medical and nursing staff for factories employing more than 500 workers.

### **S.46: Canteens:**

**Sub-section** (1) of this section empowers the state Government to make rules for providing and maintaining a canteen or canteens in a factory wherein 250 workers are employed.

### **Case-Law:**

It was held that there is a statutory obligation on the occupier to provide a canteen which must conform to the rules prescribed in that behalf. See *Hamira Singh V. Marsden mills Ltd.* 1975 (ii L.L.J.) 658.

2. *Bengal w. p. walls v. State of Banqa* 1, 970. Lab.I C.71: It was held in this case that the liability of the company under the Act was only to set up and maintain a canteen. The terms and conditions of service of the staff of the canteen do not come under that liability as the company entrusted the actual running of the canteen to the canteen managing committee.

**S.47: Shelters, rest rooms and lunch rooms:**

This section deals with the provisions of shelters, rest rooms and lunch rooms for the use of the workers. Sub-section (1) lays down that in any factory with more than 150 workers adequate and suitable shelters or rest rooms and a suitable lunch room with provision for drinking water must be provided. Sub-section (2) lays down that such rooms must be sufficiently lighted and ventilated and maintained in a cool and clean condition.

**Crèches:**

Section 48 deals with the provision of crèches in factories wherein more than 30 women workers are ordinarily employed and lays down that suitable room or rooms be provided and maintained for the use of children below six years of such women workers, such rooms should have adequate accommodation, adequate light, adequate ventilation and should be maintained in clean and sanitary conditions and should be kept under the charge of women trained in the care of children and infants.

**Welfare officers:**

Section 49 requires the employment of welfare officers in factories ordinarily employing 500 or more workers.

**Case Law:**

In *Employers Association of Northern India V. Secretary of Labour*, (6 DLR All. 297) it was held that the word "ordinarily" in section 49 of the factories Act has to be interpreted in the same manner as that in clause (M) of section 2 of the Act, namely, with reference to the subject-matter to which the Act has to be applied and in the sense in which it is used in common parlance. So it cannot be said that section 49 cannot be applied to sugar factories or to other factories which employ over 500 employees only for a few months in the year and not continuously.



2. In Associated Cement Companies Ltd. V.S. Sharma, 1965, 1.L.L.J. 433 (SC) it was held that the words "conditions of service" used in section 49 (2) are wide enough and take in the termination of services and incidentally, the conditions subject to which such termination could be brought about.

In Hazari Lal Srivastava V. Tulsipur Sugar Co. (1967-11 L.L.J 355) it was held that a welfare officer is not a workman.

A welfare officer is thus only concerned with the managerial or administration work in a factory though he himself does not possess any powers which he can exercise as such in those matters. All he does is to assist the management and labour in the exercise of their rights vis-a-vis each other, and thus he functions as one of the participants in the administrative and managerial machinery of a factory." Considering the duties assigned to a welfare officer it was held by the court that the welfare officer was not a workman.

Termination of services (in terms of employment in labour welfare officer) for not obeying the order of transfer was held not punitive. See Associated Cement Companies Ltd. 1965 -1-LL.T 433 (S.C.)

The state government exercising power in making welfare officers rules, was held to be a tribunal and that an appeal lies in the supreme court. see the following case-laws in this regard.

(a) Durga Shankar Mehta V. Thakur Raghuraj Singh, (1955) 1 SCR 267.

(b) Province of Bombay V. Kusalcllas s. Advani (1960) 2 SCR 621.

(c) Shivji Nathubhai V. Union of India, (1960) 2 SCR 775.

(d) Harinagar Sugar Mills Ltd. V. Shyarn Sunder Jhunjunwala (1962) 2 SCR 339.

(e) Engineering Mazdoor Sabha V. Hind Cycles Ltd., (1962-11 L.L.J.760

(f) Indo-China Steam Navigation Co. Ltd. V. Jasjit Singh, A.1.R1964 S.C. 1140

### **Rule Making Power:**

Section 50 empowers the state government to make rules

(1) To supplement the provisions of the chapter dealing with the welfare of the workers,

(2) To exempt the factories from the compliance of the provisions of this chapter as prescribed in the rules.

(3) To associate the workers with the management of the welfare arrangements.

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### 5.3. Self Assessment Test

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- (1) Define "young person." Enumerate the various categories under the definition.
- (2) Explain with the help of case-law as to what constitutes a manufacturing process. Is bidi making a manufacturing process?
- (3) Define "worker" Are the following "workers" under the Act?
  - (a) Time keeper in a railway workshop.
  - (b) Persons employed by a contractor.
- (4) Discuss the definition of "factory" under the factories Act, 1948.
- (5) Who can be considered as an "occupier" under the Act? Is the owner of a premise an occupier? Explain with the help of case law.
- (6) Write short notes on the following:
  - (a) Transmission machinery
  - (b) Prime mover
  - (c) Power
  - (d) Competent person
  - (e) Hazardous process
- (7) What are the main changes made by the factories (Amendment) Act 1987 in Section 2 of the Act?

#### **B**

- (1) What are the powers of the inspectors under the Act?
- (2) Explain in detail the duties of certifying surgeons.
- (3) Write short notes on the following:
  - (a) Difference between inspector and chief inspector
  - (b) Certifying surgeons
- (4) Explain with the help of case law that the action of a district magistrate is both an executive act and a judicial act

#### **C**

- (1) Enumerate in details the provisions regarding health under the Factories Act, 1948
- (2) Explain the various safety provisions under the factories Act 1948.
- (3) Write short notes on the following:
  - (a) Precautions in case of fire
  - (b) Precautions against dangerous fumes, gases, etc,

## **D**

(1) Explain in detail the welfare provisions under the factories Act 1948

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### **5.4. Further readings:**

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G.M. Kothari and A.G.Kothari, A study of industrial Law, vol 2 (4th ed.1987).

P.L.Malik, Industrial Law

Kripa Dayal Srivastava, Commentaries on the Factories Act, 1948.

S.C. SRIVASTAV, Labor laws in factories mine, Plantations, shops and Industrial establishment, Prentice hall (India) Ltd, New Delhi (1991).

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# UNIT - 6

## The Factories Act, 1948 (Part II)

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### **Objectives:**

This part of the unit is prepared to acquaint you with the:

- various provisions dealing with working hours of adults, employment of young persons,
- annual leave with wages and miscellaneous provisions as given under the Factories Act, 1948.
- The study makes an analysis of the sections pertaining to these provisions. Appropriate case - law is also provided wherever necessary.

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### **Structure:**

- 6.1 Definitions and Analysis:
  - (a) Working hours of adults
  - (b) Employment of young persons
  - (c) Annual leave with wages
  - (d) Special provisions.
- 6.2 Self-Assessment Test
- 6.3 Suggested Readings

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### **6.1 Definitions and Analysis:**

**Definitions under the Act are as under:**

#### **Working hours of adults**

Sections 51 to 66 of chapter VI contain the provisions relating to working hours of adults under the Factories Act, 1948.

**Weekly hours:** Section 51 prohibits work by adult workers for more than 48 hours in a week. To avail onset of this benefit it is essential that the claimant must be a worker within the meaning of the Act, [Workmen of Parvathy mills v. Industrial Tribunal, 1960 - I 11...1 316]

**Weekly holidays:** Section 52 prohibits work for an adult worker on the first day of the week unless he has or will have a holiday for a whole day on. one of the three

days immediately before or after the said day; and the manager has before the said day or the substituted day whichever is earlier, delivered notice to that effect at the inspector's office, and displayed, such notice in the factory. However, so substitution can be made which will result in any worker working for more than 10 consecutive days without a holiday for a whole day. This notice may be cancelled in the same manner. [See s.52 (1); provision; to s.52 (1) and s.52 (2)].

**Case-Law 1.** In state V. Shri Krishna. A.I.R. 1954 al1.44, it was held that this section (sec 52) contemplates cases of only such workers over whom the employer has control.

2. In Chitnis V. stsre, A.I.R.1953 M.B. 230, it was held that there was only one offence and not four offences where on a Sunday four persons were employed in the same part of a factory without giving notice to the inspector and without fixing the notice in the manner prescribed by the Act.

**Compensatory holidays:** Section 53 provides that in places where as a result of the exemption of a factory from the provisions relating to weekly holidays, a worker has been deprived of any of the weekly holidays, he shall be compensated with an equal number of holidays so lost, within the month in which the holidays were due to him or within the two months immediately following that month. Sub – section (2) empowers the state government to prescribe the manner in which such compensatory holidays shall be allowed.

**Daily Hours:** Section 54 prescribes nine hours, as the maximum number of hours for which an adult worker can work on any day, subject to a maximum of 48 hours in a week. However, under the provision this daily maximum may be extended to facilitate the change of shifts with the previous approval of the shift inspector.

**Interval for Rest.:** Section 55 (1) Provides that while fixing the periods of employment of adult workers, it must be ensured that no worker works for more than five hours at a stretch without an interval of rest of at least half an hour

(2) The state government or the chief inspector subject to the control of the state government may extend this period of five hours to six by permission in writing.

**case-law :** In S.K. Jaqnani V. state ,1970 - 2 L.L.J.544, it was held that mere presence of the workers during rest intervals is not a violation of law; unless it was proved that they were required or allowed to work, there was no offence.

In Emperor V. R.J. Mistry, A.I.R. 1937 Bom. 52, it was held that there was no longer any distinction between seasonal and non-seasonal factories.

In Delhi Cloth and General Mills Co. V. Its workmen, 1964 - I.L.L.J.55(S.C.), It was held that since in view of the nature of work done by some operatives, the management of the textile mill was exempted from the provisions of the Factories Act, requiring rest intervals to be given to such operatives, the claim by the operatives for compensation of rest intervals was held unjustified.

**Spread over:**

Section 56 puts a limit to the maximum hours of stay of the worker on duty. The spread over of the period of work of an adult worker must not exceed 10.30 hrs on any day including his intervals for rest. The provision to Sec.56 enjoins that the chief inspector may increase it to 12 hours for reasons to be specified in writing.

**Night Shift:** Section 57 (a) states that where a worker works in a shift extending beyond midnight, for the purposes of the provisions of weekly holidays and compensatory holidays, a holiday for whole day shall mean a period of 24 consecutive hours beginning when the shifts ends. Sub-section (b) stipulates that the following day for such a worker shall be deemed to be the period of 24 hours beginning when the shift ends and UK, hours he has worked after midnight shall be counted in previous day.

**Prohibition of overlapping shifts: Section 58 (1)** prohibits multiple shifts. Under sub - section (2) the state government or the Chief Inspector subject to the control of the state government may by a written order and for the reasons specified therein, exempt any factory or class of factories or any category of workers from the provisions of this Act.

**Extra wages for overtime:** Section 59 (1) Provides that a worker shall be entitled to wages at the rate of twice his ordinary rate of wages for overtime work, i.e., in excess of hrs in a day or 48 hrs in a week. Sub-section (2) defines ordinary rate of wages to mean the basic wages plus such allowances including the cash equivalent of the advantage accruing through the concessional rate to workers of food grains and other articles to which the worker is entitled but does not include bonus and wages for overtime work. Sub-section (3) the ordinary rate of wages for workers who are paid on a piece rate basis the time rate shall be deemed to be the equivalent to the daily average of their full-time earnings for the days on which they actually worked on the same or identical job during the month preceding the

calendar month during which the overtime work was done. The provision to Sec.59 (3) enjoins that in the case of a worker who has not worked in the immediately preceding calendar month on the same or identical job, the time rate shall be deemed to be equivalent to the daily average of the earnings of the worker for the days on which he actually worked in the week in which the overtime work was done. Explanation to sub-section (3) further provides that for the purposes of this sub-section in computing the earnings for the days on which the worker actually worked such allowances including the cash equivalent of the advantage accruing through the concessional cell to workers of food grains and other articles, as the workers for the time being entitled too shall be included but any bonus or wages for overtime work payable in relation to the period with reference to which the earnings are being compute shall be excluded: Sub- section (4) of S. 59 provides that the cash equivalent of the concessional sale of food grains and other articles shall be computed as often as prescribe on the basis of the maximum quantity of food grains and other articles admissible to standard family.

**Standard Family:** Explanation 1 of. S. 59 (4) defines "Standard Family", to mean a family consisting of the worker, his or her spouse, and two children below the age of 14 years requiring in all 3 adult consumption units.

**Adult Consumption Unit:** Explanation 2 of S. 59 (4) defines "adult consumption unit ", to mean the consumption unit of a male above the age of 14 years, and a child below 14 years shall be calculated at the rate of 0.8 and 0.6 respectively of one adult consumption unit. S.59 (5) empowers the state government to make rules for the manner of calculation the cash equivalent and maintaining registers for securing compliance with the provisions of this section.

### **Case-law**

1. In *Birla Cotton Spg. and weavg. Mills V. E.S.I. Corpn.*, 1979 Lab.LC.527, it was held that the overtime payment constitute an implied term of contract between the employer and employee.
2. In *Gujarat S.R.T.C. V. P.S.Dube*, 1978 L.ab.I.C390, it was held that section 59 does not postulate payment of extra wages for overtime when a worker does not work in the factory beyond the prescribed hours and is absent on tour on duty.
- 3, In *R. Ananthan V. Avery India Ltd.*, (1973) it was held that section 59 (1) is not attracted to claim for overtime wages for work done outside the factory premises.

**Restriction on double employment:** Act prohibits employment of adults on the same day in two factories except as prescribed under rules.

**Notice of periods of work for adults:** Section 61 (1) lays down that a notice of the period of work for adults shall be displayed every day showing the periods during which the adult workers required to work. Sub - section (2) lays down that such periods should be fixed before hand and should not contravene the provisions of weekly and daily hours, weekly holidays, intervals for rest, spread over and prohibition of overlapping of shifts. Under sub-section (3) the manager shall fix generally the periods, where all the adult workers are required to work during the same periods. Under sub-section (4) where all the adult workers are not required: to work during the same periods, the manager shall classify them into groups in conformity with the nature of their work indicating the number of workers in each group. Under sub-section (5) the manager shall -fix the periods during which the group may be required to work in respect of a group which is not required to work-on-a system of shifts, under sub-section (6) for a group working on a system of shifts and relays not subject to pre-determined periodical changes of shifts, the manager shall fix the periods during which each relay of the group may be required to work. Under sub-section (7) where any group working on a system of shifts and relays are subject to pre-determined periodical changes of shifts, the manager shall draw up a scheme of shifts from which periods of relay of the group and the relay working at any time of the day can be ascertained for any day. Sub-section (8) empowers the state government to prescribe the forms of the notice of periods of work for adults. Section 61 (9) lays down that in the case of a factory started after the commencement of the Act, a copy of such notice must be sent to the inspector before the day of beginning of work in the factory. Sub-section (10) provides that any proposed change in the system of work in any factory which will necessitate a change in the notice, referred to in sub-section (1) shall be notified to the inspector in duplicate before the change is made, except with the previous sanction of the inspector, no such change shall be made until one week has elapsed since the last change.

**Case - law :** (1) In *Alibhai\_V. Emperor* A.I.R. 1948 nag. 179 it was held that the notice displayed must be a correct one. If the hours on the notice are not complied with it tantamount to not displaying any notice. In other words, an incorrect notice,



although complied with the requirements of this section tantamount to a failure to display as enjoined by this section.

(2) In *State of Gujarat V. Kansara Manilal Bhikalai*, 1963 - 2 L.L.1.519, it was held by the high court of Gujarat that if on a particular single day, there is a departure from the system of work already notified under section 61 (1) then that could not be said to be a change in the system of work in the factory, because a change in the system of work would mean a permanent change or a change for a fairly long duration of time in the hours of work or any other condition.

**Register of adult workers:** Section 62 (1) lays down that a register of adult workers must be kept by the manager of every factory with the following particulars viz: the name of the adult worker, the nature of his work, the group, if any, in which the adult worker is included, if the group works on shifts, the relay to which he is allotted and such other particulars as may be prescribed. Such register should be made available to the inspector at all times during working hours, or when any work is going on in the factory, The provision to this section enjoins that, if the inspector is of the opinion that any muster-roll or register maintained as a part of the routine of a factory gives, inspect of any or all the workers in the factory, the particulars required under this section, he may, by order in writing, direct that such muster roll or register shall, to the corresponding extent, be maintained in place of and be treated as the register of adult workers in the factory. Under section (1A) of section 62, no adult worker shall be required or allowed to work in any factory unless his name and other particulars have been entered in the register of adult workers, Sub - section (2) empowers the state government to prescribe the form of the register, the manner in which it shall be maintained and the period for which it shall be preserved.

**Case - law:**

1. It was held in the *State Govt. M.P.V.Maganbai*, A.I.R. 1954 Nag. 41 that an occupier cannot be held responsible for noncompliance of requirements under this section. See also. A.I.R, 1944 Nag. 4.
2. The expression "at all times" means that it should be produced on demand. If the manager is absent, he should make proper arrangements to comply with the orders of inspectors. See *Shiva Behari V. State* A.I.R. 1954 All - 255.
3. In the *state V. Nagindar maganlal*, A.I.R. 1958 Born. 162, it was held that the absence of the names of the Bidi workers from registers, where they were being

tested at the time of inspector's visit, would not amount to contravention of section 62.

4. In *superintendent and Remembrance of legal Affairs, Bengal V. H.E.Watson*, A.I.R.1934 Cal. 730, it was held that section 67 of the Factories Act is mandatory. In the absence of an order of the inspector in writing, the register must be kept showing all persons employed in a factory and the hours of their work and the nature of their respective employment. Such a register must be complete in itself.

5. In *Ram Krishna Raj Nath Kmptu V. State Industrial Court, Nagpur*, A.I.R. 1960 Born 116, it was held that where the name of person was entered in the attendance register maintained under section 62, the labour commissioner was justified in raising the presumption that the person was employed in the factory.

**Hours of work to correspond with section 61 notice and 62 register :** Section 63 prohibits employment of any adult worker on any work in the factory premises except in accordance with the notice of periods of work displayed under section 61 and the entries made in the register of adult workers, under section 62,

**Case – law: 1** In *state V. H.B.Ramjoshi*, A.I.R. 1956 Born. 189, it was held by the court that the work was not a part of the manufacturing process.

2. In *S.K. Jagnani V. State*, 1964 PLR202, it was held that the manager committed ten defaults and not one default where ten workers were asked to work during interval although it may be through one order of the manager.

**Power to make exempting rules:** Section 64 (1) has been amended by the factories (Amendment) Act 1987. It is as under (1) The state government may make rules defining the persons who hold positions of supervision or management or are employed in a confidential position in a factory or empowering the chief inspector to declare any person, other than a person defined by such rules as a person holding position of supervision or management or employed in a confidential position in a factory, if in the opinion of the chief inspector, such person holds such position or is so employed and the provisions of this chapter, than the provisions of clause (b) of sub - section (1) of section 66 and the proviso to that sub – section, shall not apply to any person so defined or declared: provided that any person so defined or declared shall, then the ordinary rate of wages for such person Does not exceed the wage limit specified in sub-section (b) of section (1) of the payment wages Act, 1936, as amended from time to time.

(2) The state government may make rules in respect of adult workers in factories providing for the exemption, to such extent and subject to such conditions as may be prescribed.

(a) of workers engaged on urgent repairs,, from the provisions of sections 51, 52, 54, 55, and 56;

(b) of workers 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 of the factory, from the provisions of sections 51, 54, 55 and 56;

(c) of workers engaged in work which is necessarily so intermittent that the intervals during which they do not work while on duty, ordinarily amount to more than the intervals for rest required by or under section 55, from the provisions of sections 51, 54, 55, and 56;

(d) of workers engaged in any work which for technical reasons must be carried on continuously, from the provisions of sections 51, 52, 54, 55 and 56;

(e) of workers engaged in making or supplying articles of prime necessity which must be made or supplied every day, from the provisions of sections 51 and 52;

(f) of workers engaged in a manufacturing process which cannot be carried on except during fixed seasons, from the provisions of sections 51, 52 and 54;

(g) of workers engaged in a manufacturing process which cannot be carried on except at times dependent on the irregular action of natural forces, from the provisions of sections 52 and 55;

(h) of workers engaged in engine-rooms or boiler - houses or in attending to power plant or transmission machinery, from the provisions, of sections 51 and 52;

(i) of workers engaged in the printing of newspapers, who are held up on account of the breakdown of machinery, from the provisions of sections 51, 54 and 56.

**Explanation :-** In this clause the expression "newspapers" has the meaning assigned to it in the Press and Registration of Books Act,1867;

(j) of workers engaged in the loading or unloading of railway wagons, or Lorries or trucks, from the provisions of sections 51, 52, 54, 55 and 56;

(k) of workers engaged in any work which is notified by the state government in the official gazette as a work of national importance, from the provisions of sections 51, 52, 54, 55 and 56.

(3) Rules made under sub-section (2) providing for any consequential exemption may also provide for any consequential exemption from the provisions of section

61 which the state government may deem to be expedient, subject to such conditions as it may prescribe.

(4) In making rules under this section, the state government shall not exempt, except in respect of exemption under clause (a) of sub-section (2), the following limits of work inclusive of overtime

(1) the total number of hours of work in any day shall not exceed ten;

(2) the spread over, inclusive of intervals for rest, shall not exceed twelve hours in any one day:

Provided that the state government may, in respect of any or all of the categories of workers referred to in clause (d) of sub-section (2) make rules prescribing the circumstances in which, and the conditions subject to which the restrictions imposed by clause (1) and clause (2) shall not apply in order to enable a shift worker to work the whole or part or a subsequent shift in the absence of a worker who has failed to report for duty;

(3) the total number of hours of work in a week including overtime shall not exceed

Sixty;

(4) the total number of hours of overtime shall not exceed fifty for any one quarter.

**Explanation** - "Quarter" means a period of three consecutive months beginning on the 1st January, the 1st of April, the 1st of July or the 1st of October.

(5) Rules made under this section shall remain in force for not more than five years.

#### **case – law**

1. In *Emperor V. R.J. Mistry*, A.I.R.1957 Bom.52, it was held that an exception intended must properly be the subject of specific provision in that behalf. It cannot be deduced or inferred any exemption specifically enacted under the Act.

For a contrary view on this point, see, *Superintended and Rerne, axe. for legal Affairs, Bengal V, J.J. Andrewes*, A.I.R. 1931 cal. 639.

**Power is make Exempting Orders** Under sub-section (1) the state government can relax or modify the provisions relating to the notice of periods of Work for adults in the case of factories where owing to the nature of work it is unreasonable to fix such periods before hand. Under sub-section (2) it may also exempt adult workers from provisions relating to weekly hours, weekly holidays and daily

hours, to enable the factory or factories to deal with an exceptional pressure of work subject to the limitation in respect of working hours for adult workers set. out above. Any exemption granted under sub-section (2) of section 65 shall be subject to the following conditions namely:

- (1) The total number of hours of work on any day shall not exceed 12;
- (2) The spread over, inclusive of intervals for rest she shall not exceed 13 hours in any one day.
- (3) The total number of hours of work in any week, including overtime shall not exceed 60.
- (4) No worker shall be allowed to work overtime for more than seven days at a stretch, and the total number of hours of overtime work in any quarter shall not exceed 75.

**Explanation** enjoins that quarter has the same meaning as in sub-section (4) of section 64.

#### **Further Restrictions on Employment of Women:**

There are additional restrictions for women workers. No exemption can be granted for them from provisions relating to daily hours. However under section 66 no women shall be required or allowed to work except between the hours of 6 a.m. and 7p.m. These limits may be varied by the state government but no variation shall be authorized for employment of women between 10 p.m. and 5 a.m. Also there shall be no change of shifts except after a weekly holiday or any other holiday. Rules for exemption from hours of work may be made for women working in fish-curing or fish-canning factories to prevent damage to or deterioration of, any material. Such rules remain in force for not more than three years at a time.

#### **Case-law**

1. In Paterson V. Duke, (1904) 6F 53 (ct. of sessions) 55 J. Scot, it was held that if some women worker in a textile factory choose to dust off the machine on their own accord and regulate the spinning wheels for their own satisfaction and comfort, sometime before the starting of the hour, although arrangements for such had been made by the occupiers of the factory, it cannot be said that the women had been employed before the statutory hour.

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### **(B) Employment of Young Persons**

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This part of the unit is prepared to acquaint you with the provisions relating to employment of young persons under the Factories Act, 1948. The study makes an analysis of these provisions and provides case-law wherever necessary.

**(1) Prohibition of employment of young children:** Section 67 prohibits employment of children below the age of 14 in any factory.

**Case-law:** (1) In *Machintosh V. First Book Box Co.* (1904) 34CLT 370, it was held that it is the duty of the employer to ascertain the age of the children whom he allows to work in any factory.

## **(2) What Constitutes employment?**

(a) Sorting of groundnuts near a desecrating room, *Ramanathan V. King Emperor*, A.I.R. 1927 Mad. 435.

(b) Plaiting of straw, irrespective of the person to whom the benefit accrues. *Beadon V. Panot*, (1851) LR 6 QB. 718.

**Non-adult workers to carry tokens:** Under Section 68 a child who has completed 14 years or an adolescent can be required or allowed to work in any factory if a certificate of fitness granted with reference to him under section 69 is in the custody of the manager of the factory, and such child or adolescent, carries a token giving a reference to such a certificate while he is at work.

**Certificates of fitness:** Under section 69, on the application of any young person or his parent or guardian, with the manager's recommendation, or that of the manager himself such person shall be examined by the certifying surgeon who may grant in the prescribed form or renew the certificate of fitness if he is satisfied (a) that the child is above 14 years; (b) that the young person has completed his fifteenth year and is fit for full work. Where the place of work of the child or young person and the manufacturing process in which he is likely to be engaged are not known personally to the certifying surgeon, he shall not grant or renew a certificate unless he has examined such a place.

A certificate of fitness granted or renewed shall be valid only for a period of 12 months from date of issue. It may also be subject to conditions regarding the nature of the work in which the child or the young person may be employed or re-examination before the expiry of 12 months. In such a case, the child or young person shall not be required or allowed to work without the fulfillment of the specified condition. A certificate may be revoked by the certifying surgeon, if in his opinion; the holder is no longer fit to work in the capacity stated therein. In

case of refusal by the certifying surgeon to grant or renew a certificate or for its revocation, the certifying surgeon must state his reasons in writing for doing so. Any fee for the certificate shall be paid by the occupier and shall not be recoverable from the young person, his parent or guardian.

**Effect of Certificate of Fitness Granted to Adolescent:**

Section 70 (as amended by the Factories (Amendment) Act, 1987, is as under :

(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. to 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 in this sub-section so that no such sectioning shall authorize the employment of any female adolescent 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 child for all the purposes of this Act.

**Working Hours for Children:** Section 71 has been amended by the factories (Amendment) Act 1987; Sub-section (1) restricts the working hours of children to 4.30 hours during the day and prohibits their employment during the night absolutely. Explanation to this sub-section defines night to mean a period of 12 consecutive hours which shall include the intervals between 10 P.M. and 6. A.M. Under sub-section (2) the period of work of all children employed shall be limited to two shifts, not overlapping or spreading over more than five hours each. Each child shall be employed in only one of the relays which shall not, except with the previous permission of the chief inspector in writing be changed more frequently than once in a period of 30 days. Under sub-section (3) no exemption can be given to child workers from the provisions of section 52, viz. weekly holidays. Under

sub-section (4) child can be required or allowed to work in any factory on any day, in which he has already been working in another factory Sub-section (5) inserted by the factories (Amendment) Act 1987 is as follows: (5) No female child shall be required or allowed to work in any Factory except between 8 a.m. and 7 p.m.

**Notice of Periods of Work for Children:** Section 72 requires the display of notice regarding the period of work for children. Such periods must be fixed before hand in accordance with the method laid down for adult workers. In the case of a factory started after the commencement of the Act, a copy of such Notice must be sent to the inspector one day before starting the work at the factory. Notice of any proposed change in the system of work which will necessitate a change in the notice of periods of work shall be sent in duplicate to the inspector before effecting the change, no such change shall be made except with the previous sanction of the inspector, and until one week has elapsed since the last change.

**Register of Child Workers:** Under section 79 the manager of every factory in which children are employed is required to maintain a register of child workers. It must be written a fresh each year and should be preserved for a period of twelve months. All particulars of the child should be entered in this register.

S.74 Hours of work to correspond with notice (section 72) and register (section 73) this section corresponds to section 63 of the Act. It provides that no child shall be employed in a factory other than in accordance with the notice of periods of work for children is displayed in the factory and the entries are made before hand against their names in the register of the child workers of the factory.

**Power to Require Medical Examination:** Section 75 empowers the inspector to get any person examined. If he is of the opinion (1) that the person working is a young person and has no certificate of fitness; (ii) that the young person having a certificate of fitness is no longer fit to work in the capacity stated in the certificate by issuing notice on the manager. Till the examination is made the inspector can prohibit the employment of such a person.

**Power to make rules:** Under section 76 the state government is empowered to make rules.

(a) prescribing the forms of certificate of fitness to be granted under section 69, providing for the grant of duplicates in the event of loss of the original certificates, fixing the fees which may be charged for such certificates, and renewals their off and for their duplicates;



(b) Prescribing the physical Standards to be attained by children and adolescents working in factories;

(c) Regulating the procedure of certifying surgeons under this chapter;

(d) specifying other duties which certifying surgeons may be required to perform in connection with the employment of young persons in factories, and fixing the fees which may be charged for duties and the persons by whom they shall be payable.

**Certain Other Provisions of Law not Barred:** Section 77 lays down that the provisions of this chapter (chapter vii) shall be in addition to and not in derogation of the provisions of the employment of Children Act, 1938.

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## **(C) Annual leaves with wages**

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### **Objectives:**

This part of the unit is prepared to acquaint you with the various provisions relating to "Annual leave with wages" under the factories Act, 1948. The study makes an analysis of these provisions. Appropriate case-law is provided wherever necessary.

**Annual Leave with Wages:** Section 78 relates to the application of chapter viii. It will not apply to workers in any factory of any railway or of any Government Department where they governed by leave rules approved by the central government. It will not apply to the prejudice of any right to which a worker may be entitled under any other law or under the terms of an award or agreement including settlement or contract of service. In case the award, agreement or contract of service provides for a longer annual leave with wages than is permissible under this chapter, the worker shall continue to get the same.

**Case-law:** (1) In J.K. cotton Manufacturers V. Their workmen, 1955-ILLI. 657 it was held that section 78 provides that the provisions of chapter viii of the Act shall not operate to the prejudice of any right to which a worker be entitled under the terms of any agreement or contract of service. Such agreement or contract may be express or implied.

**Eligibilities** Section 79 deals with the eligibility and quantum of annual leave with wages (1) A worker who has worked for 240 days or more during a calendar year is entitled during the next calendar year, to leave with wages at the rate of one day

for every 20 days of work performed by him during the previous calendar year, if an adult, and one day for every 15 days of work done, in the case of a child. The period of leave shall be exclusive of all holidays which may occur during or at either at the end of such period. For the purpose of eligibility to each leave, the following days shall be deemed to be days of work but shall not earn leave for these days:

(a) Days of lay-off, by agreement or contract or as permissible under the standing orders;

(b) Maternity leave for any number of days not exceeding 12 weeks, for a female worker;

(c) The leave earned in the year prior to that in which the leave is enjoyed.

Under section 79 (2) worker whose service commences after 1st January of the calendar year, would be entitled for earned leave if he has worked two third of the total number of days in the remainder of the calendar year. Under sub-section (3) if a worker is discharged or dismissed from service or quits his employment or is superannuated or dies while in service, during the course of the calendar year, he or his heir or nominee, as the case may be, shall be entitled to wages in lieu of the quantum of leave to which he was entitled immediately before his discharge, dismissal, quitting of employment, superannuation or death, calculated at the rates specified in sub-section (1) even if he had not worked for the entire period specified in sub-section (1) or sub-section (2) making him eligible to avail of such leave, and such payment shall be-made.

(1) Where the worker is discharged, or dismissed or quits employment, before the expiry of the second working day from the date of discharge, dismissal or quitting; and

(2) Where the worker is superannuated or dies while in service, before the expiry of two months from the date of such superannuation or death.

Under sub - section (4) fraction of leave of half a day or more is treated as one full day's leave and fraction of less than, half a day is omitted for the purposes of calculating the leave. Sub -section (5) deals with the accumulation and carrying forward of leave. Accordingly leave not availed of in any one calendar year shall be carried forward to the succeeding year up to a limit of 30 days for an adult and 40 days for a child. This limit, shall not however apply to a workman who has been refused leave even though he had applied for it. It is the duty of the worker who

does not wish to avail of his leave, to give such notice to the manager before the close of the calendar year who shall enter this information in the "Leave with wages register" and the leave book of the worker concerned. Sub - section (6) lays down the procedure for obtaining leave. A worker shall apply in writing to the manager of a factory not less than 15 days before the date on which he wishes his leave to begin, for all the leave to his credit or a portion there of. But worker in a public utility service as defined in section 2 (n) of the Industrial Disputes Act, 1947 shall apply at least thirty days before. The leave may, be taken during any year is not more than three installments. Under sub - section (7) if a worker wants leave with wages due to him, to cover a period of illness, shall be granted such leave even though the application is not made within the specified time. In such a case advance payment of wages as admissible under section 81 shall be made not later than 15 days, and if employed in a public utility service, not later than 30 days from the date of application for the grant of leave. Sub - section (8) deals with the scheme for the regulation of leave. Accordingly a scheme for the regulation of leave can be made by the occupier or manager, in agreement with the works committee under the Industrial Disputes Act, 1947, if any, or the elected representatives of the workers, and lodged with the chief inspector. Under sub - section (9) such scheme shall be displayed conspicuously in the factory and it shall be in force for 12 months and may be renewed with or without modification for another period of 12 months, by agreement. Before renewal, a notice there of shall be sent to the chief inspector. Under sub-section (10) an application made in advance of the beginning of leave shall not be refused except in accordance with the scheme. Sub - section (11) deals with encashment of leave. Accordingly if a worker being entitled to leave is discharged or having applied is refused leave and quits service he shall be paid wages for his due leave before the expiry of the second working day after such discharge or on or before the next pay day in case of resignation. Under sub - section (12) the unavailed leave of a worker shall not be taken into account in computing the notice period for his discharge or dismissal.

**Case - law:**

(1) In National Carbon Co. (India) Ltd. V. The Workmen , A.I.R. 1955 Nag 1917, it was held that workers should earn 24 or 25 days as leave and holidays besides Sundays and sick leave.

(2) In *South India Corporation V. All Kerala Cashew nut Factory Workers Federation*, A.I.R. 1960 Ker. 208 it was held that the tribunal had jurisdiction to grant leave with wages irrespective of the total number of working days in a calendar year.

(3) In *The State of Gujarat V. Jasholbhai Prabhudas*, 1980 Lb. I.C. 561 (Guj.), it was held that non - payment of leave wages to worker on the second day of termination of service is not an offence if the factory was closed on that day.

**Wages during leave period:** Section 80 has been amended by the Factories (Amendment) Act, 1987. It reads as follows: (1) For the leave allowed to him under section 78 or section 79, as the case may be, a worker shall be paid at a rate equal to daily average of his total full time earnings for the days on which he actually, worked during the month immediately preceding his leave, exclusive of any overtime wages and bonus, but inclusive of dearness allowance and the cash equivalent of the advantage accruing through the concessional sale to the worker of food grains and other articles.

However in the case of a worker who has not worked on any day during the month immediately preceding his leave, he shall be paid at a rate equal to the daily average of his total fulltime earnings for the days on which he actually worked during the month preceding his leave, in which he actually worked, exclusive of any overtime and bonus but inclusive of dearness allowance and the cash equivalent of the advantage accruing through the concessional sale to the workers of food grains and other articles.

(2) The cash equivalent of the advantage accruing through the concessional sale to the workers of food grains and other articles shall be computed as often as may be prescribed, on the basis of the maximum quantity of food grains and other articles admissible to a standard family. **Explanation I:** "Standard family" means a family consisting of a worker, his or her spouse and two children below the age of 14 years requiring in all three adult consumption units.

**Explanation II:** "Adult consumption unit" means the consumption unit of male about the age of 14 years the consumption unit of a female above the age of 14 years and that a child below the age of 14 years shall be calculated at the rate of 0.8 and 0.6 respectively of one adult consumption unit.

(3) The state government may make rules prescribing

(a) the manner in which the cash equivalent of the advantage accruing through the concessional sale to a worker of food grains and other articles shall be computed; and

(b) the register that shall be maintained in a factory for the purpose of securing compliance with the provision of this section.

**Case - law:** (1) In *State V. Shanker Balaji Waje* . 1961 - 2 L.L.J.8, the Supreme Court considered the meaning of the words "total full - time earnings" in great detail. It can only mean the earnings he earns in a day by working full-time on that day, the full-time to be in accordance with the period of time given in the notice displayed in the factory on a particular day.

(2) In *Ramkrishna Ramnath Bidi Factory V. Small Causes Court*, A.I.R. 1963 Bom. 236, it was held that a bidi worker, although he may be a worker under s. 2(1), would not be entitled to the benefits of sections 79 and 80 when there can be no basis for calculating the daily average of the worker's full time earnings when the terms of work do not fix any period of work on any day.

**Advance payment:** Section 81 provides for the payment of wages in advance due for the period of leave allowed to a worker for not less than four days in the case of an adult and five days in the case of a child.

**Recovery:** Section 82 provides the means for recovering of an amount due under the provisions of chapter VIII relating to annual leave with wages. It provides that any sum payable by the employer under these provisions as shall be recoverable as delayed wages under the Payment of Wages Act, 1936,

**Maintenance of Recovery:** Section 83 empowers the state government to make rules regarding maintenance of registers containing particulars to be available for examination by the inspectors.

**Power to exempt factories:** Section 84 empowers the state government to grant exemption to factories by a written order subject to the conditions specified there in from all or any provisions of this chapter if it is satisfied that the leave rules applicable to the workers in any factory are not less favorable than those under this chapter.

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## (D) Special provisions

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**Objectives:**

This part of the unit is prepared to acquaint you with the special provisions under the factories Act, 1948. The study makes an analysis of the sections pertaining to special provisions. Appropriate case - laws has been also provided whenever necessary.

Sections 85-91 A of chapter IX deal with special provisions of the Act.

**Power to apply the Act to certain premises:** Under section 85 the basic provisions regarding health, safety and welfare have been made applicable to all workplaces irrespective of the number of workers employed therein and excludes premises where processes are carried on by the occupier with the aid of his family only.

Explanation to this section enjoins that for the purposes of this section "Owner" shall include a lessee or mortgage with possession of the premises.

**Power to exempt public institutions:** Section 86 empowers the state government to exempt any workshop or workplace where a manufacturing process is carried on and which is attached to a public institution maintained for the purposes of education, training or reformation, from all or any of the provisions of this Act. This is however, subject to a provision in tern of a scheme which as a ground for exemption from the provisions relating to hours of work and holidays may be provided, by the persons having the control of the institution, to the state government. If the state government is satisfied that the provisions of the scheme are not less favorable than the corresponding provisions of the Factories Act, than only exemption shall be granted from the provisions relating to hours of work and holidays.

**Dangerous operations:** Section 87 empowers the state government to make rules providing protection to the workers from dangerous operations carried on in factory Dangerous operations would include any process that would expose any person employed in a factory to a serious risk of bodily injury, poisoning or disease.

The rules may:-

- (a) Specify the manufacturing process or operation and declare it as dangerous;
- (b) Prohibit or restrict the employment of women, adolescents or children in the manufacturing process or operation;

- (c) Provide for periodical medical examination and prohibition of employment of unfit persons;
- (d) Provide for the protection of all persons employed in the manufacturing process or operation or in the vicinity;
- (e) Prohibit, restrict or control the use of any specified materials or processes in connection with the manufacturing process or operation, and requiring the payment of fees for such medical examination by the occupier of the factory;
- (f) Require the provision of additional welfare amenities and sanitary facilities and the supply of protective equipment and clothing, and laying down of the standards there of, having regard to the dangerous nature of the manufacturing process or operation. Clause
- (g) Has been omitted by the Factories (Amendment) Act 1987.

**Case-law:** In *Wood V. Durable Suites Ltd.*, (1953) 2 A11.E.R. 391 it was held that the obligation of an employer towards his workmen includes an obligation to exercise due care and skill to provide a proper system of work, and to provide, effective supervision.

Power to prohibit employment on account of serious Hazards:

Section 87 A which have been inserted by the Factories (Amendment) Act, 1987 provides:

- (1) Where it appears to the inspector that Conditions in a factory or part there of or are such that they may cause-serious hazard by way of injury or death to the persons employed therein to or to the general public in the vicinity, he may, by order in writing to the occupier of the factory, state the particulars in respect of which he considers the factory or part thereof to be the cause of such serious hazard and prohibits such occupier from employing any person in the factory or any part thereof other than the minimum number of persons necessary to attend to the minimum tasks, till the hazard is removed.
- (2) Any order issued by the inspector under sub - section (1) shall have effect for a period of three days until extended by the chief inspector by a subsequent order.
- (3) Any person aggrieved by an order of the inspector under sub - section (1) and the chief inspector under sub - section (2) shall have the right to appeal to the High Court.
- (4) Any person whose employment has been affected by an order issued under sub - section (1), shall be entitled to wages and other benefits and it shall be the duty of

the occupier to provide alternative employment to him where ever possible and in the manner prescribed.

**Notice of certain accidents:** (1) Under section 88 it is incumbent upon the manager to send notices of certain accidents resulting in death or causing bodily injury by reason of which the injured person is prevented from working for a period of 48 hours or more to such authorities as may be prescribed in such form and within such time.

(2) If the accident results in death, the authorities concerned should make an inquiry into the cause of death, within one month of the receipt of the notice.

(3) Sub - section (3) empowers the state government to make rules for regulating the procedure of inquiries under this section.

**Case - law:** In *Wazirchand V. Emperor*, A.I.R. 1930 Lah. 658, it was held that the occupier is equally responsible as the manager for compliance of this section. The court said that "person" includes plural also, according to the General Clauses Act.

**Notice of certain dangerous occurrences:** Under S. 88A It is incumbent upon the manager of the factory to send notice of any dangerous occurrence of such nature as may be prescribed, whether causing any bodily injury or disability or not, to such authorities and in such form and within such time as may be prescribed.

**Notice of certain diseases:** Section 89 aims at controlling industrial disease. The third schedule to The Factories Act specifies certain modifiable diseases. Under this section it is incumbent upon the manager where any worker in a factory contracts any disease specified in the third schedule, to send notice to such authorities, and in such form and within such time as may be prescribed. This section imposes an obligation on any medical practitioner, to report in writing the name and address of the patient along with the name of the disease from which the person who is or has been employed or is believed by the medical practitioner to be employed in any factory, informing to the chief inspector of factories. On the confirmation of the report, to the satisfaction of the chief inspector, the medical practitioner will get his fees as prescribed under rules. The fees so paid shall be recoverable from the occupier as an arrear of land revenue. Failure to comply with the provisions of this section, on the part of the medical practitioner is an offence punishable with fine up to one thousand rupees. The fine before the Amendment Act 1937 was only fifty rupees.



(5) The Central Government may, by notification in the official gazette, add to or alter the third schedule and any such addition or alteration will have the same effect as if it had been made by the Act. Sub - section (5) has been added by the Factories (Amendment) Act 1987.

**Power to direct inquiry into cases of accident or disease:** Section 90 empowers the state government to appoint a competent person to inquire into the causes of any case where a disease specified in the third schedule has been or suspected to have been contracted in a factory. It may also appoint one or more persons with legal or special knowledge to act as assessors. The person so appointed to hold an inquiry under this section shall have all the powers of a civil court under the Code of Civil Procedure, 1908. He shall make a report and submit it to the state government stating the causes of the accident or the disease and any attendant circumstances and adding any observations which he or any of the assessors may think fit to make. The state government may publish a report made under this section or any extracts there from if it thinks fit. Sub - section (5) Authorities the state government to make rules for regulating the procedure of enquiries under this-section.

**Case - law:** It has been held in Ram Chandra Sharma V. State of U.P., A.I.R. 1956 All.4. that the decision of the industrial tribunal is not conclusive in a prosecution under this section.

**Power to take samples :** Section 91 deals with the powers of the inspector to take sample of any substance used or intended to be used in the factory, if such use-

(1) in the belief of the inspector is in contravention of the provisions of the Act and rules or

(2) In the opinion of the inspector is likely to cause bodily injury or to injure the health of the workers in the factory.

Sub - sections (2) and (3) deal with the procedure for taking samples and sending the sample for analysis. Under this section the report of the government analyst can be used as evidence any proceedings instituted in respect of the substance.

**Safety and occupational health surveys :** (1) The Chief inspector, or the director general of factory advice and labour institutes service or the direct & general of health services to the government of India, or such other officer as may be authorized in This behalf by the state government, may at any time, during the normal working hours of factory, or at any other time as is found to be necessary

by him, after giving notice in writing to the occupier or the manager of the factory or any other person who for the time being purports to be in charge of the factory, undertake safety and occupational health surveys and such occupier or manager or such other person shall afford all facilities for such a survey, including facilities for the examination and testing of the plant and the machinery and the collection of samples and other data relevant to the survey.

(2) Under section 91 - sub section (1): for the purpose of fascinating surveys every worker shall, if so required by the person conducting the survey, present himself to undergo such medical examination as may be considered necessary by such person and furnish all information in his possession and relevant to the survey.

(3) Under section 90 A any time spent by a worker for undergoing medical examination or furnishing information under sub - section (2) shall, for the purpose of calculating wages and extra wages for overtime work be deemed to be the time during which such worker worked in the factory.

**Explanation:** This was inserted by the Factories (Amendment) Act 1987 for the purposes of this section, the report, if any submitted to the state government by the person conducting the survey under sub - section (1) shall be deemed to be a report submitted by an inspector under this Act.

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## 6.2 Self Assessment test -

(1) Write in detail the various provisions relating to 'Employment of Young Persons' under the factories Act, 1948.

(2) Write short notes on:

(a) "Working Hours of Adults" under the Factories Act, 1948.

(b) "Annual Leave with Wages" under the Factories Act, 1948

(3) Enumerate in detail the special provisions under the Factories Act, 1948.

(4) Write in detail the various provisions relating to employment of young persons under the Factories Act, 1948.

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## 6.3 Suggested readings

1. S.C. Srivastava : Labour law in factories, mine, plantation transport and shops and industrial establishment, printice hall (India) Ltd, N. Delhi (1991): A study of Industrial Law

2. P. L. Malik : Industrial Law

3. K. D. Srivastava : Commentaries on the Factories Act, 1948
4. G. M. Kothari and A.G. Kothari: A study of Industrial Law

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# UNIT -7

## The Mines Act, 1952 (Part I)

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### **Objectives:**

After going through this unit you should be able to understand.

- Scope and extent of the Mines Act, 1952
- Important Definitions and authorities under the Act.
- Committees under the Act.
- Provisions of health & Safety under the Act.

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### **Structure:**

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- 7.1 Introduction
- 7.2 Important Definitions
- 7.3 Authorities under the Act.
  - (A) Inspectors
    - (I) Chief Inspectors and Inspectors
    - (II) Functions of Inspectors
    - (III) Powers of Inspectors
    - (IV) Facilities to be provided
  - (B) Certifying Surgeons
- 7.4 Committees
- 7.5 Management of Mining Operations
- 7.6 Health and Safety
- 7.7 Further Readings
- 7.8 Questions

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### **7.1 INTRODUCTION**

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The Act seeks to amend and consolidate the law relating to the regulation of labour and safety in mines. The Act extends to the whole of India and, shall come into force on such date or dates as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be laid down for different

provisions of this Act and for different States but not later than 31st December, 1953.

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## **7.2 IMPORTANT DEFINITIONS:**

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### **(1) Mine**

Section (2) Of the Mines Act, 1952 defines "mines" to mean any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on, and includes:

- (1) all borings, bore holes, oil wells and accessory crude conditioning plants, including the pipe conveying mineral oil within the oilfields;
- (2) all shafts, in or adjacent to and belonging to a mine, whether in the course of being sunk or not;
- (3) all levels and inclined planes in the course of being driven;
- (4) all open cast workings;
- (5) all conveyors or aerial ropeways provided for the bringing into or removal from a mine of minerals or other articles or for the removal of refuse there from;
- (6) all aerial, levels, planes, machinery, works, railways, tramways and sidings in or adjacent to and belonging to a mine;
- (7) all protective works being carried out in or adjacent to a mine;
- (8) all workshops and stores situated within the precincts of a mine and under the same management and used primarily for the purposes connected with that mine or a number of mines under the same management;
- (9) all power stations, transformer sub-stations, convertor stations, rectifier stations and accumulator storage stations for supplying electricity solely or mainly for the purpose of working the mine or a number of mines under the same management ;
- (10) any premises for the time being used for depositing sand or other material for use in a mine or for depositing refuse from a mine or in which any operations in connection with such sand, refuse or other material is being carried on, being premises exclusively occupied by the owner of the mine;
- (11) any premises in or adjacent to and belonging to a mine on which any process ancillary to the dressing or preparation for sale of minerals or of coke is being carried on;

## **2. MINERALS**

Section 2 (ii) all defines 'minerals' to mean: all substances which can be obtained from the earth by mining, digging, drilling, dredging, hydraulic, quarrying or by any other operation and includes minerals oils (which in turn include natural gas and petroleum);

## **3. OPEN CAST WORKING**

Section 2 (KK) defines "open cast working" to mean:

a quarry, that is to say, an excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on, not being a shaft or an excavation which extends below superjacent ground;

## **4. Serious bodily injury**

Section 2 (Q) defines "serious bodily injury" to mean:

any injury which involves, or in all probability will involve, the permanent loss of any part or section of a body or the use of any part or section of a body, or the permanent loss of or injury to the sight or hearing or any permanent physical incapacity or the fracture of any bone or one or more joints or bones of any phalanges of hand or foot;

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## **7.3 Authorities under the Act.**

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### **INSPECTORS**

#### **(i) Chief Inspectors and Inspectors**

Under section 5 the Central Government has to appoint persons possessing the prescribed qualifications to the Chief Inspector of Mines for all the territories to which this Act extends and such persons as possess the prescribed qualifications to be Inspectors of Mines subordinate to the Chief Inspector.

No person shall be appointed to be Chief Inspector or an Inspector, or having been appointed shall continue to hold such office, who is or becomes directly or indirectly interested in any mine or mining rights in India.

The District Magistrate may exercise the powers and perform the duties of an Inspector subject to the general or special orders of the Central Government.

However nothing in this sub-section shall be deemed to empower a District Magistrate to exercise any of the powers conferred.

The Chief Inspector and all Inspectors shall be deemed to be Public servants.

## **(ii) Functions of Inspectors**

Under section 6

The Chief Inspector may by order in writing with the approval of the Central Government authorize any Inspector named or any class of Inspectors specified in the order to exercise such of the powers of the Chief Inspector under this Act (other than those relating to appeals) as he may specify.

The Chief Inspector may, by order in writing prohibit or restrict the exercise by any Inspector named or any class of Inspectors specified in the order of any power conferred on Inspectors under this Act.

The Chief Inspector shall Subject to the other provisions contained in this section declare the local area or areas within which or the group or class of mines with respect to which Inspectors shall exercise their respective powers.

## **(iii) Powers of Inspectors**

Under section 7

The Chief Inspectors and any Inspector are empowered to:

(a) make such examination and inquiry as he thinks fit in order to ascertain whether the provisions of this Act and of the regulations, rules and bye-laws and of any orders made hereunder are observed in case of any mine.

They may with such assistants, if any, as he thinks fit, enter inspect and examine any mine or any part thereof at any time by day or night.

However the power conferred by clause (c) shall not be exercised in such a manner as unreasonably impedes or obstructs the working of the mine;

They are empowered to examine into, and make inquiry respecting the state and condition of any mine or any part thereof, the ventilation of the mine, the sufficiency of the bye-laws for the time being in force relating to the mine, and all matters and things connected with or relating to the health, safety and welfare of the person employed in the mine, and take whether on the precincts of the mine or elsewhere, statements of any person which he may consider necessary for carrying out the purposes of this Act.

They may exercise such other powers as may be prescribed by regulations made by the Central Government in this behalf.

However no person shall be compelled under this sub-section to answer any question or make any statement tending to incriminate himself.

(2) the Chief Inspector or any Inspector may, if he has reason to believe, as a result of any inspection, examination or inquiry under this section, that an offence under this Act has been or is being committed, search any place and take possession (of any material or plan, section, register or other record) appertaining to the mine, and the provisions of the (Code of Criminal Procedure, 1973 (2 of 1974) shall, so far as may be applicable, apply to any search or seizure under this Act as they apply to any search or seizure made under the authority of a warrant issued under Section 94 of the Code.

An order of cancellation of Certificate by the Board is not bad for failure to suspend the certificate by the Regional Inspector. To invalidate the Board's because the Regional Inspector had not suspended the Certificate is fallacy-AIR 1977 SC 965.

There is no power if an Inspector of Mines arrests any person of to submit a charge-sheet under Section 173 Cr. PC. A statement made to him during an enquiry into an accident in the mine is admissible in evidence, since he is not a Police (H. S. Sachdec & Ors. Vs. State of M.P., 1974 Lab IC 934).

#### **(iv) Facilities to be provided**

Under section 9

every owner, agent and manager of a mine shall afford the Chief Inspector and every Inspector and every person authorised under Section. 8 all reasonable facilities for making any entry inspection, survey, measurement, examination or inquiry under this Act.

Facilities to be provided for occupational health survey.

Under Section 9A

The Chief Inspector or an Inspector or other officer authorised by him in writing in this behalf may, at any time during the normal working hours of the mine or at any time by day or night as may be necessary, undertake safety any occupational health survey in a mine after giving notice in writing to the manager of the mine, and the owner, agent or manager of the mine shall afford all necessary facilities (including facilities for the examination and testing of plant and machinery, for the collection of samples and other data pertaining to the survey and for the transport and examination of any person employed in the mine chosen for the survey) to such Inspector or officer.



Every person employed in a mine that is chosen for examination in any safety and occupational health survey under sub-section (1) shall present himself for such examination and at such place as may be necessary and shall furnish all information regarding his work and health in connection with the said survey.

The time spent by any person employed in a mine who is chosen for examination in the safety and occupational health survey, shall be counted towards his working time, so that, any overtime shall be paid at the ordinary rate of wages.

For the purposes of this subsection, "ordinary rate of wages" means the basic wages plus dearness allowance and underground allowance and compensation including such compensation, if any, accruing though the free issue of food grains and edible oils as persons employed in a mine may for the time being, be entitled to, but does not include a bonus (other than the given as incentive for production) or any compensation accruing through the provision of amenities such as free supply of coal, medical and educational facilities, sickness allowance, supply of kerosene oil, baskets, tools and uniforms.

Any person who, on examination under subsection (2) is found medically unfit to discharge the duty which he was discharging in a mine immediately before such presentation shall be entitled to undergo medical treatment at the cost of the owner, agent and manager with full wages during the period of such treatment.

If, after the medical treatment, the person referred to in sub section (4) is declared medically unfit to discharge the duty which he was discharging in a mine immediately before presenting himself for the said examination and such unfitness is directly ascribable to his employment in the mine before such presentation, the owner, agent, and manager shall provide such person with an alternative employment in the mine for which he is medically fit.

However where no such alternative employment is immediately available, such person shall be paid by the owner, agent and manager disability allowance determined in accordance with the rates prescribed in this behalf.

Further that where such person decides to leave his employment in the mine, he shall be paid by the owner, agent and manager a lump sum amount by way of disability compensation determined in accordance with the rates prescribed in this behalf. The rates under this proviso shall be determined having regard to the monthly wages of the employees, the nature of disabilities and others related factors.

## **(B) Certifying Surgeons**

(1) Under section 11 of the Mines Act the Government is required to appoint qualified medical practitioners to be certifying surgeons for the purposes of this Act within such local limits or for such mine or class or description of mines as it may assign to them. A certifying surgeon may, with the approval of the Central Government, authorized any qualified medical practitioner to exercise all or any of his powers under this Act for such period as the certifying surgeon may specify, No person shall be appointed to be, or authorised to exercise the powers of, a certifying surgeon, or, having been so appointed or authorised, continue to exercise such powers, who is or becomes the owner, agent or manager of a mine, or is or becomes directly or indirectly interested therein.

### **Duties**

The certifying surgeon shall carry out : Duties such as:

- (a) the examination and certification of adolescents under this Act;
- (b) the examination of persons engaged in a mine in such dangerous occupations or processes as may be prescribed;
- (c) the exercise of such medical supervision as may be prescribed for any mine or class or description of mines where:-
  - (i) cases of illness have occurred which it is reasonable to believe are due to the nature of any process carried on or other conditions of work prevailing in the mine;
  - (ii) adolescents are or are to be employed in any work which is likely to cause injury to their health.

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## **7.4 COMMITTEES :**

Sec.13 of Mines Act 1952 provides that the Committee shall consist of the following:-

- (a) A chairman nominated by the Central Govt. or by such officer or authority as the Central Government may authorize in this behalf;
- (b) a person nominated by the chairman and qualified by experience to dispose of the questions referred to the Committee; and
- (c) two persons to represent the interests of the persons employed in the mine of whom one shall be nominated by the owner, agent or manager of the mine concerned, and the other shall be nominated by the Central Government in

consultation with such organizations of miners employed in the mine as may be recognized for the purpose by that Government.

No Inspector or person employed in or in the management of any mine concerned shall serve as chairman or member of a Committee may, notwithstanding such failure, proceed to inquire into and dispose of the matter referred to it.

The Committee shall hear and record such information as the Chief Inspector or the Inspector, or the owner, agent or manager of the mine concerned, may place before it, and shall intimate its decision to the Chief Inspector or the Inspector and to the owner, agent or manager of the mine and shall report its decision to the Central Govt.

On receiving such report the Central Government shall pass order, in conformity there with unless the Chief Inspector or the owner, agent or manager of the mine, has lodged an objection to the decision of the Committee, in which case the Central Government may proceed to review such decision and to pass such decision and to pass such orders in the matter as it may think fit.

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## **7.5 MANAGEMENT OF MINING OPERATIONS:**

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**Notice:** Section 16 imposes an obligation upon the owner, agent or manager of a mine, to give to the Chief Inspector, the Director, India Bureau of Mines and the district magistrate of the district in which the mine is situated before the commencement of any mining operation, such notice must be in writing and in such form and containing such particulars as related are to the mine as may be prescribed. Any notice given under sub-section (1) shall be so given as to reach the persons concerned at least one month before the commencement of any mining operation.

Manager Under section 17 . Save as may be otherwise prescribed every mine shall be under one manager who shall have the prescribed qualifications and shall be responsible for the control, management, (supervision) and direction of the mine, and the owner or agent of every mine shall appoint himself or some other person, having such qualifications, to be such manager.

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## **7.6 HEALTH AND SAFETY:**

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Chapter V Provides for health and Safety of mine workers.

Drinking Water :- Section 19 deals with Drinking Water

(a) It provides, effective arrangements shall be made to provide and maintain at suitable points conveniently situated a sufficient supply of cool and wholesome drinking water for all persons employed therein.

Provided that in the case of persons employed below ground the Chief Inspector may, in lieu of drinking water being provided and maintained at suitable points, permit any other effective arrangements to be made for such supply.

(2) All such points shall be legibly marked "DRINKING WATER" in a language understood by a majority of the persons employed in the mine and no such point shall be situated within twenty feet of any washing place, urinal or latrine , unless a shorter distance is approved in writing by the Chief Inspector.

(3) In respect of all mines or any class or description of mines, the Central Government may make rules for securing compliance with the provisions of sub-sections (1) and (2) and for the examination prescribed by authorities of the supply and distribution of drinking water.

(b) Conservancy: Section 20 provides for conservancy. It reads There shall be provided, separately for males and females in every mine, a sufficient number of latrines and urinals of prescribed types so situated as to be convenient and accessible to persons employed in the mine at all times.

All latrines and urinals provided under sub-section (1) shall be adequately lighted, ventilated and at all times maintained in a clean and sanitary condition.

The Central Government may specify the number of latrines and urinals to be provided in any mine, in proportion to the number of the males and females employed in the mine.

(c) Medical appliances: Section 21 deals with medical appliances. It provides In every mine there shall be provided and maintained so as to be readily accessible during all working hours such number of first-aid boxes or cupboards equipped with such contents as may be prescribed.

Nothing except the prescribed contents shall be kept in a first-aid box or cupboard or room.

Every first-aid box or cupboard shall be kept in the charge of a responsible person who is trained in such first-aid treatment as may be prescribed.

In every mine there shall be made so as to be readily available such arrangements as may be prescribed for the conveyance to hospitals or dispensaries of persons who, while employed in the mine, suffer bodily injury or become ill.

In every mine wherein more than one hundred and fifty persons are employed, there shall be provided and maintained a first-aid room of such size with such equipment and in the charge of such medical and nursing staff as may be prescribed.

(d) Notice of accident: Under section 21 whenever there occurs in or about a mine :-

(a) an accident causing loss of life or serious bodily injury, or

(b) an explosion, ignition, spontaneous heating, outbreak of fire or irruption or inrush of water or other liquid matter, or

(c) an influx of inflammable or noxious gases, or

(d) a breakage of ropes, chains or other gear by which persons or materials are lowered or raised in a shaft or an incline, or

(e) an over winding of cages or other means of conveyance in any shaft while persons or material are being lowered or raised, or

(f) a premature collapse of any part of the working or

(g) any other accident which may be prescribed, The owner, agent or manager of the mine shall give notice of the occurrence to such authority in such form and within such time as may be prescribed, and he shall simultaneously post one copy of the notice on a special notice board in the prescribed manner at a place where it may be inspected by trade union officials.

(e) Court of inquiry for accident: Section 24 empowers the Government to appoint Court of Inquiry in case of accidents It reads When any accident of the nature referred to in any of the clauses of sub-section (1) of Section 23 occurs in or about a mine, the Central Government may, if it is of opinion that a formal inquiry into the causes of and circumstances attending the accident ought to be held, appoint a competent person to hold such inquiry and may also appoint one or more persons possessing legal or special knowledge to act as assessor or assessors in holding the inquiry.

The person appointed to hold any such inquiry shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), for the purpose of

enforcing the attendance of witnesses and compelling the production of documents and material objects.

Any person holding an inquiry under this section may exercise such powers of an Inspector under this Act as he may think it necessary or expedient for the purposes of the inquiry.

The person holding an inquiry under this section shall make a report to the Central Government stating the causes of the accident and its circumstances, and add any observations which he or any of the assessors may think fit to make.

(f) Notice of Diseases: Section 25 deals in the notice of certain diseases It reads Where any person employed in a mine, contracts any disease notified by Central Government in the Official Gazette as a disease connected with mining operations, the owner, agent or manager of the mine, as the case may be, shall send notice thereof to the Chief Inspector and to such other authorities, in such form and within such time as may be prescribed.

If any medical practitioner attends on a person who is or has been employed in a mine and who is or is believed by the medical practitioner to be suffering from any disease notified under sub-section

(1) the medical practitioner shall without delay send a report in writing to the Chief Inspector stating:-

(a) the name and address of the patient,

(b) the disease from which the patient is or is believed to be suffering, and

(c) the name and address of the mine in which the patient is or was last employed.

Where the report under sub-section (2) is confirmed to the satisfaction of the Chief Inspector by the certificate of a certifying surgeon or other-wise that the person is suffering from a disease notified under sub-section (1), the Chief Inspector shall pay to the medical practitioner such fee as may be prescribed and the fee so paid shall be recoverable as an arrear of land revenue from the owner, agent or manager of the mine in which the person contracted the disease.

If any medical practitioner fails to comply with the provisions of sub-section (2), he shall be punishable with fine which may extend to fifty rupees.

(g) Direct investigation of Disease: Under section 26 The central Government may; if it considers it expedient to do so, appoint a competent person to inquire into and report on it or any case where a disease notified under sub-section (1) of Section 25 has been or is suspected to have been contracted in a mine, and may also appoint

one or more persons possessing legal or special knowledge to act as assessors in such inquiry.

### **LEADING CASE**

#### **CHIEF INSPECTOR OF MINES V.LALA KARAM CHAND THAPAR**

(1961) 2 L.L.J.146 (S.C.) It was urged that the managing agents of the colliery company are in occupation of the mines and thus fall within the definition of the word "owner" in S. 2(1) of the Act. Das Gupta J. Speaking for the Supreme Court observed :

"The argument is that the managing agents exercise, by reason of their being managing agents of the colliery company, possession over the mine ; and so "occupy" the mine. Though the word "occupier" is not defined in the Act it is patently absurd to suppose that any and every person exercising possession over the mine, is an "occupier" and thus an owner of the mine, for the purpose of the Mines Act. From the very collocation of the words "immediate proprietor, or lessee or occupation is of the same character , that is, occupation by a proprietor or a lessee - by way of possession on his behalf and not on behalf of somebody else is meant by the word "occupier" in the 'definition. Thus, a trespasser in wrongful possession to the exclusion of the right full owner would be an occupier of the mine, and so be an "owner" for the purposes of Act. When, however, a servant or agent of the proprietor or lessee of a mine is in possession of a mine, he is in possession on behalf of his master or his principal, and not on his own behalf. It would be unreasonable to think that the legislature intended to make such servants or agents liable and responsible as "owner " of the mine. If possession on behalf of another was sufficient to make a person "occupier within the meaning of S. 2 (1) , every manager would be an occupier and thus have all the responsibilities of an "owner". Many "agents" of the proprietors or lessees of the mine would similarly be "occupier" and therefore owner if that had been the intention of the legislature it would have been unnecessary and indeed meaningless to mention "agent" and "manner" in addition to the word 'owner" in S. 18 of the Act, in the important provision as to who will be responsible for the proper carrying on of operations in the mine in regard to the provisions of the Act and regulations and bye-laws and orders made there under .

It would have been similarly unnecessary to mention "agent" and "manager" in addition to the word "owner" in S.22 which gives the Chief Inspector or inspector power to give special directions for the removal of certain defects or in S.61 providing - for the framing of bye-laws. The very fact that in Ss.18, 22 and 61 owner, agent and manager have been separately made responsible clearly shows that the legislature did not think that agent or manager would come within the definition of "owner" in S. 2 (?). Whatever possession, the managing agents of a colliery company exercise in and over a mine is exercised on behalf of the colliery company and not on their own behalf and as such managing agents are not occupiers of the mine within the meaning of S.2(1) (?).

The managing agent company, not being either agent or owner of the mine, no question of contravention by that company or any of its directors of the coal mines regulations can arise. The High Court has therefore rightly quashed the criminal proceedings against the directors of the managing agent company. Appeals Nos. 100 and 101 are accordingly dismissed."

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### **7.7 Further Readings**

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1. The Mines Act, 1952
2. Industrial Law; P.L. Malik

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### **7.8 Questions**

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1. Define the following :-
  - (i) Mine
  - (ii) Minerals
  - (iii) Serious bodily injuries
2. Discuss the powers and functions of the Inspector of Mines.
3. What are the duties of Certifying Surgeons?
4. Discuss the provisions of the Mines Act regarding health and safety of workers.



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# UNIT - 8

## The Mines Act, 1952 (Part II)

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### **Objectives:**

After going through this Unit, you shall be able to understand:-

- regarding the hours of work and limitation of employment in the Mines
- provision regarding wages and leave applicable to the workers in the mines
- power of the central Govt. to make Rules in certain cases
- Penalties which can be imposed under the Act.

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### **Structure:**

- 8.1 Introduction
- 8.2 Hours of Work and Limitation of Employment.
- 8.3 Wages and Leave
- 8.4 Power of Central Government to make rules
- 8.5 Penalties
- 8.6 Miscellaneous
- 8.7 Further Readings
- 8.8 Important Questions

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### **8.1 Introduction:**

This unit has been prepared to acquaint you with the hours of work and limitation of employment beyond which a person should not be employed in the Mines. It also suggests when a worker shall be given rest while working in a mine below the ground. It will also acquaint you about the leave and wages to which a worker is entitled. The Act gives power to the central Government to make rules regarding appointment of various authorities as stated in the Act and Welfare measures which should be applied to a mining operation. The Act also provides penalties in case of breach of various provisions like obstructing the authorities, clarification of records etc.

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## **8.2 HOURS OF WORK AND LIMITATIONS OF EMPLOYMENT:**

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Chapter VI deals with hours and limitation of employment.

### **(a) Weekly days:**

Under section 28 no person shall be allowed to work in a mine for more than six days in any one week.

### **(b) Compensatory days and Rest**

Under section 29 any person employed there in is deprived of any of the weekly days of rest for which provision is made in Section 28, he shall be allowed, within the month in which such days of rest were due to him or within the two months immediately following that month, compensatory days of rest equal in number to the days of rest of which he has been deprived.

(2) The Central Government may prescribe the manner in which the days of rest for which provision is made in sub-section (1) above shall be allowed.

### **(c) Hours of work above ground:**

Under section 30 no adult employed above ground in a mine shall be required or allowed to work for more than forty eight hours in, any week or for more than Eight hours on any day

Provided that, subject to the previous approval of the Chief Inspector, the daily maximum hours specified above may be exceeded in order to facilitate the change of shifts.

The periods of work of any such adult shall be so arranged that along with his interval for rest, they shall not on any day spread over more than twelve hours, and that he shall not work for more than five hours continuously before he has had in interval for rest of at least half an hours.

However the Chief Inspector may, for reasons to be recorded in writing and subject to such conditions as he may deem fit to impose, permit the spread over to extend over a period not exceeding fourteen hours on any day.

Persons belonging to two or more shifts shall not be allowed to do work of the same kind above ground at the same time.

However for the purposes of this provision is that persons shall not be deemed to belong to separate shifts by reason only of the fact that they receive their inter for rest at a different time.

### **(d) Flours of work below ground:**

Under section 31 no adult employed below ground in a mine shall be allowed to work for more than forty-eight hours in a week or for more than eight hours on any day:

However that, subject to the previous approval of the Chief Inspector, the daily maximum hours specified in this sub-section may be exceeded in order to facilitate the change of shifts.

No work shall be carried on below ground in any mine except by a system of shifts so arranged that the period of work for each shift is not spared over more than the daily maximum hours stipulated in sub-section (1).

No person employed in a mine shall be allowed to be present in any part of a mine below ground except during the periods of work.

**(e) Extra wages for over time:**

Under section 33 where in a mine a person works above ground for more than mine hours on any day, or works below ground for more than eight hours on any day, or works for more than forty eight hours in any week whether above ground or below ground, he shall in respect of such overtime work to be entitled to wages at the rate of twice his ordinary rate of wages, the period of overtime work being calculated on a daily basis or weekly basis, whichever is more favorable to him.

Where any person employed in a mine is paid on piece-rate basis the Central Government shall, in consultation with the employer concerned and the representatives of the persons employed in the mine, fix for the purposes of this section time rates which shall, as nearly as possible be equivalent to the average rate of earnings of the persons so employed, and the rates of wages of such persons.

For the purposes of this section "ordinary rates of wages" means the basic wages plus (any dearness allowance and compensation in cash including such compensation, if any, accruing through the free issue of food grain) and other articles as persons employed in a mine may, for the time being, be entitled to, but does not include a bonus.

**(F) Employment of adolescents:**

Under section 40 no adolescent shall be allowed to work in part of a mine which is below ground unless:

(a) he has completed his sixteenth year;

- (aa) a medical certificate in the prescribed form granted to the adolescent by a certifying surgeon certifying that he is fit for work as an adult is in the custody of the manager of the mine;
- (b) the adolescent carries while at work a token giving a reference to such certificate;
- (c) the adolescent has an interval for rest of at least half an hour after every four and a half hours of continuous work on any day.

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### **8.3 WAGES AND LEAVE**

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#### **(a) Annual leave with wages:**

Under section 32 every person employed in a mine who has completed a calendar year's service therein shall be allowed during the subsequent calendar year, leave with wages, calculated on the following basis :

- (a) in the case of a person employed below ground at the rate of one day for every sixteen days of work performed by him, and
- (b) in any other case, at the rate of one day for every twenty days of work performed by him.

A Calendar year's service referred to in sub-section

(1) shall be deemed to have been completed-

- (a) in the case of a person employed below ground in a mine, if he has during the calendar year put in not less than one hundred and ninety attendances at the mine; and
- (b) in the case of any other person, if he has during the calendar year put in not less than two hundred and forty attendances at the mine.

Explanation:- For the purpose of this sub-section-

- (a) any days of lay-off by agreement or contract or as permissible under the standing order;
- (b) in the case of female employee, maternity leave for any number of days not exceeding twelve weeks; and
- (c) the leave earned in the year prior to that in which the leave is enjoyed;

Shall be deemed to be the days on which the employee has worked in a mine for the purpose of computation of the attendances, but shall not earn leave for these days.

(2) A person whose service commences otherwise than on the first day of January shall be entitled to leave with wages in the subsequent calendar year at the rates specified in sub-section (1) , if-

(a) in the case of a person employed below ground in a mine, he has put in attendances for not less than one-half of the total number of days during the remainder of the calendar year; and

(b) in any other case, he has put in attendances for not less than two-thirds of the total number of days during the remainder of the calendar year.

Any leave not taken by a person to which he is entitled in any one calendar year under sub-section(1) or sub-section(3) shall be added to the leave to be allowed to him under sub-section (1) during the succeeding calendar year.

Provided that the total number of days of leave which may be accumulated by any such person who has applied for leave with wages but not been given such leave in accordance with any scheme shall be entitled to carry forward the unutilised leave without any limit.

Any such person may apply in writing to the manager of the mine not less than fifteen days before the day on which he wishes his leave to begin, for all leave or any portion thereof then allowable to him under sub-sections (1), (3) and (4).

Provided that the number of times in which leave may be taken during any one calendar year shall not exceed three.

An application for such leave made in accordance with sub-section (5) shall not be refused unless the authority empowered to grant the leave is of opinion that owing to the exigencies of the situation the leave should be refused.

If a person employed in a mine wants to avail himself of the leave with wages due to him to cover a period of illness, he shall be granted such leave even if the application for leave is not made within the time specified.

If the employment of a person employed in a mine is terminated by the owner, agent or manager of the mine before he has taken the entire leave to which he is entitled up to the day of termination of his employment, or if such person having applied for and having not been granted such leave, quits his employment before he has taken the leave, the owner, agent or manager of the mine shall pay him the amount payable under Section 53, in respect of the leave not taken, and such payment shall be made, where the employment of the person is terminated by the owner, agent or manager, before the expiry of the second working day after such

termination, and where a person himself quits his employment, on or before the next pay day.

The unveiled leave of a person employed in a mine shall not be taken in to consideration in computing the period of any notice required to be given before the termination of his employment.

**(b) Wages during leave:**

he shall be paid at a rate equal to the daily average of his total full-time earnings for the days on which he was employed during the month immediately preceding his leave, exclusive of any overtime wages and bonus but inclusive of any dearness allowance and compensation in cash including such compensation, if any accruing through the free issue of food grains and other articles as persons employed in the mine may for the time being, be entitled to.

Provided that if no such average earnings are available, then the average shall be computed on the basis of the daily average of the total full time earnings of all persons similarly employed for the same work.

**(c) Advance Payment:** Any person employed in a mine who has been allowed leave for not less than four days, shall, before his leave begins, be paid the wages due for the period of the leave allowed.

**(d) Unpaid wages :** Any sum required to be paid by the owner, agent or manager of a mine under this Provision not paid by him shall be recoverable as delayed wages under the provisions of the payment of wages Act,1936.

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#### **8.4 POWER OF CENTRAL GOVT.TO MAKE RULES:**

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Under section 57 The Central Government may, by notification in the official Gazette, make rules consistent with this Act for all or any of the following purpose , namely:

(a) for providing for the appointment of chairman and members of Mining boards, and for regulating the procedure of such Boards;

(b) for prescribing the form of the register referred to in sub-section (3) of section 23;

(c) for providing for the appointment of Courts of inquiry under Section 24, for regulating the procedure and powers of such Courts, for the payment of travelling allowance to the members, and for the recovery of the expenses of such Courts

including any other expenses connected with the inquiry from the manager, owner or agent of the mine concerned;

(d) for requiring the maintenance in mines where in any women are employed or were employed on any day of the preceding twelve months of suitable rooms to be reserved for the use of children under the age of six years belonging to such women, and for prescribing, either generally or with particular reference to the number of women employed in the mine, the number and standards of such rooms, and the nature and extent of the amenities to be provided and the supervision to be exercised therein;

(e) for requiring and maintenance at or near pit-heads of bathing places equipped with shower baths and of locker-rooms for the use of men employed in mines and of similar and separate places and rooms for the use of women in mines where women are employed, and for prescribing, either generally or with particular reference to the number of men and women ordinarily employed in a mine, the number of men and women ordinarily employed in a mine, the number and standards of such places and rooms,

(f) for prescribing the standard of sanitation to be maintained and the scale of latrine and urinal accommodation to be provided at mines, the provisions to be made for the supply of drinking water.

(ff) for providing the supply and maintenance of medical appliances and comforts and for prescribing the contents and number of first-aid boxes and cupboards, the training in first-aid work, the size and equipment of first-aid rooms and staff in charge thereof and the arrangement for conveyance of injured persons to hospitals or dispensaries; for requiring the impairing of persons employed or to be employed in mines otherwise than in a position of supervision or management and for prescribing schemes for such instruction and training;

(g) for prohibiting the possession or consumption of intoxicating drinks or drugs in a mine and the entry or presence there in of any person in a drunken state;

(h) for prescribing the forms of notices required under section 36 and for requiring such notices to be posted also in specified languages;

(i) for defining the persons who shall for the purpose of section 37, be deemed to be persons holding positions of supervision or management or employed in a confidential capacity;

- (j) for prohibiting the employment in mines for persons or any class of persons who have not been certified by a qualified medical practitioner to have completed their fifteenth year, and for prescribing the manner and the circumstances in which such certificates may be granted and revoked ;
- (k) for prescribing the form of the certificate of fitness required by Section 40, the conditions subject to which and the circumstances in which they may be granted and the circumstances in which they may be revoked;
- (kk) for requiring persons employed or seeking employment at mine to submit themselves for medical examination and prohibiting on medical grounds the employment of any person at a mine either absolutely or in a particular capacity or in a particular work;
- (l) for prescribing the form of registers required by section 48 and the maintenance and forms registers for the purposes of Chapter.
- (m) for prescribing abstracts of this Act and of the regulations and rules and the language in which the abstracts and bye-laws shall be posted as required by Section 61 and 62.
- (n) for requiring notices, returns and reports in connection with any matters dealt with by rules to be furnished by owners, agents and managers of mines, and for prescribing the forms of such notices, return and reports, the persons and authorities to whom they are to be furnished, the particulars to be contained in them, and the times, within which they are to be submitted;
- (o) for requiring the provision and maintenance in mines, wherein more than fifty persons are ordinarily employed, of adequate and suitable shelters for taking food with provision for drinking water;
- (p) for requiring the provision and maintenance in any mine specified in this behalf by the Chief Inspector or Inspector where in more than two hundred and fifty persons are ordinarily employed, of a canteen or canteens for the use of such persons;
- (q) for requiring the employment in every mine where in five hundred or more persons are ordinarily employed, of such number of welfare officers as may be specified and for prescribing the qualifications and the terms and conditions of, and the duties to be performed by, such welfare officers;



- (r) for requiring the establishment of central rescue stations for groups of specified mines or for all mines in a specified area and prescribing how and by whom such stations shall be established;
- (s) to provide for the management of central rescue stations, and regulation the constitution power and functions of, and the conduct of business by the authorities' (which shall include representatives of the owners and managers of, and of the (persons employed in the mines or groups of mines concerned charged with such management ;
- (t) for prescribing the position, equipment, control, maintenance and functions of central rescue stations;
- (u) for providing for the levy and collection of a duty of excise (at a rate not exceeding six pies per ton) on coke and coal produced In and dispatched from mines specified under clause (r) in any group or included under clause (r) in any specified area, the utilization of the proceeds there of for the creation of a central rescue station fund for such group or area and the administration of such funds;
- (v) for providing for the formation, training composition and duties or rescue brigades (and for the terms and conditions of service of persons trained in rescue work employed in mines); and generally for the conduct of rescue work in mines and;
- (w) generally to provide for any matter not provided for by this Act or the regulation provision for which is required in order to give effect to this Act?

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## **8.5 PENALTIES:**

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Chapter ix deals with penalties and Procedure

### **(a) Penalty for obstruction:**

Under section 63 Whoever obstructs the Chief Inspector, and Inspector or any person authorised under Section 8 in the discharge of his duties under this Act, or refuses or willfully neglects to afford the Chief Inspector, Inspector or such person any reasonable facility for making any entry, inspection, examination or inquiry authorised by or under this Act in relation to any mine, shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees, or with both.

Whoever refuses to produce on the demand of the Chief Inspector or Inspector any registers or other documents kept in pursuance of this Act, or prevents or attempts to prevent or does anything which he has reasons to believe to be likely to prevent any person from appearing before or being examined by an inspecting officer acting in pursuance of his duties under this Act, shall be punishable with fine which may extend to three hundred rupees.

**(b) Penalty for falsification of records:**

Under section 64 whoever-

(a) Counterfeits, or knowingly makes a false statement in any certificate, or any official copy of a certificate, granted under this Act, or

(b) knowingly uses as true any such counterfeit or false certificate, or

(c) makes or produces or uses any false declaration, statement or evidence knowing the same to be false, for the purpose of obtaining for himself or for any other person a certificate, or the renewal of a certificate, under this Act, or any employment in a mine, or

(d) falsifies any plan, section, register or record, the maintenance of which is required by or under this Act or produces before any authority such false plan, section, register or record, knowing the same to be false, or

(e) makes, gives or delivers any plan, return, notice, record or report containing a statement entry or detail which is not to the best of his knowledge or belief true.

Shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to (one thousand rupees) or with both.

**(c) False certificate of fitness:**

Under section 65 whoever knowingly a certificate of fitness granted to himself under Section 40 a certificate granted to another person under that section, or having been granted a certificate of fitness to himself under that section, knowingly allows it to be used, or allows an attempt to use it to be made by another person's shall be punishable with imprisonment for a term which may extend to one month or with fine which may extend to (two hundred) rupees or with both.

**(d) Penalty for double employment:**

Under section 68 if a child or an adolescent is employed in a mine on any day on which he has already been employed in another mine, his parent or guardian or the person who has the custody of such child or adolescent or who obtains any direct benefit from his wages shall be punishable with fine which may extend to fifty

rupees, unless it appears to court that the child or adolescent was so employed with-out the consent or connivance of such parent, guardian or person.

**(e) Penalty for failure to appoint manager:**

Under section 69 whoever, in contravention of the provisions of Section 17, fails to appoint a manager shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to (two thousand and five hundred) rupees, or with both.

**(f) Other penalties:**

Owner etc., to report to Chief Inspector in certain cases Where the owner, agent or manager of a mine, as the case may be, has taken proceedings under this Act against any person employed in or about a mine in respect of an offence under this Act, he shall within twenty-one days from the date of the judgment of order the court report the result thereof to the Chief Inspector.

Obligation of persons employed in a mine. No. person employed in a mine shall-

(a) willfully interfere with or misuse any appliance, convenience or other thing provided in a mine for the purpose of securing the health, safety or welfare of the employed therein.

(b) willfully and without reasonable cause do anything likely to endanger himself or others;

(c) willfully neglects to make use of any appliance or other thing provided in the mine for the purpose of securing the health or safety of the persons employed therein.

Special provision for contravention of certain regulations:- Whoever contravenes any provision of any regulation or of any bye-law or of any order made there under relating to matters specified in clauses,(d), (i), (m), (n), (o), (p), (r), (s) and (u) of section 57 shall be punishable with imprisonment for a term which may extend to six months , or with fine which may extend to two thousand rupees, or with both.

Special provision for contravention of orders under Section 22:- Whoever continues to work in a mine in contravention of any order issued under sub-section (I-A) sub-section (2) or sub-section (3) of Section 22 shall be punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine which may extend to five thousand rupees.

Special provision for Contravention of law with dangerous results:-

(1) whoever contravenes any provision of this Act or of any regulation, rule or bye-law or of any order made there under (other than an order made under sub-section (1-A) or sub-section (2) or sub-section (3) of section 22) shall be punishable:-

(a) If such contravention results in loss of life, with imprisonment which may extend to two years, or with fine which may extend to five thousand rupees, or with both; or

(b) If such contravention results in serious bodily injury, with imprisonment which may extend to one year or with fine which may extend to three thousand rupees, or with both; or

(c) If such contravention otherwise causes injury or danger to persons employed in the mine or other persons in or about the mine, with imprisonment which may extend to three months or with fine which may extend to one thousand rupees, or with both.

(2) Where a person having been convicted under this section is again convicted there under, he shall be punishable with double the punishment provided by sub-section(1).

(3) Any court imposing or confirming an appeal, revision or otherwise a sentence of fine passed under this section may, when passing judgment, order the whole or any part of the fine recovered to be paid as compensation to the person injured or, in the case of his death to his legal representative.

However if the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeals has elapsed or if an appeal has been presented, before the decision of the appeal.

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## **8.6 MISCELLANEOUS:**

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Power to exempt from operation of act:-

Under section 83 (1) The Central Government may, by notification in the Official Gazette exempt either absolutely or subject to any specified conditions any local area or any mine or group or class of mines or any part of a mine or any class of persons from the operation of all or any of the provisions of this Act.

Provided that no local area or mine or group or class of mines shall be exempted from the provisions of Section 45 unless it is also exempted from the operation of all the other provisions of this Act.

The Central Government may, by general or special order and subject to such restrictions as it may think fit to impose, authorised the Chief Inspector or any other authority to exempt, subject to any specified conditions, any mine or part thereof from the operation of any of the provisions of the regulations or rules under this Act if the Chief Inspector or such authority is of opinion that the conditions in any mine or part thereof are such as to render compliance with such provision unnecessary or impracticable.

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**8.7 Further Reading:**

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- (i) The Mines Act, 1952.
- (ii) P.L. Malik - Industrial Law.

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**8.8 Important Questions:**

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1. Discuss the provisions of the Mines Act regarding hours of work above ground and below ground.
2. What are the provisions regarding annual leave with wages in the Mines Act ?
3. Discuss the provisions relating to offences and penalties under the Mines Act.

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# UNIT -9

## The Child Labour (Prohibition and Regulation) Act, 1986.

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### **Objectives:**

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

- The necessity of this Act.
- The object of this Act.
- The establishments where employment of children is prohibited.
- The penalties which can be imposed in breach of the provisions of the Act.

### **Structure:**

- 9.1 Introduction
- 9.2 Definitions
- 9.3 Prohibition of employment of children in certain occupations and processes
- 9.4 Regulation of Conditions of work of children
- 9.5 Miscellaneous
- 9.6 Summary
- 9.7 Further reading
- 9.8 Important Questions

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### **9.1 INTRODUCTION**

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Employment of children in factories started with the beginning of industrialization in the country. The Royal Commission on Labour (1929-31) observed that child labour was miserably placed in Indian industries. The Labour Investigation Committee (1944-46) remarked that on black spot of labour conditions in India is the illegal employment of children in certain industries and that the legislative measures such as Employment of Children Act 1938 and the Indian Mines Act had not been successful to prevent the evil.

The National Commission on Labour (1966-69) also pointed out the prevalence of child labour in certain industries and has remarked that if the education of a child is a casualty in the process it is the poverty of the parents which is to be blamed.

Child labour is more of an economic problem in India. A Welfare State owes a duty to the future generation of workers to see their childhood is not wasted in the dirty corners of factories and workshops instead of being educated in school and brought up in nurseries and on playgrounds. Although legislative measures were taken in 1938 to prevent child labour but after the Independence the problem was given prime importance by making a provision in the Constitution of India to the effect that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment (Art.24). Recently the Government of India has repealed the age old Employment of Children Act 1938 and has passed the new Act called "The Child Labour (Prohibition and Regulation) Act 1986". In this unit we will discuss the main provisions of this new Act so as to keep ourselves abreast with the latest legislative measures taken with regard to child labour in our country.

The Child Labour (Prohibition and Regulation) Act 1986 received the assent of the President on 23rd December, 1986. The object of the Act is two fold- (i) to prohibit the engagement of children in certain occupations and processes and (ii) to regulate the conditions of their work in other establishments. The Act is divided into four parts consisting of 26 sections in all, together with a Schedule.

**Part I:-** Preliminary deals with the application, commencement of the Act and the definitions of the terms used in it. The provisions of this Act other than Part III shall come into force once and Part III shall come into force on such date as the Central Government may by notification in the Official Gazette appoint and different dates may be prescribed for different States and for different classes of establishments. Part- II deals with the prohibition of employment of children in certain occupations and processes. Part III makes regulations for conditions of work of children. Part IV Miscellaneous contains provisions with regard to imposition of penalties, appointment of Inspectors, rule making power and removal of difficulties etc. With a view to implement

the Act the Government of India has also framed rules called "The Child Labour (Prohibition and Regulation) Rules 1988".

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## 9.2 DEFINITIONS:

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Section 2 contains definitions of various terms as appropriate Government, Child, Day, Establishment, Family, Occupier, Port authority, Prescribed. Week and Workshop of these the definitions of 'Day' and 'Week' are the same as provided in the Factories Act 1948.

**Appropriate Government-** The Central Government shall be the appropriate government in two cases- (i) if the establishment is under its control and (ii) a railway administration, a major port, a mine and an oilfield. In all other cases State Government shall be the appropriate Government.

**Child** - Child means a person who has not completed his fourteenth year of age.

In the Factories Act 1948 the term child has been defined as a person who has not completed his fifteenth year of age. Art. 24 of the Constitution of India prohibit employment of children below the age of fourteen year in any factory or mine or in any other hazardous employment. Section 67 of the Factories Act 1948 prohibits employment of children below the age of fourteen years in any factory.

**Establishment** - The definition of the term establishment is wide enough. It includes a shop, commercial establishment, workshop, farm, and residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment for the purposes of the Act.

**Family** - The term 'Family' has been defined in the context of an occupier. It means the individual, the wife or husband of such individual and their children, brother and sister of such individual.

**Occupier** - Occupier has been defined, in relation to an establishment or a workshop. Occupier is the person who has the ultimate control over the affairs of the establishment or workshop.

An occupier may be an owner, a lessee or a mere licensee but he must have the right to occupy the property and dictate the terms of Management. He must be in possession of the establishment or workshop and control its working. It is not necessary that an owner must necessarily be an occupier, and



that an occupier must necessarily be an owner. Whether a manager of an establishment or workshop is an occupier is a question of fact. Ultimate control of the affairs of the establishment or workshop is the sole test.

**Port authority** - Port authority means any authority administering a port.

In other works Port authority means any authority which is responsible for the administration of a port. It may be an individual or a body of persons and may bear different designations but the power to administer the port must vest in it.

**Workshop** - Workshop means any premises including the precincts thereof wherein any industrial process is carried on and it must not be a factory. Industrial process is carried on in factories also but a factory is defined in relation to the number of persons employed in it. Therefore such premises wherein industrial process is carried on but are not factories will be called workshops for the purposes of this Act;

Further, precincts are usually understood as a space enclosed by walls or fences. Whereas premises are buildings they would include precincts. What are the precincts of particular premises is a question of fact to be determined according to the circumstances of each particular case. The word premises are not to be confined in its meaning to buildings alone.

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### **9.3 PROHIBITION OF EMPLOYMENT OF CHILDREN IN CERTAIN OCCUPATIONS AND PROCESSES (Sections 3-5).**

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**Part II**- deals with the prohibition of employment of children in certain occupations and processes. Section 3 is obligatory. It prohibits employment of children in certain occupations and processes. Section 4 contains power to amend the Schedule and Section 5 deals with the constitution, function and powers of the Child Labour technical Committee.

#### **Prohibition of employment of children (sec.3) –**

No child shall be employed or permitted to work in any of the occupations set forth in Part A of the Schedule or in any workshop wherein any of the processes set forth in Part B of the Schedule is carried on.

Provided that nothing in this section shall apply to any workshop wherein any process is carried on by the occupier with the aid of his family or

to any school established by or receiving assistance, or recognition from Government.

This section creates an obligation on the occupier of an establishment or workshop wherein those occupations and processes which are mentioned in the Schedule are carried on. The Schedule attached to the Act has two parts, Part A and Part B. In Part A occupations have been specified and Part B contains the names of the processes. An occupier is not only to employ children in these specified occupations and processes but he shall also not allow any child to work in these occupations and processes.

However there is only one exception to this prohibition. The prohibition will not be applicable to-

(i) any workshop which is carried on by the occupier with the aid of his family or any school which is established by or receiving assistance or recognized by the Government.

#### **Power to amend the Schedule (Sec.4)-**

The Schedule attached to the Act specifies occupations and processes in which employment of children is prohibited. This Schedule is amendable only by the Central Government. For amending the Schedule the Central Government shall give notification in the Official Gazette at least three months of its intention to do so and on the expiry of three months by a like notification in the Official Gazette shall amend the Schedule. The purpose behind the two successive notifications is to provide an opportunity to the persons affected by, to raise objection if any, for consideration by the Central Government.

#### **Child Labour Technical Committee (Section 5) -**

The Central Government has been empowered to constitute by notification in the Official Gazette an advisory committee to be called Child Labour Technical Committee. The function of this Committee is to advise the Central Government for the purpose of addition of any occupation or process to the Schedule. The committee shall consist of a Chairman and not more than ten members. All the members and the Chairman shall be appointed by the Central Government. The Committee is empowered to hold its meetings as and when it considers necessary and also to regulate its own procedure. The Committee shall have power to appoint one or more sub-committees for consideration of any particular matter. Appointment of sub-committees from

amongst the members of the Committee is not necessary. Non-members can also be appointed on the sub-committees. Necessary provisions with regard to term of office, the manner of filling casual vacancies the allowances, resignations, removal, cessation of membership, holding of meetings etc have been made in the Child Labour (Prohibition and Regulation) Rules 1988.

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#### **9.4 REGULATION OF COUNDITIONS OF WORK OF CHILDREN (Sec.6-13)**

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Section 3 to 5 of Part II deal with the prohibition of Employment of Children in the occupations and processes mentioned in the Schedule. But other occupations and processes, in which children may be employed, warrant regulation of the conditions of their work. Therefore, regulations with regard to conditions of work of children in the occupations and processes other than that Scheduled have been made in Sections 6 to 13 of Part III of this Act.

Section 6 provides that provisions of Section 6 to 13 shall apply to an establishment or a class of establishment in which none of the occupations or processes referred to in Section 3 is carried on since Section 3 absolutely prohibits the employment of children in Scheduled occupations and process on the provision of Sec. 6 to 13 shall apply to only those establishment or class of establishments in which Scheduled Occupations and processes are not carried on.

##### **Hours and Period of Work (Sec.6)**

(1) No child shall be required or permitted to work in any establishment in excess of such number of hours as may be prescribed for such establishment or class of establishments.

Hours of work per day for a child are not prescribed for such establishment or class of establishments in which children are employed. However, in Factories Act 1948 where a child has to be defined to be a person who has not completed his fifteenth year of age, he cannot be, required to work for more than four and a half hour on any day (Sec.71).

(2) The period of work on each day shall be so fixed that no period shall exceed three hours and that no child shall work for more than three hours before he has had an interval for rest for at least one hour.

(3) The period of work of a child shall be so arranged that includes his interval for rest and it shall not be spread over more than six hours including the time spent in waiting for work on any day.

The intention of this provision is that the total span of time including working hours, interval for rest and waiting period, should not exceed six hours. If the period of work is spread over it shall be confined to six hours on a day. This means that a child cannot be called to work from 9.00 in the morning for two hours and then again from 4.00 in the afternoon.

No child shall be permitted or required to work:

- (i) between 7.00 P.M. and 1.00 A.M.
- (ii) overtime
- (iii) in any establishment on any day on which he has already been working in another establishment.

### **Weekly Holidays (Sec.8):**

Every child shall be allowed a holiday of one whole day in each week. This day shall be specified in a notice and the notice shall be permanently exhibited in a conspicuous place in the establishment. Such a day once specified shall not be altered by the occupier more than once in three months.

### **Notice to Inspector (Sec.9):**

Every occupier of an establishment shall send to the Inspector of the concerned area a notice within thirty days from the date of application of this Act to that establishment. This notice shall contain the following particulars:

- (a) the name and situation of the establishment
- (b) the name of the person in actual management of the establishment
- (c) the address to which communication relating to the establishment should be sent and
- (d) the nature of the occupation or process carried on in the establishment.

### **Disputes regarding Age (Sec.10):**

If there arises any dispute as to the age of any child employed in an establishment and there is no certificate granted by the prescribed medical authority to this effect, power has been given to the Inspector to refer such dispute to the prescribed medical authority for decision.

### **Maintenance of Register (Sec.11):**

An occupier has to maintain a register in respect of children employed in his establishment. The register shall contain the following information:

(a) the name and date of birth of every child so employed or permitted to work.

(b) hours and periods of work of any such child and the intervals of rest to which he is entitled

(c) the nature of work of any such child and

(d) such other particulars as may be prescribed.

Display of notice of abstract of Sections 3 and 14 (Sec.12)-

A notice containing abstract of Sections 3 and 14 shall be caused to be displayed-

(i) by every railway administration, every port authority and every occupier

(ii) in a conspicuous and accessible place at every station on its railway or within the limits of a part of at the place of work, as the case may be

(iii) in the local language and in the English language

### **Health and Safety (Sec.13)-**

For the purpose of securing health and safety of the children employed in any establishment, the appropriate Government, has been empowered to make rules by notification in the Official Gazette with regard to the following matters-

(a) cleanliness in the place of work and its freedom from nuisance

(b) disposal of wastes and effluents

(c) ventilation and temperature

(d) dust and fume

(e) artificial humidification

(f) lighting

- (g) drinking water
- (h) latrines and urinals
- (i) spittoons
- (j) fencing of machinery
- (k) work at or near machinery in motion
- (l) employment of children on dangerous machines
- (m) instructions training and supervision in relation to employment of children on dangerous machines
- (n) device for cutting of power
- (o) self-acting machines
- (p) greasing of new machinery
- (q) floor, stairs and means of access
- (r) pits, sumps, opening in floors etc.
- (s) excessive weights
- (t) protection of eyes
- (u) explosive or inflammable dust, gas etc.
- (w) maintenance of buildings and
- (x) safety of buildings and machinery

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## 9.5 MISCELLANEOUS (Sec.14-26)

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**Part IV** - Miscellaneous contains provisions with regard to penalties, appointment of inspectors, rules making power removal of difficulties, amendment of certain other Acts etc.

### **Penalties (Sec.14-15)-**

Uniform penalties have been provided in this Act for contravention of the provisions of this Act and the provisions of certain other Acts. This is a step to make the Act a comprehensive one. The penalties are as under-

Offences	Penalties
A. Contravention of the provisions of this Act.	
1. Whoever employees or permits any child to work in	Imprisonment extending from 3 months to one year or With

<p>contravention the provisions of Sec. 3.</p> <p>2. Whoever having been convicted of an offence under Section 3 commits a like offence afterwards.</p> <p>For failing to :-</p> <p>Give notice as required under Sec.9</p> <p>Maintain register as required under Sec. 11</p> <p>Making false entry therein.</p> <p>Display of notice of abstract of Sec. 3 and</p> <p>Comply with or contravene any other provision of this Act or the rules made there under.</p>	<p>fine from 10,000 rupees to 20,000 rupees or with both.</p> <p>Imprisonment extending to 6 months to two years.</p> <p>Simple imprisonment upto one month or with fine up to 10,000 rupees or with both.</p>
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### **B. Contravention of the provisions of other Acts.**

Same penalties as mentioned above in (1) and (2) are imposed for contravention of the following provisions of these Acts-

- (a) Section 67 of the Factories Act 1948
- (b) Section 40 of the Mines Act 1952
- (c) Section 109 of the Merchant Shipping Act 1958
- (d) Section 21 of Motor Transport Workers Act 1961

Section 67 of the Factories Act 1948 prohibits employment of children below fourteen years of age in factories.

Section 40 of the Mines Act 1952 prohibits employment of adolescents below ground of a mine.

Section 109 of the Merchant Shipping Act 1958 prohibits employment of children on any ship.

Section 21 of the Motor Transport Workers Act prohibits employment of children in any Motor Transport Undertaking.

### **Procedure relating to offences (Sec.16)-**

The Act empowers any person, police officer or inspector to file a complaint of the commission of an offence under this Act in any court of competent jurisdiction. Any offence under this Act shall be tried only by the court of a Metropolitan Magistrate or a Magistrate of first class. Every certificate granted by the prescribed medical authority as to the age of a child shall be a conclusive evidence for the purposes of this Act.

**Appointment of Inspectors (Sec.17)-**

For the purposes of securing compliance with the provisions of this Act appropriate Government has been empowered to appoint Inspectors and an Inspector so appointed shall be deemed to be a public servant within the meaning of the Indian Penal Code.

**Power to make rules (Sec.18)-**

The Act empowers the appropriate Government to frame rules by notification in the Official Gazette and subject to their previous publication with regard to all or any of the following matters-

(a) the term of office of, the manner of filling casual vacancies of, and the allowances payable to, the Chairman and members of the Child Labour Technical Advisory Committee and the conditions and restrictions subject to which a non-member may be appointed to a sub-committee under sub-section (5) of Section 5.

(b) number of hours for which a child may be required or permitted to work under sub-section (1) of Section 7.

(c) grant of certificates of age in respect of young persons in employment or seeking employment, the medical authorities which may issue such certificate, the form of such certificate, the charges which may be made there under and the manner in which such certificate may be issued.

Provided that no charge shall be made for the issue of any such certificate if the application is accompanied by evidence of age deemed satisfactory by the authority concerned.

(d) the other particulars which a register maintained under Section 11 should contain.

**Rules and notifications to be laid before Parliament or State Legislature-**



The Act requires that every rule made under this Act by the Central Government and every notification issued under Section 4 must be laid before each house of Parliament for a total period of thirty days. This period of thirty days may comprise one or more successive sessions. If both the Houses agree in modification or annulment of any rule, the rule or notification shall thereafter stand modified or annulled as the case may be. But such modification or annulment shall not affect the validity of anything done previously under the rule or notification. Similar every rule made by a State Government under this Act shall be laid as soon as may be after it is made, before the legislature of that State.

#### **Certain other provisions of law not barred (Sec.20)-**

Provisions regarding employment of children are also contained in the Factories Act 1948, the Plantations Labour Act 1951 and the Mines Act 1952. These Act provides that the provisions of this Act will be in addition to the provisions contained in these three Acts and the provisions of this Act shall not in any way be in derogation to provisions of these three Acts subject only to one exception that the provisions regarding penalties contained in Section 15 of this Act shall override the relevant provisions of these three Acts.

#### **Removal of difficulties (Sec.21)-**

Difficulties may arise in giving effect to the provisions of this new Act. Therefore, power has been given to the Central Government for a limited period to remove the difficulty by order published in the Official Gazette. The order will contain such provisions, not inconsistent with the provisions of this Act and which may appear to the Central Government as necessary or expedient for removal of the difficulty. But no such order shall be made after the expiry of a period of three years from the date on which this act receives the assent of the President. Further every such order, shall, immediately after it is made, be laid before the Houses of Parliament.

#### **Repeal and Savings (Sec.22)-**

The age old Employment of Children act 1938 has been repealed by this new Act but anything done or any action taken under the repealing Act shall be deemed to be valid provided that it does riot contravene the provisions of this new Act.

#### **Amendment of certain other Acts (Sec.23-25)-**

With a view to bring uniformity in the definitions of child and adolescent necessary substitution, insertions and omissions in the relevant provisions of certain other Acts have been made by this Act. These are as under-

**Minimum Wages Act 1948-In Section 2-**

(i) clause (a) has been substituted by the following clauses-

(a) "adolescent" means a person who has completed his fourteenth year of age but has not completed his eighteenth year.

(aa) "adult" means a person who has completed his eighteenth year of age.

(ii) the following clause has been inserted after clause (b)-

(bb) child means a person who has not completed his fourteenth year of age.

Prior to this the terms adolescent, adult and child were not defined in the Minimum Wages Act 1948; they were assigned the meaning respectively assigned to them in the Factories Act 1948.

**Plantations Labour Act 1951-**

(i) The definitions of adolescent and child as given in Sec.2 (a) and (c) of the Act have also been similarly amended. The adolescent means a person who has completed his fourteenth year of age and child means a person who has not completed his fourteenth year of age.

(ii) Section 24 which prohibits employment of a child below twelfth year of age in plantations has been omitted.

(iii) In Section 26 the opening portion, the words "who has completed his twelfth year" have been omitted.

**Merchant shipping Act 1958-**

In Section 109 for the word "fifteen" the word "fourteen" has been substituted.

**Motor Transport Workers Act 1961-**

In clause (a) and (c) of Section 2 for the word "fifteen" the word "fourteenth" year has been substituted. This amendment is also related to the age of adolescent and child.

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## 9.6 SUMMARY:

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The object of the Child Labour (prohibition and Regulations) Act 1986 is to prevent the exploitation of children in induce establishments. The Act has been passed with the object to prohibit the employment of children in certain occupations and processes and to regulate the conditions of work in other establishments. The Act has replaced the Employment of Children Act 1938. It extends to the whole of India. The Act defines child to be a person who has not completed his fourteenth year of age. It also brings uniformity in the definitions of child and adolescent by amending the relevant provisions of other Acts:

The certificate of the prescribed medical authority shall be conclusive evidence as to the age of a child. The Act prohibits employment of children in certain occupations and processes. These occupations and processes have been specified in the Schedule separately. Only the Central Government on the advice of the Child Labour Technical Committee can amend the Schedule. The Act also makes provisions to regulate the conditions of work of children in other establishments in which none of the occupations and processes specified in the Schedule are carried on. These provisions are related to hours and period of work, night and overtime work, weekly holidays rest intervals etc. besides, a duty has been imposed on the occupier of the establishment to furnish necessary information to the Inspector, maintain a register, in respect of the children employed by him and display a notice of the abstract of Sections 3 and 14. Appropriate Government has also been empowered to frame rules relating to the matters of health and safety of children. Contravention of the provisions of this Act and the rules made there under entail punishment of imprisonment or with fine or with both. The functions of the Inspectors appointed under the Act are to ensure compliance with the provisions of the Act and to refer any dispute as to the age of a child to the prescribed medical authority for decision.

### Some leading Cases on Child Labour:

i. Chhota Bhai Munnu Bhai & Co. And ... vs State Of U.P. And Anr. on 11 November, 1998 : each **child**. (v) In **cases** where **child labour** is not prohibited but only regulated Rs. 5,000/-have been recommended ... each **child**. (v)

In **cases** where **child labour** is not prohibited but only regulated Rs. 5000/-have been recommended... -Allahabad High Court

ii. (1999) IILLJ 956 All - R S Dhavan - Hemendra Bhai vs State Of Chhattisgarh on 6 January, 2003

possible to hold that the applicant has employed **child labourer**. The **case** relates to scheme of supplying raw material ... present **case** the firm has not employed the **child** as **labourer** or permitted to work in any workshop where..

Chattisgarh High Court

iii. 2003 (97) FLR 402 - K Kuranga - Vishnu Dayal Sharma S/O Banwari ... vs State Of Uttar Pradesh Through ... on 28 March, 2008

**cases**, 3328 **cases** were decided and only in 416 **cases**, i.e. only in 12 percent of the **cases**, convictions ... every effort to decide such **case** very expeditiously, as engaging a **child** in **childlabour**, when he ought...Allahabad High Court

iv. Hayath Khan vs The Deputy **Labour** Commissioner ... on 11 November, 2005 reported that petitioner has employed **child labour**. He registered a **case** alleging contravention of Section 3 of the **Child Labour** ... compensation to be deposited to the District **Child labour** Rehabilitation and Welfare Fund in terms of Annexure-G dated...Karnataka High Court

v. ILR 2005 KAR 6001 - R Gururajan - A. Srirama Babu vs The Chief Secretary To The ... on 6 June, 1997- study undertaken by these Counsels to conduct this **case**. 3. "**Child labour**" is not a phenomenon or feature peculiar ... Vide "Indian **Child Labour**" Dr. J.C. Kulshresta as referred to in M.C. Mehta's **case**, supra). We have... Karnataka High Court

vi. ILR 1997 KAR 2269, Supreme Court of India State Of Uttaranchal vs Balwant Singh Chaufal & Ors on 18, Supreme Court of India

vii. Civil Writ Petition No.9968 Of ... vs State Of Punjab on 9 April, 2013 Name of Juvenile Commission The Right of **Child** Enactment Justice (Care for Protection Children to **Labour** And Protection ... 2693 of 2010 is treated as lead **case**. The **Child Labour**(Prohibition and Regulation) Act, 1986 unjab-Haryana High Court

vii. Court On Its Own Motion vs Govt. of Delhi on 15 July, 2009

**Child Welfare Department;** Put forward the **cases of child labour** as per Section 32 with the help of Action hired under continuous active surveillance. b) In **case the child labour** is found to be employed and if their number

Delhi High Court

viii. **Labourers Working On Salal ... vs State Of Jammu And Kashmir** on 25 April, 1984 **Contract Labour Act** and Rules 41 to 50 of the **Contract Labour Central Rules**, the contractors and piece wagers ... work place in the Project. In **case any child labourer** i engaged by any contractor/sub-contractor immediate orders..Supreme Court of India<sup>11</sup>

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### 9.7 Suggested further Readings:

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1. The Child labour (Prohibition and regulation) Act 1986

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### 9.8 Important Questions:

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1. Define the following-

(i) appropriate Government

(ii) child

(iii) family

(iv) establishment

2. Write explanatory notes on the following-

(i) occupier

(ii) Workshop

3. What are the occupations and processes in which the employment of children is prohibited? Who can and under what circumstances amend the Schedule?

4. Discuss the provisions with regard to regulation of conditions of work of Children under the Child Labour (Prohibition and Regulation) Act 1986.

5. Discuss the provisions relating to imposition of penalties for offences committed under the Child Labour (Prohibition and Regulation) Act 1986.

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<sup>11</sup> <http://indiankanoon.org/search/?formInput=cases%20on%20child%20labour>

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# UNIT -10

## The Inter-State Migrant Workmen (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) Act, 1979

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### Objectives

- On completion of this unit, you should be able to understand-
- Various terms used in the above enactment
- Procedure of registration and licensing
- responsibilities of contractors
- wages & other facilities available to migrant workmen
- judicial responses on the point:

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### Structure:

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- 10.1 Introduction
- 10.2 Definitions
- 10.3 registration of Establishment
- 10.4 Licensing of contractors & their duties
- 10.5 Wages, Welfare & other Facilities
- 10.6 Inspectors
- 10.7 Miscellaneous
- 10.8 Judicial responses
- 10.9 Summary
- 10.10 Self-assessment Test
- 10.11 Key Words
- 10.12 Further Readings

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### 10.1 INTRODUCTION

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The object of the enactment of Inter State, Migrant Workmen Act was to protect the interests of Inter State Migrant Workers and, in particular, to

eliminate abuses to which these workmen recruited from one State and taken for work to another State were subjected to by the contractors, Sardar or Khatedar, recruiting them. The malpractices indulged in by the contractors, Sardars Khatedars in regard to workmen recruited by them for work outside their State has been briefly summarized in the Statement of objects and Reasons which reads as under :

"Though the Sardars promise at the time of recruitment that wages calculated on piece rate basis would be settled every month, the promise is not usually kept. Once the worker comes under the clutches of the Contractor, he takes him to a far off place on payment of railway fare only. No working hours are fixed for these workers and they have to work on all the days in a week under extremely bad working conditions. The provisions of the various labour laws are not being observed in their case and they are subjected to various malpractices."

It was felt that since Inter State Migrant Workers are generally illiterate and unorganized and are by reason of their extreme poverty, easy victims of these abuses and malpractices, it was necessary to have a comprehensive legislation with a view to securing effective protection to the Inter State Migrant Workmen against their exploitation, hence the Inter State Migrant Workmen Act Regulation of Employment and Conditions of Service) Act, 1979 was enacted.<sup>1</sup>

The provisions of the various labour laws were not observed in their case and they were subjected to various malpractices. This unit discusses the mandatory character of registration and licensing as also the various responsibilities of the contractor including that of Wages, Welfare and other facilities to enforce the provisions of the enactment in its true perspective, the inspectors have been employed and imposed.

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## **10.2 DEFINITIONS**

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### **Contractor:**

Contractor has been defined in relation to an establishment. Contractor is a person who may be an independent contractor, or agent, responsible to produce certain results, not-simply by supply of goods or articles of

manufacture to such establishment but also by the employment or supply of workman in the establishment, whether he is called a sub-contractor, Khatader, Sardar, agent or any other person, who recruits or employs workmen. [Section 2 (b)]

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, department or authority, or such other officer as specified by the govt. or the authority.

(ii) in relation to a factory, the owner or occupier or the manager of the factory

(iii) in relation to a mine, the owner or agent of the mine and where he acts as a manager ;

(iv) in relation to any other "establishment, any person responsible for the supervision and control of the establishment. [See section 2 (9)]

**Inter State Migrant Workman: Inter State Migrant Workman means:**

Any person who is recruited "by or through a contractor in one state under an agreement or arrangement for employment in an establishment in another state, whether with or without the knowledge of the principal employer in relation to such establishment. [See Section 2(e)].

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### **10.3 REGISTRATION OF ESTABLISHMENT**

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The Act imposes an obligation upon the principal employer of the establishment employing Inter State Migrant Workers to get the registration of the establishment. Thus, every principal employer of such establishment to which this Act applies, is required to present an application before the registering officer within the prescribed time, form and manner along with prescribed fees for registration of the establishment. The registering officer shall register the establishment within one month from the presentation of the application, if the application is complete in all respects; and if it is not complete he shall return the same to the principal employer. If no action has been taken by the registering officer within one month; the principal employer shall present the application again and the registering officer then register the



establishment and issue a certificate to this effect within 15 days from the presentation of such application to the principal employer.

If the registering officer is satisfied by any reference made to him or otherwise that the registration of the establishment has been sought by misrepresentation or suppression of any material fact or that for any other reason the registration has become useless or ineffective he, may, require the registration to be revoked, but he can do so after giving an opportunity to the principal employer to be heard. He will then revoke the registration with the approval of the appropriate government giving therein the reasons for revocation.

The registering officer may also suspend the operation of the certificate of registration pending the revocation. He shall do so for a period specified in the order and serve by post (registered) along with a statement of reasons on the principal employer and such order shall be effective on the date on which the notice is served.

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#### **10.4 LICENCING OF CONTRACTORS & THEIR DUTIES:**

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For recruiting Inter State migrant Workmen the contractor has to obtain license from the competent authority under the Act. A license may contain terms and conditions of the agreement under which workmen will be recruited, the remuneration payable, hours of work , fixation of wages and other essential amenities in respect of inter-state migrant workmen as the appropriate government deems fit.

##### **Grant of license-**

(1) Every application for grant to license shall be made on a prescribed form and shall contain the particulars regarding the location of the establishment, the nature of process, operation or work for which such workmen are employed and other prescribed particulars.

(2) The licensing officer may make certain necessary investigations and follow such procedure as prescribed for issuing the license.

(3) Such license shall be valid for the period specified there in and may be renewed from time to time for such period and on payment of such fees as prescribed.

### **Revocation, Suspension and Amendment of licenses-**

(1) If the licensing officer is satisfied either on a reference made to him or otherwise, that,

(a) a license has been obtained by, misrepresentation or suppression of material facts, or

(b) the holder of the license has failed to comply with the conditions of the license without reasonable cases or has contravened any provisions of this Act or rules made under it;

then the licensing officer after giving an opportunity to the Holder of license to be heard may revoke the license or forfeit the security furnished by him and communicate such order to the holder of the license.

(2) The licensing officer may vary or amend the license granted as per rules.

### **Duties of the contractors-**

(1) To furnish such particulars and in such form as may be prescribed, to the specified authority in the State from which an inter-state Migrant workmen is recruited and in the state in which such workmen is employed, within fifteen days of such recruitment. Subsequent charges in the particulars are to be intimated to the appropriate authorities of both the states.

(2) To issue to every inter-state migrant workman, a pass book affixed with a passport size photograph of the workman and indicating in Hindi and English languages, where the language of workman is not Hindi or English, also in the language of the Workman, the following-

(i) Name and place of the establishment where in the workman is to be employed.

(ii) The period of employment.

(iii) The proposed rates and modes of payment of wages.

(iv) The displacement allowance payable.

(v) The return fare payable to the workman on the expiry of the period of his employment and in such contingencies as may be prescribed and in such other contingencies as may be specified in the contract of employment.

(vi) Deductions made; and

(vii) Such other particulars as may be prescribed.

(3) The contractor shall also be responsible to furnish such return in such form and manner, in respect of every inter-state migrant workman who ceases to be employed to the specified authorities of both the recruiting and employing states, which shall include a declaration that all the wages and other dues, the fare for his return journey back to his state have been paid.

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## **10.5 WAGES WELFARE OTHER FACILITIES:**

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### **Wages and conditions of service-**

The wage rates, holidays, hours of work and other conditions of service of an inter-state migrant workman shall be the same or of similar kind to those of other workmen of that establishment. If no such other workmen are present therein, then in accordance with the conditions prescribed by the appropriate government.

The following points shall be kept in view in respect of wages:-

(a) The wages shall not be less than minimum wages as per standards under the Minimum Wages Act, 1948.

(b) The Wages shall be paid in cash and not in kind or even by cheque.

(c) The wages shall be paid regularly and before the expiry of such period as may be prescribed.

(d) There shall be equal pay for equal work irrespective of sex.

(e) The wages shall be disbursed in the presence of representative appointed by the principal employer, who will certify the disbursement in a prescribed manner.

(f) If the contractor fails to pay the wages or any allowance in prescribed period or makes short payment, the principal employer shall pay the amount forth with and deduct from the payments to be made to the contractor as if a debt.

### **Welfare and Other Facilities-**

The Act imposes a duty upon every contractor employing inter State migrant workmen in connection with the work of an establishment to which this Act applies:

(a) to ensure suitable conditions of work to such workmen having regard to the fact that they are required to work in a state different from their own state.;

(b) to provide and maintain suitable residential accommodation to such workmen during the period of their employment;

(c) to provide the medical facilities to the workman free of charge

(d) to provide protective clothing to the workmen free of charge

(e) in case of fatal accident or serious bodily injury to any such workman, to report to the specified authorities of both the states and also the next of Kin of the Workman;

(f) to provide sufficient quantity of wholesome drinking water, sufficient number of sanitary latrines and Urinals and washing facilities

(g) to provide suitable rest rooms where migrant workmen are required to halt at night in a connection with the working of the establishment;

(h) to provide canteens in sufficiently good condition where migrant workmen more than one hundred are employed;

(i) to provide crèches where twenty or more women are ordinarily employed as migrant workmen,

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## **10.6 INSPECTORS:**

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Under the prescribed rules an inspector may within his local limit;

(a) enter the premises of the establishment where inter-State Migrant Workmen are employed, with such assistants who are servants of Government or any local or public authority for the purpose of-

(i) Ascertaining the payment of wages, providing other conditions of service and facilities in accordance with the provisions of this Act;

(ii) Examine any register, record or notices required to be kept or exhibited under the Act, and may also require to produce them for inspection,

(b) Examine any person found within the premises to determine whether that person is an Inter-State Migrant Workman;

(c) require any person giving out work to any workman to give any information with respect to the names, addresses of the person to, for and from

whom the work is given out or received and with respect to the payment made for the work,

(d) seize or take copies of such register or record of wages or notices or portions thereof, if there appears that offence has been committed by the principal employer or contractor;

(g) obstruction of an inspector from discharging his duties or refusal to produce any record or document necessary for his inspection call for the imprisonment up to two years or a fine up to Rs. 2000/- or both.

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## **10.7 MISCELLANEOUS:**

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### **Provisions regarding industrial disputes in relation to inter-state migrant workman-**

(1) Notwithstanding anything contained in the Industrial Disputes Act, 1947, any dispute or difference in connection with the employment or non employment or the terms of employment or the conditions of labour of an inter-state migrant workman may;

(a) If industrial dispute is related to an establishment administered by the Union, it may be referred under the provisions of the Industrial Disputes Act, by the central government to any of the authorities referred to in chapter II of that Act,

(i) in the State wherein the establishment is situated;

(ii) in the Home state of the workman, on his application, if he has returned after completion of his employment;

(b) If the industrial dispute is related to an establishment under the state administration-

(i) be referred under the provisions of this Act, to the Government where the establishment is situated or to any appointed authority in that State, or

(ii) be referred by the Government of the State where the recruitment of such workman was made or to any authority appointed by that state if the application is made by the workman that he has returned to home State after completion of his employment, Provided that no application shall be entertained after the expiry of a period of six months from the date of his return

to his home State after the completion of his employment; unless the Government is satisfied that he was prevented by sufficient cause from making the application within that period;

No reference to the home state shall be made except after obtaining the concurrence of the Government of the State in which the establishment is situated. Without prejudice to the provisions of Sec. 33 B of the Industrial Disputes Act, where the dispute is pending in the state in which establishment is located an application is made by such workman to the corresponding authority of the home state after completion of his employment that authority shall forward that application to the central or State Government as the case may be and transfer such proceeding in the prescribed manner to the, appointed authority:

**Contravention of provisions regarding employment of inter-state migrant workman**-Whoever contravenes any provisions of this Act or any rules made under it regarding employment of such workman or contravenes any condition of license shall be punished with imprisonment which may extend to one year, or with fine which may extend to one thousand rupees; or with both and in case of a continuing contravention with an additional fine which may extend to one hundred rupees for everyday during which such contravention continues for the first such contravention.

**Effect of laws and agreements inconsistent with the Act-**

(i) Provisions of this Act shall be binding notwithstanding anything inconsistent therewith contained in any other law or in terms of any agreement or contract of service, or in any standing orders applicable to the establishment whether made before or after the commencement of this Act;

Provided that - if such law, agreement, contract of service or standing orders in the establishment are entitled to benefits of any kind which are more favorable to such workman than under provisions of this Act; such workmen shall continue to be entitled to the more favorable benefits in respect to that matter notwithstanding that they receive benefits in respect of other matters under this Act.

(2) Nothing contained in this Act shall be construed as precluding any inter-state migrant workman from entering into an agreement with the principal employer or the contractor for granting them rights and privileges

which are more favorable to them than those to which they would be entitled under this Act.

**Power to exempt in special cases:**

The appropriate Government may, by notification in the official Gazette and subject to such conditions and restrictions and for specified period, direct that all or any of the provisions of this Act or the rules made under it shall not apply to any establishment, or class of establishment, or any contractor or class of contractors, or any inter-state migrant workman, if the government is satisfied that it is just and proper to do so having conditions of employment in such establishment or class of establishment and all other relevant circumstances.

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**10.8 JUDICIAL RESPONSES:**

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In People's Union for Democratic Rights V. Union of India the supreme court held that because of the employment of large number of migrant workmen from different states of the country in various Asiad projects, the Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, being a social Welfare legislation, be applied to them without waiting for the framing of rules for the purpose

Similar view was expressed by the Supreme court in Labourers working on Salal Hydro Projects V. State of Jammu & Kashmir.

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**10.9 SUMMARY:**

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The enactment protects the interest of generally illiterate unorganized Inter-State migrant workmen and attempts to guarantee justice or fair play to them. It makes registration and licensing mandatory for the principal employers/contractors in order to employ migrant workmen. The responsibilities of employers in relation to migrant Workmen being-regular & equitable wages, some allowances, residential accommodation, protective clothing, medical facilities and so on. Inspectors ensure the enforcement and the non-observance of the provisions calls for penalty. The Act also provides for the remedy to enforce the rights.

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## 10.10 SELF-ASSESSMENT TEST

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Answer the following:

1. Explain the meaning of contractor, Principal employer, Inter-State Migrant Workman.
2. What is the procedure of registration & licensing under the Act in this unit?
3. What are the right of migrant Workman in terms of Wages, Welfare and other facilities?
4. Write Short Notes on the following –
  - (a) Reference of industrial dispute of migrant workmen,
  - (b) Judicial Responses,
  - (c) Effect of Laws & Agreement inconsistent with the Act,
  - (d) Inspectors,
  - (e) Power of Exemption,
  - (f) Duties of contractors

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## 10.11 KEY WORDS

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### **Contractor:**

a person who recruits migrant workmen for producing certain results and also called as Khatedar, Sardar or Agent .

### **Principal Employer:**

The agency or person responsible for the supervision and control of the whole work of the establishment. This responsibility may be on Head of the Deptt. of Govt. owner or occupier or manager of factory or mines and so on.

### **Inter-State Migrant Workmen:**

Unorganized workmen recruited from different states by the contractor for the employment in the establishment of principal employer.

### **Registration :**

Means authorization to the establishment to employ migrant workmen.

### **License:**

Means enforceable terms and conditions like wages & amenities etc. on which migrant workmen are to be employed.

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## 10.12 FURTHER READING:

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1. P.L. Malik - Industrial Law.
2. Bare Act - The Inter-State Migrant Workmen (Regulation of Employment and conditions of service) Act,1979.
3. Indian Labour Journal.
4. Labour Law Journal.
5. People's Union for Democratic Rights V. Union of India A.I.R., 1982 S.C. 1473.
6. Labourers working on Salal Hydro Project V. State of Jammu & Kashmir 1983 I. L.L.J. 494 (S.C).s

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# UNIT -11

## Bonded Labour System (Abolition) Act, 1976

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### **Objectives**

After going through this unit you should be able to understand the problem of Bonded labour in the industrial world and the measures made by legislators to protect them from exploitations.

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### **Structure**

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- 11.1 Introduction
- 11.2 Objectives of the Act
- 11.3 Definitions
- 11.4 Vigilance Committee
- 11.5 System of Abolition
- 11.6 Bonded Labour System
- 11.7 Judicial Attitude
- 11.8 Summary
- 11.9 Key Words
- 11.10 Self Assessment Test

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### **11.1 INTRODUCTION**

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The system of bonded labour has been "prevalent in various parts of the country since long prior to the attainment of political freedom and it constitutes an ugly and shameful feature of our national life. This system, based on exploitation by a few socially and economically powerful persons trading on the misery and suffering of large numbers of men and holding them in bondage is a relic of a feudal hierarchical society which hypocritically proclaims the divinity of man but treats large masses of people belonging to the lower rungs of the social ladder or economically impoverished segments of society as dirt and chattel. This system under which person can be bonded to provide labour to another for years and years until an alleged debt is supposed to be wiped out

- which never seems to happen during the lifetime of the bonded labourer is totally incompatible with the new egalitarian socio-economic order which we have promised to build and it is not only an affront to basic human dignity but also constitutes gross and revolting violation of constitutional values."

The Bonded Labour System has been abolished by Law throughout the country with effect from 25th October, 1975 under the Bonded Labour System (Abolition Act, 1976.) The Act envisages release of all the bonded labourers from bondage and simultaneous liquidation of their debts. The New 20-Point programme stipulates full implementation of laws abolishing bonded labour which implies (1) identification; (2) release; (3) action against offenders; (4) constitution and holding of regular meetings of the Vigilance Committees at the district and sub-divisional levels; (5) conferring of the powers of Judicial Magistrates on Executive Magistrates under Section 21 of the Bonded Labour System (abolition) Act, 1976 and (6) maintenance of the registers etc. as prescribed under rule 7 of the Bonded Labour System (Abolition) Rules 1976. The Bonded Labour System (Abolition) Act, 1976 is being implemented by the State Governments concerned. The incidence of bonded labour has been reported from 12 States viz. Andhra Pradesh, Bihar, Gujarat, Haryana, Karnataka, Kerala, and Madhya Pradesh. According to the latest reports received from the State Governments, the total number of bonded labourers identified and freed as on 31.3.1989 was 2,42,532 out of which 2,17,816 have been rehabilitated leaving thereby the rest of the bonded labourers to be rehabilitated. A statement showing the State wise position is in the Annexure. Majority of the bonded labourers belong to Scheduled Caste, Scheduled Tribe and other weaker sections of the Society.

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## **11.2 OBJECT OF THE ACT**

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The object of the legislature in enacting this Act was to provide for the abolition of bonded labour system with a view to prevent the economic and physical exploitation of the weaker sections of the people and for matters connected therewith or incidental there to.

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## **11.3 DEFINITIONS**

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Sec.2(g) of the Act defines "Bonded Labour System" to mean the system of forced, or partly forced, labour under which a debtor enters, or has, or is presumed to have, entered into an agreement with the creditor to the effect that,-

(i) in consideration of an advance obtained by him or by any of his lineal ascendants or descendants whether or not such advance is evidenced by any document and in consideration of the interest, if any, due on such advance,  
Or

(ii) in pursuance of any customary or social obligation, or

(iii) in pursuance of an obligation devolving on him by succession, or

(iv) for any economic consideration received by him or by any of his lineal ascendants or descendants, or

(v) by reason of his birth in any particular caste or community, he would:-

(1) render, by himself or through any member of his family, or any person dependent on him, labour or service to the creditor or for the benefit of the creditor, for a specified period or for an unspecified period, either without wages or for nominal wages, or

(2) forfeit the freedom of employment or other means of livelihood for a specified period or for an unspecified period, or

(3) forfeit the right to appropriate or sell at market value any of his property or product of his labour or the labour of a member of his family or any person dependent on him, and includes the system of forced, or partly forced, labour under which a surety for a debtor enters, or has, or is presumed to have entered into an agreement with the creditor to the effect that in the event of the failure of the debtor to repay the debt, he would be under the bonded labour on behalf of the debtor.

From the above, it would be seen that this definition contains series of alternatives. The bonded labour system essentially represents the relationship between a creditor & a debtor. When such a relationship exists & the debtor under takes to mortgage his services or the services of any member of his family to the creditor for a specified period or for an unspecified period under the prescribed conditions, he comes within the definition of Sec.2(g). In other words, he becomes a bonded labourer as he renders bonded labour or services

to the creditor. To make the issue abundantly clear, it may be stated that either of the four alternatives given in section 2(g) together with an element of loan/debt/advance could be enough to determine the existence of bonded labour system as defined in that section.

Bonded Labourer Sec. 2 (f) of the Act defines the term bonded labourer in the following words. "That the labourer who incurs or has, or is presumed to have incurred, a bonded debt."

Bonded Labour Sec.2 (e) provides that bonded labour means any labour or service rendered under the bonded labour system.

Bonded Debt. Sec.2 (d) provides that "bonded debt means an advance obtained, or presumed to have been obtained, by a bonded labourer under or In pursuance of, the bonded labour system.

Despite the above position as indicated above in clear & unambiguous terms; despite the fact that the definition is quite clear & exhaustive in the body of the Bonded Labour System (Abolition) Act, 1976 itself, doubts have been raised from time to time by different State Governments at different forums about the correct definition of the bonded labour system. Doubts have also been raised as to whether a contract labour/migrant labour would also come within the purview of Bonded Labour system as defined in section 2 (g) of the Act.

The above doubts were discussed at a National Seminar on bonded labour organized by the Ministry of Labour & the National Labour Institute New Delhi from 7.2.83 to 9.2.83.

The Participants at the seminar had come to the conclusion that in view of the word or occurring at the end of each clause in sub section (g) of section 2 of the Act, it is not necessary that the criteria under all the sub-clauses should be fulfilled and it is enough if one of them is fulfilled in each particular case. The matter has also been examined in consultation with the Ministry of Law & they have opined that a person who was initially a contract labour/migrant labour would subsequently acquire the status of the bonded labour if he meets one of the four criteria/ingredients of the bonded labour system as defined in section 2 (g) of the Act.

The Government of India vide its letter no. X-11011/3/82-DI dated 1st June, 1984 has issued further clarification regarding identification of bonded

labourers. This is based on the interpretation given by the Hon'ble Supreme Court in the Judgment dated 16.12.83 in a writ petition No. 2135 of 1982. Bandhua Mukti Morcha V/s Union of India & others. According to this judgment, every case of forced labour would come within the preview of the bonded labour system & the element of loan/debt/advance determining the relationship of creditor and debtor would be presumed to be in existence unless & until such a presumption has been rebutted.

Hon'ble Chief Justice of Supreme Court Shri Bhagwati categorically said that above definition of bonded labour system given in the Act is defective. Relevant portion of the above judgment of Hon'ble Supreme Court is reproduced here.

"Ordinary course of human affairs would show, indeed judicial notice can be taken of it, that there would be no occasion for a labourer to be placed in a situation where he is required to supply forced labour for no wage or for nominal wage, unless he has received some advance or other economic consideration from the employer and under the pretext of not having returned such advance or other economic consideration, he is required to render service to the employer or is deprived of his freedom of employment or of the right to move freely wherever he wants. Therefore, whenever it is shown that a labourer is made to provide forced labour, the court would raise a presumption that he is required to do so in consideration of an advance or other economic consideration received by him and he is therefore, a bonded labourer. This presumption may be rebutted by the employer and also by the State Government if it so chooses, but unless and until satisfactory material is produced for rebutting this presumption, the court must proceed on the basis that the labourer is a bonded labourer entitled to the benefit of the provisions of the Act.

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#### **11.4 VIGILANCE COMMITTEE**

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For the purpose of identification & release of bonded labourer powers have been conferred on the district magistrates/Sub. Divisional magistrates of every district/sub division. To assist the District Magistrate/Sub. Divisional magistrate in discharge of his statutory functions vigilance committees are

required to be constituted at the district & sub-divisional levels by every state Government. These committees are to be closely associated with the process of identification & release of bonded labourer & their rehabilitation.

**Constitution of the Vigilance Committee:**

Constitution of the vigilance committee is given under section 13 of Bonded Labour System (Abolition) Act 1976. According to this section each vigilance committee, constituted for a district shall consist of the following members, namely:-

(a) the District Magistrate or a person nominated by him who shall be the Chairman;

(b) three persons belonging to the Scheduled Caste or scheduled Tribe and residing in the district, to be nominated by the district magistrate;

(c) two social workers resident in the district to be nominated by the district magistrate;

(d) not more than three persons to represent the official or non-official agencies in the district connected with rural development, to be nominated by the State Government;

(e) One person to represent the financial and credit institutions in the district to be nominated by the district magistrate;

Each vigilance committee, constituted for a sub-division shall consist of the following members, namely:-

(a) the sub-divisional magistrate, or a person nominated by him, who shall be the Chairman;

(b) three persons belonging to the Schedule caste or Schedule tribes and residing in the sub-division, to be nominated by the sub-divisional magistrate;

(c) two social workers, resident in the sub-division, to be nominated by the sub-divisional magistrate;

(d) not more than three persons to represent the official or non-official agencies in the sub-division connected with rural development, to be nominated by the District Magistrate;

(e) one person to represent the financial and credit institutions in the sub-division, to be nominated by the sub-div Magistrate;

(f) one officer specified under section 10 and functioning in the Sub-Division.

**Term of office & Vacation of seat of members of vigilance committee.**

Term of office & under which circumstances the seats of the members of the District vigilance committee/sub-divisional vigilance committee are to be vacated is given in rule 3 & 4 respectively of Bonded Labour System (Abolition) Rules, 1976 Accordingly;

(1) Every member of District Vigilance Committee or sub-divisional vigilance committee nominated under clause (b), (d) & (e) of Sub-Section (2)/(3) of section 13 shall hold office for a period of two years from the date on which his nomination is notified in the official Gazette and shall, on the expiry of the said period, continue to hold office until his successor is nominated and shall also be eligible for re-nomination.

(2) Every member referred above

(a) may, by giving notice in writing to the authority which nominated him, resign his office and, on such resignation being accepted, shall be deemed to have vacated his office;

(b) Shall be deemed to have vacated his office.

(i) he fails to attend three consecutive meetings of the District vigilance committee/sub-Divisional vigilance committee as the Case may be, without obtaining leave of the Chairman of such, committee for such absence.

Provided that the authority which nominated him may, if it is satisfied that such member was prevented by sufficient cause from attending the three consecutive meetings of the committee, restore him to membership;

(ii) if he becomes subject to any of the following disqualification namely:-

(i) is adjudged insolvent;

(ii) is declared to be of unsound mind by competent court;

(iii) is convicted of an offence which, in the opinion of the authority which nominated him, involves moral turpitude;

(c) may be removed from office, if the authority, which nominated such members, is of the opinion that such member has ceased to represent the interest to which he was nominated.



Provided that a member shall not be removed from office under this clause unless a reasonable opportunity is given to him for showing cause against such removal.

(3) A member, nominated to fill a casual vacancy shall hold office for the unexpired portion of the term of his predecessor.

### **Functions of the Committee**

Detailed functions of the Vigilance Committee are provided in sec. 14 of the Act. Accordingly each vigilance committee shall be :-

(a) to advise the District Magistrate or any officer authorized by him as to the efforts made, and action taken, to ensure that the provisions of this Act or of any rule made there under are properly implemented;

(b) to provide for the economic and social rehabilitation of the freed bonded labourers ;

(c) to co-ordinate the functions of rural banks and co-operative societies with a view to channelizing adequate credit to the free bonded labourers ;

(d) to keep an eye on the number of offences of which cognizance has been taken under this Act

(e) to make a survey as to whether there is any offence of which cognizance ought to be taken under this Act ;

(f) to defend any suit instituted against a freed bonded labourer or a member of his family or any other person dependent on him for the recovery of the whole or part of any bonded debt or any other debt which is claimed by such a person to be bonded debt.

A Vigilance Committee may authorize one of its members to defend a suit against a free bonded labourer and the member so authorized shall be deemed, for the purpose of such suit to be the authorized agent of the freed bonded labourer.

Rule 7 of the Bonded Labour System (Abolition) Rule 1976 requires that in order to ensure the implementation of the provision of the Act, every District Vigilance Committee shall maintain the following registers in respect of freed bonded labour within the local limits of its jurisdiction, namely:-

(a) a register containing the names and addresses of freed bonded labour ;

(b) a register containing statistics relating to the vocation occupation and income of every freed bonded labour ;

(c) a register containing details of the benefit's which the freed bonded labour are receiving, including the form of land, inputs for agriculture, training in handicrafts and allied occupation, loans at differential rates of interest or employment in urban or non-urban areas,

(d) a register containing details of various cases under this Act.

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## **11.5 SYSTEM OF ABOLITION**

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The bonded Labour System (Abolition) Act 1976 envisages (a) identification of bonded labourers; (b) release of bonded labourer from bondage & ; (c) rehabilitation of freed bonded labourers.

These three functions are the direct responsibility of the State Government concerned For the purpose of identification & release of bonded labourers; powers have been conferred on the District magistrate of every District. To assist the District Magistrate in discharge of his statutory functions vigilance committees are required to be constituted at the district & Sub-Divisional levels by every State Government.

These Committees are to be closely associated with the process of identification, release of bonded labourers & their rehabilitation.

Such a process could be greatly facilitated if the right type of persons with the right caliber, perception & commitment to these programmes are to be included in vigilance committees and maintain close watch and supervision from the level of the state government.

After arriving at the conclusion by the competent authority that a person is a bonded labourer, such competent authority will record a finding to that effect & then issue a formal certificate of release in favor of that person so that it will help in identification of that person, as a freed bonded labourer and also for formulating schemes for his rehabilitation.

It is observed that there is a very wide gap between identification & release of the bonded labourer from bondage. Sometimes it ranges between six months to two years. This is due to formal, rigid and legalistic approach being followed for recurring such release. This is an endless process which is

detrimental to the interest of the bonded labourer who, cannot stand up to the tyranny of law and rigidity of the legal procedure. The only way out would be to have a summary trial immediately on receipt of a report from the concerned field agencies so that identification & release can be simultaneous, It is only when there is resistance from the keeper of bonded labour to such release that recourse to the procedure established by law may be taken & the case decided on merit. This is the only practical way of reducing the time gap between identification and release, which in turn will help in accelerating the pace of rehabilitation.

Unless immediate relief of rehabilitation is provided to the bonded labour the very purpose of this programme is defeated and there are possibilities of its relapsing back in the same situation or to lead a more miserable life than before for want of livelihood. Therefore the scheme for rehabilitation of bonded labour provides that bonded labour should be given immediate in trim relief up to 500/- after his release in the form of food grain, clothes etc. Government of Rajasthan, agriculture Department (Special Scheme) and IRD Department vide its circular No.F. 13 (100) Agri/Gr./XI/HI/33 dated 19th June 1984 observed met there are many cases pending for trial for quite a long time and some of the collectors have not prepared the rehabilitation projects for the released bonded labourer during the pendency of these cases. It has also been observed that there remains a substantial time lag between the release and formulation of projects for rehabilitation.

As a result of which the poor bonded labourers heap, been deprived of the rehabilitation assistance for no fault on their part. State Government vide above circular directed that all newly released bonded labourer should be given immediate assistance to the extent of Rs. 500/- immediately after release & action should also be initiated at once for the formulation or- rehabilitation projects under Central Sector Scheme. The Collectors need not wait for the decision of the case pending for trial Provided that they are confident that it is a genuine case of bonded labourer and they have given a release certificate for that purpose treating him as a bonded labourer.

Thereafter rehabilitation measure should also be taken at the earliest for providing him permanent means of livelihood & suitable project for his

rehabilitation should be prepared at the concerned district magistrate's level within next 15 days after giving in trim relief of Rs. 5000. The project in question would thereafter be examined & sanctioned & then funds would be released under the central sector scheme. In the meanwhile assistance of loan and subsidy as per normal pattern of I.R.D.P. (Integrated Rural Development Programme) may be provided under the IRD programme and thereafter on receipt of the subsidy assistance of Rs. 4000/- under the central sector scheme the loan/subsidy earlier provided under the IRDP can be recouped out of such release to the extent indicated in the project report in such a way that additive if any would only be charged under the IRDP for subsidy and loan from the bank.

It need hardly be emphasized that three components is identification, release & rehabilitation are not to be viewed in isolation from each other but are to be taken as parts of an integral whole in which the three processes are closely related, one leading to the other. It is only when a total & integrated approach is taken that the processes of identification, release & rehabilitation can be simultaneously undertaken & successfully completed without leaving the least time gap between one & other.

The task of simultaneous identification, release and rehabilitation of these labourers is enormous and has been engaging the constant attention of Central and State Governments concerned ever since the enactment of the Bonded Labour System (Abolition) Act 1976. The urgency and the complex magnitude of this problem must be evident from the reply to the debate on the Bonded Labour System Abolition Bill in the Lok Sabha by the then Labour Minister on 22.1.1976.

"Socio-economic legislation is bound to be reduced to a dead letter, if appropriate follow-up steps" are not taken on the economic and social front" Analyzing the economic problems which a bonded labour would face on being freed, the Minister had observed:

"He will not have inputs for production or any supply of credit; he will neither have any professional skill that would enable him to pursue an independent livelihood ...Even where installed in a profitable activity, he will have no income during the period of gestation. The bonded labourer will not obviously be aware of his rights. At times, he may not even like to undergo the

strenuous process of economic rehabilitation and may even prefer reversion to thralldom".

Planning Commission approved the idea of having a Centrally Sponsored Scheme; the objective of having a Centrally Sponsored Scheme was to give a matching grant to the State Governments to provide seed, capital to the beneficiaries. The existing Centrally Sponsored Scheme for rehabilitation of bonded labour (which is a plan scheme) provides for a total subsidy of Rs. 4000/- per released bounded labourer, 50% of which is given as Central assistance, the remaining 50% being met by the concerned State Government. The State Governments concerned prepare scheme for rehabilitation and send them to the Ministry of Labour for according necessary sanction. A Screening Committee under the Chairmanship of Director General (Labour Welfare) scrutinizes these schemes and accords sanction. The State Governments are required to report the progress of expenditure in the shape of monthly and quarterly progress reports and also submit utilization certificates in support of such expenditure once in every quarter.

Besides physical and economic rehabilitation, psychological rehabilitation is of great importance. It may be noted that the two are not independent but closely inter-related. It is quite possible that physical and economic rehabilitation may in turn bring about psychological rehabilitation. At the same time, there may be cases where due to a sense of pervasive mental depression arising out of years of bondage, no physical and economic rehabilitation will be possible without bringing about psychological rehabilitation first. The two aspects of rehabilitation should, therefore, be always taken together.

Psychological rehabilitation is of great relevance for the bonded labourer who has been used to a world of being dominated and servitude, who is obviously not aware of his rights and for whom debt has almost become natural, that he is entitled to earn his economic livelihood and have a decent living as any other human being and that in time of need, he need not have to fall back upon the usurious money lenders. Unless he is psychologically assured and reassured that debt need not regulate his destiny any longer, there is every possibility that he will prefer sliding back to debt bondage.

This is an extremely difficult and delicate task which has to be performed with great care, and diligence. The official of the village and block level who are directly concerned with the release of bonded labourers have a significant role to play, to install in the freed bonded labourers a sense of security and protection, so essential for their psychological rehabilitation.

Bonded labour represents the extremes of poverty and backwardness among the Category of landless agricultural labourers. They have widely different socio-economic back ground. Even conditions vary between different areas of the same State, such as hill areas, plains, drought prone and desert areas. No uniform guideline for physical, psychological and economic rehabilitation of the freed bonded labour can, therefore, be laid down, down far less being implemented. The basic approach behind any such rehabilitation efforts should, however, be need-based and development oriented. Scheme for rehabilitation are such as to meet the total requirements of the bonded labour families to enable them to cross poverty line and to prevent them from sliding back to debt bondage.

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## **11.6 BONDED LABOUR SYSTEM - AN OFFENCE**

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The Bonded Labour System (Abolition) Act, 1976 declares an act of enforcement of bonded labour to be an offence after the commencement of this Act.

Sections 16 to 23 in Chapter VI of Bonded Labour System (Abolition) Act, 1976 deal with the offences and procedure for trial and punishment in respect of violation of provisions of the Act.

Sec. 16 provides that whoever, compels any person to render any bonded labour shall be punishable with imprisonment for a term which may extend to three years and also with fine which may extend to two thousand rupees.

Forum for the trial of the offences envisaged under the Act:-

Section 21(2) specifically provides that an offence under this Act may be tried summarily by a Magistrate. There is a provision under section 21 (1) in the Bonded Labour (Abolition) Act 1976 enabling the State Government to delegate the powers of Judicial Magistrates to the Executive Magistrate Vide

which they can try offences under Bonded Labour System (Abolition) Act, 1976.

Accordingly the State Government has already delegated the power vide notification No. F. 3 (g) Jud/75 dated 11.12.75. The Notification is reproduced below:-

“In exercise of power conferred under Sec.21(1) of the Bonded labour system (Abolition) Ordinance, 1975, The Governor, State of Rajasthan hereby empower all the District Magistrate Additional District Magistrate & Sub Divisional Magistrate to exercise all the power of judicial magistrate, first class to try offences under the Bonded Labour System (Abolition) Ordinance, 1975.

This notification was issued in 1975 when the Bonded labour System (Abolition) Ordinance was promulgated by Govt. of India. The notification is also effective after the enactment of the Act in 1976. Sec 27(2) provides that “Notwithstanding such repeal anything done or any action taken under the ordinance (including any notification published, direction or nomination) made , power conferred, duly imposed or officer specified) shall be deemed to have been done or taken under the corresponding provisions of this Act.”

Thus section 21(1) read with section 27(2) makes it quite clear that the Executive Magistrates of the State of Rajasthan competent to try offences as judicial magistrates under this Act & they can also pass appropriate punishment for the offenders.

Section-21A-2) specially provides that an offence under this Act may be tried summarily by a Magistrate. It has also been mentioned in section 22 that every offence under this Act shall be cognizable & bail able.

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## 11.7 JUDICIAL ATTITUDE

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Bandhua Mukti Morcha v. Union of India<sup>2</sup> is a land-mark decision in the arena of bonded labour. The pitiable condition of bonded labourers working in some of the stone quarries in Faridabad district in the State of Haryana was brought to the notice of the Supreme Court by way of a letter by an organization dedicated to the cause of release of bonded labourers in the country. Later on, the Court appointed two Advocate Commissioners to visit the spot and one Dr. Patwarditan to carry out a socio-legal investigation. The

report of the Advocate Commissioners pointed out that the workmen in the stone-quarries were leading a most miserable life and they presented a picture of helplessness, poverty and extreme exploitation at the hands of moneyed people. The Government raised a preliminary objection that no fundamental right of the petitioner or workmen was violated. The Court rejected this contention.

**Observed Bhagwati J.:** "When a complaint is made on behalf of workmen that they are held in bondage and are working and living in miserable conditions without any proper or adequate shelter over their heads, without any protection against sun and rain without two square meals per day and with only dirty water from a nullah to drink, it is difficult to appreciate how such a complaint can be thrown out on the ground that it is not violative of the fundamental right of the workmen. It is the fundamental right of every one in this country, assured under the interpretation given to Article 21 by this Court in Francis Mullins case (AIR 1980 SC 849) to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (a) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no state has the right to take any action which will deprive a person of the enjoyment of these basic essentials.

The court added that it was not necessary for the bonded labourers to show that they were compelled to provide forced labour in consideration of an advance or other economic consideration received from the mine-lessees and owners of stone-crushers.

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### **11:8 SUMMARIES**

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In this unit we have discussed various definitions relating to Bonded Labour and the procedure for identifying bonded labourer. We have discussed



the responsibility of District Magistrate and Sub-Divisional Magistrate in identifying, release and rehabilitation of bonded labourers. How vigilance Committees are to be constituted and in what way such committees assist District Magistrate & Sub-Divisional Magistrate in discharging their duties as such. The procedure for identifying & formulation of scheme for rehabilitation of bonded labourers, have also been discussed in detail. We have also discussed that an Act of enforcement of bonded labour is an offence & violation of the provision of the Act made punishable as crime.

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### **11:9 KEY-NOTES**

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The bonded labourers are the unorganized mass of the Society. Every case of forced labour would come within the preview of the bonded labour system & the element of loan/debt/advance determining the relationship of creditor & debtor would be presumed to be in existence unless & until such a presumption has been rebutted.

It is imperative that recording a finding by the competent authority to the effect that a person is Bonded Labourer, a formal certificate of release is issued in favor of that person so, that it will help in identifying that person as a freed bonded labourer & also for formulating scheme for his rehabilitation. Three components of identification, release and rehabilitation are not to be viewed in isolation but are to be taken as integral whole. There should be no time lag between the release and formulation of projects for rehabilitation of the bonded labourer.

Scheme for rehabilitation of freed bonded labourers are formulated only after taking into account the socio-economic back-ground of such persons & ascertaining their where about as well as after taking into account their aptitude, skills, preference & felt needs.

Only those families of bonded labourer who have been provided with an economically viable unit of a productive asset of Rs. 4000/- each or more should be considered as fully rehabilitated. No Physical & economic rehabilitation will be possible without bringing about psychological rehabilitation. These two aspects of rehabilitation should, therefore, be always taken together. The Bonded Labour system (Abolition) Act 1976 declares an

Act of enforcement of bonded labour to be an offence. Offence under this Act may be tried summarily by an Executive Magistrate.

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### **11.9 SELF ASSESSMENT TEST**

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Answer the following questions, so that you may know how much you have understood the subject discussed in this unit.

1. What is the object of the Act? Critically examine the Definition of a Bonded Labourer?

2. What is the Scheme of identification, release & rehabilitation of Bonded Labourer envisaged by the Act? What are the functions of Vigilance Committee & also discuss its constitution & term of its members? What are the provisions regarding offences under the Act, Also discuss the procedure & forum for trial of such offences?

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# UNIT - 12

## The Contract Labour (Regulation & Abolition) Act, 1970

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### Objectives

After going through this unit, you should be able to understand

- the nature of Contract labour and
- how the interest of Contract labour are protected under this Act.

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### Structure

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#### 12.1 Introduction

(a) Contract Labour - Nature and Concept.

(b) Judicial Attitude.

(c) Legislative Response.

(d) Constitutionality of the Act.

(e) Scope and Applicability.

#### 12.2 Definitions

12.3 Appointment of Advisory Board.

12.4 Registration of Undertaking Engaging Contract Labour.

12.5 Prohibition of employment of Contract Labour

12.6 Licensing of Contractors.

12.7 Welfare, Health of Contract Labour.

12.8 Penalties and Procedure

12.9 Appointment and Powers of Inspectors.

12.10 Concluding Observations

12.11 Self Assessment Test

12.12 Suggested Readings.

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### 12.1 Introduction

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**(a) CONTRACT LABOUR-NATURE AND CONCEPT:**

The concept of contract labour is not synonym to ordinary labour because the former is employed by the contractor who renders services to the principal employer. Further, this concept of contract labour emerged due to temporary nature of work in any undertaking or in the work of transportation or other works not directly connected with the principal production of the undertaking. Later on, the entrepreneur and the employer adopted the practice of carrying out even principal or primary incidental work of production by giving contract to the contractors. The term labour means a person who renders service for remuneration or otherwise under contract of employment whether expressed or implied. In that work the relationship of employer and labour established under a contract of service. In some cases, employer may not carry out the work by engaging labour but enters into a contract with the independent person who in turn carries out the work with the help of his own labour. The labour engaged by this contractor for the execution of work under the contract with the principal employer is known as contract labour. Before independence, the practice of engaging contract labour developed enormously. There was no protection with regard to security of employment, working conditions, hours of work, rest interval, weekly holiday or other types of benefits and welfare facilities which a factory owner should provide to his employees under the Factories Act, 1948. Further laws like the Minimum Wages Act, 1948, the Workmen's Compensation Act, 1923 and the Employees Provident Fund and Misc. Provisions Act, 1952 were also not applicable to contract labour. Thus, even after independence contract labours were exploited not only by the contractors but also by the principal employers. A demand was, therefore, raised for the abolition of the system of contract labour or if it is not possible, for the regulation of contract labour so that they may get advantages and benefits provided under various labour laws admissible to other regular employees of the undertaking that as it may.

#### **(b) Judicial attitude prior to 1970 Act on abolition of Contract-**

The judiciary has made a significant contribution by discouraging the practice of employment of contract labour, particularly when the work is (i) of perennial nature and must go on from day-to-day, (ii) incidental and necessary for the work of the factory, (iii) sufficient to employ considerable number of whole time workers & (iv) being done in other concerns through regular workers. A question regarding abolition of contract labour came up before the Supreme Court of India

in *Standard Vacuum Refining Company, India Ltd. v. Its Workmen*, (1960)11 LLJ. 233 (SC). In this case two questions arose before the court, namely, (i) whether a dispute raised by the permanent workmen regarding abolition of contract labour is an "industrial dispute under section 2 (k) of the industrial Disputes Act? and (ii) whether the directions given by the Industrial Tribunal abolishing The contract system were valid ? The court answered the question in affirmative and observed that a dispute regarding abolition of contract labour and absorption of labour engaged by the contractor on permanent basis was an industrial dispute. The court also held that tribunal had jurisdiction to adjudicate upon the dispute because the matter related to the employment and conditions of labour of workmen engaged in the undertaking.

However, in *Ghatge & Patil concerns Employee Union v. Ghatge and Patil Transport Pvt. Ltd.*(1968) 11..J. 566 (SC) the Supreme Court held that since the drivers had voluntarily resigned from their jobs and entered into an agreement considering themselves under the contract labour to be more favourable than the of their former employment and the contract labour system had act been prohibited under any law, it should not be considered as exploitation of the Drivers. It was also observed in this case that in the employment of contract labour through a contractor or a middleman there might be chances of unfair labour practices and contract labour could be robbed out in case of these drivers, The situation was, however, different because they were required to choose one of the two systems and it was reasonably proper on their part that they had chosen a system which was considered by them to be more beneficial voluntarily.

### **C. Legislative Response**

In order to abolish the system of contract labour in certain establishments and in certain circumstances and to regulate the working condition of contract labour the Contract Labour (Regulation & Abolition) Act, 1970 (here in after referred to as the Act) was passed by the Parliament which received the assent of the President on September 5, 1970. The Act came into force on February 10, 1971. The Act, as its preamble shows, was to regulate the employment of contract labour in certain establishments and to provide for the abolition in certain circumstances and abolition in certain circumstances and for matters connected there with.

It may be that contract labour itself leads to various abuses and faces many problems such as: uncertainty of employment, no better working conditions, late

working hours, no facility of any, shelter and other welfare measures. In order to solve these two these problems the Act was enacted with a view to achieve following objectives:

- (i) to ascertain the nature and extent of contract labour in undertaking and its justification;
- (ii) to examine the possibility of the abolition of contract labour in certain circumstances;
- (iii) to determine the responsibility for the payment of wage of contract labour,
- (iv) to ensure proper working and living conditions of contract Labour at work place;
- (v) to grant licenses to the contractors for the employment of contract labour to carry out the work of an undertaking for this purpose.

**(d). Constitutionality of the Contract Labour**

(Regulation and Abolition) Act, 1970

The constitutionality of the Act was challenged in Gammon India Ltd. vs. Union of India, 1974, SCC 252 on the ground that it places unreasonable restrictions in his fundamental freedom to trade or business and was, therefore, violates of the fundamental right of the employees conferred under Article 19 (1) (g) of the Constitution and the Supreme Court held that Act is constitutionally valid and it does not violate any fundamental rights of the employer.

**(e) Scope and Applicability**

The Act applies to every establishment in which 20 or more workmen are employed or were employed on any day of the preceding 12 months. Sec I. The Act was also applicable to Government and Local Authorities. The appropriate Government has further been empowered to extend the scope of the Act to any establishment or contractor where less than 20 workmen are or were employed by issuance of a notification in the Official Gazette after giving not less than 2 months notice. The Act is, however, not applicable to an establishment in which work is performed intermittently or it is of casual nature. Explanation to section 1 says that work shall not be of an intermittent nature, if it was performed continuously for more than 120 days in the preceding 12 months or in case of seasonal industry more than 60 days in a year, if a question arises whether the work of the establishment is of an intermittent or of casual nature, the appropriate Govt. in consultation with Central

Board of State Board as the case may be, shall decide this question and its decision shall be final.

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## **12.2 Definitions**

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Section-2 defines various terms such as appropriate Govt. workman as a contract labour, contractor, principal employer, wages, workman etc. The terms “appropriate Government”, “workman”, are the same as defined in the Industrial Dispute Act and the “wages” shall have the same meaning as contained under the Payment of Wages Act. (It is, therefore, desirable to know these terms it would be better to see the lessons on the industrial Dispute Act and Payment of wages Act) The term “Contractor” means a person who undertakes some work of an establishment through contract labour or who supplies contract labour for any work of the establishment and it includes the sub-contractor. A Contractor engaged for construction of a building for the establishment falls within the definition under the Act. (Gammon India Ltd. Vs Union of India 1974 SCC 596) The term “establishment” means any Office or Department of Govt., or local authority or any place where an industry, trade, business, manufacture or occupation is carried on The Calcutta High Court in Lionel Edwards. Ltd. v. Labour Enforcement Officer (1977 51 FOR 199) held that a ship or vessel in which repair work is carried on is an establishment for the purpose of this Act. The term ‘principal employer’ has been defined under Section 2 (g) of the Act and includes all Central or State Govt. departments, local authorities, factories, mines or any other establishment or any person responsible for the supervision and control of the establishment. In Asiad case the Supreme Court held that the Central Government and Delhi Development Authority are the principal employers for the purpose of this Act and they should ensure that the workers engaged by the contractors for the construction stadiums and other structures for Asiad Game should get minimum wages as prescribed under the Minimum Wages Act. In Labourers working in Salal Hydro Project Vs. State of Jammu & Kashmir (1983,2. S.C.C.,281) the Supreme Court held that sub-contractors or piece wagers are contractors within the definition of section 2 (C) of the said Act.

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## **12.3 APPOINTMENT OF ADVISORY BOARDS:**

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Section 3 empowers the Central Government to constitute the Central Advisory Contract Labour Board to advise to the Central Govt. on matters arising out of the administration of this Act and to carry out other function assigned to it. The Central Advisory Board shall comprise of Chairman to be appointed by the Central Government the Chief Labour Commissioner as an Ex-officio member and other members at exceeding 17 but not less than 11 from the persons represent the Government, Railway, Coal and Mining industry and the representative of the contractors and workmen. The members from these categories nominated or appointed by the Central Govt. shall be on the terms and conditions laid down under the rules framed for this purpose.

Section 4 provides the constitution of State advisory Board, in every state to be established by the State Government for carrying out functions arising out of the administration of this Act or as assigned to it under the Act. The State Board shall consist, of a Chairman, the Labour Commissioner as an ex-officio member or in his absence any officer nominated by the State Govt. and any other member not exceeding 11 but not less than 9 persons to represent to Govt, industry, the contractor and the workmen. According to Central rules framed under the Act the Central Board shall consist, of Chairman , Chief Labour Commissioner, one person representing the Central Govt., 2 persons representing the Railways, five persons representing the employers in Coal and other mines and contractors and seven persons representing the employees in Railways, Goat & other Mines or the employees of the contractors. The Chairman shall hold office for a period of three years and the official members of the Central Govt. or Railways shall hold office during the pleasure of the President of India and the representatives of the employers and employees shall hold office for a period of three years. A person of unsold mind, undercharged insolvent and convicted for the office of moral turpitude shall be disqualified to be appointed as a member of the Board. The Central Contract Labour (Regulation and Abolition) Rules 1971 lays down the provisions for allowances meeting and quorum of the Board.

Section 5 provides that the Central Board or the State Board as the case may be, may further constitute committee or committees for the proper implementation of the provisions of the Act. No specific number of the member of any committee has been provided and it shall rest at the discretion of the Board but out of the



members of the committee, the Board may nominate one of its members as the Chairman of the committee.

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#### **12.4 REGISTRATION OF UNDERTAKING ENGAGING CONTRACT LABOUR:**

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The Act does not altogether abolish the Contract labour system but permits the appointment of the contract labour in certain circumstances, and in that case the establishment engaging contract labour shall have to comply with the provisions of the Act with regard to the welfare, and health of the contract labour, therefore , to permit a particular establishment to employ contract labour it is necessary that the establishment should be registered under the Act and licenses may be granted, to the contractors to engage, contract labour for carrying out the emergent and casual nature of work of that establishment. For this purpose Section 6 of the Act provides that the appropriate Govt. (the Central or the State Govt. as the case may be) may by order appoint a Gazetted Officer of the Govt. to be the Registering Officer and categorically lay down the limits within which a Registering Officer shall exercise his powers.

Section 7 of the Act says that every principal employer of an establishment shall apply, within the period the appropriate govt. notified in the Gazette in a prescribed application form to the Registering Officer for the registration of the establishment and the Registering Officer on being satisfied that the application is complete in all respect, shall register an establishment and issue a certificate of registration to, the principal employer under the Act. Section 3 says that if the, Registering Officer is satisfied that the registration of any establishment has been obtained by fraud, misrepresentation or suppression of any material fact, it may revoke the registration after giving a right and opportunity of hearing to the principal employer. Section 9 says that no principal employer of an establishment to which this Act applies shall employ contract labour in the establishment in case of non-registration or after revocation of registration or after the expiry of the period fixed in the certificate of registration.

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#### **12.5 Prohibition on employment of Contract Labour**

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Section 10 prohibits employment of contract labour. This section is important to the effect that barring the establishment registered under the Act which was permitted to employ contract labour, the contract labour system is abolished and there is total statutory prohibition of employment of contract labour. It says that the appropriate Government after consultation with the Board (Central or the State as the case may be) may prohibit establishment of contract labour in any process, operation or other work in any establishment by issuance of notification in the office Gazette. Sub-section 2 of Section 10 provides for the contract labour in that establishment and other relevant factors such as; (a) whether the process, operation or other work is incidental to or necessary for the establishment, (b) whether the work is of perennial nature, (c) whether the work is done ordinarily through regular workmen in that establishment or any other similar establishments and (d) whether is sufficient for the employer to employ considerable number of whole time workmen. Under the Explanation of section 10, if a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate government there on shall be final.

The Supreme Court in *Vegalis Pvt. Ltd. v. Its WorkMen* 1971 2 SCC 724 held that with effect from February 10, 1971 when the Act came into force the appropriate government has exclusive jurisdiction h regard to prohibition of employment of contract labour and the Industrial Tribunal under section 10 of the Industrial Disputes Act has no jurisdiction to direct and establishment to abolish contract labour in respect of lodeing and unloading from May 1, 1971. The Court accordingly held the direction of Industrial Tribunal abolishing contract labour was not sustainable.

In *J.P. Gupta v. Union of India* 1981, Lab. IC. 641 the notification prohibiting the contract labour in Coal, Mines was challenged before the Patna High Court. The Patna High Court held the notification to be valid and observed that a single notification prohibiting contract labour in different establishment can be issued validity if the operation and nature of work are similar in all establishments.

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## **12.6 LICENCING OF CONTRACTORS**

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Chapter IV deals with licensing of contractors. Section 11 provides that the appropriate Government may by issuance of a notification in the Official Gazette

appoint a Gazetted Officer of the Government to be the Licensing Officer and may define the limits and jurisdiction within which the Licensing Officer shall exercise his powers. Section 12 says that no contractor to whom this Act applies shall undertake or execute any work through contract labour except under and in accordance with the license issued in that behalf by the Licensing Officer. This license may contain such conditions of service, including conditions as to hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate government may deem fit to impose under the rules. The appropriate government may impose a fee or any security from the contractor at the time of granting license for the due performance of the conditions as may be prescribed. Execution of work in a Government project must be in accordance with the license obtained under section 12 of the Act.

The Supreme Court in *Labourers working at Salal Hydro Project v. State of Jammu & Kashmir* 1983, 2 SCC 181 held that failure to obtain license under section 12 of the Act will amount of criminal offence punishable under section 23 of the Act. Section 12 imposes a liability not to undertake or execute any work through contract labour without license, a liability which continued until the license was obtained. The Patna High Court in *Padam Prasad Jain Vs. State of Bihar* 1978 L at IC 145 held that any undertaking which is executing the work through contract labour without a license is constituting an offence every day on which the work is carried out without license.

Section 13 says that every application for the grant of license under section 12 shall be made in the prescribed form and shall contain the particulars regarding the location of establishment, nature and operation, of work for which the contract labour is to be employed. The Licensing Officer may make investigation and after full satisfaction may grant a license. In that license payment of required fees shall valid for the period specified therein and it may be renewed from time to time. Section 14 says that the Licensing Office if satisfied that a license granted under section 12 has been obtained by mis-representation or suppression of material facts or the holder of a license has failed to perform the conditions of the license may after giving the holder of the license a reasonable opportunity of hearing, revoke or suspend the license or forfeit the amount deposited as security for the due compliance of the conditions under the license. The Licensing Authority is also empowered to vary or amend the license granted under section 12 of the Act. The

licensing officer under section 14 is not a judicial authority or a Court. Section 15 says that an appeal within 30 days from the date on which the order is communicated may be filed by an aggrieved party if he is aggrieved by an order of the authority made under sections 7, 8, 12, or 14 of the Act.

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## **12.7 WELFARE, HEALTH OF CONTRACT LABOUR:**

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The Act provides protection to contract labour so that they may not be exploited and to confer those advantages which the regular employees are getting in the establishments. In this respect Section 16 provides that the appropriate Govt. may make rules requiring any establishment to which this Act applies and where in 100 or more contract 'labour are ordinarily employed, to establish one or more Canteens for the use of such contract labours. The number of Canteens, accommodation and furniture and the food stuff which is to be served and the charges of the food stuff may also be prescribed. This is necessary to ensure that the contract labour may get better food before on subsidized rates. The provisions of this Act were challenged the Supreme Court in Gammon India Ltd. v. Union of India (1974 SCC 596) and the Court held that the provisions are not unreasonable. Section 17 ensures the provision for rest rooms in every place where the contract labour is engaged to halt at night in connection with the work of the establishment. It is provided that the contractor shall provide and maintain for the use of contract labour such number of rest rooms or other suitable places as necessary for the use of accommodation for rest and night half properly maintained and sufficiently lighted and ventilated. Section 18 says that it shall be the duty of every contractor employing contract labour to provide and maintain sufficient supply of drinking water at convenient places and sufficient number of latrines and urinals so situated as to be convenient to the contract labour and washing facilities. Section 19 says that there shall be provided and maintained by the contractor during all working hours, a first aid box equipped with the prescribed contents at every place where contract labour is employed by him.

Section 20 imposes liability on principal employer in certain cases, It says that if any facility required to be provided under section, 16 to 19 for the benefit of contract labour is not provided by the contractor within the prescribed time such amenity shall be provided by the principal employer and all expenses incurred by

him in providing such facilities, or amenities may be recovered from the contractor either by deduction from any amount payable to him or as a debt payable by the contractor. Invoking the provisions of this section, the Supreme Court directed the Central Govt. authorities including D.D.A. in Peoples Union for Democratic Rights Vs. Union of India (1982 3SCC 285) popularly known as Asiad case India, to ensure that if the contractor has failed to provide these amenities, the Govt. authorities as principal employer will be responsible for enforcement.

Section 21 imposes responsibility for payment of wages. It says that a contractor shall be liable for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of the period as may be prescribed. The responsibility of the principal employer is also fixed to ensure regular payment of wages by the contractor to the contract labour. The principal employer, in case of failure of payment of wages, within the prescribed period by the contractor shall make payment to the contract labour and recover the amount so paid from the contractor with regard to payment of wages to the contract labour. the Supreme Court held in Asiad case and in Salal Hydro Project case that it is the responsibility of the principal employer to ensure that the contractor is paying at least statutory minimum wages to the contract labour failing which the direct responsibility may be placed on the principal employer treating it a violation of Articles 21 and 23 of the Constitution.-

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## **12.8 PENALTIES AND PROCEDURE:**

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Section 22 to 35 deal with the provisions related to the penalties, procedure and miscellaneous provisions. Section 22 says that whoever obstructs an Inspector appointed under section 28 of the Act in the discharge of his duties or refuses and willfully neglects to afford a reasonable opportunity to inspect for making any examination, investigation and inspection under the Act shall be punishable with imprisonment for a term which may be extended to 3 months or Rs. 500/- fine or with both This also applies to a case where a delinquent willfully refuses to produce a register or a document on demand by the Inspector.

Section 23 is important to the effect that whoever contravenes any provision of the Act regarding prohibiting, registering or regulating the employment of contract labour or contravenes any condition of the license shall be punishable with

imprisonment for a term which, may extend to a period of 3 months or a fine which may extend to Rs. 1,000/- or with both and in the case of continuous contravention with an additional fine of Rs. 100/- for every day after conviction for the first contravention. Section 24 provides that for any other offences not covered as above shall as be punishable. Section 25 provides punishment in case of offences committed by the company. The offences under the Act are not cognizable and the Court shall take cognizance only on a complaint made by or with the previous sanction in Writing by the Inspector appointed under the Act and the complaint can be filed within three months from the date on which the alleged commission of offence came to the knowledge of the said Inspector.

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## **12.9 APPOINTMENT AND POWERS OF INSPECTORS**

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Section 28 of the Act provides the appointment of the Inspectors to exercise powers regarding inspection, examination, investigation and seizing of the records or any other powers for the execution and fulfillment of the provisions of the Act. The Inspector may exercise following powers:-

1. An Inspector is competent to enter, at all reasonable hours, 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 under law and require the production thereof for inspection;
2. An Inspector may examine any person whom he finds in any such premises or place and who, he has reasonable cause to believe, is a workman employed therein;
3. The Inspector may require any person giving out work and any workman, to give any information which is in his power to give with respect to the names and addresses of the persons, to for and from whom the work is given out or received, and with respect to the payments to be made for the work.
4. The Inspector may seize the register, record of wages or notices or portions thereof as he may consider relevant in respect of an offence under the Act which he has reason to believe has been committed by the Principal employer or Contractor.
5. The Inspector may exercise such other powers as may be prescribed.

The person is legally bound to supply records to the Inspector otherwise he will be guilty of the offence punishable under the provisions of the Indian Penal Code. The Provisions of Criminal Procedure Code, 1973 shall apply to any search or seizure made under the Act.

Section 29 of the Act imposes obligation on every Principal employer and every contractor to maintain register and records giving full particulars of contract labour and these records shall be exhibited in such manner and at proper place of the establishment for the inspection. Any contract contrary to the provisions of the Act shall be void according to section 30 of the Act. The appropriate Government, (the Central or the State as the case may be), may make rules for carrying out the purposes of the Act. The rules may provide for all or any of the matter, specified in sub-section (2) of section 35 of the Act.

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### **12.10 CONCLUDING OBSERVATIONS:**

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Contract labour was categorized as unorganized labour though working in organised sectors till the passing of the Act and was not statutorily protected and safeguarded. Workers under the contract labour system were exploited by both, contractors and the principal employers. Their working and living conditions were unsatisfactory and pitiable. After passing of the Act, the system is not only eliminated in certain circumstances but where it is permitted under the license, workers as contract labour are adequately protected. Statutory obligation is imposed on the contractors/principal employers to provide welfare and health measures. They are treated at par with other regular workers of the undertaking.

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### **12.11 SELF ASSESSMENT TEST**

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Answer the following questions:

1. Discuss the nature and meaning of contract labour.
2. Explain the objects and reasons of passing the Contract Labour (Regulation and Abolition) Act, 1970.
3. Describe the provisions relating to welfare and health of contract labour.
4. In what circumstances the contract labour is prohibited in an undertaking.
5. Discuss the salient features of the Act.
6. Enumerate the powers of inspectors appointed under the Act.

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**12.12 SUGGESTED READINGS**

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1. K.D. Shrivastava, Commentaries on the Contract Labour Regulation & Abolition Act, 1970.
2. P.L. Malik (1987 ed) Industrial Law.



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# UNIT -13

## Conceptual Aspects of Industrial Sociology

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### Objectives:

After going through this unit, you should be able to –

- Appreciate the concept of Industrial Sociology.
- know the meaning and scope of Industrial sociology.
- Gain knowledge about development of Industrial Sociology and its use in an industrial organization.

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### Structure:

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- 13.1 Introduction
- 13.2 Definitions of Industrial Sociology
- 13.3 Scope of Industrial Sociology
- 13.4 Development of Industrial sociology
- 13.5 Self-Assesment Test.
- 13.6 Further Readings

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### 13.1 INTRODUCTION:

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Sociology is concerned with the systematic study of social relationship, with the interaction between social structure and the behavior of individual and groups. Sociology is about social relationship. The social relationship which essentially consists of mutual awareness usually followed by reciprocal interrelations and interactions comes under sociology. It also embraces any social reality which distinguishes it from other sciences such as psychology or economics.

Industrial sociology is a comparatively new term which gained currency about the middle of 20th century. As a specialized subject Industrial sociology is distinct from such disciplines as Industrial or Personnel Management which are concerned with the practical problems of industry and managing 'Men' in the industry. It does not exist as a separate field by virtue of a central theoretical focus. It draws its theory and methods from a variety of sub-discipline within sociology. Industrial sociology began primarily as an applied field. Earlier it was concerned with

establishing policies, solution of specific problems and how to improve the morale of industrial workers. Later on the emphasis shifted towards building a science of social behavior in organizations and greater specialization.

It is also concerned with the study of the industrialization process. The word 'industrialization' is in fact, most often used to refer to the shift from an agriculture based economy to the based upon manufacturing. Fundamental social processes are the same irrespective of whether the occasion for social interaction is familial, economic, political, educational or industrial. Industrial sociology is the application of the sociological approach to the reality and problems of industry. As students of Industrial sociology we are invested in its application to the "world of work".

It is very important to know the way in which groups formal and informal, are held together in the process of industrialization. The most genuine interest of Industrial sociology is to study the informal group relations besides formal organizational and statutory industrial relations. A student of Industrial sociology must raise questions like: what is the character of industrial organization and industrial society? We must also make efforts to know the intergroup relations and roles of unions, management and Government. The student should also understand the social structure of industrial society. Industrial man develops new pattern of relations, which are more varied and complex than in pre-industrial society.

India like most modern nations, has committed itself to industrial development as a necessary means to solve its economic and social problems. It is, therefore, very important to make use of the applied science i.e. Industrial Sociology to solve our socio-economic problems arising due to industrialization and development.

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### **13.2 Definition of Industrial Sociology:**

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The concerns of Industrial sociologists have been rapidly changing during the last few decades. Sociologists are still struggling to define the field. Industrial Sociology consists of the application of the methods of sociology to the analysis of work organizations and work roles. It specially analyses the content of work roles, the norms or expectation is associated with the same work roles in different work organizations. It is also concerned with 'Compliance Structure' of work

organizations as it relates roles to each other and persons to roles in a systematic way.

H. J. Smith has defined Industrial sociology as “The Study of Social Relations in Industrial and organizational settings, and of the way these relations influence and are influenced by, relations in wider community” - According to the above definition Industrial sociology is a study of social relations in organizational setting.

According to Lupton “it is the study of the social system of the factory and the influences external to the factory which affect that system”. The author of above definition has been more specific. According to him Industrial sociology is the study of Factory as a social system.

Wilbert E. Moore defines, “Industrial Sociology then is concerned with the application or development of principles of sociology relevant to the industrial mode of production and industrial way of life. According to Moore it is a study of industrial way of life.

A. Etzione defines Industrial Sociology is most fruitfully considered as an applied field and as a branch of organizational sociology involving the study of economic organizations, that is, those organization having the primary aim of producing goods and services, exchanging them or organizing and manipulating monetary process. According to the author of the above definition Industrial Sociology is a branch of organizational sociology.

If we analyze the above definitions we can conclude that:

- (a) Industrial sociology is an applied discipline;
- (b) It is not merely concerned with general Sociological concepts, but those which specially refer to industry,
- (c) Industrial sociology is the application of the sociological approach to the reality and problems of industry,
- (d) It is also a study of social relations in industrial and organizational settings. At same time it is concerned with how the relations in organizational settings influence and are influenced by relations in community.
- (e) It is also concerned with the application of the methods and models of sociology to the analysis of work organizations and work roles,
- (f) Industrial sociology is concerned with how economic sub-system is related to after sub-system in a particular community.

(g) Industrial sociology does not exist as a separate field by virtue of central theoretical focus.

It draws its theory and methods from a variety of sub-discipline within sociology.

It is clear from the above definitions and conclusions that what sociology has to offer to the student of industrial social organizations today is not a body of laws of social behavior, but rather a particular perspective of a special way of looking at the world of work.

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### **13.3 SCOPE OF INDUSTRIAL SOCIOLOGY:**

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From the definitions discussed above it is very clear that they differ from each other regarding the field of Industrial Sociology. At the same time, if we read of Industrial sociology texts, there is remarkable consistency in the kinds of material included in it the material section on the work group, on the structure of industrial bureaucracy and on union-management relations. They also contain some discussion of the industrialization process, of major work roles in industry. These are important areas of Industrial sociology.

Industrial sociology is a part of general sociology. It began primarily as a moiled science. It deals with economic production in its broadest sense. Conventionally it used to cover only those studies that focus on the modern industrial system. The question of rosinig morale of industrial workers remained prime concern of industrial sociologists. With the advent of technological revolution the concern of industrial sociologists shifted to the building a science of social behavior. The term social behavior refers to any human behavior that is predictable with some probability.

Besides industrial organization, there is now ever increasing interest in the study of complex formal organizations such as hospitals, schools and governmental. The major increase in research activity as taken place in area of industrialization process.

Industrial Sociology also deals with industrial work. We know that work is universal activity which every society always practiced. Though work is natural to every man yet the tendency on his part to, avoid work in various degrees is present in every society. This phenomenon is observed more in the modern society. It is due to the inherent complexity of industrial work. In spite of existence of work avoidance, the fact is that man likes work. It is due to the existence of several

motives because of man Works. What are these motives? How to motivate man to contribute his best to the organization is the crucial question before every industrial sociologist.

Industrial sociology is also concerned with internal structure of industry. Industrial organizations can be divided into formal and informal organizations. In the formal organizations the relationship is impersonal or abstract; the relationship between its members is regulated by rules and regulations and by collective agreements. This forms a part of a wider system. Industrial organizations are also divided into so called line and staff organizations and functional activities.

Relationship which does not correspond to any regulative norm may be called informal. Informal organizations of industry are made of the vast net of spontaneous relationship arising among personnel and crystallizing more or less permanently in groups. The main reason of formation of such social groups may be due to insufficient satisfaction of social needs and or exigencies by the formal organization. This emergency of informal groups cannot be suppressed. They exist at all levels into which the industrial organization is hierarchically divided. Sometime these informal groups do hamper the functioning of industry. This area is also of much interest to the industrial sociologists.

Industrial sociology is also concerned with the functions and organization of management. The decision making process is no doubt the focal point of planning and management action in general. It is also concerned with the supervision, co-ordination and ether managerial functions. Formal and informal communication system prevalent in the organization as well as with the problem of communication is another important port of internal structure, of industry. Studies in this area are also included in the scope of Industrial Sociology.

The line and staff in the most important division of managerial organization the subordinate positions are derived from the ultimate authority which is a requirement of every organization, including industrial. The relations of supervisor and subordinate are connected with each other vertically, while staff relationship run horizontally. The co-ordination between line and staff is one of the main problems faced by industry. The study of this problem is also an important scope of Industrial sociology.

With the emergence of white collar workers, who are also known as knowledge workers; the authority of the supervisor is diminishing. The decision making power

of supervisor is also diminishing. Therefore, new ways and means are being found to improve the position of supervisors in industry. The society of the future may be called a white collar society. White collar workers are better educated than blue collar workers. They have higher expectations from the industry for their need satisfaction. When these expectations remain unfulfilled frustration creeps in. These frustrations are also associated with the routine of the work, depersonalization, red tape and bureaucratic approach prevalent in majority of industrial organizations. Blue collar workers face different types of problems such as monotony and fatigue both mental as well as physical. Environmental factors such as noise, light also affect the health of blue collar workers. Studies in these areas form scope of the subject.

Organizational dimension refer to the power structure of social systems. While organization possess an internal aspect and consist of persons behaving in according with the expectations and demands of the positions they occupy. Industrial sociology is concerned with analysis of organization dimensions of industry. It also studies the established norms and structure which govern the behavior of large social groups in industry.

In social context study of trade unions forms scope of Industrial sociology, Trade socio-economic interests of the working class people. They function as pressure group and, deal with management through collective bargaining. They are recognized as an essential part of industry. Development of Trade unions in any industrial society, its situation and problem unions are response to the industrial revolution. Trade unions as organization are protecting the social forms and important subject matter and scope of Industrial sociology.

Industrial peace and harmony are desired by every, society for its rapid development. Industrialization has brought class system in opposition, to other system of social stratification. It also brings rapid social change, along with many problems which affects the traditional social structure of the society. Education of all parties involved in industry is essential to solve its problems.

S.R. Parker, R. K. Bilown and others have discussed the scope of Industrial sociology in their work *The Sociology of Industry* as follows:

(a) Analysis of bureaucratized industry from the point of view of organization roles and the behavior and attitudes of professional and black-coated workers.

(b) Studies of workplaces as complex organic or socio-technical systems by which individuals achieve some balance between the demands of the work situation and their own goals.

(c) Studies of working groups (mainly informal) and their systems of relationships, aims and beliefs, particularly where these contrast with those of management.

(d) Analysis of the 'industrial relations' complex mainly descriptions of the historical development of labour organizations, bargaining procedures and types of trade union.

(e) Analysis of the consequences of industrialism for the individual, including the interaction between work and non-work areas of life.

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### **13.4 DEVELOPMENT OF INDUSTRIAL SOCIOLOGY:**

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Industrial sociology has its roots in early twentieth century. The subject can be said to have emerged with the researches on small groups in industry by Elton Mayo and his colleagues at Harvard. Mayo was head of the Department of Industrial Research of Harvard University in Boston. He is identified as the father of Industrial Sociology.

Increasing industrial efficiency and productivity and developing democratic values of equality and justice here the main concerns of social scientists. Therefore, earlier studies in Industrial sociology were based on increased employee satisfaction and also increased efficiency in the production system. Inter on Industrial Sociology became increasingly objective and developed a wider structure functions perspective.

F.W. Taylor, Father of scientific Management and his associates attempted to apply scientific methods to industrial work. Their assumption was that men could be related to their work rather as machines to be made as efficient as possible. His study is limited to the physical characteristics of the human body as its responds to the routine and clearly defined job. He suggested that incentive would evoke more and more efficient work by the employee and financial rewards from the increased efficiency could be used to enhance the income of workers as well as of managers. It will also secure the harmonious co-operation of both groups. The ideas generated much controversy and opposition. Taylor's assumptions regarding human behavior were criticized. The critics said that it overlooked the effects of cumulative fatigue

and variations in the abilities between workers. The human relations approach arose as a reaction against all these assumptions.

The investigations at the Hawthorne works of the Western Electric Company in go between 1927 and 1932 have been widely reported. These experiments have probably and more often discussed than any other single piece of research in Industrial sociology. Almost everybody whoever mentions 'human relations in industry' discuss the above study of the things to which this phrase refers is, what is by now a very large numbers of studies of inter personal relations in industry? Human relations in industry are also the table applied to a social movement in industrial management. Critics of human relations approach the total disregard of trade unions. They turned to the study of the structure and function of trade unions. Many of them also studied union-management relations and the functions of social conflict. The work of Max Weber on bureaucracy as influenced directly or indirectly a number of other major contributors to the development of Industrial sociology.

Earlier studies of Mayo and his associates were not at all concerned with industrial social structure. Initially the purpose was to observe the effects of working condition on job performance. It revealed that while working in group workers develop a norm of a proper day's work and continue to perform at that level even when conditions are not very conducive. Later, when it became apparent that work performance is affected by factors outside the job, various experiments were performed. The importance of social structure factors was discovered by this study. Thus Industrial Sociology was born.

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### **13.5 Self-Assessment Test:**

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Answer the following question:

1. Define Industrial sociology
  2. Discuss the scope of Industrial sociology.
  3. Trace in brief the development of Industrial Sociology
  4. What is the utility of Industrial sociology in an industrial organization?
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### **13.6 Further Reading:**

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Seth, N. R. & Patel P.J. 1979: Industrial Sociology in India, Rawat Publication: Jaipur.



Parker, S.R. Brown, R.k., child, J., Smith, M.A. 1967. The Sociology of industry, Georg Allen & Unwin Ltd., London.

Faunce, William, A., 1967: Readings in Industrial Sociology, Meredith Publishing Co., ACC, New York.

Gisbert Pascual S.I. 1972: Fundamentals of Industrial Sociology, Tata McGraw-Hill Publishing C. Ltd., Bombay - NewDelhi.

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# UNIT -14

## Industrialization and Social Institutions

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### Objective:

After reading this unit you will be able to know

- about industrialization and social institutions **related with it.**
- the impact of industrialization on various social institutions
- the changes which are taking place in our society.

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### Structure:

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- 14.1 Introduction
- 14.2 Caste; definition features and changes
- 14.3 Joint Family: Meaning of Family and Joint family, Characteristics of Joint Family, and impact of industrialization.
- 14.4 Marriage: Meaning of Marriage and. Hindu Marriage, Changes in Marriage institutions.
- 14.5 Religion: Definition, Religion and Social Change
- 14.6 Urbanization: Meaning and effects on society.
- 14.7 Industrial Relations: Meaning of Industrial Relations, and Social Problems: social problems of generated by industrialization.
- 14.7 Questions
- 14.8 Further Readings

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### 14.1. Introduction:

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Industrialization has been variously defined by sociologists. Central to all these definitions, however, is the idea of a shift in economic base of a community or society from agriculture to industry. According to M.S. Gore "The term industrialization refers to the process wherein production of goods with the use of hand tools is replaced by production with use of hand tools is replaced by production with the use of power driven machines. Industrialization depends upon and sustains monetization of the economy, a high degree of occupational specialization and a system of factory production based upon the individual rather than the kinship group. "The most apparent and dominant effect of the introduction

of power driven machine in the industry, industrial production by the factory system. The factory system brought about many changes such as work in industry is the replacement of the system of industry industrial production by the factory system. The factory system brought about many changes such as work in industry must be regular and punctual, the modern worker is dependent for his livelihood on an employer who owns machines and controls not only the conditions of work but also the manner of work to be performed. This process of industrialization, wherever it may occur, has some common feature. The factory system and industrial technology inevitably result in more complex division of Labour than that found in traditional agriculture society. The process of industrialization accelerates the growth of development and involves a series of inter-twined economic changes. The first change it brings about is that the previously isolated, self-sufficient-rural economy into a singly national economy. The second is the dominance of production for sale over production for exchange (barter-system) or for use. This change results in the emphasis upon money. The introduction of technology in farming and manufacturing involves large capital expenditure. Industrialization also adds in the steady growth of means of communication and transport. The towns and cities became as bases of manufacturing and trade. There is a steady development of specialization in the division of labour. This division of labour is more complex than that found in traditional agriculture societies. It demands increasing specialization in various occupations in industries. It tends to produce more differentiated stratification patterns and contributes to the segmentalized character of industrial societies. The changing nature of work, along with increasing occupational specialization, brings problems of adjustment of rural migrants to industrial employment.

The creation of modern economy demands a large scale market. It also gives rise to exchange of produce from one region to another.

This in turn gives impetus to modern means of communication and transport to facilitate this exchange. The social effects of these new means of communication are enormous. The new economy breaks down local isolation. Not only goods but men and ideas move freely from one region to another. The local identity is replaced by a national view.

Herold Wilensky has observed that Industrialization represents a multifront attack on tradition, an attack symbolized by the words "change" and "movement." Many

of the institutions which have meaning within the context of the traditional society (small community) lose this meaning in the frame-work of the large society or modern industrial societies. The family loses its place as a productive and economic security yielding unity in a society in which industrialization has taken place and where economic ties are with persons outside the kinship groups and economic security is obtained through governmental or other insurance schemes. Rudolf Heberly has observed that Industrialization creates vast urban areas ...yield a new standard of living and leisure draws on new skills both social and technical requires a vast net work of rules to guide and coerce men in the complex and interrelated task essential to its successful growth, (spawns)? New centre of power and further the concentration of authority in old center particularly the state. The industrialization is a great process of transformation. It also has repercussions upon social organizations. It accelerate rate of social change, changes in the structure of family, the nature of religious values and observance etc.

Industrial society has nullified the small face to face primary groups and has brought transformation of traditional societies. The traditions oriented social action is found in all societies. It includes forms of social behavior which have been taken over from ancestors. Traditional behavior is based upon the continuity of attitude and states of mind. Though traditional behavior may sometimes, conflict with the demands of industrialization, usually it is an important re-enforcing element in the maintenance or support of stability in a period of rapid change.

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#### **14.2. Caste:**

The caste system has been the base of Indian society. Even though it is difficult to define precisely the caste and caste system the word caste is generally used in everyday life to distinguish one person from another. The first evidence of the existence of the caste system is found in Rig Veda. It is said that caste was evolved mainly because of certain nations attached to colour distinction and the power which Brahmins or Aryans wanted to retain with them. The post-Vedic period saw the growth and consolidation of the power of the Brahmins. The Law of caste prescribed by Manu provided legitimacy to the caste system and established supremacy of the Brahmins over other castes.

As regards the origin of the castes the sacred books of Hindus contain no uniform or consistent account, of its origin. The most common story is that the castes issued from the mouth, arms, thighs and feet of Purusha or Brahma. The Hirusasukta hymn, speak of four castes, namely, Brahmins (originated from mouth) , Kshtriya (from hands), Vaishya (from thighs) and Sucira (from feet) . However, there is much evidence available in Puranas and Shastras about the different and contradictory origins assigned to the castes. Differences of race and of occupation are also considered to be origin of caste by many scholars, both Indian as well as Western.

### **Definition**

Caste may be defined as a hereditary endogamous group which divides the individual's status in the social stratification and his profession. Most of the scholars defined caste in terms of its functionality to the society and culture in India. It has been defined as one where by a society is divided into a number of self-contained and completely segregated units (as castes). It is an aggregate of persons whose status, obligations and privileges are fixed by birth. The status is wholly pre-determined and without any hope of changing it. Modern thinkers consider it best to enumerate the features of castes.

### **Features of Castes**

The main features of the caste are, a common name, common descent (human or divine), professing the same hereditary occupation and forming a single homogenous community and hereditary membership and endogamy. The six main features of caste according to Ghurye are:

#### **(1) Segmental Division of Society:**

The society is divided into various castes with a well developed life of their own, the membership of which is determined by consideration of birth. Caste is hereditary. No amount of wealth or achievement can change the status of a person which is ascribed to him by birth. The caste rules and norms regulate and control the conduct of all the members of the caste. The citizens owe moral allegiance to the caste rather than to the community as a whole.

#### **(2) Hierarchy and Groups:**

The essence of caste is the arrangement of hereditary groups in a hierarchy. The whole society is divided into distinct classes with a concept of high and low. Two opposite ends of the hierarchy are relatively fixed. Brahmins in India stand the

apex of the social ladder and Harijans at the bottom. However in between, i.e. in the middle of the social ladder, there is considerable room for debate regarding mutual position. Each caste tries to prove superiority over the rank of others. This area of hierarchy permits social mobility. Dispute regarding mutual position occur even among Brahmins and Harijans, respectively in their own groups. In India, this hierarchical caste system, which differs in some respects from Hindu caste system, also prevails among other religious communities such as Islam and Sikhism.

**(3) Restriction on Feeding and Social Intercourse:**

Higher castes try to preserve their ceremonial purity by imposing restrictions on feeding and social intercourse with lower castes. For example, a Brahmin will accept pakka food i.e. food prepared in ghee/milk from any community, but he cannot accept Kachcha food from other castes. Elaborate rules govern the acceptance of cooked food and water from another caste.

The concept of pollution plays a crucial part in maintaining the required distance and restriction of social intercourse between different castes. There is broad line between Hindus and Harijans in the matter of pollution.

**(4) Allied and Religious Disabilities and Privileges of the different Sections:**

The impure or "Shudra" suffer from social and religious disabilities. Generally they are made to live on the outskirts of the city. They are prevented from using the many public facilities such as wells, ghats. The untouchables could not enter a religious place or temple. The impure castes are also not allowed to use certain facilities such as access to shops, restaurants etc. which are used or frequented by higher castes.

**(5) Lack of Unrestricted Choice of Occupation:**

The hereditary association of a caste with an occupation has been so striking that it has occasionally been argued that caste is nothing more than the systematization of occupational differentiation. Most of the castes practice agriculture in addition to their traditional occupation. Members of a particular caste are expected to follow the caste occupation.

**(6) Restriction on Marriage:**

While the aforesaid elements or features generally change even rapidly, but endogamy retains its stable character. Than it is the essence of the caste system. The majority of persons marry within their own caste. There is little exception to this general rule of endogamy which is due to the practice of hyper gamy. Hyper

gamy or anuloma marriages (marriage between male belonging to higher caste and female belonging to lower caste) are permitted while hypogamous or pratiloma (female belonging to higher caste cannot marry male belonging to lower caste) are prohibited. Thus, caste was an all encompassing system dealing with all aspects of a man's life. It is a dynamic system changing from time to time.

### **Impact of Industrialization on Caste System**

We shall now consider the changes in the caste systems which have been brought about by the process of industrialization. The process of industrialization also occurred during British period and was accelerated in independent India. Industrial revolution has also been a factor, besides others, responsible for transforming the caste system. Industrialization adversely affected the village, industries and handicrafts and artisan castes. The new economic opportunities benefitted lower castes also and they tried to move up in the hierarchy. The old occupations having disappeared new occupations have appeared wherein the Brahmin and the Sudra freely meet and mix. Caste restrictions cannot be enforced in a factory where members from lower caste brush their shoulders with the members of higher caste, yet it continues at mental level as there is little change in the attitude and mentality of the people.

The crude expressions of untouchability have disappeared in the cities, but in rural areas it still exists. Opportunities for social mobility are greater in the cities than in villages. The dissociation between caste and occupation is greater in big industrial centers and towns. The social policy of giving preference to Harijans in 'public employment' has also helped in breaking the traditional association of this caste with agriculture labour.

According to Prof. M.N. Srinivas- The adoption of the symbols of higher castes, such as customs, rites and way OF Life by the lower castes has been called 'Sanskritization'. On the other hand the higher castes, particularly those living in bigger cities, are undergoing a process of Westernization, which includes adoption of Western ways of life. It also means a degree of "secularization" and "rationalism" and in these two respects it stands opposed to Sanskritization. In other respects, Westernization helps to spread Sanskritization through the products of its technology-news papers, radio, Films, Television etc.

Caste system is weakening in India due to many factors, such as education, social movements, constitutional provisions, Industrialization etc. The features of caste

system are also changing. Social legislations have also brought about change in marriage rules and many caste disabilities are removed through legal measures. No doubt there is legal equality but in reality social equality is yet to be achieved in our country.

Though changes in caste system are being observed and experienced but what is now coming into being is a new type of stratification in which caste and class are mixed up in an inextricable tangle. It is certainly true that restrictions on marriage, diet, mode of life, occupation etc. based on caste system are breaking due to industrialization, it is difficult to make an unqualified statement concerning the future of caste system.

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### **14.3. Joint Family**

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#### **The Family:-**

Of all human groups, family is the most important primary group. Thus, primary group consists of husband and wife, with or without children. It is also known as group of persons united by the ties of marriage, blood and adoption. It may also include members of two generations. Family comes into existence when a man and woman establish mating relations between them through the institution of marriage. Every family is known by a name and needs economic provision to satisfy human wants and needs. It also requires a home or household for its living. Family is the most universal group and is the first institution in the history of mankind. It is a basic and fundamental unit of human society, which provides emotional basis to a close-knit group. The responsibility, role and status of each member determined and defined in a given social situation. Family as an institution is permanent and universal, while as an association it is temporary and transitional.

#### **Joint Family:-**

Indian family system differs from Western family system. The family in India does not consist of only husband, wife and their children but also other relatives such as uncles, aunts, grandsons etc. The joint family may persist even after the death of the father or marriage of a son. The eldest surviving son becomes the head of the family in place of his father. According to Prof. Karve – “A Joint family is a group of people who generally live under one roof, eat food at one hearth, hold property in common and participate in common worship and are related to each other as



some particular type of kindred. Thus, members of joint family live under the same roof, eat from the same kitchen, perform their rituals together and their common expenses are met out of income of the ancestral estate.

In the traditional Hindu joint family the senior male, either father or eldest brother or son, was usually the head of the household. It was his duty to look after the ancestral property, meet the expenses out of the income and manage the resources carefully and for the benefit of members of the joint family. The younger members were required to show respect to elders and obey their command. Respect for the age resulted in powers and privileges being concentrated in the hands of elders.

### **Characteristics of Joint Family**

Joint family is a large size family because several relatives, along with members of more than one generation, live together. The joint family in India is based on patriarchal descent and the property is passed from one generation to another generation within father's family.

The property of joint family belongs to all members and is held on a cooperative basis until it is partitioned by the male members of the family.

The basis of joint family system is cooperation. The total earnings of all the members of family are pooled together. The rights and obligations of each member of joint family are predetermined, except the head of the family who has some privileges.

Joint family system has many advantages to its credit such as it provides social insurance to the aged, infirm and widows of the family. It also provides economic security to all including unemployed members of the family. It secures division of labour, as each member is given work according to his/her abilities. The system also avoids fragmentation of land holdings. The joint family system realizes the socialistic ideal of each according to his ability, to each according to his needs.

Besides the advantages of the joint family system, it has disadvantages also to its credit. The joint family becomes home of idlers and some members may lead a life of utter lethargy. In the joint family there is little opportunity for the fostering of individual autonomy or self dependence and initiative. The system encourages litigation and quarrels among the members. It denies privacy to the members; particularly to newly wedded couple. Thus joint family system has got both its strong supporters as well as opponents.

**Impact of Industrialization on Joint Family system** It is observed that joint family or extended family system is breaking down under the impact of industrialization. Though there may be exceptions here and there, yet it cannot be said that the system has been completely abolished. At the same time there is no doubt that the system is finding it difficult to withstand the wind of change and process of transformation, which is taking place in our society. India today is on the way to industrialization. The movement from villages to industrial centers is responsible for breakdown of the joint family system. With the spread of education and western outlook the influence of individualism has made deep inroad in the joint family system. Factory occupation has made members of the same family economically independent. This has weakened the joint family in our country.

It is very difficult to say that joint family system is being replaced by the nuclear family system. At the same time it may be observed that industrialization has given rise to a new economic system. It secularizes life and develops an individualistic philosophy, which are incompatible with joint family system. Thus, Clear change is noticed in the joint family system though the change is taking place very slowly. The role and status of women in joint family are also changing. The young educated women are more assertive which give rise to problems and tensions in family life. With industrialization nuclear household is becoming more common in the urban areas of our country.

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#### **14.4. MARRIAGE:**

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##### **Meaning of Marriage:-**

The institution of marriage is common to all societies. It is an institution which admits men and women to family life. Prof. H.T. Mazumder, defines marriage "as a socially sanctioned union of male and female, or as a secondary institution devised by society to sanction the union and mating of male and female for purpose of (a) establishing a household (b) entering into sex relations (c) procreating and (d) providing care, for the offspring." It is a relationship in which a man and a woman are socially permitted to fulfill their biological needs and to have children. In almost all societies one the other form of marriage exists.

##### **Hindu Marriage:-**

It is well known that marriage is an essential obligation for all Hindus. The Hindu Marriage was considered to be a sacrament (Sanskaria) for sanctifying (purifying) the body. Marriage was a holy union for the performance of the religious duties and rituals. Thus religious and social objectives of marriage were more important than biological needs of the persons entering into the union. The marriage was indissoluble or irrevocable. Thus, it was not a social contract. Only customary divorce was permitted, which was generally practiced among lower castes. Birth of a son is necessary as he performs periodical rituals, including annual Sarrdha for the attainment of moksha to the dead ancestors.

Inter caste and inter community marriages were not sanctioned by the Hindu community. A man was allowed to marry, in theory, any number of women (known as polygamy). A Hindu woman was not permitted to marry more than one man during her life time. Widow Remarriage was validated as early as 1856. Anuloma form of marriage, i.e. intercaste marriage between man of higher caste wed woman of lower caste, was allowed. But the Pratiloma form, i.e. marriage in which men of lower caste marry women of higher caste, was not validated. Child Marriages were common and are still taking place, even after the passing of the Child Restraint Marriage Act, 1929.

The rules of exogamy (marriage outside group/prohibition of marriage between close blood relations) are still in operation though the degrees of relations have been reduced. From 7 to 5 from father's side and from 5 to 3 from mother's side, the Hindu Marriage Act, 1955 retains the old rules and Law where custom or usage allow marriage between Sagota, Sapravara and Sapinda (common ascendancy) persons. If custom or usage does not allow such marriage then the said Act prohibits such marriage. The Act has not only codified the Hindu Law of marriage and divorce but has effected revolutionary changes. Monogamy (one man - one wife) is the rule under the Law and now accepted as a sound public policy. Many erroneous beliefs regarding Hindu marriage have been eradicated. Inter-caste and inter-community (marriage between Jain, Sikh, Hindu and Buddhist) are validated by the said Act. Liberal and easier divorce procedure is provided by amending the Act in 1976.

### **Change in Marriage Institution:-**

The social reform movement, process of industrialization and legislative measures to raise the status of women in India did succeed to some extent in changing the

social and economic status of womenfolk in general but as more and more women are seeking education and economic independence, the age-old restrictions are breaking down. Indian women are acquiring more rights now. It is a popular belief that urbanization, industrialization and Westernization have secured for Indian women an increased measure of freedom. But this may be true for women of higher caste only. Widow Remarriage and divorce are not viewed as horror or sin. Inter-caste and inter-regional/community marriages are beginning to occur. Educated girls find it difficult to live with their parents-in-law, obeying mother-in-law at every point. As educated women seeks and peruses a career. Sometimes it generates family conflict, which is a hard reality of life. The stability of marriages can no longer be taken for granted. The rate of divorce is also on the increase, giving rise to many social problems. Traditional type of marriage is not liked by the educated young women. The age of marriage, among higher caste living in urban area, has gone up due to variety of factors, economic as well social. As regards mate-choice the girl has no say and selection of mates is generally made by parents. In this direction there is not much change but there is no doubt that things are beginning to move. Now a day's girls have started asserting and giving their opinions in the choice of mate as well.

In brief, it can be observed that the traditional role of Indian women is changing due to the social, economic and political changes which have occurred in the last few decades. These factors have contributed greatly in the upliftment of women in general.

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#### **14.5. RELIGION:**

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It is difficult to define "religion." Many people take the word to mean their own religion only. Religion has a very deep influence upon the general people. Prof. Ogburn has defined religion as attitude towards super-human powers. According to Prof. Maciver, Religion as we understand the term implied a relationship not merely between man and man but also between man and some higher power. Numerous definitions have been given by scholars according to their own beliefs. As a matter of fact it is difficult to agree upon one definition.

It is possible to accept religion as belief in God or some super-natural power, at the same time there can also be a godless religion. It is a matter of rites rituals,

observance, faith and ceremony for the behavior or follower of a particular religion. Some social thinkers believed rituals to be more important than religious belief itself in maintaining religious attitude.

Religion seeks to interpret and control man's relations to the forces of his physical and social environment. These forces are said to be under the control of some supernatural power. Religion pervades in all the societies. No doubt there is diversity, in the forms of religious belief and practice Hindu society attaches there importance to ceremonialism. Each religion has a central theme which is determined by the interest of the people.

Though religion is a highly personalized thing; yet it has a social aspect and social role to play. Religion explains individual sufferings. It enhances self-importance and is a source of social cohesion by possession of common social values. It is also an important agency of social control. The control by religion is very strong in the social sphere. Things that have religious sanction are easily propagated and circulated.

### **Religion and Social Change**

The most outstanding effect that industrialization has on religious, organization and belief is that of secularization. Secularization involves a reduction of religious control over everyday life and the substitution of rational for ritual action. The influence of secularization on Hinduism is greater than on other religions. The celebration of births, marriage, and death ceremonies and festivals is now less marked by the old rituals. The place of religion has definitely been on the wane in our daily life. With the diminishing influence of religion on life in general, the moral values such as honesty, faithfulness, truthfulness etc. are on the decline in our contemporary society. In times the societies world over are experiencing phenomenon of religious fundamentalism.

This phenomenon is creating havoc and generating violence in many countries. In India also we are experiencing the same phenomenon. This has given rise to communal feelings and violence in our society.

In modern industrial societies the need of religion is no less important as long as suffering exists in the world. There is much strain in modern life. Industrialization and science cannot solve all the problems of modern life therefore the need to preserve religion, which should guide mankind to solve the social economic

problems and suffering rather than for the purpo lausing God, has an urgency and istle role to play.

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#### **14.6. URBANIZATION:**

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In the recent past the growth of urban population in India has been rapid. The 1981 census shows the urban population at 24.43 per cent. Although urbanization and industrialization are associated in many ways, they are independently variable. No doubt, as a process it also occurs due to large changes in economic production. Urbanization is a way of life. This way of life indicates sophisticated living, wide acquaintance with things and genera awareness etc. It is difficult to define the terms 'urban and 'rural' generally the characteristics of size, density of population, heterogeneity and occupation show difference in urban and rural communities.

Urban areas or cities provide more opportunities for personal advancement than rural areas. This is one of the causes of large scale migration from villages to urban centers. These streams of, migrants make problems of adjustment in urban life. Rapid urbanization in our country is producing many socio-economic problems. Some rural areas are incorporated into metropolitan cities and lose much of their rural character. With raid communication and transportation, the isolation and self-sufficiency of villages have been steadily eroded.

The urbanization weakens the primary relationships and encourages individualism and lack of community feeling in urban areas. It also increases social disorganization. The problems of slums have cropped up because of housing shortage. Slums appear to be a nearly universal feature of city life. Slum areas generate crime, juvenile delinquency and prostitution in urban areas. The people live in miserable living conditions in these areas. The demand for houses, streets, water, lights, sewers and other social services increases. This diverts the capital resources, which are scarce particularly in developing countries, in providing these amenities. This in turn is leading to the lack of employment opportunities sought in urban areas.

Urbanization has a bright picture also, as it provides many facilities of making life comfortable. It provides ample opportunities for individual advancement. It has liberated women from exclusiveness of domesticity. But the dark side of urbanization industrialization blurs the bright picture of urban way of life.

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### **14.7. Industrial relations and Social Problems:**

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With the advent of industrialization workplace/organization and work environment have undergone a basic transformation in terms of the scale of production, employment of work /force in factories/industrial organizations and increased complexities in relationship between employers and workmen. 'Industrial Relations' constitute one of the most delicate and complex problems of modern industrial society. Technological advancement has eliminated long established jobs and created new avenues that require different patterns of experience and education.

According to Prof. J.H. Richardson, "Industrial Relation is an art of living together for purpose of production". According to Prof. L.S. Kudchedkar, "Industrial relations are organized relations between two organized parties represented by employers and employees" forums regarding industrial matters of collective interests. Industrial relation is a unique relationship between two unequal classes i.e. capitalist and proletariat (Working class) which is governed by collective bargaining. It is a formal relationship between employer and employees. Conflict is inherent in the relationship between the two, which cannot be eliminated altogether. The industrial conflict can be managed and resolved by various methods such as collective bargaining, conciliation, Adjudication and Arbitration. Certainly the conflict between the employer and workmen can be minimized if not eliminated completely.

Industrialization has created many social problems. It has generated so called 'secondary relationships' which are the feature of industrial employment. It has become difficult to maintain primary social controls over the behavior of the individual/groups in an industrial and other social organizations. The strain of demands of modern industrial system/society results in frustration, value conflicts and loss of emotional security, which leads to apathy or alienation Thus, many social problems such as alcoholism, drug addiction and mental disorders are experienced in the society. The incidence of gambling and prostitution are also on the increase.

The characteristics of Indian Labour market are changing very rapidly. Indian workers in organized sector are no more exploited. They have also adjusted to urban ways of life.

One of the serious threats to the efficient conduct of modern industrial system seems to be the ravaging industrial disharmony. There is a growing consciousness of the effects of strikes/lock-outs to the economy as a whole. They should not be resorted to as arm-twisting device. Non-fulfillment of many demands of the workers has brought industrial unrest and protest. Violence erupts very frequently. It has resulted in destruction of property, burning of vehicles and even stabbing and cases of murders. |

Industrial peace and discipline is the need of the hour. It can be built upon the proper understanding of the mutual problems between employers and workers. Thus, there is a need to have an enlightened, responsible management and workers union in industries.

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**14.8. Questions:**

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1. Discuss the impact of industrialization on caste and joint family.
2. What changes are taking place in the institutions of marriage and religion due to industrialization?
3. Discuss the effects of urban life on the character of society.

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**14.9. Further Readings:**

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1. Urbanization and family Change. M.S. 'Gore, Popular Prakashan, Bombay, 1968.
2. Industrialization, B.F. Hoselitz & W.E. Moore (Ed) UNESCO orton (1968)
3. India: Social, M.N. Srinivas, Hindustan Publishing Corporation (India) Delhi, 1968.



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# UNIT -15

## Case Laws

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### Objectives:

This unit has been prepared to acquaint you with

- how cases are dealt in the courts of law.
- how one omission or fault causes violation of various provisions of the law
- how provision of various Acts are practically applied and legal principles are worked out through cases.

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### Structure:

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- 15.1 Introduction
- 15.2 Case (1) V.P. Gopala Rao v. Public Prosecutor, Andhra Pradesh.
  - 15.2 (a) Subject
  - 15.2 (b) Facts
  - 15.2 (c) Decision of the Supreme Court
  - 15.2 (d) Principles laid down
- 15.3 Case (2) Labourers working on Salal Hydro Project v. State of J.&K.
  - 15.3 (a) Subject
  - 15.3 (b) Facts
  - 15.3 (c) Decision of the Supreme Court
  - 15.3 (d) Principles laid down
- 15.4 Case (3) Mukesh Advani V/S State of M.P.
  - 15.4 (a) Subject
  - 15.4 (b) Facts
  - 15.4 (c) Decision of the Supreme Court
  - 15.4 (d) Principles laid down
- 15.5 Self assessment test
- 15.6 Important legal words
- 15.7 Further readings

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**15.1 INTRODUCTION:**

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According to the concept of "Welfare State", Labour legislation prescribes minimum welfare standards of employment for workers. It is the duty of the State machinery to implement these laws. If provisions of Welfare Laws are not implemented, people have right to seek the remedy from the Court. The Supreme Court and High Court may direct the executive for implementation and periodical supervision of labour welfare provisions and the Tribunals may direct the executive for implementation of the welfare provision.

For the purpose Unit 15 deals with the details of the three cases prescribed for the present study. Each case contains subject, Facts, Judgment and Principles lay down. Study of these cases in the light of provisions of different Acts, prescribed in your course, will enlighten you to make up your mind to be a good scholar in scholar your particular discipline.

**15. - CASE - I**  
**V.P. GOPAL RAO .....Appellant,**  
**Versus**  
**Public Prosecutor, Andhra Pradesh.....Respondent**  
**A.I.R. 1970 S.C. 66**

**15.2 (a) SUBJECT**

The present appeal has been filed against the conviction under Section 92 for contravention of Section 6 (1) of the Factories Act, 1948 and Rules 3 and 5 (3) of the Andhra Pradesh Factory Rules, 1950.

In this case Supreme Court affirming the view of High Court, explained the scope of Sections 2 (m), 2 (k) (i) and 2 (1) of the Factories Act, 1948 with respect to the disputed premises. It was held that the process of moistening, stripping and packing of sun cured tobacco leaves are "manufacturing processes."

**15.2 (b) FACTS**

The appellant was the occupier-cum-manager of the M/s. Golden Tobacco (Pvt. Ltd.). Company's premise was at Uluru in Andhra Pradesh. At Uluru, sun cured

country tobacco was purchased from local producers. It was collected, processed and stored and then transported to the company's factory at Bombay. According to the prosecution, appellant was operating the factory without obtaining a license from the Chief Inspector of Factories and his previous permission approving the plans of the building. The appellant was prosecuted and tried for contravention of Section 6 (1) of the Factories Act, 1948 and rule 3 and 5 (3) of the Andhra Pradesh Factory Rules, 1950.

### **In Trial Court**

The Munsif Magistrate, Uluru accepted the defense contention and acquitted the appellant. According to the Magistrate, the prosecution failed to establish the premises were a factory, or that any manufacturing process was carried on, or that any worker was working therein.

### **In appellate Court**

On and appeal against the order of the Magistrate the Andhra Pradesh High Court allowed the appeal, Section 92 for contravention of Section 6 (1) and rules 3 and 5 (3), and sentenced him to pay a fine of Rs. 50/- under each count.

Aggrieved by the order of the High Court the appellant filed a special leave under Article 136 of the Indian constitution.

## **15.2 (c) DECISION OF THE SUPREME COURT**

Justice Bachawat delivered the judgment of the Court, on behalf of three judges. The question in this appeal was whether the Company's premises of Eluru constitute a "factory" under Section 2(m) of the Factories Act under section 2(m) "factory" means any premises including the precincts there of "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 with the aid of power, or is ordinarily so carried on." It was not disputed that more than 20 persons were working on the premises. The points in issue were:

- (1) Whether any "manufacturing process" was being carried on therein?
- (2) Whether persons, who were working on the premises, were "workers"?

### **(1) Manufacturing process**

In order to appreciate the first issue it is necessary to examine the meaning of "manufacturing process" defined under section 2(k) which reads as under:

“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.”

It is evident from the facts that in the Company’s Eluru premises, sun-cured tobacco leaves brought from the growers were subjected to the process of moistening, stripping and packing. To handle tobacco leaves without breakage, moistening was done for 10 to 14 days by sprinkling water on stacks of tobacco, and shifting the top and bottom layers. The wholly spoilt and partly spoilt leaves were separated. The leaves were tied up in bundles and stored in the premises. From time to time they were packed in gunny bags and exported to the Company’s factory at Bombay, where they were used for manufacturing cigarettes.

According to the Court the moistening was an adaptation of the tobacco leaves. The stacks were stripped by breaking them up. The leaves were packed by bundling them up and putting them into the gunny bags. The breaking up, the adaptation and the packing of the tobacco leaves were done with a view to their use and transport. The Court accordingly held that all these processes were “manufacturing processes” under Section 2(k) (1) of the Factories Act, 1948.

**(ii) Workers**

The next question was whether 20 or more persons worked on the premises. On behalf of the appellant, it was admitted that more than 20 persons worked there. But his contention was that they were employed by independent contractors and were not worker as defined in the Section 2 (c) of the Factories Act, 1948. Section 2(1) defines “Worker” to mean “a person employed, directly or through any agency, whether for wages or not, in any manufacturing process or in cleaning any part of the machinery or premises used for a manufacturing process, or the subject of the manufacturing process.”

In the present case, the prosecution relied on

(i) six returns submitted by the Eluru, establishment to the Regional Provident Fund Commissioner; (

(ii) the testimony of P.W.I., Subbarao the Assistant Inspector of Factories;

(iii) report of inspection of the premises on Dec.20, 1965 (P-I) and the appellant’s reply for the show causes notice (p-5) dated Jan. 15, 1966.

Monthly returns from July to Dec., 1966, disclosed the number and names of about 200 persons employed every month; and the recoveries from the wages, and the

company's contributions, on account of the Provident Fund. These returns have included all persons employed in the Eluru establishment, either by the management or by or through a contractor.

The testimony of the Assistant Inspector of the Factories showed that on Dec. 20, 1965, he had found 120 workmen working in the premises, doing the work of stripping stalks from the tobacco leaves. The work of stripping was being done under the supervision of the management's clerk who had noted the quantity of the work done, at the end of the day. Some workmen were doing other work. This was corroborated by his inspection report which was not disputed by the appellant. The Court held that "it is not disputed that more than 20 persons worked in the premises regularly every day. There is the positive evidence that the work of stripping stalks from the tobacco leaves, was done under the supervision of the management. There is no evidence to show that the other work in the premises was not done under the like supervision. The prosecution adduced prima facie evidence showing that the 'relationship of master and servant existed between the workmen and the management'.

The Court, therefore, held that the persons employed were workers as defined in Section 2(1) and the company's premises at Eluru constituted a "factory". As a result of the facts the appeal was dismissed.

### **15.2 (d) PRINCIPLES LAID DOWN**

(1) The processes of moistening, stripping and packing of sun-cured tobacco leaves, with a view to their use and transport, is a "manufacturing process".

(2) If more than 20 persons are employed under the supervision of the management in a premise, where the manufacturing process is carried on, the persons employed are workers and the premise is a factory.

## **15.- CASE - 2**

**Labourers working on Salal Hydro Project.....Petitioner  
VERSUS**

**State of Jammu and Kashmir and others..... Respondents**

**A.I.R. 1984 S.C. 177.**

### **15.3 (a) SUBJECT**

In this case, by way of public interest litigation under Article 32 of the Constitution, the Supreme Court directed the Central Govt. to implement the provisions of the Inter State Migrant Workmen (Regulation of employment and Conditions of Service) Act, 1979, The Contract Labour (Regulation and Abolition) Act, 1970, Article 24 of The Constitution of India, 1950 and Minimum Wages Act, 1948. The Court further directed the Central Government to carry out "regular, frequent and effective inspection to enforce the provisions of the aforesaid Act for the benefit of the workmen employed on the Salal Hydro Electric Project, Jammu & Kashmir. The Court also directed the Central Government to see that children of construction workers be provided with the facilities of schooling.

### **15.3 (b) FACTS**

This litigation started on the basis of a letter addressed by the People's Union for Democratic Rights to Mr. Justice D.A. Desai enclosing a copy of the news item, which appeared in the issue of Indian Express dated August; 26, 1982. In the news, it was pointed out that workmen including Orriya and other workmen, working on the Salal Hydro Electric Project were denied the benefit of various labour laws and were subjected to exploitation by the sub-contractors.

The Salal Hydro Electric Project is a power project, undertaken by the Government of India for generation of electric power, utilizing the water of the river Chenab Government of India has entrusted it to the National Hydro Electric Power Corporation for the execution on 'agency basis'. Certain provisions of the work are being executed by the National Hydro Electric Power Corporation itself, through their directly employed workmen, while other portions of the work are entrusted to different contractors. These contractors are doing a part of their work through workmen directly employed by them, while another part of the work has been allotted by them to sub-contractors described as piece-wagers.

#### **Action taken and directions issued by the Court**

(1) The above letter was treated as a writ petition and by an order dated Sept. 10, 1982, the Union of India, the State of Jammu and Kashmir and others were directed to appear as respondents to the writ petition and notice to show cause against the writ petition was issued to them.

(2) The Court also directed the Labour Commissioner, Jammu to visit the site of the Salal Hydro Electric Project and ascertain the following things:

(i) Whether there are any bonded labourers employed on this project and if so, to furnish their names;

(ii) Whether there are any migrant workmen who have come from other States;

(iii) What are the conditions in which the workers are living, and

(iv) Whether the labour laws enacted for their benefit are being observed and implemented.

(3) Pursuant to this order made by the Supreme Court, the Labour Commissioner, Jammu visited the site of the Project and made an interim report on October 11, 1982 and this was followed by a final report dated October 15, 1982. On November 3, 1982 the Court directed that since the report of the Labour Commissioner Jammu disclosed that this project was being carried out by the government of India, the Union of India and the Chief Labour Commissioner (Central) may also be added as respondents to the writ petition.

(4) The Court also directed the Union of India and the Chief Labour Commissioner (Central) that they should file their affidavit within two weeks, replying about the disclosures made in the two reports of the Labour Commissioner.

Pursuant to this order, an affidavit dated Dec. 14, 1982 was filed by H.S. Raju, Deputy Secretary to the Govt. of India in the Ministry of Labour on behalf of the Union of India.

### **15.3 (c) DECISION OF THE SUPREME COURT**

The Supreme Court heard the writ petition in the light of the two reports made by the Labour Commissioner, Jammu and the affidavit filed by Mr. H.S. Raju on behalf of Union of India and gave a judgment on March 2, 1983.

The question raised in this petition was, whether the workmen employed on the project work were ensured the rights and benefits provided to them under various labour laws such as the Contract Labour (Regulation and Abolition) Act, 1970, the Minimum Wages Act, 1948 and the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.

Justice P.N. Bhagwati gave his rulings on the following points in his judgment:

(1) The Contract Labour (Regulation and Abolition) Act-1970 is being applicable to the establishment pertaining to the project work. The Executive Engineers of the

National Hydro Electric Power Corporation having supervision and control over the respective establishment are registered as principal employers.

The contractors who are executing different portions of work are license under the provisions of this act. But the sub-contractors or piece wagers, to whom different portions of the work had been entrusted by the contractors, did not hold any license. Although they fell within the definition of the word 'Contractor' in Section 2(c) of the Contract Labour Act-1956, since the project work is being carried on by or under the authority of the Central Government, the Central Government is the appropriate Government for this project work.

The Court therefore by its judgment directed the Central Government to ensure that the sub-contractors or piece-wagers do not execute any portion of the project work without obtaining a license under Section 12 (1).

(2) The Court pointed out that according to final report, though the Corporation had provided 'Canteen' and rest rooms to its workmen, as required by the Sections 16 and 17 of the Contract Labour Act-1970, but the contractors and piece wagers of sub-contractors had not provided such canteens and rest room. They had also not provided adequate washing facilities at work sites under Section 18 (c) of this Act. So far as medical facilities were concerned, according to final report, adequate medical care had been provided to all the workmen employed on the project site. The Court, therefore, directed the Central Government to take immediate steps for ensuring that canteens, rest rooms and washing facilities are provided by the contractors and the piece wagers or sub-contractors, to the workmen in accordance with the Sections 16,17 and 18 (c) read with rules 41 to 50 and 57.

(3) The Court accepted that according to final report, there was no other irregularity in the payment of wages, about the workmen of the Corporation and contractors. In case of workmen employed by the piece wagers or sub-contractors, payment of wages was made directly only to those workmen who were employed individually. But to other workmen like Oriya labourers, who were employed in groups, wages were paid through Khatedars. There were complaints of the deductions on account of advance made to the workmen and messing charges etc. Complaints about nonpayment of wages for weekly' of days and 50% payment of overtime wages to the workmen employed through khatedars, were also pointed out in final report.



The Court gave directions in the judgment that the payment of wages, whether normal or overtime, to the workmen employed by the piece wagers or sub-contractors, should be made: directly without the intervention of any Khatedar. Such payment of wages should be made without making any deduction except authorized by statute, in the presence of an authorized representative of the Central Government.

(4) So far as the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 is concerned, the Labour Commissioner Jammu and Kashmir clearly point out the total negation of implementation of its provisions. According to his final, report, Oriya workmen who are employed on the project site-were recruited by Khatedars from their villages in Orissa. They were brought to the project city for work and would clearly be "Inter State Migrant Workmen" under Section 2(e).

In the affidavit filed by Mr. H.S. Raju, the following explanations were given:

(i) Most of the workmen from other states have gone to Salal Project for work on their own. They are therefore not migrant workmen within the meaning of the term used in the Inter State Migrant Workmen Act.

(ii) The notification for appointment of various authorities in this Act was issued in June, 1982 whereas this Act had come into force on Oct. 2, 1980.

The Court pointed out that Central Government cannot escape from its obligation to enforce the provisions of the Inter Stat Migrant Workmen Act on this plea. There was no justification for the Central Government to delay any longer the implementation when the Act and the Rules had come into force with effect from Oct. 2, 1980.

The Court directed the Central Government to take immediate steps for enforcement of the provisions of the Inter State Migrant Workmen Act and the Rules made under it; in regard to workmen employed in the project work. Court also directed the Central Government to file and affidavit within one month about implementation of the provisions of this Act.

(5) The final report of the Labour Commissioner, Jammu and Kashmir pointed out that there was no evidence of any worker having been detained and not allowed to go home against his wish.

The Court ruled out that there was no violation of the provisions of the Bonded labour System (Abolition) Act, 1976.

(6) It was pointed out in the final report that some minors were found to have been employed on the project site. The Court directed that in compliance with the requirements of Article 24 of the Constitution, no child below the age of 14 years should be employed in the project work. The Court pointed out that, Central Government should take care to see that necessary facilities for schooling were provided to these children of construction workers.

(7) It was also pointed out in the final report that the Corporation, Contractors and Sub-Contractors or piece wagers are paying to their workmen at the rate of Rs. 9/- per day as per minimum wages prescribed by Central Government payable to the workmen of the construction industry, whereas the minimum wages payable to the workmen for same work, was Rs. 10/- as notified by the State of Jammu and Kashmir. The Court directed the Central Government to remove this anomalous situation.

(8) The Court also directed to the Central Government to carry out regular frequent and effective inspections to enforce all the above provisions of various labour laws.

(9) The Supreme Court adjourned the writ petition to May 6, 1983 to take it up for further hearing after receiving report from Central Government in accordance with the directions given in this judgment.

### **15.3 (d) PRENCIPLES LAID DOWN**

The Supreme Court pointed out that Central Government cannot escape from its obligation to enforce the various provisions of the Inter State Migrant workmen (Regulation of employment and conditions of service) Act, 1979 whether contract Labour regulation and Abolition) Act, 1970 Article 24 of the constitution and the Minimum Wages Act, 1948. The act is applicable to the workers employed in the project in a State.

**15. CASE - 3**  
**Mukesh Adwani .....Petitioner**  
**VERSUS**  
**State of M.P. ....Respondent,**

## **A.I.R. 1985 S.C. 1363**

### **15.4 (a) SUBJECT**

In this case, petitioner addressed a letter to one of the judges of the Supreme Court along with a cutting from a newspaper. This letter was treated as a writ petition under Article 32 of the Constitution of India, as public interest litigation. The writ petition was based on the Sections 2 (d), (e), (f), (h), 6, 7, 10, to 12 of the Bonded Labour System (Abolition) Act, 1976. The Court directed Union of India and Government of M.P. to implement provisions of Section 5 of the Minimum Wages Act, 1948, Sections 3 and 7 of the Payment of Wages Act-1936, Article 38, 41, 42 and 43 of the Constitution of India, and setting up of effective implementation machines jointly.

### **15.4 (b) FACTS**

In the newspaper "Indian Express" dated September 14, 1982, a news about the horrid plight of the bonded labour working in flagstone quarries at Raisen in Madhya Pradesh was exposed by the reporter Mr. N.K.Singh. Along with the cutting of the above news, the petitioner Mukesh Advani addressed a letter to one of the Judges of the Supreme Court on 23rd September, 1982.

### **ALLEGATIONS**

(i) It was alleged that the contractors who operated the mines, recruit labour force from Tamilnadu. Every one recruited to work was paid roughly an advance of Rs. 1000/- and then brought to work at the mines. This amount of Rs. 1000/- is reimbursable by monthly deductions from their wages. But the method of accounting is so much manipulated that the debt of Rs. 1000/- is never wiped out and on the contrary, it increases by geometrical proportions. The workman goes deeper into ineptness with the result that he becomes a bonded labour.

(ii) The working conditions are inhuman and unjust. Not a single legislation enacted for the welfare of labourers is implemented or respected. There is no weekly holiday. Sanitary conditions are in deplorable state. During the rainy season mines are closed so the workmen are not paid wages. No workman can leave the employment until the entire debt is repaid which is beyond the reach of the workman.

(iii) It was alleged that the functionaries of the Labour Department of the Centre and the State are not effective to stop this exploitation.

(iv) It was alleged that, in the absence of a notification, specifying minimum wages for the labour force employed in the flagstone mines; there is naked and unabashed exploitation of workmen.

### **ACTION TAKEN BY THE SUPREME COURT**

(i) the above letter was treated as a Writ Petition under Article 32 of the Constitution of India

(ii) A notice was ordered to be issued on dated Oct. 7, 1982, to the Deputy Commissioner/Collector, Bhopal.

(iii) The District Judge, Bhopal was directed to proceed to the site of stone quarries at Raisen and ascertain the existence of bonded labour and to submit a detailed report of the working condition in the mines. He was also directed that he may take assistance of Mr. N.K. Singh, who had exposed the situation as it existed.

(iv) The Legal Aid Committee was also directed to deposit a sum of Rs. 1000/- with the Registrar of the Supreme Court to meet the expenses of the District Judge in carrying out his assignments.

### **REPORT SUBMITTED BY THE DISTRICT JUDGE, BHOPAL**

In the detailed report submitted by the District Judge, the following facts were pointed out:

(i) The Tamil labourers working in Raisen mines had made a complaint on May 24, 1980 to the Govt. M.P. about in human treatment given by quarry contractor. This Complaint was forwarded to the Superintendent of police Raison to enquire into the matter. He submitted a report that 48 workmen from Tamilnadu had been released and they had returned to Tamilnadu. Again a report on Sept. 8, 1980 was lodged at Police Station, Raison by seven workmen about their harassment. In which it was alleged that the quarry contractor Hamid Khan was making claim from each of them to repay Rs. 15,000/- to 16,000/- towards advance taken by them. The workmen were paid less than what was agreed at the time recruitment. They were not free to leave the employment and they lived a captive's life. On the complaint an offence was registered at the Police Station under Bonded Labour System (Abolition) Act, 1976. At the time of the report, the case was pending.

(ii) The District Judge further pointed out that there is a piece rate method of paying wages. The piece rate ranges from Rs. 10/- to Rs. 20/- for a standard Khanti

(a big piece of stone of size 101x10'x1'). After the Khanti is dug, it is to be cut nicely into slabs of specified sizes if the slabs are not properly severed from the stone, the workmen is not paid anything. A pair of male and female is assigned to a Khanti and earns Rs. 5/- to 10/- per day, out of which unauthorized and impermissible deductions are made leaving the workman very little to survive.

(iii) He found that restraints were put on the workmen to leave the job. But one a quarry contractor was subject to detailed enquiry he stopped recovery of the advances and removed all restraints. This had happened when the District Judge made his enquiry the Thus, there was no bonded labour. Workmen had left their shelters.

(iv) The District Judge also pointed out that there was total absence of implementation of the labour laws applicable to these quarries. Madhya Pradesh Government in its affidavit admitted in the above facts and expressed that in respect of flagstones mines, Central Government was the appropriate Government. Central Government had appointed only one inspector for 11 districts with the result that welfare laws for workmen were not implemented.

#### **15.4(c) DECISION OF THE COURT**

The Supreme Court gave high priority to the statutory prescription of minimum wages. For this purpose the court served notices on the State of Tamilnadu and Union of India by November 23, 1982 and on failure of speedy action time and again directed the Union of India as "appropriate Government" to issue a preliminary notification under Section 5 of the Minimum Wages Act, 1948.

However a preliminary notification under section 5 of the Minimum Wages Act was actually issued on Oct. 31, 1983 by Government of India, prescribing minimum piece rate of wages for various occupation in flagstone mines and a copy of notification dated March 23, 1984 specifying the minimum wages for such occupations was submitted to the court in April 1984. As a first step the notification prescribing minimum wages had been issued, the Supreme Court disposed of this petition, hoping for an effective implementation of various labour laws.

#### **15.4(d) PRINCIPLES LAID DOWN**

1. The Supreme Court can entertain petitions-on the basis of a letter written by such persons containing a complaint is bonded labour.
2. Mines are playing an important role in National Economy. For various operations in mines, there will be contractors and workmen. Contractor takes contract to get profit, even at lowest bid. For this, he uses all notorious methods of exploitations. He violates many labour laws prescribing minimum standards for working hours, weekly holidays, wages, working conditions etc. On the other hand the State or an appropriate Government is obliged under Article 38, 41, 42, 43 to extend the umbrella of protection to these poor, needy and innocent workmen. The unprotected workmen are unable to negotiate on terms of equality and may accept any term to stave of hunger and destitution. It is / the duty of the State to regularize such employments and to set up such a machinery for an effective implementation of various labour laws.

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### **15.5 SELF-ASSESSMENT TEST:**

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Answer the following questions in brief and explain what you have understood through this unit.

1. State the facts and principles of law laid down in V.P. Gopala Rao's Case.
2. State the facts of the Salal Hydro Electric Project case.
3. Discuss Bonded Labour with reference to Mukesh Advani's Case.
4. State the principles laid down in Mukesh Advani's Case.
5. Discuss the term "Interstate Migrant Worker" and Sub-Contractors as per Salal Hydro Electric Project Case.
6. Write case comments on any one of the cases prescribed for Case Law in this unit.

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### **15.6 IMPORTANT LEGAL TERMS INTER-STATE MIGRANT WORKMEN:**

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Any person who is recruited by or through a contractor for employment in one state under an agreement or other arrangements in an establishment in other state, whether with or without the knowledge of the principal employer in relation to such establishment [See Section 2(e) of the Inter State Migrant Workmen (Regulation of employment and conditions of Service) Act, 1979.]

#### **Contract Labour**

A workman hired through a contractor in connection with the work of an establishment, with or without the knowledge of the principal employer.

**Minimum Wages:**

Minimum limit of wages essential to maintain the working capacity of a workman.

**Sub-Contractor:**

A person who supplies contract labour for any work of the establishment or who undertakes to produce a given result for the establishment is known as 'Contractor' and includes a sub-contractor.

**Bonded Laborer:**

Any laborer who incurs, or has, or is presumed to have, incurred, a bonded debt. S. 2(F)

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**15.7 FURTHER READINGS:**

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1. The All India Reporter, 1970 Vol. 57.
2. The All India Reporter, 1984 Vol. 71.
3. The All India Reporter, 1985. Vol. 72.
4. The Factories Act, 1948.
5. The Inter State Migrant Workmen (Regulation of employment and conditions of Service) Act, 1979.
6. The Contract Labour (Regulation and Abolition) Act, 1970.
7. The Minimum Wages Act, 1948.
8. The Bonded Labour System (Abolition) Act, 1976.
9. The Payment of Wages Act, 1936.
10. The Constitution of India, 1950.
11. Industrial Law P.L. Malik, (15th Edition) Eastern Book Company, Lucknow.

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# UNIT -16

## The Motor Transport Workers Act, 1961

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### Objectives

The object of this unit is to apprise the student about the

- Meaning of “motor transport worker” , “Motor Transport Undertaking” .
- Welfare provisions provided for the Motor Transport Workers and to regulate the conditions of their work.
- Working hours provisions provided for the Motor Transport Workers
- Requirement to get the undertaking registered under the provisions of the Act.
- Provisions of penalty in case of violations of the provisions of the Act.

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### Structure

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- 16.1 Introduction
- 16.2 Preliminary and Definition in the Act
- 16.3 Registration of Motor Transport Undertakings
- 16.4 Welfare and Health of Motor Transport Workers
- 16.5 Hours and Limitations of Employment of Motor Transport Workers
- 16.6 Employment of Young Persons as Motor Transport Workers
- 16.7 Wages and Leave for Motor Transport Workers
- 16.8 Penalties and Procedure for them
- 16.9 Miscellaneous Provisions
- 16.10 Summary
- 16.11 Self assessment Tests
- 16.12 Suggested Reference Books



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## 16.1 Introduction

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Before the enactment of the Motor Transport workers Act, 1961 there were enactments like the Motor Vehicles Act, 1939 and the Factories Act, 1948, which cover certain sections of motor transport workers and certain aspects of their conditions of employment. There was, however, no independent legislation applicable to motor transport workers as a whole or for regulating the various aspects of their conditions of employment work and wages. It was considered desirable to have a separate legislative measure for motor transport workers which would cover matters like medical and welfare facilities, hours of work spread-over, rest periods, overtime, annual leave with wages, etc., on the analogy of similar enactments for workers in factories, mines and plantations.

The present Act is intended to achieve these objects.

The Motor Transport Workers Bill received the assent of the President on 20th May, 1961 after being passed by both the Houses of Parliament and came into force as the Motor Transport workers Act, 1961 (27 of 1961).

It has been amended asunder thereafter.

1. The Central Labour Laws (Extension to Jammu and Kashmir) Act, 1970 (51 of 1970).
2. The Delegated Legislative Provisions (Amendment) Act, 1985 (4 of 1986)

***The Act has Nine Chapters.***

***The first Chapter is Preliminary with following provisions in two Sections:***

**The section 1 of the Act it provides for Short title, extent, commencement and application:-** (1) This Act may be called the Motor Transport Workers Act, 1961<sup>12</sup>.

(2) It extends to the whole of India <sup>13</sup>.

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<sup>12</sup> This Act has been extended to Dadra and Nagar Haveli by Regulation 6 of 1963, sec. 2 and Sch. I' Pondicherry by Regulation 7 of 1963, sec. 3 and Goa, Daman and Diu by Regulation II of 1963, sec. 3 and Sch

<sup>13</sup> The words "except the State of Jammu and Kashmir" omitted by Act 51 of 1970, sec. 2 and Sch. (w.e.f. 1-9-1971)

(3) It shall come into force on such date, not being later than the 31st day of March, 1962, as the

Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different States:

<sup>14</sup>[Provided that it shall come into force in the state of Jammu and Kashmir on the commencement of the Central Labour Laws (Extension to Jammu and Kashmir) Act 1970 (51 of 1970)].

(4) It applies to every motor transport undertaking employing five or more motor transport workers :

Provided that the state Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply all or any of the provisions of this Act to any motor transport undertaking employing less than five motor transport workers.

### **Section 2 of the Act provides meaning and Definitions of the various terminology used in the Act.**

In this Act, unless the context otherwise requires, -

(a) **“adolescent”** means a person who has completed his fifteenth year but has not completed his eighteenth year:

(b) **“adult”** means a person who has completed his eighteenth year:

(c) **“child”** means a person who has not completed his fifteenth year

(d) **“day”** means a period of twenty-four hours beginning at midnight:

Provided that where a motor transport worker's duty commences before midnight but extends beyond midnight, the following day for him shall be deemed to be the period of twenty-four hours beginning when such duty ends, and the hours he has worked after midnight shall be counted in the previous day.

(e) **“employer”** means, in relation to any motor transport undertaking, the person who, or the authority which, has the ultimate control over the affairs of the motor transport undertaking, and where the said affairs are entrusted to any other person whether called a manager, managing director, managing agent or by any other name, such other person,

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<sup>14</sup> Added by Act 51 of 1970, sec. 2 and Sch. (w.e.f. 1-9-1971))

**(f) "hours of work"** means the time during which a motor transport worker is at the disposal of the employer or of any other person entitled to claim his services and includes-

(i) The time spent in work done during the running time of the transport vehicle;

(ii) The time spent in subsidiary work; and

(iii) Periods of mere attendance at terminals of less than fifteen minutes.

Explanation - For the purpose of this clause -

**(1) "running time"** in relation to a working day means the time from the moment a transport vehicle starts functioning at the beginning of the working day until the moment when the transport vehicle ceases to function at the end of the working day, excluding any time during which the running of the transport vehicle is interrupted for a period exceeding such duration as may be prescribed during which period the persons who drive, or perform any other work in connection with the transport vehicle are free to dispose of their time as they please or are engaged in subsidiary work;

**(2) "Subsidiary work"** means work in connection with a transport vehicle, its passengers or its load which is done outside the running time of the transport vehicle, including in particular -

(i) work in connection with accounts, the paying in of cash, the signing of registers, the handling in of service sheets, the checking of tickets and other similar work;

(ii) the taking over and garaging of the transport vehicles;

(iii) Traveling from the place where a person signs on to the place where he takes over the transport vehicle and from the place where he leaves the transport vehicle to the place where he signs off;

(iv) work in connection with the upkeep and repair of the transport vehicle; and

(v) the loading and unloading of the transport vehicle;

**(3) "period of mere attendance"** means the period during which a person remains at his post solely in order to reply to possible calls or to resume action at the time fixed in the duty schedule;

**(g) “motor transport undertaking”** means a motor transport undertaking engaged in carrying passengers or goods or both by road for hire or reward, and includes a private carrier;

**(h) “motor transport worker”** means a person who is employed in a motor transport undertaking directly or through an agency, whether for wages or not, to work in a professional capacity on a transport vehicle or to attend to duties in connection with the arrival, departure, loading or unloading of such transport vehicle and includes a driver, conductor, cleaner, station staff, line checking staff, booking clerk, cash clerk, depot clerk, time-keeper, watchman or attendant, but except in section 8 does not include-

(i) any such person who is employed in a factory as defined in the Factories Act, 1948.

(ii) any such person to whom the provisions of any law for the time being in force regulating the Conditions of service of persons employed in shops or commercial establishments apply;

**(i) “prescribed”** means prescribed by rules made under this Act;

**( j ) “qualified medical practitioner”** means a person having a certificate granted by an authority specified in the Schedule to the Indian Medical Degrees Act, 1916 (7 of 1916), or notified under section 3 of that Act or specified in the schedules to the Indian medical council Act, 1956 (102 of 1956), and includes any person having a certificate granted under any Provincial or State Medical Council Act;

**(k) “spread-over”** means the period between the commencement of duty on any day and the termination of duty on that day;

**(l) “wages”** has the meaning assigned to it in clause (vi) of section 2 of the Payment of Wages Act, 1936 (4 of 1936);

**(m) “week”** means the period between midnight on Saturday night and midnight on the succeeding Saturday night;

**(n) all other words** and expressions used but not defined in this Act and defined in the Motor Vehicles Act, 1939 (4 of 1939), shall have the meanings respectively assigned to them in that Act.

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## ***16.2 Registration of Motor Transport Undertaking.***

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**Section 3 provides that** (1) Every employer of a motor transport undertaking to which this Act applies shall have the undertaking registered under this Act.

(2) An application for the registration of a motor transport undertaking shall be made by the employer to the prescribed authority in such form and within such time as may be prescribed.

(3) Where a motor transport undertaking is registered under this Act, there shall be issued to the employer a certificate of registration containing such particulars as may be prescribed.

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### ***16.3 Inspecting Staff***

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**Section 4 provides for Chief inspector and inspectors** (1) the State Government may, by notification in the Official Gazette, appoint for the State a duly qualified person to be the chief inspector and as many duly qualified persons to be inspectors subordinate to the chief inspector as it thinks fit.

(2) The chief inspector may declare the local limits within which inspectors shall exercise their powers under this Act, and may himself exercise the powers of an inspector within such local limits as maybe assigned to him by the State Government.

(3) The Chief inspector and all inspectors shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

#### **Section 5 provides for Powers of the inspectors**

(1) Subject to such conditions and restrictions as the State Government may by general or special order impose, the chief inspector or an inspector may--

(a) make such examination and inquiry as he thinks fit in order to ascertain whether the provisions of this Act or rules made there under are being observed in the case of any motor transport undertaking, and for that purpose

require the driver of a transport vehicle to cause the transport vehicle to stop and remain stationary so long as may reasonably be necessary;

(b) with such assistance, if any, as he thinks fit, enter, inspect and search any premises which he has reason to believe is under use or occupation of any motor transport undertaking at any reasonable time for the purpose of carrying out the objects of the Act;

(c) examine any motor transport worker employed in a motor transport undertaking or require the production of any register or other document maintained in pursuance of this Act, and take on the spot or otherwise statements of any person which he may consider necessary for carrying out the purposes of this Act;

(d) seize or take copy of such registers or documents 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 an employer;

(e) exercise such other powers as may be prescribed;

Provided that no person shall be compelled under this sub-section to answer any question or make any statement tending to incriminate him.

(2) The provisions of the Code of criminal Procedure, 1898 (5 of 1898), shall, so far as may be, apply to any search or seizure under this section as they apply to any search or seizure made under the authority of a warrant issued under section 98 of the said Code.

### **Section 6 provides for the Facilities to be afforded to inspectors**

Every employer shall afford the chief inspector and an Inspector all reasonable facilities for making any entry, inspection, examination or inquiry under this Act.

### **Section 7 provides for Certifying surgeons with these provisions**

(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 motor transport undertakings or class of motor transport undertakings as it may assign to them respectively.

(2) The certifying surgeon shall perform such duties as may be prescribed in connection with--

- (a) the examination and certification of motor transport workers;
- (b) the exercise of such medical supervision as may be prescribed where adolescents are, or are to be, employed as motor transport workers in any work in any motor transport undertaking which is likely to cause injury to their health.

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## **16.4 Welfare and health provisions applicable**

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**Section 8 provides for Canteens with following provisions** (1) The State Government may make rules requiring that in every place wherein one hundred motor transport workers or more employed in a motor transport undertaking ordinarily call on duty during every day, one or more canteens shall be provided and maintained by the employer for the use of the motor transport workers.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for --

- (a) the date by which the canteens shall be provided;
- (b) the number of canteens that shall be provided and the standards in respect of construction, accommodation, furniture and other equipment of the canteens;
- (c) the foodstuffs which may be served therein and the charges which may be made there for;
- (d) the constitution of a managing committee for a canteen and the representation of the motor transport workers in the management of the canteen.

(3) The State Government may, subject to such conditions as it may impose, delegate to the chief inspector the power to make rules with reference to clause (c) sub-section (2).

### **Section 9 provides for the Rest rooms with following provisions**

(1) In every place wherein motor transport workers employed in a motor transport undertaking are required to halt at night, there shall be provided and maintained the employer for the use of those motor transport

workers such number of rest rooms or such other suitable alternative accommodation, as may be prescribed.

(2) The rest rooms or the 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.

(3) The State Government may prescribe the standards in respect of construction, accommodation, furniture and other equipment of rest rooms or the alternative accommodation to be provided under this section.

### **Section 10 provides for the Uniforms with following provisions**

(1) The State Government may, by notification in the Official Gazette, make rules requiring an employer of a motor transport undertaking to provide for the drivers, conductors and line checking staff employed in that undertaking such number and type of uniforms, raincoats or other like amenities for their protection from rain or cold as may be specified in the rules.

(2) There shall be paid to the drivers, conductors and line checking staff by the employer an allowance for washing of uniforms provided under sub-section (1) at such rates as may be prescribed; Provided that no such allowance shall be payable by an employer who has made at his own cost adequate arrangements for the washing of uniforms.

### **Section 11 provides for the Medical facilities with following provisions**

There shall be provided and maintained by the employer so as to be readily available such medical facilities for the motor transport workers at such operating centers and halting stations as may be prescribed by the State government.

### **Section 12 provides for the First-aid facilities with following provisions**

(1) There shall be provided and maintained by the employer so as to be readily accessible during all working hours a first –aid box equipped with the prescribed contents in every transport vehicle.



(2) Nothing except the prescribed contents shall be kept in a first-aid box.

(3) The first-aid box shall be kept in the charge of the driver or the conductor of the transport vehicle who shall be provided facilities for training in the use thereof.

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## ***16.5 HOURS OF WORK AND LIMITATION OF EMPLOYMENT***

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### **13. Hours of work for adult motor transport workers**

No adult motor transport worker shall be required or allowed to work for more than eight hours in any day and forty-eight hours in any week:

Provided that where any such motor transport worker is engaged in the running of any motor transport service on such long distance routes, or on such festive and other occasions as may be notified in the prescribed manner by the prescribed authority, the employer may, with the approval of such authority, require or allow such motor transport worker to work for more than eight hours in any day or forty-eight hours in any week but in no case for more than ten hours in a day and fifty-four in hours in a week, as the case may be :

Provided further that in the case of a breakdown or dislocation of a motor transport service or interruption of traffic or act of God, the employer may, subject to such conditions and limitations as may be prescribed, require or allow any such motor transport worker to work for more than eight hours in any day in any week.

### **14. Hours of work for adolescents employed as motor transport workers.**

No adolescent shall be employed or required to work as a motor transport worker in any motor transport undertaking--

- (a) for more than six hours a day including rest interval of half-an-hour;
- (b) between the hours of 10 P.M. and 6 A.M.

### **15. Daily intervals for rest**

(1) The hours of work in relation to adult motor transport workers on each day shall be so fixed that no period of work shall exceed five hours and that no such motor transport worker shall work for more than five hours before he has had an interval for rest for at least half-an-hour;

Provided that the provisions of this sub-section in so far as they relate to interval for rest shall not apply to a motor transport worker who is not required to work for more than six hours on that day.

(2) The hours of work on each day shall be so fixed that a motor transport worker is, except in any case referred to in the second provision to section 13, allowed a period of rest of at least nine consecutive hours between the termination of duty on any one day and the commencement of duty on the next following day.

### **16. Spread-over**

(1) The hours of work of an adult motor transport worker shall, except in any case referred to in the second provision to section 13 be so arranged that inclusive of interval for rest under section 15, they shall not spread-over more than twelve hours in any day.

(2) The hours of work of an adolescent motor transport worker shall be so arranged that inclusive of interval for rest under section 14, they shall not spread-over more than nine hours in any day.

### **17. Split duty**

Subject to the other provisions contained in this Act, the hours of work of a motor transport worker shall not be split into more than two spells on any day.

### **18. Notice of hours of work**

(1) There shall be displayed and correctly maintained by every employer a notice of hours of work in such form and manner as may be prescribed showing clearly for every day the hours during which motor transport workers may be required to work.

(2) Subject to the other provisions contained in this Act, no such motor transport worker shall be

Required or allowed to work otherwise than in accordance with the notice of hours of work so displayed.

### **19. Weekly rest**

(1) The State Government may, by notification in the Official Gazette, make rules

providing for a day of rest in every period of seven days, which shall be allowed to all motor transport workers.

(2) Notwithstanding anything contained in sub-section (1), an employer may, in order to prevent any dislocation of a motor transport service, require a motor transport worker to work on any day of rest which is not a holiday so, however, that the motor transport worker does not work for more than ten days consecutively without a holiday for a whole day intervening.

(3) Nothing contained in sub-section (1) shall apply to any motor transport worker whose total period of employment including any day spent on leave is less than six day.

### **20. Compensatory day of rest**

Where, as a result of any exemption granted to an employer under the provisions of this Act from the operation of section 19, a motor transport worker is deprived of any of the days of rest to which he is entitled under that section, the motor transport worker shall be allowed within the month in which the days of rest are due to him or within two months immediately following that month, compensatory days of rest of equal number to the days of rest so lost.

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## **16.6 EMPLOYMENT OF YOUNG PERSONS**

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**21. Prohibition of employment of children.--**No child shall be required or allowed to work in any capacity in any motor transport undertaking.

**22. Adolescents employed as motor transport workers to carry tokens.**--No adolescent shall be required or allowed to work as a motor transport worker in any motor transport undertaking unless--

(a) a certificate of fitness granted with reference to him under section 23 is in the custody of the employer; and

(b) such adolescent carries with him while he is at work a token giving a reference to such certificate.

### **23. Certificate of fitness**

(1) A certifying surgeon shall, on the application of any adolescent or his parent or guardian accompanied by a document signed by the employer or any other person on his behalf that such person will be employed as a motor transport worker in a motor transport undertaking if certified

to be fit for that work, or on the application of the employer or any other person on his behalf with reference to any adolescent intending to work, examine such person and ascertain his fitness for work as a motor transport worker.

(2) A certificate of fitness granted under this section shall be valid for a period of twelve months from the date thereof, but may be renewed.

(3) Any fee payable for a certificate under this section shall be paid by the employer and shall not be recoverable from the adolescent, his parent or guardian.

**24. Power to require medical examination.**--Where an inspector is of opinion that a motor transport worker working in any motor transport undertaking without a certificate of fitness is an adolescent, the inspector may serve on the employer a notice requiring that such adolescent motor transport worker shall be examined by a certifying surgeon and such adolescent motor transport worker shall not, if the inspector so directs, be employed or permitted to work in any motor transport undertaking until he has been so examined and has been granted a certificate of fitness under section 23.

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## **16.7 WAGES AND LEAVE**

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**25. Act 4 of 1936 to apply to payment of wages to motor transport workers.--**The payment of

Wages Act, 1936, as in force for the time being, shall apply to motor transport workers engaged in a motor transport undertaking as it applies to wages payable in an industrial establishment as if the said Act had been extended to the payment of wages of such motor transport workers by a notification of the State Government under sub-section (5) of section I thereof, and as if a motor transport undertaking were an industrial establishment within the meaning of the said Act.

**26. Extra wages for overtime**

(1) Where an adult motor transport worker works for more than eight hours in any day in any case referred to in the first provision to section 13 or where he is required to work on any day of rest under sub-section (2) of section 19, he shall be entitled to wages at the rate of twice his ordinary rate of wages in respect of the overtime work or the work done on the day of rest, as the case may be.

(2) Where an adult motor transport worker works for more than eight hours in any day in any case referred to in the second proviso to section 13, he shall be entitled to wages in respect of the overtime work at such rates as may be prescribed.

(3) Where an adolescent motor transport worker is required to work on any day of rest under subsection

(2) of sub-section 19, he shall be entitled to wages at the rate of twice his ordinary rate of wages in respect of the work done on the day of rest.

(4) For the purposes of this section, "ordinary rate of wages" in relation to a motor transport worker means his basic wages *plus* dearness allowance.

**27. Annual leave with wages.--**(1) Without prejudice to such holidays as may be

prescribed, every motor transport worker who has worked for a period of two hundred and forty days or more in a motor transport undertaking during

a calendar year shall be allowed during the subsequent calendar year leave with wages for a number of days calculated at the rate of -

(a) if an adult, one day for every twenty days of work performed by him during the previous calendar year; and

(b) if an adolescent, one day for every fifteen days of work performed by him during the previous calendar year.

(2) A motor transport worker whose service commences otherwise than on the first day of January shall be entitled to leave with wages at the rate laid down in clause (a) or, as the case may be, clause (b) of sub-section (1) if he has worked for two-thirds of the total number of days in the remainder of the calendar year.

(3) If a motor transport worker is discharged or dismissed from service during the course of the year, he shall be entitled to leave with wages at the rate laid down in sub-section (1), even if he has not worked for the entire period specified in sub-section (1) or sub-section (2), entitling him to earned leave.

(4) In calculating leave under this section, fraction of leave of half a day or more shall be treated as one full day's leave, and fraction of less than half a day shall be omitted.

(5) If a motor transport worker does not in any one calendar year take the whole of the leave allowed to him under sub-section (1) or sub-section (2), as the case may be, any leave not taken by him shall be added to the leave to be allowed to him in the succeeding calendar year:

Provided that the total number of days of leave that may be carried forward to a succeeding year shall not exceed thirty in the case of an adult or forty in the case of an adolescent.

(6) In this section "calendar year" means the year commencing on the first day of January.

*Explanation.*--For the purposes of this section, leave shall not include weekly holidays or holidays for festival or other similar occasions whether occurring during or at either end of the period of leave.

### **28. Wages during leave period**

(1) For the leave allowed to a motor transport worker under section 27, he shall be paid at the rate equal to the daily average of his total full time

wages for the days on which he worked during the month immediately preceding his leave, exclusive of any overtime earnings and bonus,

if any, but inclusive of dearness allowance and the cash equivalent of the advantage, if any, accruing by the concessional supply by the employer of food grains for the day on which he worked.

(2) A motor transport worker who has been allowed leave for not less than four days under section 27 shall, on an application made by him in this behalf to the employer, be paid in advance, before his leave begins, an approximate amount equivalent to the wages payable to him for the period of his leave and any amount so paid shall be adjusted against the wages due to him for the aforesaid period of leave.

(3) If a motor transport worker is not granted leave to which he is entitled under sub-section (3) of section 27, he shall be paid wages in lieu thereof at the rate specified in sub-section (1).

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## **16.8 PENALTIES AND PROCEDURE**

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### **29. Obstructions**

(1) Whoever obstructs an inspector in the discharge of his duties under this Act or refuses or willfully neglects to afford the inspector any reasonable facility for making any inspection, examination or inquiry authorised by or under this Act in relation to any motor transport undertaking shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

(2) Whoever willfully refuses to produce on the demand of an inspector any register or other document kept in pursuance of this Act, or prevents or attempts to prevent or does anything which he 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 this Act, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

### **30. Use of false certificate of fitness**

Whoever knowingly uses or attempts to use as a certificate of fitness granted to himself under section 23 a certificate granted to another person under that section, or having been granted a certificate of fitness to himself, knowingly allows it to be used, or an attempt to use it to be made, by another person, shall be punishable with imprisonment which may extend to one month, or with fine which may extend to fifty rupees, or with both.

**31. Contravention of provisions regarding employment of motor transport workers.--**Whoever, except as otherwise permitted by or under this Act, contravenes any provision of this Act or of any rules made there under, prohibiting, restricting or regulating the employment of persons in a motor transport undertaking, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both, and in the case of a continuing contravention with an additional fine which may extend to seventy-five rupees for every day during which such contravention continues after conviction for the first such contravention.

### **32. Other offences**

Whoever willfully disobeys any direction lawfully given by any person or authority empowered under this Act to give such direction or contravenes any of the provisions of this Act or of any rules made there under for which no other penalty is elsewhere provided by or under this Act shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

### **33. Enhanced penalty after previous conviction**

If any person who has been convicted of any offence punishable under this Act is again guilty of an offence involving a contravention of the same provision, he shall be punishable on a subsequent conviction with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both:



Provided that for the purposes of this section no cognizance shall be taken of any conviction made more than two years before the commission of the offence which is being punished.

### **34. 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 and punished accordingly:

Provided that nothing contained 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 purposes 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.

### **35. Cognizance of offences**

No court shall take cognizance of an offence punishable under this Act unless the complaint made by, or with 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.

### **36. Limitation of prosecutions**

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.

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## **16.9 MISCELLANEOUS with following provisions:**

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### **37. 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 commencement of this Act.

Provided that where under any such award, agreement, contract of service or otherwise a motor transport worker 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 motor transport worker shall continue to be entitled to the more favorable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matters under this Act.

(2) Nothing contained in this Act shall be construed as precluding any motor transport worker from entering into an agreement with an employer for granting him rights or privileges in respect of any matter which are more favorable to him than those to which he would be entitled under this Act.

### **38. Exemptions**

(1) Nothing contained in this Act shall apply to or in relation to any transport vehicle--

- (i) used for the transport of sick or injured persons;
- (ii) used for any purpose connected with the security of India, or the security of a State, or the maintenance of public order.

(2) Without prejudice to the provisions of sub-section (1), the State Government may, by notification in the Official Gazette, direct that subject to such conditions and restrictions, if any, as may be specified in the notification, the provisions of this Act or the rules made there under shall not apply to--

(i) any motor transport workers who, in the opinion of the State Government, hold positions of supervision or management in any motor transport undertaking,

(ii) any part-time motor transport worker, and

(iii) any class of employers:

Provided that before issuing any order under this sub-section, the State Government shall send a copy thereof to the Central Government.

### **39. Powers to give directions**

The Central Government may give directions to the Government of any State as to the carrying into execution in the State of the provisions contained in this Act.

### **40. Power to make rules**

(1) The State Government may, subject to the condition of previous publication 1[by notification in the Official Gazette] make rules to carry out the purposes of this Act:

Provided that the date to be specified under clause (3) of section 23 of the General Clauses Act, 1897 (10 of 1897), shall not be less than six weeks from the date on which the draft of the proposed rules was publish.

(2) In particular, and without prejudice to the generality of the foregoing power, any such rules may provide for --

(a) the form of application for the registration of a motor transport undertaking, the time within which and the authority to which such application may be made;

(b) the grant of certificate of registration in respect of a motor transport undertaking and the fees payable for such registration;

(c) the qualifications required in respect of the chief inspector and inspector;

(d) the powers which may be exercised by inspectors and the manner in which such powers may be exercised;

(e) the medical supervision which may be exercised certifying surgeons;

(f) appeals, from any order of the chief inspector or inspector and the form in which, the time within which and the authorities to which, such appeals may be preferred;

(g) the time within which facilities required by this Act to be provided and maintained may be so provided;

(h) the medical facilities that should be provided for motor transport workers;

(i) the type of equipment that should be provided in the first-aid boxes;

(j) the manner in which long distance routes, festive and other occasions shall be notified by the prescribed authority;

(k) the conditions and limitations subject to which any motor transport worker may be required or allowed to work for more than eight hours in any day or more than forty-eight hours in any week in any case referred to in the second proviso to section 13;

(l) the form and manner in which notices of period of work shall be displayed and maintained;

(m) the rates of extra wages in respect of the overtime work done by a motor transport worker in any case referred to in the second proviso to section 13;

(n) the registers which should be maintained by employers and the return, whether occasional or periodical, as in the opinion of the State Government may be required for the purposes of this Act

; and

(o) any other matter which has to be, or may be, prescribed.

<sup>15</sup> [(3) Every rule made by the State Government under this Act, shall be laid, as soon as it made, before the State Legislature.]

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## **16.10 Summary**

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<sup>15</sup> .Ins. by Act 4 of 1986, sec. 2 and Sch.

Labour laws also known as employment law is the body of laws, administrative rulings, and precedents which address the legal rights of, and restrictions on, working people and their organizations. Before passing of the Motor Transport workers Act, 1961 there was, however, no independent legislation applicable to motor transport workers as a whole or for regulating the various aspects of their conditions of employment work and wages. This act covers the motor transport workers and aspects of their conditions of employment. It was considered desirable to have a separate legislative measure for motor transport workers which would cover matters like medical facilities, welfare facilities, hours of work spread-over, rest periods, overtime, annual leave with pay, etc., on the analogy of similar enactments for workers in factories, mines and plantations.

In this act provisions of all these have been made. In case of violations of the provisions of the Act Penal provisions are there and offender is punished accordingly.

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## **16.11 Self assessment Tests**

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Q.1 Define and explain meaning of “motor transport”, “motor transport worker” , “Motor Transport Undertaking”.

Q.2 Discuss the welfare provisions provided for the Motor Transport Workers and the provisions which regulates the conditions of their work.

Q.3 Discuss the working hours as provided to the Motor Transport Workers

Q.4 Discuss the requirements to get the undertaking registered under the provisions of the Act.

Q.5 Discuss the provisions of penalty in case of violations of the provisions of the Act.

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## **16.12 Key Words**

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(a) **“adolescent”** means a person who has completed his fifteenth year but has not completed his eighteenth year:

(b) **“adult”** means a person who has completed his eighteenth year:

(c) **“child”** means a person who has not completed his fifteenth year

(d) **“day”** means a period of twenty-four hours beginning at midnight:

Provided that where a motor transport worker’s duty commences before midnight but extends beyond midnight, the following day for him shall be deemed to be the period of twenty-four hours beginning when such duty ends, and the hours he has worked after midnight shall be counted in the previous day.

(e) **“employer”** means, in relation to any motor transport undertaking, the person who, or the authority which, has the ultimate control over the affairs of the motor transport undertaking, and where the said affairs are entrusted to any other person whether called a manager, managing director, managing agent or by any other name, such other person,

(f) **“hours of work”** means the time during which a motor transport worker is at the disposal of the employer or of any other person entitled to claim his services and includes-

(i) The time spent in work done during the running time of the transport vehicle;

(ii) The time spent in subsidiary work; and

(iii) Periods of mere attendance at terminals of less than fifteen minutes.

Explanation - For the purpose of this clause -

(1) **“running time”** in relation to a working day means the time from the moment a transport vehicle starts functioning at the beginning of the working day until the moment when the transport vehicle ceases to function at the end of the working day, excluding any time during which the running of the transport vehicle is interrupted for a period exceeding such duration as may be prescribed during which period the persons who drive, or perform any other work in connection with the transport vehicle are free to dispose of their time as they please or are engaged in subsidiary work;

(2) **“Subsidiary work”** means work in connection with a transport vehicle, its passengers or its load which is done outside the running time of the transport vehicle, including in particular -

(i) work in connection with accounts, the paying in of cash, the signing of registers, the handling in of service sheets, the checking of tickets and other similar work;

(ii) the taking over and garaging of the transport vehicles;

(iii) traveling from the place where a person signs on to the place where he takes over the transport vehicle and from the place where he leaves the transport vehicle to the place where he signs off;

(iv) work in connection with the upkeep and repair of the transport vehicle; and

(v) the loading and unloading of the transport vehicle;

(3) "period of mere attendance" means the period during which a person remains at his post solely in order to reply to possible calls or to resume action at the time fixed in the duty schedule;

**(g) "motor transport undertaking"** means a motor transport undertaking engaged in carrying passengers or goods or both by road for hire or reward, and includes a private carrier;

**(h) "motor transport worker"** means a person who is employed in a motor transport undertaking directly or through an agency, whether for wages or not, to work in a professional capacity on a transport vehicle or to attend to duties in connection with the arrival, departure, loading or unloading of such transport vehicle and includes a driver, conductor, cleaner, station staff, line checking staff, booking clerk, cash clerk, depot clerk, time-keeper, watchman or attendant, but except in section 8 does not include-

(i) any such person who is employed in a factory as defined in the Factories Act, 1948.

(ii) any such person to whom the provisions of any law for the time being in force regulating the Conditions of service of persons employed in shops or commercial establishments apply;

**( j ) "qualified medical practitioner"** means a person having a certificate granted by an authority specified in the Schedule to the Indian Medical Degrees Act, 1916 (7 of 1916), or notified under section 3 of that Act or specified in the schedules to the Indian medical council Act, 1956 (102 of 1956), and includes any person having a certificate granted under any Provincial or State Medical Council Act;

(i) “wages” has the meaning assigned to it in clause (vi) of section 2 of the Payment of Wages Act, 1936 (4 of 1936);

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### **16.13 Suggested Reference Books**

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1. The Motor Transport Workers Act 1961 with  
The Maharashtra Motor Transport Workers Rules 1962,  
Labour Law Agency, 2013.
2. Bare Act The Motor Transport Workers Act 1961
3. The Motor Transport Workers Act 1961 by P.L. Mailk