

Course : PGDLL-03



**Vardhaman Mahaveer Open University,
Kota**

Wages and Social Security Legislations

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LL-3 Course Introduction

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 Wages and magnitude of wages as reflected in various concepts of wages. In second unit you will be able to appreciate the existence of constitutional machineries for fixation of wages and the role of State in determination of wages. The third unit will acquaint you with concept of dearness allowance and rules of its payment. The fourth unit will introduce you with the need for regulating the payment of wages through legislation. It will also introduce with the authorized deductions which employer can make from wages. Payment of wages is to be made in legal tenders i.e. current currencies. It is not permitted in kinds. It is important to note that right to get payment of wages is absolute.

Unit five is Minimum Wages Act, 1948, which covers the definition of minimum wages, and the protection given to the unorganized, weak and workers not capable of collective bargaining. It will also introduce you with procedure for determination of minimum wages. The unit six will acquaint you with various provisions of the Equal Remuneration Act, 1976. Act provides for no discrimination in payment of remuneration and recruitment. It will also acquaint you with authorities and appellate authorities hearing and deciding complaints and claims.

Unit seventh will introduce you with conceptual aspects of Social Security and the philosophy of social security viewing it as charity to help workmen. It will also acquaint you with statutory structure of social insurance and social assistance. Unit eighth will introduce with The Workman's Compensation Act, 1923. Unit provides for payment of compensation in case of accidental injuries. It will help you in knowing about factors deciding amount of compensation and distribution of compensation and the Special Machineries provided for the compensation.

Unit nine will introduce you with other provisions of Employee State Insurance Act, 1948 and rulings on compensation to workers and meaning of Employment Injuries, Occupational Disease, Temporary Disablement, Permanent Partial Disablement and Permanent Total Disablement for Compensation purpose. Unit tenth will acquaint you with other provisions of Employee State Insurance Act, 1948 in which provisions of Administration of Corporation, purposes for which finances can be collected from contributors are there.

Unit eleven is Maternity Benefits Act, 1961 which regulates the employment of women in case of child birth and the maternity leave and other benefits during pregnancy and child birth. Unit twelfth and thirteen are Employees' Provident Fund and Miscellaneous Act, 1952 which are related to Provident fund scheme, Family Pension Scheme and the Deposit Linked Insurance Scheme and advantages thereof. Unit fourteen will acquaint you with meaning of Gratuity and when and how it is payable. The unit fifteen is case laws to appreciate judicial analysis with special reference to wages and social securities.

Last unit is the latest provision regarding harassment of women at work places. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 provides the protection to women. This unit will explain you about definitions under the Act. The Act defines sexual harassment at the work place and creates a mechanism for redressal of complaints. It also provides safeguards against false or malicious charges. Act is to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto. The Act aims to provide women's the right to work with dignity

UNIT – 1

Conceptual Aspects of Wages

Objectives

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

- The meaning of wages ;
- The magnitude of wages as reflected in various concepts of wages ; and
- The existence and inevitability of wage-differentials and the need to minimize them through standardization of wages.

Structure:

- 1.1 Introduction
- 1.2 meaning and Definition of wages
- 1.3 Difference between wages & salary
- 1.4 Concept of Minimum Wages
- 1.5 Concept Fair Wages
- 1.6 Concept of Living Wages
- 1.7 Concept of Need-based Minimum Wages
- 1.8 Wage Differentials
- 1.9 Standardizations of Wages
- 1.10 Summary
- 1.11 Self-Assessment Test
- 1.12 Key Words
- 1.13 Further Readings

1.1 Introduction

The purpose of this unit is to acquaint you with the conceptual aspects of wages. Wages means remuneration paid to workers for their services and which is capable of being expressed in terms of money. Wages is defines in different labour legislations. "its meaning carries almost the same sense in every legislation, of course, with minor differences to suit the objectives of a particular enactment. The minimum wages, fair wages, need-based minimum wages, Living wages, wage differentials and standardization of wages are the important aspects of the concept

of wages. Minimum wages means the wage sufficient to preserve the existing level of efficiency of workers. Fair wages means wages more than minimum wages but less than living wages or, in other words, the mean of minimum and living wages. Living wages is a higher level of wages which not only takes care of the present needs but the further needs also to some extent. Need-based minimum wages is near to fair wages. Except minimum wages every other wages takes into account the capacity of industry to pay. Wage differentials are bound to occur and are necessary for motivating the workers to improve their skills. The standardization of wages is to control unnecessary wage differentials and to maintain equitable standards in the wages.

1.2 Meaning and Definition of Wages

From the point of view of the last laissez faire policy, wages may be defined as the contract incomes. Fixed or settled between the employers and employees. A more comprehensive definition of wages may be that wages means all remunerations capable of being expressed in terms of money and payable to a person under a contract of employment for the work done in such employment. It does not include travelling allowance, employer's contribution for social security measures, gratuities, and housing accommodation and welfare services rendered to the workers by the employers. The definitions of wages given in various labour legislations are alike. Workmen compensation Act, E.S.I. Act., I.D. Act, Maternity Benefit Act, Minimum Wages Act. Payment of wages Act reflects more or less same sense; of course, except with the minor difference to suit the objective of the particular Act. For example, I.D. Act includes value of work accommodation and travelling concession in wages but excludes bonus and the money value of concessional supply of food grains but does not include O.T. earnings and bonus other than incentive bonus. Under the payment of wages Act, overtime is included in the definition of wages. **Thus wage is monetary compensation (or remuneration) paid by an employer to an employee in exchange for work done. Payment may be calculated as a fixed amount for each task completed (a *task wage* or piece rate), or at an hourly or daily rate, or based on an easily measured quantity of work done.**

1.3 Difference between Wages and Salary

Wages and salary are the terms which are used interchangeably but from technical point of view there are certain differences between the two which may be discussed in the following points-

- a. Wages are payable to blue-collared workers while salary is payable to white-collar workers;
- b. Wages can be paid daily, weekly, fortnightly or monthly while salary can be paid monthly only;
- c. The magnitude of wages is less but the magnitude of salary is comparatively more ;
- d. Wages is the subject of collective bargaining while salary is normally not the subject of collective bargaining because for it there are standard forms by way of pay scale ;
- e. The neutralization for rise in prices in terms of D.A. is proportionately more in case of wages and proportionately less in case of salary. The neutralization ranges from 80 to 100% in case of wages while neutralization in case of salary is at the most 75% ;
- f. The basis of wages can be piece-rate or periodical while the basis of salary is periodical only.

However, the two terms are very close to one another. The above differences are on the basis of practices followed so far.

1.4 Concept of Minimum Wages

The minimum wages is one which must provide not merely for bare subsistence of life but for the preservation of the efficiency of workers. For this purpose, minimum wages must provide for some measure of education, medical requirement and transport facilities. According to the Australian Industrial Act, the basic wages approximate to subsistence level is called minimum wages but in India minimum wages is definitely above subsistence level. This concept of minimum wages has been propounded by Fair Wages Committee, 1948 in India and which has subsequently been reflected in various decisions of the Supreme Court. For instance, in *Hydro-Engineering Pvt. Ltd. V. Their Workmen* (1969. I. LL.J.713), the supreme Court agreed with the Fair Wages Committee with regard to the meaning of minimum wages. In *Chandra Bhawan Boarding & Lodging V. State of Mysore* (Air. 1970, SC. 2042). the concept of minimum wages includes not only a

base sufficient to meet the bare sustenance of an employee and his family, but it also includes expenses of an employee on primary needs like food, shelter, cloth, medical aid, education and transport charges, etc.

The minimum wages is a dynamic concept. It changes with the growth of economy and the standards of living. It is likely to differ from place to place and industry to industry. In fact, minimum wages is that low level of wages which should be payable to workers in all circumstances and for the some regulating mechanism is necessary without which no employer would pay minimum wages to the workers because minimum wages is the problem of sweated and unorganized workers. That's why Prof. Marshall says that a combination of 1000 workers is very weak and uncertain force in comparison with a single employer of a thousand employees. In other words, owing to the weak bargaining power of workers, they are forced to get very low level of wages. I.L.O. Convention, 1928 also prescribes for the setting of minimum wages fixing machinery in industry in which no arrangement exists for the purpose of regulating the wages by collective bargaining or otherwise, and where wages are exceptionally low. In India Minimum Wages Act provides the right of minimum wages to the unorganized workers and the minimum wages is to be paid irrespective of capacity of the industry to pay, in all circumstances. Supreme Court, in number of cases has stressed this point. In *Hindustan Hosiery Industries V. F. H. Lala and Others* (AIR. 1974. SC. 526), the Supreme Court held that capacity of industry is irrelevant to pay minimum wages. Similarly, in *Crown Aluminum Works V. their Workmen* (1958. 1. LL. J. 1) the Supreme Court held that industry which does not have capacity to pay minimum wages has no right to exist. Thus, in our country the right to get minimum wages is well established and a worker even by agreement cannot waive this right.

1.5 Concept of Fair Wages

Fair wages is popularly defined as a mean of minimum wages and the living wages or to oscillate between the two. The encyclopedia of Social Science describes for wages as one equal to that secured by workers performing work of equal skill, difficulty or unpleasant nature. In the same spirit famous economist Marshall would consider the rate of wages to be fair if it is about the level with the average payment of Similar tasks in other trades, which are of equally difficult and

disagreeableness and which require equal abilities and training. Prof. Pigou has defined fair wages in the wider and narrower sense. A wage rate is fair in the narrower sense when it is equal to the rate current for similar workmen in the same trade and neighborhood. It is fair in the throughout the country and in the generality of trade. Its actual level is determined by following two principles –

- (a) The capacity of industry to pay wages;
- (b) The prevailing rates of wages in the same or similar occupations in the same or neighboring localities.

The concept of fair wages in the same of similar Supreme Court cases which are as follows:

- (a) Express News Paper Ltd. V. Union of India (AIR. 1958. SC. 578) – The fair wage is a mean between the living wage and minimum wage.
- (b) Hindustan Times Ltd. V. Their Workmen (1963. I. LL. J. SC. 112) – Justice Das Gupta defined fair wages as something above the minimum wage, which may roughly be said to approximate the need-based minimum wage in the sense of wage which is adequate to cover the normal needs of the average employee regarded as a human being in a civilized society.
- (c) Hindustan Hosiery Industry V. F. H. (AIR. 1974. SC. 526) – The Fair wage must also take note of the economic reality of the situation and the minimum needs of workers having fair sized family. Wage cannot be fixed in Vacuum. It is necessary to take note of so many factors from real life of a worker without ignoring the vital interest of industry.

1.6 Concept of Living Wages

It represents a standard of living which provides not merely for bare physical subsistence but for maintenance of health and decency, a measure of frugal comfort, including education of children, requirement of essential social needs and a measure of insurance against the more important misfortunes including old age. This is the ideal wages and envisaged in Article 43 of Directive Principles in Part IV of the Constitution. I. L. O. Conventions also provide for living wages.

The concept of living wages has been discussed in a number of Supreme Court cases. Some of the cases are as under –

- (a) Express News Paper V. Union of India (AIR. 1958. SC. 578) – This is an ideal wages over which a social welfare state has to approximate in an attempt to ameliorate the working conditions of the workers.
- (b) Hindustan Times Ltd. V. Their Workmen (1963. I. LL. J. SC. 112) – While the industrial adjudication will be happy to fix a wage structure which would give the workmen generally a living wage, economic conditions make that only a dream for the future.

1.7 Need-based Minimum Wages Concept

The minimum wages defined by Committee on Fair Wages indicated only the components which should be taken into account in fixing minimum wage. It was the 15th Indian Labour Conference which considered the question of minimum wage and it was agreed that the minimum human needs of the industrial workers, irrespective of any other consideration. To calculate the need-based minimum rate, the committee accepted the following norms and recommended that they should guide all wage fixing committees.

- (a) In calculating the minimum wage, the standard working class family should be taken to consist of three consumption units for one earner, the earnings of women; children and adolescents should be disregarded.
- (b) Minimum food requirements should be calculated on the basis of net intake of 2700 calories, as recommended by Dr. Aykroyd for an average Indian adult of moderate activity.
- (c) Clothing requirements should be estimated at a per capita consumption of 18 yards per annum which would give for the average workers family of four a total of 72 yards.
- (d) In respect of housing, the norm should be the minimum rent charged by Government in any area for house provided under the subsidized Industrial Housing Scheme for low income groups.
- (e) Fuel, lighting and other 'miscellaneous' items or expenditure should constitute twenty percent of the total minimum wage.

Committee recognized the existence of instances where difficulties might be experienced in implementing these recommendations, wherever the minimum wages fixed went below the recommendation, it would be incumbent on the

authorities concerned to justify the circumstances which prevented them from adherence to the norms laid down.

According to National Commission on Labour, in fixing the need-based minimum wages, the capacity to pay will have to be taken into account. Since most of the Boardson wages have taken into consideration the capacity to pay in fixing the fair wages for the respective industries, the wage fixed by them fall in the realm of fair wages, though at its lower level. The need-based minimum wages is also a level of fair wages and represents a wage higher than the minimum obtaining at present in many industries, through it is only in the lower reaches of the fair wage. Experience with wage determination since the formula was adopted, supports the National Commission of Labour Conclusion.

1.8 Wage Differentials

In practice, differences in wages are bound to exist in different employments, occupations and localities. The questions of wage differentials has a profound economic and social significance as it's is directly related to the allocation of economic resources of country including manpower, growth of national dividend and pace of economic development. The nature and extent of wage differentials are conditioned by various sets of factors which are as follows:-

- (a) The workers are not homogeneous group; they differ in respect of mental or physical qualities and levels of education and training;
- (b) Differences in the nature of employment – Regular employment carries low remuneration as against an irregular employment;
- (c) There may be differences in the nature of occupation – Hazardous and dangerous occupations generally offer higher wages or emoluments as against simple and safe ones.
- (d) Differences in wage due to the existence of a strong trade union.
- (e) Differences in wages in the same occupation at two places of regions may arise due to geographical immobility of workers.
- (f) Differences in wages may be due to government interference.

According to Bhootlingam Committee, 1978, the wage differential ratio should not be more than 1 : 30, otherwise it will be uncontrolled and unrestricted wages differential causing frustration differential is a necessary part of wage structure, however, it should be very rational and according to set norms. It is inevitable and

necessary for motivating the workers to acquire more skills and qualification and ultimately to improve their efficiency. At national level, it is necessary to boost the production, prosperity and rate of economic growth.

1.9 Standardization of Wages

One important problem connected with the wages of industrial workers in India is that of lack of standardization. Often in the same industry, at the same industrial centre, for the same occupation different rates of wages are paid. Then, as indicated earlier wages vary from State to State, from industry to industry, from factory to factory and in the same industry from occupation to occupation. Thus the wage level is relatively high in Delhi, Maharashtra (erstwhile Bombay) U.P., Bihar and West Bengal while it is low in Assam, Orissa and Rajasthan. Besides the basic wages, dearness allowance also varies widely from place to place, for the obvious reason that in some cases, it is linked up with the cost of living indices with different classes of workers; in some cases, it is flat while in others it is proportionate to incomes. Moreover, the average annual earnings of the workers also differ from place to place.

These differences in wage rates, which are not based on any scientific principles, are responsible for a number of evils in modern industry. The workers have a tendency to migrate from the low-paid industries to better-paid industries or from the factory where wages are low to the factory where wages are higher. The stability of labour force is thus difficult to achieve. Then, the variation in wage rates also prepares a ground for industrial disputes. When workers doing the same job in two factories in the same centre receive different remuneration, those getting comparatively low remuneration are sure to be discounted and will revolt whenever they get opportunity. Besides, these wages differentials also result in the waste of a lot of time, money and labour as a large number of workers have to be treated on a separate footing for most of the administrative purposes. In view of all these considerations however, variations in wages rates must be eliminated.

The standardization of wages is, therefore, a pressing demand. Standardization implies that there should be some standard scale of wages for similar classes of work in industries. It, however, does not mean equal pay for all,

it also does not mean a maximum rate but it means a fair and reasonable wages which may be uniform in its application. There are, of course, various difficulties in achieving standardization of wages rates for the workers. The manufacturing work includes different operations requiring varying degrees of skill and effort. Further, the type of machinery and material in use, the conditions in which work is carried on, the quality of goods manufactured, etc. also vary from time to time. In spite of these difficulties, standardization of wage rates can be achieved if employer's and worker's representatives work in a spirit of co-operation and friendliness and by mutual discussion and deliberation fix standard rates for different operations.

1.10 Summary

In the foregoing pages, the various conceptual aspects of wages have been discussed. In fact, the magnitude of remuneration paid to the workers for their services can be reflected in the various concepts of wages, like minimum wages, fair wages, need-based minimum of wages and living wages, etc. in modern times, the minimum wages is the problem of unorganized labour and it is to be regulated and there should be a legal sanction behind it.

In our country, to get the minimum wages is regulated by Minimum Wages Act, 1948 and is well-established through various decisions of the Supreme Court. It is to be paid in all circumstances.

Fair wages is the problem of organised labour and is determined through Wages Boards and adjudication authorities. In this, the capacity of industry to pay is an important consideration because a balance is to be struck between the workers, interest of employers and economic growth.

Living wages is the ideal wages and on the line as stipulated in Article 43 of our Constitution but unfortunately, it is difficult to be achieved. Wage differentials are necessary part of wage structure if skill formation is to be motivated and productivity is to be achieved but at the same time it should be reasonable.

There should be standardization of wages to avoid unnecessary wage differentials.

1.11 Self-Assessment Test

Answer the following questions:-

- (a) Discuss the various concepts of minimum wages, fair wages and living wages.
- (b) What is meant by wages? Bring out the difference between wages and salary.
- (c) Discuss the meaning and importance of wage differentials. What are the factors responsible for it?
- (d) Write short notes on the following :-
 - (i) Need-based minimum wages
 - (ii) Standardization of wages
 - (iii) Minimum wages

1.12 Key Words

- (a) Wages : means remuneration for service of labour in production capable of being expressed in terms of money.
- (b) Minimum Wages : Wages sufficient to meet the needs of food, cloth, shelter, medical, education, etc. and above subsistence level.
- (c) Fair Wages : mean between minimum wages and living wages.
- (d) Living Wages : An ideal wages stipulated in Article 43 of the Constitution providing for comforts and misfortunes and the needs arising in future also.
- (e) Standardization of Wages : There should be standards wages scales for similar class of workers in various industries to control unrestricted wages differences.

1.13 Further Readings

- 1. G.K. Kothari : Wages, Dearness Allowances & Bonus
- 2. K.N. Subramaniam : Wages in India
- 3. Dr. T.N. Bhagoliwal : Economics of Labour and Industrial Relations
- 4. Report of National Commission on Labour
- 5. Indian Labour Year Books
- 6. Labour Law Journal

UNIT – 2

Wage Fixation

Objectives

Another going through this unit, you should be able to understand –

- The Constitution of the machinery for the fixation of wages;
- The role of state in determination of wages;
- The rationale of separate machinery for fixation of wages for organised and unorganized labour.
- Objectives and the feasibility of National wages policy.

Structure

- 2.1 Introduction
- 2.2 Fixation of wages under Minimum Wage Act, 1948
- 2.3 Fixation of Wages by Adjudication;
- 2.4 Fixation of Wages by Wage Boards;
- 2.5 Fixation of Wages by collective Bargaining;
- 2.6 Factors and Principles in Fixation of Wages;
- 2.7 National Wage Policy;
- 2.8 Summary;
- 2.9 Self-Assessment Test;
- 2.10 Key Words;
- 2.11 Further Readings;

2.1 Introduction

The problem of wages is one of the most important labour problems not only because it concerns ultimately every worker but also it contains the clue to the solution of many other problems of Indian workers. That's why the wages are found to be the principle reason for disturbing industrial peace. Hence, the machinery for the determination of wages assumes paramount importance. In our

country, separate machinery exists, each for the determination of wages in the organized sector and unorganized sector, the machinery which is working for the fixing of wages consists of statutory machinery under Minimum Wage Act, 1948 Adjudicatory machinery, collective bargaining and the Wages Boards.

The unit also studies about the wages policy of government to regulate the wages and to do justice to all, including the consumer, in this unit various factors which play-role in the fixation of wages of various principles which are considered for the purpose of fixation of wages, have been discussed.

2.2 Fixation of Wages under Minimum Wages Act

The Minimum Wages Act, 1948 provides statutory machinery for the fixation of wages in the unorganized sector of the economy. The said Act covers the employment like rice mills, oil mills, pulses mills, mica mines and various employments in agriculture like livestock, poultry farming, horticulture and many other employments given in the schedule of Minimum Wages Act. The appropriate government, under section 27 of the Minimum Wages Act, has the right to extend the arm of this Act to the employments in addition to those enumerated in the schedule.

For the fixation of wages, the appropriate government appoints as many committees or sub-committees as it considers necessary to hold enquiries and advise on matters of fixation or revision of wages. The members of committee are nominated by the appropriate government on the basis of principle of equal representation of workers and employers. Not exceeding 1/3rd of the total members of the committee are independent. The chairman of the committee is an independent person. In order to control and coordinate the functions of the sub-committees, the appropriate government may appoint state-advisory Board which is of representative character, consisting of the representatives of workers, employers and the state. This Advisory Board performs the following functions –

- a) Coordinating the work of committees and sub-committees;
- b) Advising the appropriate government in matters of fixing and revising the minimum rates of wages;
- c) Advising the government regarding procedure for the effective functioning of committee and sub-committees.

- d) In addition to the said Advisory Boards, Central Govt. can appoint Central Advisory Board to perform the following functions –
- e) Advising the central and state Governments in the matters of fixing and revising the minimum rates of wages and other matters under the Act.
- f) Coordinating the activities of state Advisory Boards.

The machinery for the fixation of wages is constituted only when there are 1000 workers in a particular employment in the whole state. For example, if there are 1000 workers in oil mills in the state of Rajasthan, then the machinery for the fixation of minimum wages, consisting of the committees, sub-committees and Advisory Boards may be constituted. But this requirement of 1000 workers is not applicable in case of employment in agriculture. The rate of wages is expected to be revised after every five years.

¹As per the REPORT ON THE WORKING OF THE MINIMUM WAGES ACT, 1948 FOR THE YEAR 2006 kinds of Wages and methods of fixation is as under:

I. INTRODUCTION:

1.1 The purpose of seeking employment is to sell labour to earn wages so as to attain a decent or dignified standard of living. The wage or income that a worker obtains from his /her work is therefore, what enables him /her to achieve a fair standard of living. One seeks a fair wage both to fulfil one's basic needs and to feel reassured that one receives a fair portion of the wealth that one works to generate for society. Society has a duty to ensure a fair wage to every worker, to ward off starvation and poverty, to promote the growth of human resources, and to ensure social justice without which likely threats to law and order may undermine economic progress.

1.2 The Constitution of India accepts the responsibility of the State to create an economic order in which every citizen finds employment and receives a fair wage. This made it necessary to quantify or lay down clear criteria to identify a fair wage. Therefore, a Central Advisory Council in its first session (November, 1948) appointed a Tripartite Committee on Fair Wages. The Committee consisted of representatives of employers, employees and the Government. Their task was to enquire into and report on the subject of fair wages to labour.

¹ <http://labourbureau.nic.in/MW2k6%20Section-1.htm>

1.3 The Committee on Fair Wages defined three different levels of wages viz;

- (i) Living wage
- (ii) Fair wage
- (iii) Minimum Wage

1.3.1 LIVING WAGE:

The living wage, according to the Committee, represented the highest level of the wage which should enable the worker to provide for himself and his family not merely the basic essentials of food, clothing and shelter but a measure of frugal comfort including

education for children, protection against ill health, requirements of essential social needs and a measure of insurance against more important misfortunes including old age. But the Committee felt that when such a wage is to be determined, the considerations of national income and the capacity to pay of the industry concerned has to be taken into account and the Committee was of the opinion that living wage had to be the ultimate goal or the target.

1.4 FAIR WAGE:

1.4.1 The Fair Wages Committee in this connection observed: the objective is not merely to determine wages which are fair in the abstract, but to see that employment at existing levels is not only maintained, but if possible increased. From this point of view, it will be clear that the levels of the wages should enable the industry to maintain production with efficiency. The capacity of industry to pay should, therefore, be assessed by the Wage Boards in the light of this very important consideration.

1.4.2 The Fair Wages Committee also recommended that the fair wage should be related with the productivity of labour. In this connection it may be said that in India since the existing level of wages is unable to maintain the workers on subsistence plus standard, it is essential that the workers must be first assured a living wage and only after this minimum has been done, the wages should be related to the productivity. The Committee further recommended that the fair wage should be related with the prevailing rates of the wages, though in view of unduly low wages prevailing even in organized industries in the country, it laid

that the wage fixing machinery should, therefore, make due allowance for any depression of wages caused by unequal bargaining.

1.4.3 With regard to the machinery to be adopted for the fixation of fair wages, the Committee favoured the setting up of Wage Boards. It recommended that there should be a State Board for each State, composed of independent members and representatives of employers and employees in equal numbers. In addition to the State Board, there should be a Regional Board for each of the industry taken up for wage regulation. Finally, there should be Central Appellate Board to which appeals may be preferred from the decision of the Wage Boards. On the recommendations of the Committee on Fair Wages, a bill was introduced in the Parliament in August 1950, known as Fair Wages Bill. It aimed at fixing fair wages for workers employed in first instance, in factories and mines. It contained various other useful provisions also. But the bill now stands lapsed.

1.4.4 The Fair Wage Committee appointed by the Government of India, as stated earlier, drew a distinction between a minimum and a living wage and observed that the minimum wage is less than the living wage. With regard to the fair wage, the Committee recommended that it should be above the minimum wage and below the living wage.

1.5 MINIMUM WAGE:

1.5.1 The Committee was of the view that a minimum wage must provide not merely for the bare sustenance of life, but for the preservation of the efficiency of the worker. For this purpose the minimum wage must also provide for some measure of education, medical requirements and amenities.

1.5.2 The statutory Minimum Wage is the wage determined according to the procedure prescribed by the relevant provisions of the Minimum Wages Act, 1948.

1.5.3 The question of establishing statutory wage fixing machinery in India was, therefore, discussed at the third and fourth meetings of the *Standing Labour Committee* held in 1943 and 1944 respectively and at successive sessions of the *Tripartite Labour Conference* in 1943, 1944 and 1945. The last of these approved in principle the enactment of minimum wages legislation. On April 11, 1946, a Minimum Wages Bill was introduced in Parliament but the passage of the

Bill was considerably delayed by the constitutional changes in India. It was, however, passed into an Act in March 1948.

1.5.4 The Act applies to the employments that are included in Parts I and II of the Schedule Appended to the Act. The authority to include an employment in the schedule and to take steps for getting the minimum rates of wages fixed or revised vests with the Government Central or State, according to the nature of employment. Once the minimum rates of wages are fixed according to the procedure prescribed by law, it is the obligation of the employer to pay the said wages irrespective of the capacity to pay.

1.6 CONCEPT OF THE MINIMUM WAGES AS DEFINED IN THE VARIOUS INTERNATIONAL LABOUR ORGANISATION (ILO) CONFERENCES

1.6.1 A brief history of the concept of Minimum Wages as taken up under the various International Labour Organisation Conferences from time to time is traced in the following paragraphs.

1.6.2 CONVENTION NO.26 ELEVENTH SESSION (1928)

1.6.3 Eleventh Session held on 30 May 1928, was convened at Geneva. Adoption of proposals with regard to Minimum Wage Fixing Machinery was the first item on the agenda of the Session.

1.6.4 CONVENTION NO. 99 THIRTY FOURTH SESSION (1951)

1.6.5. The Thirty Fourth Session of ILO was held on 6th June, 1951 and the Convention concerning the Minimum Wage Fixing Machinery in Agriculture was the eighth item on the agenda of the Session. The guidelines for creation / maintenance of adequate machinery whereby Minimum wages can be fixed for agricultural workers were similar to those stated for Minimum Wage Fixing Machinery in the 11th Session of the ILO.

1.6.6 CONVENTION NO.131 FIFTY FOURTH SESSION 1970

1.6.7 The General Conference of the ILO, met in its 54th Session on 3rd June, 1970 in Geneva, passed the Convention concerning Minimum Wage Fixing, with special reference to developing countries on 22nd June, 1970. It was thought that

the earlier conventions with regard to the Minimum Wages had played a valuable part in protecting disadvantaged groups of wage earners and that another convention was needed to complement the earlier ones, which, while of general application, will pay special regard to the needs of developing countries.

1.7 MINIMUM WAGE DEFINED IN THE VARIOUS SESSIONS OF INDIAN LABOUR CONFERENCES

1.7.1 FIFTEENTH SESSION, (1957)

1.7.2 At the 15th Session of the Indian Labour Conference held at New Delhi in July 1957, an important resolution was passed, which laid down that the minimum wage should be need-based and should ensure the minimum human needs of the industrial worker. The following norms were accepted as a guide for all wage-fixing authorities including Minimum Wage Committees, Wage Boards, Adjudicators, etc.:

- (i) In calculating the minimum wage, the standard working class family should be taken to comprise three consumption units for one earner, the earnings of women, children and adolescents being disregarded.
- (ii) Minimum food requirements should be calculated on the basis of a net intake of 2700 calories as recommended by Dr. Akroyd for an average Indian adult of moderate activity.
- (iii) Clothing requirements should be estimated on the basis of a per capita consumption of 18 yards per annum, which would give for the average worker's family of four a total of 72 yards.
- (iv) In respect of housing, the norm should be the minimum rent charged by Government in any area for houses provided under the Subsidised Industrial Housing Scheme for low income groups ; and
- (v) Fuel, lighting and other miscellaneous items of expenditure should constitute 20 per cent of the total minimum wage. The Resolution further laid down that wherever the minimum wage fixed was below the norms recommended above, it would be incumbent on the authorities concerned to justify the circumstances which prevented them from adherence to the aforesaid norms. The Resolution, thus, tried to give concreteness to the whole concept of minimum wage.

In 1991, the Supreme Court in its judgment expressed the view that children's education, medical requirement, minimum recreation, including festivals ceremonies, provision for old age and marriage should further constitute 25 per cent and be used as a guide for fixing the minimum wage.

1.7.3 THE THIRTIETH SESSION (1992)

The Indian Labour Conference in its Thirtieth Session in September, 1992 expressed the view that while the tendency to fix minimum wages at unrealistically high levels must be checked, implementation of wages once fixed must be ensured. It felt that the implementation machinery, consisting of labour administration in the States had been far from effective. It was desirable that workers' organizations and non-governmental voluntary organizations etc. played a greater role instead of engaging an army of inspectors for this purpose.

1.7.4 REVISION

The Minimum Wage rates should be revised at an appropriate interval not exceeding five years.

1.7.5 PROCEDURE FOR FIXATION/REVISION

In (Section 5 of) the Minimum Wages Act, 1948, two methods have been provided for fixation/revision of minimum wages. They are the Committee method and Notification method.

(i) COMMITTEE METHOD

Under this method, committees and sub-committees are set up by the appropriate Governments to hold enquiries and make recommendations with regard to fixation and revision of minimum wages, as the case may be.

(ii) NOTIFICATION METHOD

In this method, Government proposals are published in the Official Gazette for information of the persons likely to be affected thereby and specify a date not less than two months from the date of the notification on which the proposals will be taken into consideration. After considering advice of the Committees/Sub-committees and all the representations received by the specified date in Notification method, the appropriate Government shall, by notification in the Official Gazette, fix/revise the minimum wages in respect of the concerned scheduled employment and it shall come into force on expiry of three months from the date of its issue.

1.7.6 VARIABLE DEARNESS ALLOWANCE (VDA)

It was recommended in the Labour Ministers' Conference held in 1988, to evolve a mechanism to protect wages against inflation by linking it to rise in the Consumer Price Index. The Variable Dearness Allowance came into being in the year 1991. The allowance is revised twice a year, once on 1st April and then on 1st October.

1.7.7 ENFORCEMENT MACHINERY

The enforcement of the provisions of the Minimum Wages Act in the Central Sphere is secured through the officers of Central Industrial Relations Machinery. In so far as State Sphere is concerned, the enforcement is the responsibility of the respective State Government/Union Territory.

1.7.8 NATIONAL WAGE POLICY

Though it is desirable to have a National Wage Policy it is difficult to conceive a concept of the same. The issue of National Wage Policy has been discussed on many occasions at various forums. Because fixation of wages depends on a number of criteria like local conditions, cost of living and paying capacity also varies from State to State and from industry to industry, it would be difficult to maintain uniformity in wages. The Indian Labour Conference, held in November, 1985 expressed the following views-

Till such time a national wage policy does not come into being, it would be desirable to have regional minimum wages in regard to which the Central Government may lay down the guidelines. The Minimum Wages should be revised at regular periodicity and should be linked with rise in the cost of living.

Accordingly, the Government issued guidelines in July, 1987 for setting up of Regional Minimum Wages Advisory Committees. These Committees renamed subsequently as Regional Labour Ministers Conference, made a number of recommendations which include reduction in disparities in minimum wages in different states of a region, setting up of inter-state Coordination Council, consultation with neighbouring States while fixing/revising minimum wages etc.

1.7.9 REGIONAL COMMITTEES TO REDUCE DISPARITIES IN WAGES

There is disparity in rates of minimum wages in various regions of the country. This is due to the differences in socio-economic and agro-climatic conditions, prices of essential commodities, paying capacity, productivity and local conditions influencing the wage rate. The regional disparity in minimum wages is also attributed to the fact that both the Central and State Governments are the appropriate Government to fix, revise and enforce minimum wages in scheduled employments in their respective jurisdictions under the Act . To bring uniformity in the minimum wages of scheduled employments, the Union Government has requested the States to form regional Committees. At present there are five Regional Minimum Wages Advisory Committees in the country which are as under:-

NAME OF THE REGION	STATE/UNION TERRITORY
Eastern Region	West Bengal, Orissa, Bihar, Jharkhand and Andaman & Nicobar Islands.
North Eastern Region	Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Sikkim, Nagaland and Tripura.
Southern Region	Andhra Pradesh, Karnataka, Kerala, Tamil Nadu, Pondicherry and Lakshadweep.
Northern Region	Punjab, Rajasthan, Himachal Pradesh, Jammu & Kashmir, Haryana, Uttar Pradesh, Uttrakhand, Delhi and Chandigarh.
Western Region	Maharashtra, Gujarat, Goa, Madhya Pradesh, Chhattisgarh, Dadra & Nagar Haveli and Daman & Diu.

2.3 Fixation of Wages by Adjudication

The wages can be determined by the adjudication machinery, which means the determination of question judiciously. The adjudication machinery assumes jurisdiction on the matters of wages when reference to it is made by appropriate government under section 10 of industrial Disputes Act, 1947. The third schedule of this Act says that the industrial Tribunal may take up the matters relating to the wages and the modes of its payment. The adjudication machinery functions like a

civil court as it has power to summon witness, examine them and also examine various documents furnished by the parties to prove their case. The adjudication has right to modify the terms of contract to dispense justice to the parties. Nature of the adjudication machinery is quasi-judicial.

For the adjudication machinery Fixation of wage-structure is always a delicate task, because a balance has to be struck between the demands of social justice which require that the workmen should receive their proper share of the national income which they help to produce, with a view to improving their standard of living and depletion which every increase in wages makes in the profits, as this tends to divert capital from industry into other channels thought to be more profitable. In formulating a wage structure in a given case, the industrial adjudication does take into account, to some extent, considerations of right and wrong, propriety and delicate problems. In balancing the conflicting interests of the employer, the employees, and the public the adjudication has a delicate job of weighing; and it is a three and not a two-pan scale. His is a tedious task of reconciliation a head-on clash of various-very basic policies and interests, namely : freedom of contract, freedom of trade, sanctity of contract, individual liberty, protection of business, right of work, making of training available to the employees, earning of livelihood for oneself and family, utilization of one's skill and talent, continued productivity, betterment of one's status, avoidance of one's becoming a public charge encouragement of competition and discouragement of monopoly and international trade, etc.

Though the adjudication machinery has played an important role in the fixation of wages yet its limitation is that it determines the wages only in the cases coming before it. In other words, it cannot, at its own, determine the wage structure of an industry or of an employment.

2.4 Fixation of Wages by Wage Boards

The wage board is a non-statutory body with authority to fix wages independently for the industry for which it is set up. It is constituted by the government with the consent of workers and the employers concerned such

consent is usually obtained by the government either at the tripartite conferences or at the meetings of tripartite committees.

A wage Board generally consists of two representatives each of employers' representative and trade union in the industry and two independent persons (usually one is an M.P. and other a professor or Economist) under the Chairmanship of a well known public figure.

The system of wage Boards represents an effort at collective negotiations at the instance of the government. In actual process of decision making, the government does not interfere; the only occasion when it intervenes is when it compels the parties concerned to exert their will to negotiate the terms of wages and conditions of employment. The recommendations of the implementation by the parties concerned the policy has been to accept recommendations which are unanimous. Only; in few cases the recommendations have been modified. The Board is asked –

1. To determine the categories of employees who should be brought within the scope of proposed wage structure;
2. To recommend wage structure based on the principles of fair wages as enunciated by the committee on fair wages.
3. To consider desirability of extending the system of payment by results;
4. To recommend the principles that should govern the grant of bonus to workers in the specific industry.

The functioning of wage Boards comprises the following steps –

1. To prepare comprehensive questionnaire designed to collect information on prevailing wage rates and scale differentials, means to assess the industry's capacity to pay, most desirable methods of measuring capacity of workers, work rates, prospects for industries in immediate future and. Regional variations in prices. The questionnaires are sent to labour unions, employers association, interested individuals and government agencies.
2. To give public hearing to the labour unions and employers association not represented on the Boards as well as others interested in the industry.
3. To convene secret sessions in which members of the Board make proposals and counter proposals regarding the items covered in terms of reference.

Wage Board have played an important role and provided useful forum for tripartite discussions and examination of the question of wage fixation in the context of development planning. They have helped in bringing the wage level in depressed industries to a uniform standard. National commission on labour had made the following recommendations –

1. The chairman of the wage Board should be selected by the common consent of the organization of employers and employees in the industry concerned.
2. Wage Board should be assisted by technical assessors and experts.
3. The terms of reference to the wage Board should be decided by the government in consultation with the organization of employers and workers concerned.
4. A Central wage Board Division be set up in Union Ministry of labour on permanent basis to serve wage boards through the supply of statistical and other material and lending of the necessary staff.
5. Unanimous recommendations of wage Boards should be accepted and in case of non-unanimous recommendations the governments should hold consultations with the organizations of employers and employees before taking final decision.
6. The wage Boards should not be set up under any statutes but the recommendations as finally accepted by the government, should be made statutory binding on the parties.
7. For industries covered by Wage Boards a permanent machinery should be created for follow up action.
8. Wage Boards should complete their work in one year's time and operation of recommendations of a wage Board should be between two or three years, after which the need for subsequent wage Board should be considered on merits.

2.5 Fixation of Wages by Collective Bargaining

Collective bargaining as a method of wage determination has to be considered in the last not because it is the least important of the various methods of

wage determination but because it is the one that has made the least progress. In fact, it received encouragement only after independence of India because of the growth of trade unionism and change in the attitude of employers but at the same time, wages forms to be the most important item of collective bargaining, wherever it is there the collective bargaining of wages takes place in the organized sector and in very limited number of industries which are well developed, like cotton textile, cement, iron and steel, etc. the collective bargaining of wages has not made much headway because of the lack of atmosphere for the purpose it pre-supposes the strong trade unions, mutual understanding between the parties, a particular level of economic development and habit of honoring the agreements entered into the law regulating unfair labour practices. Unfortunately, in our country, the essential conditions for the success of collective bargaining on wages do not exist. In the proposed Amendment Bill of 1988 on industrial relations, there are proposals for constitution of bargaining council which shall consist of the representatives of registered trade unions-enjoying the highest membership but not less than 40% of total membership. There seem to be very weak chances of progress in the area of collective bargaining on wages.

2.6 Factors and Principles in Fixation of Wages

The various factors and principles considered by the machinery for the fixation of wages are as follows –

1. Capacity of industry to pay – the capacity of industry to pay had played an important role in the determination of wages. If industry has better capacity to pay, it will be able to pay wages on the higher side without any difficulty and hence the capacity to pay is judged by the following variables-
 - i) The progress of the industry;
 - ii) The prospects of the industry in future;
 - iii) The existence and extent of the profits of the industry;
 - iv) The nature of demand which the industry is expected to secure or the market the industry can capture.

If the above variables move in the positive and favorable direction, then the industry is capable to pay wages on an increasing scale. In *Express Newspaper Pvt. Ltd. V. Union of India* (1961, I.L.L.J. 359), it was held by justice Bhagwati that for ensuring capacity of industry to pay the elasticity of demand to its products in response to the increased production should be taken into account.

1. **The Capacity to Pay** – The capacity of industry to pay plays an important role in determination of the fair Wages and living wages in the organised sector. This has been considered well by the wage Boards and the adjudication machinery. However, in case of minimum wages, the capacity of the industry to pay is totally an irrelevant factor. In *Crown Aluminum works V. their Workmen* (1958 I.L.L.J. – I) justice Gajendra Gadkar has opined that the minimum wages should be paid even if industry does not have the capacity to pay. Not only this the industry which cannot pay minimum wages has no right to exist. Again, in *Kamani Metals V. their workmen* (A.I.R. 1967 S.C. 1975) the Supreme Court has held that minimum wages should be paid irrespective of the financial condition of the establishment and its capacity to pay.
2. **Cost of Living** – This means ascertaining the cash value of the demand of workers which, in its turn, is measured by consumer price index number prepared jointly by the governmental agencies, more particularly by Labour Bureau, Simla. These consumer price index numbers are prepared on the basis of consumer habits and the price level in the base year. The wages are adjusted by increasing dearness allowance by considering the behavior of price level on the basis of the base year of these indices.
3. **Productivity of Labour** – Productivity of labour is an important factor in determination of the wages, though it is extremely difficult to measure the productivity of workers. For positive correlation, the efficiency of the workers is preserved and increased by paying him good wages. Hence the productivity of labour is reasonably stressed in the determination of wages.
4. **Social Justice** – Social justice is a mechanism of harmonizing the conflicting interests between the employers and the employees with the minimum of friction. The conflict of interest is inherent in every system and the conflict between the interest of the employer and the employees cannot

be an exception in all matters, including the determination of wages. In determination of the wages, social justice means taking into account the reasonable amount of profits, if earned by the employers as also the good standard of living of the workers. In other words, the wages must not be so high as to fall very heavily on the employers which curtails their profits otherwise there will not be any motivation for investment. Similarly, the wages must be sufficient for the worker to maintain a good standard of living and also making it possible for them to raise their status in the society.

5. **Wage Differentials** – In practice, differences are found and exist in the wages in different employments occupations and localities. The economic and social significance as it is directly linked to the location of economic resources of the country and also for the skill formations. The wage differentials are necessary to give due importance to the qualifications, responsibilities, abilities and other factors in the determination of wages.
6. **Level of National economy** – The level of national economy also plays an important role in the determination of the wages. Naturally there will be higher level of wages in the developed countries as compared to developing or underdeveloped ones.
7. **Region – Cum – Industry Comparison** – The aim of this principle is that the scales of wages or dearness allowance fixed for a particular unit or industry, should not be out of tune with the wages, etc. prevalent in the industry of the region so that unfair competition may not result between one establishment and another and diversity in wages in the region may not lead to industrial unrest.

The following guidelines are considered in comparing the establishment in a particular region-

1. Their standing;
2. The strength of labour force employed by them;
3. The extent of their respective customers;
4. The position of the profits or losses incurred by them for some year before the date of the award;
5. The extent of the business carried on by the concerns;
6. The capital invested by them;

7. The nature of the business carried on by them;
8. The presence and absence and the extent of their reserves;
9. The dividends declared by them; and
10. The prospects about the future of their business.
11. In considering the above principles, no distinction is made between the private and public sector undertakings.

METHODS OF WAGE DETERMINATION IN INDIA:

Fixation of wages in India is not a recent phenomenon though there was no effective machinery till 2nd world war for settlement of disputes for fixation of wages. After independence of India, industrial relations become a major issue and there was a massive increase in industrial dispute mostly over wages leading to substantial loss of production. Realizing that industrial peace is essential for progress on industrial as well as the economic front, the central government convened in 1947 a tripartite conference consisting of representatives of employers, labour and government.

Government of India formulated industrial policy resolution in 1948 where the government has mentioned two items which have bearing on wages:

Statutory fixation of minimum wages and Promotion of fair wages:

To achieve the 1st objective, the minimum wages act of 1948 was passed to lay down certain norms and procedures for determination and fixation of wages by central and state government.

To achieve the second objective, GOI appointed in 1949 a tripartite committee on fair wages to determine principles on which fair wages should be fixed.

Wages and salary incomes in India are fixed through several institutions by Collective Bargaining, Industrial Wage Boards, Government appointed Pay Commissions and Adjudication by courts and tribunals.²

COLLECTIVE BARGAINING:-

²<http://www.ukessays.com/essays/economics/how-is-wage-determined-in-india-economics-essay.php#ixzz3aqLawUFY>

- Collective bargaining relates to those arrangements under which wages and conditions of employments are generally decided by agreements negotiated between the parties.
- Broadly speaking the following factors affect the wage determination by collective bargaining process.
Alternate choices & demands
Institutional necessities
The right and capacity to strike
- In a modern democratic society wages are determined by collective bargaining in contrast to individual bargaining by working.
- In the matter of wage bargaining, unions are primarily concerned with General level of wage rates
Structure of wages rates (differential among occupations) ³

In fixing the Wages evaluation of Job is also done. A **job evaluation** is a systematic way of determining the value/worth of a **job** in relation to other jobs in an organization. It tries to make a systematic comparison between jobs to assess their relative worth for the purpose of establishing a rational pay structure.

Job evaluation needs to be differentiated from **job analysis**. Job analysis is a systematic way of gathering information about a job. Every job evaluation method requires at least some basic job analysis in order to provide factual information about the jobs concerned. Thus, job evaluation begins with job analysis and ends at that point where the worth of a job is ascertained for achieving **pay equity** between jobs.⁴

2.7 National Wage Policy

Wage policy means legislation or governmental action calculated to affect the level or structure of wages, or both for the purpose of attaining specific objectives of social and economic policy. No government can avoid having a wage policy. Even non-intervention is a policy. With the advancement of welfares, the government is actively involved in wage regulations and wage determination

³ <http://www.scribd.com/doc/31537418/Wage-Determination-in-India>

⁴ http://en.wikipedia.org/wiki/Job_evaluation

because it is considered to be the matter of prime public importance and it cannot be left to the uncontrolled activity of employers and trade unions.

Following are the objects of National wage policy

1. To encourage increase in National Income;
2. Neither the existence of unreasonable wage differentials nor the distortion of such things;
3. To encourage capital formation;
4. To protect the interest of consumers;
5. To control inflation;
6. To raise the economic status of worker and improve standard of living.
7. To improve the level of employment; and
8. To provide social justice to the employers and employees.

National Wage Policy in India is necessary for the following reasons.-

1. We have adopted economic planning has the strategy of economic development. For the fulfillment of targets of planning, industrial peace and uninterrupted production is necessary, for all this, National Wage Policy has to be worked out and implemented.
2. For realization of objectives of socialistic pattern of society, social justice and equal opportunities for all as envisaged in Directive Principles of State Policy.
3. Absence of Strong unions makes it all the more incumbent on the state to devise a National Wage Policy for protection of workers.
4. It is necessary for formulating the necessary guidelines by the various authorities entrusted with the task of wage fixation and wage revision.

In the opinion of National Commission on Labour, National Wage Policy should be linked with general level of income and consistent with rate of growth of real output and be aimed social justice, economic and political stability and the capital formation needed for future growth, it is this need for ensuring stability of the economy which has led countries like Netherlands, Norway, Sweden, France and the U.K. to adopt wage policies relating to incomes and prices.

In order to understand the structure of Wages you should also understand what the Wage Differential is?

In Industrial Relations there is the difference in wages between workers with different skills in the same industry or between those with comparable skills in different industries or localities.⁵ This is wage differential.

The committee on fair wages recommended that wage differentials should be established on the basis of certain considerations:

- The degree of skill.
- The strain of work.
- The experience involved.
- The training required.
- The responsibility undertaken.
- The mental and physical requirement.
- The disagreeableness of the task.
- Hazards.
- Fatigue involved.

The nature and extent of wage differentials are conditioned by a set of factors such as:

- The condition prevailing in the market.
- The extent of unionization.
- Relative bargaining power of employer and employee.
- The rate of growth of productivity.
- The extent of authoritarian regulations and the centralization of decision making.
- The customs and traditions.
- The general economic, industrial and economic conditions in the country.
- Prevailing rates of wages.
- Capacity of an industry to pay.

2.8 Summary

In the foregoing pages, the various machineries for the determination of wages have been discussed. In all this, it has been noticed that the State plays an important role in the constitution and the functioning of the machinery for determination of wages in most of the cases. The various factors which are taken

⁵ <http://www.thefreedictionary.com/wage+differential>

into account in the determination of the wages are capacity of industry to pay, cost of living region-cum-industry principle, level; of economic development and so on. The Government adopts the public policy of wages which is known as wages policy.

National Wage Policy is needed for the realization of goals and social justice enshrined in the Directive Principle of State Policy and for the fulfillment of the targets of economic planning as also for the guidance of various authorities entrusted with the determination of wages. In our country, No wage policy can be stable because of the behavior of the price level.

2.9 Self-Assessment Test

Answer the following questions-

1. Discuss the various machineries for the fixation wages in India. Why separate machinery is needed for the organised and unorganized sector of the economy?
2. Critically examine the constitution and working of Wage Boards in India.
3. What are the various factors in the determination of wages?
4. Write short notes on the following-
 - a) Statutory machinery for the fixation of wages;
 - b) Meaning and objects of Wage policy;
 - c) National Wage Policy.

2.10 Key Words

Unorganized Labour – means the workmen working in the sweated industries and has no trade unions to exert their pressure on the employer.

Wage Board – mean the non-statutory bodies appointed by the government for the determination of the wages in the organised sector. It is of representative character, consisting of representatives of the workers employers and the state.

Adjudication – means judicial determination of the question where decision is given on the basis of evidence furnished by the parties. It is having quasi-judicial character.

Wage Policy – means the policy of the government on wages or public policy on the wages for attaining specific objectives of social and economic policy.

2.11 Further Readings

1. G.L. Kothari: wages, Dearness Allowance & Bonus
2. K.N. Subramaniam: Wages in India
3. Mamoria & Mamoria: Industrial Labour, Social Security and Industrial Peace in India.
4. V.V. Giri: Labour Problems in India Industry
5. Dr. T.N. Bagoliwal: Economics of Labour and Industrial Relations
6. Report of National Commission on Labour
7. Indian Labour Year Books
8. Labour Law Journal

UNIT – 3

Dearness Allowance and Fringe Benefits

Objectives:

The purpose of this unit is to enable the students to know

- about the meaning and the Definition of Dearness Allowance and Fringe Benefits
- judicial analysis of the various concepts and principles involved for the purpose of computation of Dearness Allowance payable to various categories of workers engaged in various regions either in same industry or in different industries.

Structure

- 3.1 Meaning & Definition of Dearness Allowance
- 3.2 Evolution of the concept of Dearness Allowance & Fringe Benefits;
- 3.3 Mode of payment of Dearness Allowance Evolved on the basis of recommendations of Commissions, Committees and Wage Boards;
- 3.4 Payment of Additional Dearness Allowance by the Central & the Various State Governments on the Basis of Recommendation on various Bodies;
- 3.5 Merger of Dearness Allowance with basic Wages & its feasibility;
- 3.6 Judicial Attitude in terms of payment of Dearness Allowance and Fringe Benefits to the Workers including Government Employees as well as those engaged in public & Private Corporations;
- 3.7 Conclusive Observation
- 3.8 Summary
- 3.9 Self Assessment

3.1 Meaning and Definition of Dearness Allowance:

The literal meaning of these words put forth is that it is an allowance payable to the employees in order to compensate them for the dearness or in other words increase in the cost of living due to price hike of various commodities from time to

time. In this regard it has been quite appropriately observed by the National commission on labour that adjustments in wage levels becomes necessary on account of increase in the cost of living and improvement in economic conditions. White wage adjustment in respect of the former aim at preventing erosion of wage levels in real terms and the adjustments belonging to the latter category are intended to improve real standards.

Hence the basic object of paying dearness allowance to employees is to compensate them for the increase in price index so as to enable them to continue to get basic necessities of the life in consonance with their standard of living. Whenever wage structure has to be evolved, it has to take into account not only the fixation of basic wages rather fixation of rates of dearness allowance has also to be pronounced on the basis of graduated rise in price index. The basic object of the payment of Dearness Allowance has been. Since its inception to neutralize the price hike so as to enable the employees to purchase the goods as per their basic needs and it becomes imperative to keep in view the basic objective at every stage so as to do justice with the working class. In some countries as hike in cost of living is compensated by corresponding increase in total salary and there is no system of payment of additional Dearness Allowance. In India although price rise is neutralized by paying additional Dearness Allowance but it is merged in basic wages by the National Pay Commission appointed from time to time by the Central Government as well as by the concerned State Government.

3.2 Evolution of the Concept of Dearness Allowance & Fringe Benefits:

The necessity of compensating the real wages payable to the working class was felt long back, more particularly, during the 1st world war when a steep hike in price index was felt by the working class mainly due to scarcity of food items and due to which demand was made by the labour engaged in various industries and at Ahmadabad this movement was led by Mahatma Gandhi, the Father of the Nation. Hence a principle was evolved ensuring protection of real wages of the workers in case of substantial price rise. Initially it was called Dearness Food Allowance being an allowance which was claimed by the workers in order to enable that they might be in a position to purchase bread and butter for their family. During the Second World War also existing nexus between wages and prices was disturbed

due to which industrial disputes took place between workers and the employers. Consequently compensation for increase in prices was secured by the working class through the process of joint settlement during the period of 1940-45. The basic reason for keeping it distinct and separate from basic wages had been an expectation that the increase in price index would come down one day and at that juncture payment of dearness allowance could be withdrawn without any resentment and opposition from the working class. But this expectation has been belied due to the reason that since then payment of increased Dearness Allowance in order to neutralize the price rise has become a regular feature as price has never come down. At the initial stage payment of dearness allowance was confined only to the organised sector of employment but with the passage of time it has been extended to unorganized sector or employment as well as to the persons employed in departments of Central and the various State Governments. Payments of Dearness Allowance could find acceptance by the Court of Enquiry constituted under the Trade Disputes so as to investigate payment of dearness allowance to the railway employees. Various Commissions viz., Central Pay Commission, 1947, Rank Award Commission, 1995, The Second Pay Commission, 1959, Das Commission, 1965 and Gajendra Gadkar Commission 1967 approved the principle of payment of dearness allowance. The Government of India from time to time set up various Wage Boards since 1957 for the purpose of determining terms of employment in various industries and these boards were sought to keep the dearness allowance as a separate component of wages. Incidentally some of them had recommended merger of Dearness Allowance with the basic Wages.¹

It has been observed by the National Commission on Labour that the system of Dearness Allowance as it has evolved in India might add under certain circumstances to inflationary tendencies. International experience in general and that of Asian region in particular indicates that even if some form of relationship between wage levels and cost of living might be preferred but the form of relationship might vary. Although the predominant pattern appears to be adjustment of wages as whole but the practice of keeping separate element could also be found in vogue. In fact both the arrangements have their own advantages and disadvantages and the main advantage for the latter would be its flexibility. Wage rate could not be brought down because of a fall in prices but dearness

allowance if kept as a separate element could be on the other hand the system could also be designed to reduce the time lag between the prices but dearness allowance if kept as a separate element could be on the other hand the system allowance if kept as a separate element could be on the other hand the system could also be designed to reduce the time lag between the price increase and payment of compensation therefore. Its main disadvantages would be that the way the system has operated all these years has resulted in complete distortion of the wage structure with the Dearness Allowance portion in certain areas being several times the size of basic wage. This may have adverse repercussion on incentives and productivity. Therefore, it would be essential that the changes in money wages should be associated with corresponding changes in cost of living otherwise without such adjustment, real would be efoded.¹

Basic guidelines to regulate the payment of dearness allowance to the employees were for the first time formulated in the Indian Labour Conference held at New Delhi in September, 1943 and in this conference the proposal of fixation of Dearness allowance on regional basis with reference to cost of living was approved. The Gregory Committee which submitted its report in the year 1944 recommended that the absolute amount of Dearness Allowance should be equated to full compensation for the weighted average of the earnings of all wage-groups below the weighted average and the payment of additional dearness allowance should be determined in relation to the cost of Living Index. The workers in each region should be entitled to get single dearness allowance. It would be necessary for this country to continue to pay dearness allowance to neutralize wholly or at least substantially the increase in cost of living. For the concerned people it could be easily inferred from the schemes of variable dearness allowance worked out by the Wage Boards under study that attempts have been made to provide for cent per cent neutralization for rise in cost of living in respect of the lowest paid unskilled workers in consonance with the recommendations of the Fair Wage Committee. The Wage Boards could guarantee cent percent neutralization by keeping the wages very low and by prescribing a lower rate of adjustment with the changes in consumer price index (C.P.I.). Whenever it was intended to enforce in a uniform manner cent percent neutralization for rise in cost of living in respect of lowest paid unskilled workers in different industries, it was necessary to adopt uniform

minimum wage in respect of such workers engaged as lowest paid unskilled workers in different industries, it was also essential to adopt a uniform minimum for adjustment for various regions and areas. There has been variation with regard to extent of neutralization in respect of other categories of employees. The highest paid category under the scheme of variable dearness allowance worked out by various wage Boards, it has been clearly established that there has been no uniformity in the extent of neutralization even in respect of workers drawing the same wage and even if the recommendations of various wage Boards provided for cent percent neutralization for rise in cost of living but the degree of the relief made available to the workers differed from industry to industry as well as from one region to the other. The disparity could be conspicuously noticed in case of lowest paid unskilled category of workers due to varying rates of minimum wages payable to them as per recommendation by the concerned Wage-Boards. Another factor which has resulted in payment of variable dearness allowance had been the time gap involved for the purpose of revising Dearness Allowance which varied drastically from one industry to other industry as recommendation of the Wage Boards. The First Wage Board for Cotton Textile and Cement Industries recommended monthly revision of Dearness Allowance. The Wage Board for Iron and Steel, iron ore mining, Lime Stone and Dolomite Mining Industries and the Second Wage Board for Cement industry recommended quarterly revision of variable Dearness Allowance. The Wage Board for the Jute and Coal Mining Industries provided for monthly revision of Dearness Allowance. The Wage Board for Sugar and Tea Plantation Industries provided for yearly adjustment of Dearness Allowance. Thus the approaches of the Wage Boards towards the compensation for the rise in prices varied in respect of selection of Consumer Price Index, rate of adjustment on periodicity of revision.¹

3.3 The Scope and the Mode of Computation of Dearness Allowance: (Evolved on The Basis of Recommendations of Commissions, Committees & Wage Boards)

The First Pay Commission (1947) was of the view that the payment of Dearness Allowance would be a necessity in order to bring the total emoluments to correspond with the present day cost of living. The payment of such a Dearness

Allowance was a necessity particularly, in lower grades of Government servants as their pay could enable them to live on the marginal leave in normal times and the dearness allowance must be so fixed as to neutralize the rise in prices. The Second Pay Commission of Enquiry on Enquiry on Emoluments and conditions of service of Central Government Employees (1959) could give wider meaning to the concept of dearness allowance by propounding that dearness allowance would be a device to protect to a greater or lesser extent, the real income of the wage earners and salaried employees from the effects of rise in prices. The Gajendra Gadkar Commission on Dearness Allowance was of the view that having regard to the basic characters of Dearness Allowance it would be applicable to those employees whose salaries might be at the subsistence level or little above it.

National Commission on Labour (1968) observed that irrespective of the quantum of the wages, Dearness Allowance permissible to the lowest paid employee should be paid at par to those at higher level of Wages to whom Dearness Allowance might be otherwise admissible. The basic object of payment of Dearness Allowance at flat rate should be justified that the principal aim of Dearness Allowance being to compensate only the increase in the prices of the essentials and it should not vary with income level. While the counter argument put forth would be that payment of dearness allowance at flat rate disincentive to improve efforts and affects production and productivity, particularly, in case of skilled workers.¹ the National Commission of Labour the worker in the event of a rise in cost of living to purchase the same amount of goods of basic necessity, The National Commission of Labour was of the view that the only purpose of dearness allowance would be to enable the worker in the event of rise in cost of living to purchase the same amount of goods of basic necessity as before and this purpose would be served by an equal amount of dearness allowance to all employees irrespective of differences in their emoluments.² In case of differential amount of dearness allowance payable on basis of rate of wages payable to the employees the basic problem would relate to computation of quantum of dearness allowance, The main controversy would be between point to point adjustment or adjustment from slab to slab. The size of the slab either 5 points or 10 points would be another issue to be decided. The basic drawback might be that the index would be a statistical measure and it can be subjected to a margin of error. The slab system would work better for reasons that it would be easier to operate and provide incentive for

increased production and productivity of the Dearness Allowance, Commission, therefore recommended linkage of dearness allowance five point slab (with reference to consumer price index Base 1960 = 100). However employees getting point to point neutralization should be exemplar. The Dearness Allowance has to be revised on the basis of average of consumer Price Index for the preceding quarters, namely February to April, May to July and August to October respectively. It has been observed by various Commissions and Committees that Adjustable Dearness Allowance as quite evident from its nomenclature is payable in addition to the sanctioned dearness allowance and its basic object would be to provide immediate relief to the employees against the rise in cost of living so as to enable them to continue to get basic necessities of the life.

3.4 Payment of Additional Dearness Allowance on the Basis of Recommendations of Various Bodies:

The employees are paid in addition to basic wage and dearness allowance on adjustable dearness allowance which is also called additional dearness allowance. The .D.A. is to be revised and paid on 1st day of the month of June, September and December of every year. Additional dearness allowance is payable to the employees in the form of interim relief in order to compensate them for the price hike and basically its payment involves minimum formalities thereby ensuring prompt payment of money. Subsequently the additional dearness allowance is merging in to regular dearness allowance payable to employees. The Payment of additional dearness allowance has become a routine feature particularly in case of Government employees.

Fringe Benefits:

Fringe benefits are payment of current or deferred benefits received by the employees in addition to their wages. These benefits are commonly known as supplementary benefits which also include services rendered to the employees in case of sickness or other contingency to which they might be exposed to in the course of employment. The residential accommodation provided to the employees is also included within the preview of fringe benefits. In advanced countries various benefits e.g. medical allowance, night shift allowance, conveyance

allowance, washing allowance, leave travel concession, leave encasement benefits, etc. which is payable by the employer to the employees by virtue of contractual commitment are also called fringe benefits. In fact fringes benefits would substantially contribute for the welfare of employees either during the tenure of their service or after retirement and it could be quite appropriately be said to be an expenditure which might not constitute part of the normal wages or other allowance. Fringe benefits would be a part of employee compensation and constitute an integral component of an individual's earning, involving spirally costs of production and increased labour costs would be ultimately borne by the consumers in the form of increased cost of product and in spite of this basis drawback fringe benefits might continue to be a substantial part of the compensation system in near future. Fringe benefits definitely purport to develop a harmonious industrial relations climate and it would improve employee productivity as well as loyalty thereby providing a sense of individual security.

3.5 Merger of Dearness Allowance with wages and its feasibility:

With the substantial rise in the cost of living the steep increase in the dearness allowance loses nexus and direct proportion with the rise in cost of living and relative weight in the context of basic earnings of the employees. Due to these reasons the basic issue pertaining to merger of dearness allowance into the basic wages was given a serious thought by Central Wage Boards and the National Commission on Labour. In this context it was suggested by the first Central Wage Board for the Cotton Textile Industry for consolidation of dearness allowance into basic wages in each mill at the index which yielded an amount three fourths of the average dearness allowance. Majority of the components of the basic wage and dearness allowance could merge as one integral whole but in practice due to the pressure of employee's trade Unions and federations in various industries merger could be feasible only in rare cases. In this context it was observed by the national Commission on Labour that the Dearness Allowance should be merged with basic wages only at a reasonable point of time. The merger would be likely to have wide repercussions in industry and might require consideration of related wage issues on an extensive front. In the absence of price series related to the base year in which the two components of wages would be merged, the workers might have a feeling

that any future erosion of their real wages would not be adequately safeguarded. Quite apart from all these drawbacks the Commissions strongly recommended the merger of dearness allowance at the base year of 1969-70 of the new Consumer Price Index series. The National Commission on Labour highlighted that the aim of such merger should be to rationalize the existing wage structure and to make basic wages more realistic that at present, Merger of dearness allowance with basic wages would serve useful purpose only if these above said factors are duly taken care of so as to maintain their proper balance of basic factors viz., payment of additional amount of money in order to neutralize the price rise without disturbing wage structure of the employed and to neutralize increase in cost of living by paying additional or adjustable dearness allowance. The step if implemented at the earliest could prove to be of vital importance thereby ensuring payment of so much money which might enable the employees and their children to get basic necessities of life from the wages payable to them. Merger of dearness allowance with basic would also simplify the procedural complementation to a great extent.

3.6 Judicial Attitude vis-a-vis, payment of Dearness Allowance:-

(i) Nature and Extent of Neutralization: It may be safely gathered after having cursory glance over the relevant pronouncements of the judiciary that it has played a pivotal role in formulating the schemes relating to payment of dearness allowance to the working class and the Government employees. In the context of basic reasons for the payment of dearness allowance it was observed by the Supreme Court in **Hindustan Motors Ltd. vs. Its Workmen**¹ that the whole purpose of dearness allowance would be to neutralize a portion of increase in cost of living. The Supreme Court also held that it would be proper and desirable that the dearness allowance should not remain fixed rather it should be on a sliding scale. The basic object of paying dearness allowance could be served in consonance with its object of compensating the rise in the cost price index by paying more amounts in order to enable the employees to have their basic necessities and to maintain their standard of living as earlier. This approach was quite appropriately approved by the Supreme Court subsequently in **Hindustan Times Ltd. v/s It's Workmen**². In this context the approach has been well settled that 100 percent neutralization would not be possible as it would lead to vicious

circle and add to inflationary spiral and as observed by the Supreme Court in case of **Clerks of Calcutta Tramways Co. Ltd v/s Calcutta Tramway Co³** that except in case of the very lowest class of the manual labourers whose income is just sufficient to keep the body and they should together it would be impolitic and unwise to neutralize the entire rise in cost of living by dearness allowance. This approach was reiterated by the Supreme Court in case of **Kamani Metals & Alloys Ltd. v Their Workman⁴** where it was held that it would not be advisable to neutralize 100 per cent rise in cost of living as it would lead to inflation and therefore, the dearness allowance would often be a little less than 100 percent neutralization. The position with regard to neutralization of increase in cost of living had been explained in detail by the Supreme Court in case of **Killick Nixon Ltd. v Killick and Allied Companies Employees' Union⁵** wherein it was observed that so far as the lowest paid employees were concerned, they would be entitled to hundred per cent neutralization, particularly, when they might be paid at or just above subsistence level and at any rate not less than 95 percent neutralization of the rise in the cost of living and hence there should be no ceiling on dearness allowance payable to the employees within the slab of first rupees 100 and in case of next slab the extent of neutralization might be less than 100 per cent but should be not less than 95 per cent. From the case law discussed above it could be inferred the neutralization not keep pace with the rise in the cost of living, more particularly, in the case of employees who might be above the category of lowest paid employees and degree and extent of neutralization would be on the decreasing side in the context of higher and higher categories of employees in respect of payment of salary to them.

(ii) Ceiling on the quantum of Dearness Allowance: - With regard to ceiling on the extent of neutralization it has been observed by the Supreme Court from time to time it would not be feasible to impose ceiling on the quantum of dearness allowance payable to the employees as it has to be increased with increase in the cost of living. In this regard the Supreme Court in case of **Workmen of Indian Hume Pipe Company Ltd. Bombay v Indian Hume Pipe Company Ltd.** held that the theory of ceiling on the quantum of dearness allowance could not be accepted since under the existing condition there could be not control over the prices of essential commodities and as such a ceiling would not be given sufficient

cushion when prices of essential commodities continuously rise. A judicial controversy had been created by the single Judge of Bombay High Court by observing that a ceiling could be imposed by the company on the quantum of dearness allowance in case of **Hindustan Lever Mazdoor Sabha v Hindustan Lever Ltd.**¹ but the Division Bench of the Bombay High Court in this case overruled this approach by holding that the theory of ceiling on the quantum of dearness allowance could not be accepted since under the prevailing conditions there cannot be any control over the prices of essential commodities and such a ceiling would not give sufficient cushion when the prices of essential commodities rise continuously. Therefore, system of payment of dearness allowance has to be continued without any ceiling. Burden of obligation would lie on the employer in case of restructuring of the dearness allowance schemes to the disadvantage of the workers to prove to the satisfaction of Industrial Tribunal that the wage structure in the industry concerned was well above the minimum level and the employer was not in a position to bear the burden of the existing wage structure as observed by the Supreme Court in case of **Workmen of Partakes brats Co. Ltd. v Management of Partakes brats & Co. Ltd.**²

3.7 Conclusive Observation

After taking into consideration various phases involved in the process of growth and development of the concept of dearness allowance, it could be treated without an iota of doubt that judicial activism has played a vital role in defining in clear terms the parameters of this subject. In addition to that various committees and commissions have also contributed substantially in defining the concept of dearness allowance, its meaning, implications, its purpose and the nature of the relief provided to the employees. It is interesting that an uniformity should be maintained for the purpose of computation of dearness allowance and its revision so that confusion created by the various approaches in vigil for paying dearness allowance to industrial workers and other employees including Government employees may be minimized at the earliest.

3.8 Summary

In this unit the concept of the dearness allowance has been defined with special reference to the object and purpose of paying dearness allowance to the working class including the government employees. In order to enable the students to understanding the various parameters of the subject historical background has been discussed with special references to the observation of various commissions and the committees appointed with regard to payment of dearness allowance, its revision and the mode of computation of dearness allowance. The term fringe benefits have also been discussed at length while are basically payable in the form of supplementary benefits or in the form of social security benefits.

The scope and the mode of payment of dearness allowance have also been discussed at length. It has also been highlighted in this unit as to when dearness allowance could be merged into wages. It would into be an exaggeration to claim the judiciary has played a vital role in defining the term dearness allowance as well as the object and purpose of payment of dearness allowance. An in-depth study has made in this chapter to him highlight judicial activism involved on the subject.

3.9 Self Assessment Test

Answer the following questions in not more than 500 words.

1. Define the term 'Dearness allowance' highlighting the object and purpose of paying 'Dearness allowance.
2. Trace the historical background of the term 'Dearness allowance' with special reference to the mode of various commissions and committees appointed for this purpose.
3. Discuss the mode of computation of dearness allowance? When can dearness be merged in to wages.
4. When additional dearness allowance is paid to the employees on the basis of recommendations of various Bodies? Discuss.
5. Discuss the relevant case Law on the meaning, object and the purpose of payment of dearness allowance. Could it be said that the judicial activism has played vital role with regard to payment of dearness allowance and other incidental aspects.

UNIT – 4

Wage Legislation – Part I

(The Payment of Wages Act, 1936)

Objectives

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

- The need for regulating the payment of wages through legislation;
- The reasons for making the payment of wages in legal tender and avoiding the payment of wages in kind ;
- The authorized deductions which the employers can make from the wages ;
- The right to get payment of wages is absolute.

Structure

- 4.1 Introduction;
- 4.2 Aims and Objectives of the Act;
- 4.3 Definitions;
- 4.4 Responsibility for payment of wages;
- 4.5 Time of payment of wages;
- 4.6 Medium of payment of wages;
- 4.7 Authorized deductions from wages;
- 4.8 Nature of right to get payment of wages;
- 4.9 Inspectors;
- 4.10 Miscellaneous;
- 4.11 Summary;
- 4.12 Self-Assessment Test;
- 4.13 Key Words;
- 4.14 Further Readings;

4.1 Introduction

Before the enactment of payment of wages Act 1936, there were malpractices on the part of employers not to pay regularly the hard- earned wages of workers in time and also to impose unnecessary fines. Royal commission on labour felt the necessity of regulating the wages and has recommended a legislation to regulate wages and to avoid unauthorized deductions from the wages. On its recommendation, the Act was passed in 1936 and came into force from 28th March, 1937. The Act provides that wages should be paid regularly and in legal tender. The payment of wages in kind may defraud the workers as its calculation always resulted in their exploitation.

According to the Act, wages can be paid weekly fortnightly or monthly. The wages can also be paid by cheque depending on the arrangements and agreements.

The right to get wages in time is absolute and even the worker himself cannot relinquish this right. It also provides adequate machinery for the enforcement of the various provisions of the Act. It applies to all the employed in the industrial and other establishment.

4.2 Aims and Objectives of the Act:

The enactment has the following main aims and objectives –

- (i) Regular payment of wages.
- (ii) The payment of wages in legal tender, i.e. in coins or in currency notes. The payment of wages in kind is to be avoided because it may defraud the workers.
- (iii) Preventing arbitrary deductions from the wages- only those deductions are to be made from the wages which are authorized by the enactment.
- (iv) Restraining the rights of the employer to impose fines. Only the reasonable and legitimate fines, necessary to maintain discipline in industry are to be imposed.
- (v) Providing remedy to workers whose wages has either not been paid in time or unnecessary deductions made from their wages?
- (vi) To prevent exploitation of workers the act makes the right of workers to get payment of wages absolute. In order words, the

employers cannot force the workers to make an agreement contrary to the provisions of the Act.

4.3 Definitions:

Some Important Definitions of the Act are:

"employed person" includes the legal representative of a deceased employed person;

"employer" includes the legal representative of a deceased employer;

"factory" means a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948), and includes any place to which the provisions of that Act have been applied under sub-section (1) of section 85 thereof;]

(a) Wages

"wages" means all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes-- (a) any remuneration payable under any award or settlement between the parties or order of a Court;

(b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;

(c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);

(d) any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made;

(e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force; but does not include –

(1) any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a Court;

- (2) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the State Government;
- (3) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
- (4) any travelling allowance or the value of any travelling concession;
- (5) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or
- (6) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d).]

Thus in brief Wages means all remunerations capable of being expressed in terms of money through a contract of employment and includes any remunerations payable under any award or settlement, overtime allowance and any other additional payment. It does not include the following –

- (i) Bonus which does not form part of the remuneration;
- (ii) Value of house accommodation or supply of light, water or any other amenity or service specifically excluded by the general or special order of the government;
- (iii) Any contribution made by the employer to any pension or provident fund or ESI scheme.
- (iv) Travelling allowance or value of any travelling concession ;
- (v) Any gratuity payable on termination of employment.

Thus, the definition contains what is to be included and what is not to be included in the wages. In fact the term wages means the wage which is earned and not the potential wages.

(b) Industrial and Other Establishments:

Industrial or other establishment means any

- [(a) tramway service, or motor transport service engaged in carrying passengers or goods or both by road for hire or reward;

- (aa) air transport service other than such service belonging to, or exclusively employed in the military, naval or air forces of the Union or the Civil Aviation Department of the Government of India;]
- (b) dock, wharf or jetty;
- [(c) inland vessel, mechanically propelled;]
- (d) mine, quarry or oilfield;
- (e) plantation;
- (f) workshop or other establishment, in which articles are produced, adapted or manufactured, with a view to their use, transport or sale;
- [(g) establishment in which any work relating to the construction, development or maintenance of buildings, roads, bridges or canals, or relating to operations connected with navigation, irrigation or the supply of water, or relating to the generation, transmission and distribution of electricity or any other form of power is being carried on;]
- [(h) any other establishment or class of establishments which the Central Government or a State Government may, having regard to the nature thereof, the need for protection of persons employed therein and other relevant circumstances, specify, by notification in the Official Gazette.]

4.4 Responsibility for the Payment of wages

Every employer shall be responsible for the payment of all wages required to be under the act, to persons employed by him. But in the case of persons employed in factories, industrial establishment or railways, the following persons shall also be responsible for the payment of wages –

- (a) In factories- the person named as the manager; if, however, the manager resigns, or is dead, or is remove then this responsibility again becomes the responsibility of the employer.
- (b) In an industrial establishment – the person, if any, who is responsible to the employer for the supervision and control of the industrial administration in this behalf for the local area concerned.

- (c) Upon railways – the person nominated by the employers and hence, they are liable to pay wages. In case of death of employer, his representatives are liable to pay wages.

4.5 Time for payment of wages

Every person responsible for the payment of wages shall fix a time for the payment of wages which can be either weekly or fortnightly or monthly. The payment of wages is to be made regularly and a wage period shall not exceed one month in any case.

The rules relating to time of payment of wages are –

(a) The wages of every person employed in any railway, factory or industrial establishment upon or in which less than 1,000 persons are employed shall be paid before the expiry of seventh day of the following wage – period. In case the number of workers exceeds 1000 the wages shall be paid before the expiry of the tenth day of the following wage-period. In the case of persons employed on dock, wharf or jetty or in mine, the balance of wages due on completion or the final tonnage account of the ship or wagons loaded or unloaded, as the case may be, shall be paid before the expiry of the seventh day from the day of such completion.

(b) Where the employment of any person is terminated by or on behalf of the employers, the wages earned by him shall be paid before the expiry of the second working day from the day on which his employment is terminated. Where the employment of any person in establishment is terminated due to the closure of the establishment for any reason other than weekly or other recognized holiday, the wages earned by him shall be paid before the expiry of the second day from the day on which his employment is so terminated.

(c) The state Government may, by general or special order, exempt the person responsible for the payment of wages from the operation of the above provisions in certain cases.

(d) All payment of wages shall be made on a working day.

4.6 Medium of payment of Wages

The payment of wages is to be made in the legal tender which in other words means the current coins or currency notice or both. Payment of wages in kind is not permitted because it amounts to the exploitation of workers under the garb of payment of wages in kind, the total wages paid to them was meager and non-cash payments were overvalued. Hence, payments are to be made either in cash or in cheque.

The process of payment of wages in cash is very cumbersome where the numbers of workers are very large. It is also risky where the sum involved is large and the factory or industrial establishment is situated at a remote place. In order to obviate these difficulties and save the workers from carrying cash on the pay day and mispending it, a proviso has been added to sec. 6 by the payment of wages (Amendment) Act, 1976. According to it, the employer may after obtaining the written authorization of the employed person, pay him the wages either by cheque or by crediting the wages in his bank account. The provision in the Amendment Act for paying wages by cheque or depositing wages in bank account will also inculcate the banking habit among the workers and also make the process of payment simpler for the employer.

4.7 Authorised Deduction from the Wages

Section 7 of the Enactment provided that wages of all employed person shall be paid without deductions of any kind except those authorized by the Act. This section mentions certain items which alone can be deducted from the wages. Nothing outside that list is authorized to be deducted.

There are two explanations appended to sec. 7 (I) according to explanation I every payment made by the employed person to the employer or his agent shall, for the purpose of this Act, be deemed to be a deduction from wages.

According to explanation II, any loss of wages resulting from the imposition for good and sufficient cause upon a person employed of any of the following penalties, shall not be deemed to be a deduction from wages in any case. These penalties are;

- (1) The withholding of increment or promotion (including the stoppage of increment at an efficiency bar);

- (2) The reduction of a lower post or time scale or to a lower stage in a time scale; or
- (3) Suspension – in case of Karnataka central Coop. bank Ltd. V. Karpi, it was held that loss of wages on account of suspension is not to be treated deduction from wages because subsistence allowance is not paid for the services rendered but for enabling the employee to survive and face the enquiry. Hence it is not given by way of wages. Deductions from the wages of an employed person shall be made only in accordance with the provisions of this Act, and may be of the following kinds only, namely;-
 - (a) Fines;
 - (b) Deductions for absence from duty;
 - (c) Deductions for damage to or loss of goods expressly entrusted to the employed person for custody, or loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default;
 - (d) Deduction for house accommodation supplied by the employer or by Government or any housing board set up under any law for the being in force (whether the government or the board is the employer or not) or any other authority engaged in the business of subsidizing house-accommodation in the Official Gazette.
 - (e) Deductions for such amenities and services supplied by the employer as the state Government or any other officer specified by it in this behalf may be general or by special order authorize;-

Explanation: - The word: service in this sub clause does not include the supply of tools and raw materials required for the purpose of employment;

 - (f) Deductions for recovery of advantage of whatever nature (including advances for travelling allowance or conveyance allowance), and the interest due in respect thereof, or for adjustment of over-payment of wages;
 - (g) Deductions for recovery of the loans made from any fund constituted for the welfare of labour in accordance with rule approved by the state Government, and the interest due in respect thereof.
 - (h) Deductions for recovery of loans granted for house-building or for other purpose approved by the state Government, and the interest due in respect thereof;

- (i) Deductions of income-tax payable by the employed person;
- (j) Deduction required to be made by order of a court or other authority competent to make order;
- (k) Deductions for subscriptions to, and for repayment of advances from any provident fund to which the provident fund Act, 1925 applies or any recognized provident fund as defined in Sec. 58-A or the Indian Income Tax Act, 1922, or any provident fund approved in this behalf by the state Government, during the continuance of such approval;
- (l) Deductions for payments to co-operative societies approved by the state Government or any officer specified by it in this behalf or to a scheme of insurance maintained by the Indian Post Office; and
- (m) Deductions, made with the written authorization of the person employed for payment of any premium on his life insurance policy to the life Insurance Corporation Act, 1956, or for the purchase of securities of the Government of India or any state Government or for being deposited in any post office savings Bank in furtherance of any saving scheme of the Government;
- (n) Deductions made with the written authorization of the employed person, for the payment of his contribution to any fund constituted by the employer or a trade union registered under the Trade Union Act, 1926 (16 of 1926), for the welfare of the employed persons or the members of their families, or both and approved by the state Government or any officer specified by it in this behalf, during the continuance of such approval.
- (o) Deductions made, with the written authorization of the employed persons for payment of the fees payable by him for the membership of any trade union registered under the Trade Union Act, 1926 (16 of 1926)
- (p) Deductions for payment of insurance premium on Fidelity Guarantee Bonds;
- (q) Deductions for recovery of losses sustained by a railway administration on account of acceptance by the employed person of counterfeit or base coins or mutilated or forged currency notes;
- (r) Deductions for recovery of losses sustained by a railway administration on account of the failure of the employed person to invoice, to bill, to collect or to account for the appropriate charge due to that administration, whether in respect of fares, freight, demurrage, wharf-charge and carriage or in respect of

- sale of food in catering establishment or in respect of sale of commodities in grains hop or otherwise;
- (s) Deductions, made with the written authorization of the employed person, for contribution to the Prime Minister's National Relief Fund or to such other, Fund as the Central Government may, by notification in the official Gazette, specify.

4.8 Nature of the Right to get Payment of Wages

The Act confers an absolute right to the worker to get wages in time and only those deductions can be made which are authorized under the Act. Section 23 of the Act incorporates the principle of contracting out according to which there cannot be an agreement which is contrary to the provisions of the Act OR which defeats the provisions of the Act so that the workers may not be subjected to exploitation or may not be compelled to enter into an agreement which takes away their right under the Act. Thus worker cannot relinquish his right in any situation. Even if he has been made to waive his right, it has no legal effect and he can enforce his right without any difficulty. Thus an agreement against the provisions of the Act is null and void. In case of Union of India V. Triloke Nath Bhasin, it was observed that payment of wages Act, 1936 calls for a benevolent or beneficial construction, a construction which should advance the remedy and suppress the mischief. In case of doubt, the Act should be so interpreted as to favor the employee. If, for example deduction is unauthorized, no agreement can give employer the right to make such deductions. Thus right of the employee under the Act is an absolute one.

4.9 Inspectors

An inspector of factories appointed under the Factories act, 1948 shall be an inspector for the purpose of the payment of wages Act in respect of all factories within the local limits assigned to him.

The state Government may also by notification in the official gazette appoint such other persons as it thinks fit to be inspectors for the purposes of this Act, it may define the local limits within which and the class of factories and industrial

establishments in respect of this Act in respect of persons employed upon a railway to whom this Act applies.

An Inspector may –

- (a) Make such examination and inquiry as he thinks fit in order to ascertain if the provisions of the Act are being observe;
- (b) Enter, inspect and search any premises of any railway factory or industrial establishment at any reasonable time for the purpose of carrying out the objects of the Act;
- (c) Supervise the payment of wages to persons employed upon any railway or in any factory or industrial establishment.
- (d) Examine the register and records maintained in pursuance of this act and take statements of any persons which he consider necessary for carrying out the purposes of the Act;
- (e) Seize or take copies of register or documents which may be relevant in respect of an offence committed by an employer. In respect of this the provisions of section 94 of Criminal Procedure Act, 1973 shall apply.
- (f) Exercise such other powers as may be prescribed.

Every Inspector is deemed to be a public servant within the meaning of the Indian Penal Code.

Every employer is bound to afford an Inspector all reasonable facilities for making any entry, inspection, supervision, examination or inquiry under the Act.

4.10 Miscellaneous

(A) Remedies

The enactment provides remedies to the claims of the employees when delays are made in the payment of wages or when unauthorized deductions are made from the wages. According to Sec. 15 of the Act, state Government is empowered to appoint some person as the authority to hear and decide for any specific area of claims arising out of deductions from wages or delay in payment of wages of persons employed or paid in that area, including all matters incidentals to such claims such appointment shall be made by a notification in the official gazette. Following may be appointed as authority for the purpose –

- i) A presiding officer of any labour court industrial tribunal;
- ii) Any commissioner for workmen compensation;
- iii) Any other officer with experience as a judge of Civil Court.

The jurisdiction of such authority is to determine the terms of contract in so far as they relate to the payment of wages and in so far as he has to declare the liability of the employer to pay wages under the terms of contract. Such authority enjoys the powers of Civil Court under the Code of Civil procedures for the purpose of taking evidence or enforcement of the attendance of witnesses and can also compel the production of documents. Such authority is a quasi-judicial body.

The applications for claims arising under the Act may be made by –

- (a) The person employed himself, or
- (b) Any legal practitioner, or
- (c) Any official of a registered trade union authorized in writing to act on his behalf, or
- (d) Any Inspector under this Act, or
- (e) Any other person acting with the permission of the Authority appointed under Sec. 15(1).

No direction for the payment of compensation shall be made in the case of delayed wages in the authority is satisfied that the delay was due to –

- (a) A bonafide error or dispute;
- (b) The occurrence of an emergency or the existence circumstances;
- (c) The failure of the employed person to apply for or accept payment.

Appeal against the decision of such authority can be made to the District Court within 30 days. Such appellant court may, if it thinks fit, submit any question of law for the decision of high Court and, if it does shall decide the question in conformity with such decision.

(B) Conditional Attachment of Property;

Where after an application has been made under Sec. 15(2), the Authority, or where after an appeal has been filed under Sec. 17, the Court is satisfied that the employer or other person responsible for the payment of wages under Sec. 3 likely

to evade payment of any amount that may be directed to be paid under Sec. 15 or Sec. 17, the authority or the court, as the case may be except in cases where the Authority or Court is of opinion that the ends of Justice would be defeated by the delay, after giving the employer or other person an opportunity of being heard, may direct the attachment, of so much of the property of the employer or other person responsible for the payment of wages as is in, the opinion of the Authority or court, sufficient to satisfy the amount which may be payable under the direction.

The provisions of the Code of Civil Procedure, 1908, relating to attachment before judgment under the Code shall, so far as may be, apply to any order for attachment.

(c) Bar of Suits:

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

- i) Forms the subjects of in application under sec. 15 which has been presented by the plaintiff and which is pending before the Authority appointed under that section or of an appeal under sec. 17; or
- ii) Has formed the subject of a direction under sec. 15 in favor of the plaintiff; or
- iii) Has been adjudged, in any proceeding under sec. 15 not to be owed to the plaintiff; or
- iv) Could have been recovered by an application under sec. 15.

In *Jiyajirao Sugar Co. Ltd. V. Bannerji*, (1963) it was held that a Civil Court has no jurisdiction to decide any disputes as to the amounts payable as wages if the Payment of Wages Act is applicable whatever the cause for the delay in the payment of claim, the jurisdiction of the authority under sec. 15 of the Act becomes absolute and exclusive under sec. 22.

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

(D) Payment of Undisbursed Wages in Cases of Death of Employed Person:

By Amendment Act of 1982, new section 25-A was added to facilitate the payment of undisbursed wages in case of death of the employed person to the rightful claimants. In such case wages shall be paid to the person nominated by the deceased in this behalf in accordance with the rules made under the Act. Where no such nomination has been made or where, for any reason, such amount cannot be paid to the person so nominated, be deposited with the prescribed authority who shall disburse the amount so deposited to the rightful claimant after examining the whole issue.

4.11 Summary

The payment of wages act, 1936 regulates the payment of wages to certain classes of persons employed in the industry. The scope of this act is limited to the persons drawing the earned wages for the month, which does not exceed Rupees one thousand six hundred. The department is enforcing this legislation to the persons employed at the registered factories.⁶

It applies in the first instance to the payment of wages to persons employed in any ⁷[factory, to persons] employed (otherwise than in a factory) upon any railway by a railway administration or, either directly or through a sub-contractor, by a person fulfilling a contract with a railway administration. ⁸[and to persons employed in an industrial or other establishment specified in sub-clauses (a) to (g) of clause (ii) of section 2] (5) The State Government may, after giving three months' notice of its intention of so doing, by notification in the Official Gazette, extend the provisions of ⁹[this Act] or any of them to the payment of wages to any class of persons employed in ¹⁰[any establishment or class of establishments specified by the Central Government or a State Government under sub-clause (h) of clause (ii) of section 2]

Thus the Payment of Wages Act ensures the regular payment of wages to the employees and also restrains the right of the employer to make unauthorized deductions. The employer is required to fix the wage periods which shall not

⁶ http://labour.kar.nic.in/fandb/f_payact.htm#PAYMENT retrieved 22.05.2015

⁷ Subs. by Act 38 of 1982, s. 3 (w. e. f. 15-10-82).

⁸ Ins. by s. 3 ibid. (w.e.f. 15-10-1982).

⁹ Subs. by Act 68 of 1957, s. 2. for "the Act" (w.e.f. 1-4-1958). 96

¹⁰ Subs. by Act 38 of 1982, s. 3 (w. e. f. 15-10-82).

exceed one month. The payment of wages is to be made in legal tender, i.e. the current coins and currency notes or both. The employer has not to enter into an agreement with the employed person whereby he is required to relinquish any right conferred by the Act. The right of the employee to get wages regularly is absolute one. For the effective enforcement of the Act, the State Government is authorized to make the rules. Such Government may also appoint appropriate authority to consider the claims arising under the Act along with the right to appeal to the either party.

4.12 Self-Assessment Test

- Q.1 What are the authorized deductions under the Payment of Wages Act, 1936?
- Q.2 What are the powers and the functions of the Inspectors?
- Q.3 What is the remedy if the payment of wages is not made according to the provisions of the Act? Whether the Act provides any remedy if the worker waives his right under the Act?
- Q.4 Write Short notes on-
- a) Wages
 - b) Industrial and offer establishment
 - c) Principle of contracting out.

4.13 Key Words

Contracting out means there cannot be any contract contrary to the provisions of the Act and even if it is there, it has no legal effect.

Wages means all payments capable of being expressed in terms of money and payable under the terms of employment. It includes additional payments like overtime allowance and it excludes travelling allowance as also the contribution of employer towards ESI Scheme, provident fund and gratuity, etc.

Medium of Payment of Wages means making payment in legal tender, i.e., in the current coins or currency notes or both.

Authorised deduction are those which the employers are permitted to deduct from the wages of the employees like fines, payments towards LIC premium, contribution of the employees towards ESI scheme and provident fund, etc.

4.14 Further Readings

1. K.N. Subramaniam – Wages in India
2. The Payment of Wages Act, 1936
3. Report of National Commission on Labour
4. Indian Labour year Books
5. G.L. Kothari – Wages, Dearness & Bonus
6. Indian Labour Journal
7. S.N. Mishra – An Introduction of Labour & Industrial law
8. Karnataka Central Co – Operative Bank Ltd. V. Karpi, 1987 I, L.L.J., 179

UNIT- 5

Wage legislations Part – II

(Minimum Wages Act, 1948)

Objective

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

- The meaning of minimum wages;
- The Minimum Wages Act, 1948 protecting the rights of unorganized workmen who are weak and not capable of collective bargaining;
- Procedure for the determination of minimum wages;
- The right to get minimum wages is absolute.

Structure

- 5.1 Introduction
- 5.2 Definitions
- 5.3 Procedure
- 5.4 Advisory Boards
- 5.5 Nature of the rights of minimum wages
- 5.6 Inspectors
- 5.7 Miscellaneous
- 5.8 Summary
- 5.9 Self-assessment Test
- 5.10 Key words
- 5.11 Further readings

5.1 Introduction

The Minimum Wages Act, 1948 was brought into being to provide minimum wages to the sweated labour. The labour is unorganized and is not capable of collective bargaining and hence, minimum wages is to be ensured to them, through statutory machinery created under the said Act for the determination of wages. The

right to minimum wages is absolute one and worker himself cannot waive this. The machinery for determination of the wages is of representative character, consisting of the representatives of workers, employers and the State Government. Under the Act, a schedule is attached which specifies the government has the power to extend the provisions of this Act to any of the employment which is of the nature specified in the schedule.

5.2 Definitions

(a) Minimum wages

The term minimum wages is not defined under the Act. It was first defined by Fair Wages Committee, 1948 and subsequently adopted by various decisions of the court. According to Fair Wages Committee, minimum wages is one which provides not merely for bare subsistence of life but for the preservation of the efficiency of the worker. For this purpose, minimum wages must provide not only for food, shelter and clothing but also for education, medical facilities and transportation. This definition was adopted by the Supreme Court in *Hydro-Engineering Pvt. Ltd. vs. their workmen*. In fact, minimum wages is a dynamic concept. It changes with the growth of economy with changes in the standard of living. It is likely to differ from place to place, society to society and from industry to industry.

(b) Employer

Employer means any persons who employs, whether directly or through any person or whether on behalf of himself or any other person, employees in any schedule employment in respect of which minimum wages have been fixed under the Act. For the purpose of State Government, either State Government or local authority is the employer. A Managing agent is also an employer. In essence, employer is a person who pays wages and exercises supervision and control over the work of employees.

(c) Employee

Employee means any persons who are employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum wages has been fixed. It does not include any member of the forces of the Union. The definition of employees is wide enough to include a person working on job or piece rate basis.

(d) Wages

Wages means all remuneration capable of being expressed in terms of money which would, if the terms of the employment, expressed or implied, were fulfilled, be payable to a person, employed in respect of his employment or the work done in such employment and includes house rent allowance. It does not include things like the contribution of employer towards pension fund or provident fund or travelling allowance or contribution towards ESI scheme and so on.

5.3 Procedure for Fixation and Revision of Minimum Wages

The appropriate government appoints committees or sub-committees as it considers necessary to hold enquiries and advices on matters of fixing and revision of minimum wages. The members of the committee are nominated by the appropriate government on the principle of equal representation. These committees consist of representatives of workers, employers and the state. Each representation is with a view to provide representatives opportunity to put forward their respective views and also to ensure acceptability of wages recommended by them. The Chairman is an independent person.

These Committees consider the following points while making their recommendations-

- (1) Need of the workers in terms of food, cloths, shelter and others;
- (2) Cost of living based on an approved consumer price index number;
- (3) Conditions of employment;
- (4) The behavior of price level to evolve a formula for wage adjustments to neutralize increasing prices which cause reduction in real wages.

The committee, however shall not take the following considerations while determining minimum wages-

- (1) The fact that employer finds it difficult to carry on his business;
- (2) The employer does not have financial capacity to pay minimum wages. Supreme Court is of the view that if employer does not have financial capacity to pay even minimum wages, his industry does not deserve to exist.
- (3) The employer has incurred losses during previous years;
- (4) The employer has difficulty in importing raw materials.

After taking into account the above, the committee shall recommend the minimum wages to the appropriate government which takes a final decision in the matter. The appropriate government shall consider the recommendation of committees and sub-committees and also the advice of Advisory Board and will notify the minimum wages in respect of each scheduled employment by notification in the official Gazette.

5.4 Advisory Board

The Advisory Board do exists at State level and the Union level. State Advisory Board are created the appropriate government for the following purpose-

- (1) For coordinating the work of committees and sub-committees appointed from time to time for the determination of minimum wages;
- (2) Advising the government in the matter of fixing and revising the minimum wages;
- (3) For advising the procedure for the effective functioning of committees and sub-committees. This State Advisory Board is also of representative character consisting of the representatives of workers, employers and the State.

The Central Advisory Board is created by the Central Government for the following purpose-

(1) Advising the Central and the State government in the matters of fixing and revising minimum wages;

(2) For coordinating the activities of all State Boards in India.

Again, this Board is also of representative character consisting of the representatives of employers, workers and the government.

5.5 Nature of the Right of Minimum Wages

The right of the un-organised workers to get minimum wages is also established and is of absolute character so much that even workers himself cannot waive this right. Reason for attributing this character to this right is that under compelling socio-economic circumstances, the workers can be made to do away with it. The Supreme Court, in a number of cases, has declared this right to be absolute one and under no circumstances, the employer can refuse to pay minimum wages. In *Crown Aluminum Works Vs. their workmen*, Justice Agneta Gaudkar has opined that an industry does not have right to exist if it is not capable of paying minimum wages. In *Kaman Metals Vs. their workmen*, the Supreme Court has opened that minimum wages should be paid irrespective of extent of profits, the financial conditions of the establishment, and on the availability of workmen on lower wages.

But in eighties of the century, it has been experienced through social surveys that workers are not able to move to the court of law even if minimum wages are not paid to them and tolerates injustice in silence. Therefore, to protect their this right, the Supreme Court has liberalized the principle of locus-stand and now even a non-concerned party could go to the court of law to protect the rights of workers and to ensure social justice to them. In *Peoples Union for Democratic Right and others*, the Supreme Court has said that poor too have civil and political rights. Hence, the Supreme Court ordered Union of India, Delhi Administration and Delhi Development Authority that minimum wages be paid to the workmen employed in the construction work connected with the Asiad 1982. This spirit was maintained

by the Supreme Court in Sanjeet Roy Vs. State of Rajasthan where the Supreme Court ordered the Rajasthan Govt. to pay minimum wages to the labour engaged in drought relate operation, on a petition by Sanjeet Roy. Thus, through the provisions of law and judicial dicta, it is now well proved that right to minimum wages is absolute one and in no situation can be deprived of this.

5.6 Inspectors

Inspectors are appointed by the appropriate government to ensure the employers of scheduled employment observe the provisions of Minimum Wages Act. For this purpose the inspectors have been armed with the following powers-

- (1) He may enter at the reasonable hours, the premises of the employer in respect of which minimum wages has been fixed under the Act. For this purpose he has power to examine register, records of wages or notices required to be kept or exhibited and can do all reasonable act which is necessary for the fulfillment of the objectives of the Act.
- (2) He may examine any person giving whom he finds in any such premises or place and believes to be employee employed therein.
- (3) He may require any person given out-work and any out workers, to give any information which is in his power to give and with respect to the payments made for the work.
- (4) He may size or take copies of such register, records of wages or notice or portion 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.
- (5) He may exercise any such power as be prescribed.

Each inspector shall be deemed to be public servant within the meaning of India Panel Code.

5.7 Miscellaneous

(a) Wages in Kind,

The Act provides that wages shall be paid in cash so that worker is not exploited by over-estimating the value of wages in kind. However, if the payment wages in kind is in the interest of the workers, then wages can be paid in kind also. For example, the wages can be paid in terms of supply of essential commodities at concessional rates. Its value will be estimated accordingly. For this purpose, the government shall specify the circumstances by a notification in the official Gazette and authorities the payment of minimum wages either wholly or partly in kind.

(b) Correction of Errors

The Act provides that the appropriate government may, at any time, by notification in the official Gazette, correct clerical or arithmetic mistakes in any order fixing or revising minimum rates of wages under the Act because the errors arising therein may be an accidental slip or omission. But at the same time government is not authorized to alter it. Such notification, after it is issued, shall be placed before the Advisory Board for information.

(c) Scheduled employment

Scheduled employment means an employment specified the Schedule or in process or branch of work forming a part of such employment. Following are the scheduled employments which are divided into two parts.

Part I

1. Employment in any woolen carpet making or shawl weaving establishment.
2. Employment in any rice mill, flour mill or dal mill.

3. Employment in any tobacco (including biri making) manufactory.
4. Employment in any plantation that is to say, any estate which is maintained for the purpose of growing cinchona, rubber, tea or coffee.
5. Employment in any oil mill.
6. Employment under any local authority.
7. Employment on the construction or maintenance of roads or in building operation.
8. Employment in stone-breaking or stone-crushing.
9. Employment in any lac manufactory.
10. Employment in any mica works.
11. Employment in public motor transport.
12. Employment in tanneries and leather manufactory.
13. Employment in gypsum mines.
14. Employment in barites mines.
15. Employment in bauxites mines.
16. Employment in manganese mines.
17. Employment in China clay mines.
18. Employment in Cyanide mines.
19. Employment in magnetic mines.

Part II

Employment in agriculture, that is to say, in any form of farming including the cultivation, and tillage of the soil, dairy, farming, the production, cultivation, growing and harvesting of any agricultural or horticultural commodity, the raising of live stock, bees or poultry and any practice performed by a farmer or on a farm as incidental to or in conjunction with farm operations (including any forestry or timbering operation and the preparation for market and delivery to storage or to market or to carriage for transportation to market of farm produce).

However, the appropriate government has right to extend the provisions of this Act to any other employment than specified above if it is in the interest of the work force which is unorganized.

(d) Principle of Contracting Out:

It means that there cannot by any agreement contrary to the provisions of the Act. If under any circumstance workers is forced to enter into an agreement which is contrary to the provisions to Act or which defeat the purpose of the Act, than such agreement is null and void and having no enforceability or does not hold good in law. In other words, by virtue of an agreement, the provisions of the Act cannot be made ineffective or the workers are not allowed to waive their right to get minimum wages. This establishes that right to get minimum wages is available to workers in an absolute manner and it cannot be taken away in any circumstance. Thus, the right to get minimum wages is deeply rooted and well established.

5.8 Summary

The Minimum Wages Act, 1948 is a social welfare legislation which provides social justice to the unorganized labour which has weak bargaining position in the market of labour. It specifies the employments in the Schedule, which are covered under the umbrella of the Act, but at the same time government has power to extend the provisions of the Act to any other employment apart from the scheduled one. The right to get minimum wages is well established and absolute one. The employer in nor circumstances can refuse to pay minimum wages. For example, employer cannot say that he does not have capacity to pay or workmen are ready to work below the minimum wages or his industry is running in losses. Even the workman does not have right to have to get minimum wages. The decisions of various courts also confirm the absolute character of this right.

Minimum Wages in Rajasthan w.e.f January 1, 2014 to June 30, 2015

Minimum Wages in India: Revised minimum wages in Rajasthan for domestic workers, maids, agriculture, manufacturing, oil mills, textile industry, handloom industry, hotels and restaurants.

Sr. No.	Scheduled Employment	Total Minimum Wages (In Rs)			
		Un skilled	Semi-skilled	Skilled	Highly-Skilled
1	Agriculture	189	199	209	259
2	Automobile Workshop	189	199	209	259
3	Employment in Bricks Works Industries	189	199	209	259
4	Cabal operating and Related services	189	199	209	259
5	Cement Prostrated Project Industry	189	199	209	259
6	Cinema industry	189	199	209	259

7	Cold drinks soda & Allied Products	189	199	209	259
8	Cold Storage	189	199	209	259
9	Computer Hardware Industry & Services	189	199	209	259
10	Contingency & workers in all government offices	189	199	209	259
11	Cotton Dyeing, Printing and Washing factories	189	199	209	259
12	Cotton Ginning & Pressing Factories	189	199	209	259
13	Cotton Waste Spinning Factories	189	199	209	259
14	Employment in Construction & Maintenance of Roads	189	199	209	259
15	Handloom Industry	189	199	209	259

16	Hotel and Restaurants	189	199	209	259
17	Employment in Irrigation Departmental workers	189	199	209	259
18	Engineering Industries	189	199	209	259
19	Employment in Sugar Pan Industries without Mechanical Power	189	199	209	259
20	Employment in Institutions of Gota kinari and Lappa	189	199	209	259
21	Jute Patte Industry	189	199	209	259
22	Khadi Handicraft & Village Industry	189	199	209	259
23	Employment in Local Authority undertakings	189	199	209	259
24	L.P.G. distribution and related services	189	199	209	259

25	Marketing and Consumers Co-operating Societies	189	199	209	259
26	Metal Foundry & General Engineering Industry	189	199	209	259
27	Employment in Mica works	189	199	209	259
28	Non-Government Organization (N.G.O.) & Institutions	189	199	209	259
29	Oil Mills	189	199	209	259
30	Pesticide along with chemicals & Pharmaceuticals Industry	189	199	209	259
31	Petrol Pumps & related Services	189	199	209	259
32	Private Educational Institution	189	199	209	259
33	Private Hospitals & Nursing Homes	189	199	209	259
34	Power loom Factories	189	199	209	259

35	Printing Press	189	199	209	259
36	Employment in Production, Distribution and Supply of Electricity	189	199	209	259
37	Employment in Public Health Engineering Department	189	199	209	259
38	Public Motor Transport	189	199	209	259
39	Public Works Department	189	199	209	259
40	Rice Mill, Flour Mill & Dal Mill	189	199	209	259
41	STD, ISD, PCO & related Services	189	199	209	259
42	Shops and Commercial Establishments.	189	199	209	259
43	Small Scale Industry	189	199	209	259
44	Soap Stone Factories	189	199	209	259

45	Sweeper & Sanitary service not covered in other employment	189	199	209	259
46	Tailoring work & Garments Industry	189	199	209	259
47	Taxies Auto Rickshaw & Traveling Agencies	189	199	209	259
48	Textile Industry	189	199	209	259
49	Manufacturing of Tiles & Potteries Industry	189	199	209	259
50	Wool Cleaning and Pressing Factories	189	199	209	259
51	Woollen Spinning and Weaving Factories	189	199	209	259
52	Wood works & Furniture Industry	189	199	209	259
53	Factories registered under Factory Act	189	199	209	259

Minimum Wages for Household work			
Sr. No.	Type of Work	No. of Hours spent for work Per Day	Minimum Wage Rate Per Month (in Rs)
1	Washing clothes	60 minutes	679
2	Washing Utensils	60 minutes	679
3	Washing clothes and utensils	60 minutes	679
4	Washing clothes and utensils and cleaning the house	60 minutes	679
5	Other household work	60 minutes	679
6	Washing clothes and utensils, cleaning the house, doing other household work, childcare, dropping kids to school etc work.	One full day work	5434

Source: Department of Labour and Employment, Government of Rajasthan

5.9 Self-Assessment Test

Answer the following questions'

- 1) What is minimum wages and what is nature of right of minimum wages under the Act?
 - 2) What is the procedure for the determinations of minimum wages under the Minimum Wages Act?
 - 3) Discuss the constitution and functions of Advisory Boards under the Act.
 - 4) Write sort notes on the following :
 - a) Scheduled employment
 - b) Wages
 - c) Principle of Contracting out.
 - d) Inspectors.
-

5.10 Key Words

Minimum Wages: Means the Wages which is sufficient to preserve existing level of efficiency and which is above subsistence level.

Contracting Out: Means there cannot be a contract contrary to the provisions of the Act.

Scheduled employment: Means employment specified in the scheduled and where the unorganized labour is engaged.

Employer: Means a person who provides employment in any scheduled employment in respect of which the Act applies.

Advisory Boards: Means the boards constituted at State level and the Union level to coordinate the various activities of the committee and sub-committees and also to advice on the matters of revision of fixation of minimum wages. They consist of the representatives of the workers, employers and the State.

5.11 Further Readings

1. K.N. Subramiam – Wages in India.
2. The Minimum Wages Act, 1948
3. Report of National Commission on Labour.
4. Indian Labour Year Books

5. G.L. Kothari : Wages, Dearness Allowance and Bonus.
6. Indian Labour Journal
7. S.N. Mishra: An Introduction to Labour & Industry Law
8. Kamani Metals Vs. Their Workmen, AIR 1967 SC 1175
9. Peoples Union for Democratic rights & other Vs. Union of India & others,
1982 II LLJ 454 (SC)

UNIT- 6

The Equal Remuneration Act, 1976

Objectives

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

- the underlying objectives of the Equal Remuneration Act and,
- accordingly, evolve policies and programs in the context of your organization, establishment and employment.
- No Discrimination in payment of Remuneration and Recruitment
- Advisory Committee under the Act and its Constitution and Duties
- Authorities, their appointment, Jurisdiction, power and procedure for hearing and deciding claims and complaints.

Structure

- 6.1 Introduction: Objectives, extent and commencement, effect, and Application of the Act
- 6.2 Definitions: Appropriate Government, Commencement, Employer, Remuneration, same work or work of a similar nature and worker etc.
- 6.3 No Discrimination in payment of Remuneration and Recruitment
- 6.4 Advisory Committee: Constitution and Duties
- 6.5 Authorities: appointment, Jurisdiction, power and procedure for hearing and deciding claims and complaints.
- 6.6 Miscellaneous: Employer to maintain Register, Inspectors and their powers, penalties, Offences, Cognizance and Trial.
- 6.7 Summary
- 6.8 Self-assessment test
- 6.9 Further Readings

6.1 INTRODUCTION

This unit has been prepared to acquaint you with the underlying objectives of the Act. Both, pre and post Independent India witnessed discrimination against women workers in their recruitment as well in the payment of remuneration for the same work of a similar nature as compared to their men folks.

This indiscreet discrimination against women continued in establishments and employments until the celebration of 1975 as International Women's year.

Objectives

The first and the foremost objectives of the Act is to give effect to the constitutional injunction of Article 39 of our Constitution. Clauses (a) and (d) of Article 39 provides that the state shall, in particular, direct its policy towards securing, (a) that the citizens, men and women equally, have the right to an equal means of livelihood and, (d) that there is equal pay for equal work for both, men and women. This right is deducible from Article 14 read with Clauses (d) of Article 39, as held in *Sanjeev Coke v. union of India*, A.I.R. 1984 S.C. 541.

The welfare of women is of prime importance in a welfare state. Hence, any special provision for her protection for her protection and upliftment under Clauses (3) of Article 15 would not offend the guarantee of non-discrimination enshrined in clause (1) of Article 15.

Again, Article 39 of the Indian Constitution envisaged that the state shall direct its policy, among other things, towards securing that there is equal pay for equal work for both, men and women. To give effect to this constitutional enshrinement, the President of India promulgated on the 26 the day of September, 1975, the Equal Remuneration Ordinance, 1975 so that the provisions of Article 39 of the Constitution may be implemented in the year which was being celebrated as the International Women's year?

The Ordinance provided for the payment of equal remuneration to men and women workers for the same work, or work of a similar nature, and it also provided for the prevention of discrimination on grounds of sex. The Ordinance also ensured that there would be no discrimination against recruitment of women and provided for the setting up of an Advisory Committee to promote employment opportunities for women. The Ordinance was replaced by the Equal Remuneration Act (No. 25 of 1976), enacted by parliament in the Twenty- seventh year of Republic of India.

Preamble of the Act provides that it is an “Act to provide for the payment of equal remuneration to men and women workers and for the prevention of discrimination, on the ground of sex, against women in the matter of employment and for matters connected therewith or incidental there to.”

Extent and Commencement

The Act extends to the whole of India. It has got retrospective as well as prospective effect. The Act received the assent of the president of India on February 11, 1976 and was published in the Gazette of India on February 12, 1976. The Act was made enforceable not later than within a period of three years from the date of its approval by the parliament. Sub-section (3) 1 of the Act provides that “it shall come into force on such date, not being later Government may, by notification, appoint, and different dates may be appointed for different establishment or employments.”

Sub-section (3) of Section 1 read with Clauses (b) of Section 2 confers the power on the Central Government to enforce this Act within a period of three years from the date of its passing in respect of employment in different establishment on different dates. In exercise of the powers conferred by sub-section 3 of Section 1 of the Equal Remuneration Ordinance, 1975 (12 of 1975), the Central Government appointed January 1, 1976, as the date on which the Ordinance was made applicable in respect of employments in local authorities and January 27, 1976, in respect of employments in hospitals, nursing homes and dispensaries. Likewise, it was enforced in respect of employments in banks, Insurance Companies and other financial institution on 8.3.1976; in respect of educational teaching and research institution it came into force on 5.4.1976 in respect of mines as defined by Section 2 (1) of the Mines Act, 1952, Employees’ Provident fund Organization, the Coal Mines Provident Fund Organization, the Employees State Insurance Corporation, the Act came into force on 1.5. 1976. In respect of employments in Food Corporation of India, Central Warehousing Corporation and the State Warehousing Corporation, the Act came into force on 1.7.76; and in respect of employments in the manufacture of textiles and textile products including manufacturing of cotton, wool and silk, synthetic fibers, Jute and Mesta for ginning, cleaning, balling, spinning, weaving, shrinking, mercerizing, printing, dyeing, bleaching etc. and also in respect of employments in the manufacture of

textile products including wearing apparel other than foot wear, the Act came into force on 15.7.76.

In respect of employments in the manufacture of electrical and electronic machinery, apparatus and appliances and factories located in plantation as defined in Factories Act, 1948, and plantations of labour Act 1951 the Act was enforced on 27.8.76 in respect of employments in the manufacture of chemicals and also in respect of employments in land and water transport as specified in the schedule the Act was enforced on 10.2.1977. Likewise, by notifications on different subsequent dates down to 3.6.1978 the Act was enforced in respect of various other establishments and employments.

Effect of the Act

The Equal Remuneration Act, 1976, has got overriding effect retrospectively against any law, award, agreement or contract of service. The Act, by Section 3 enacts notwithstanding anything inconsistent therewith contained in any other law or in the terms of anytime, agreement or contract of service whether made before or after the commencement of this Act, or in any other instrument effect under any law for the time being on force.

Application of the Act

The Act applies to every kind of establishment and employment, and extends to the whole of India. However, this Act does not apply in certain special cases as has been provided by Section 15 of the Act. It says that in so far as (a) the terms and conditions of a woman's employment are in any respect, affected by compliance with the law regulating the employment of women, or (b) any special treatment is accorded to women in connection with birth, or expected birth of a child, the requiring equal treatment as regards terms and conditions relating to retirement, marriage or death, or to any provision made in connection with retirement, marriage or death.

Further, the Act, by Section 16, provides that where appropriate Government, on a consideration of all the circumstances of a case, is satisfied that the difference in remuneration, or a particular specie of remuneration of men and women workers in any establishment, or employment is based on a factor other than sex, it may, by notification, make a declaration to that effect and any act of

employer attributable to such a difference shall not be deemed to be a contravention of any provision of this Act.

The Supreme Court in *Dr. C. Girijambalal v. Government of A.P.*, (1981) 1 L.L.J. 314 (S.C.), has held that the principle of equal pay for equal work cannot be applied in the field of rendering professional services. The Court while holding the principle inapplicable in professional services, cited examples that dressing of a wound by a doctor and a Compounder, and arguing of a case in the court by a senior and a junior lawyer cannot, at any way, be treated equally with regard to remuneration.

6.2 Definitions

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

- (a) **Appropriate Government:** In this Act, unless the context otherwise requires, 'Appropriate Government' means (i) in relation to any employment carried on by or under the authority of the Central Government or a railway administration, or in relation to a banking company, a mine, oilfield or major port or any corporation established by or under a Central Act, the Central Government, and (ii) in relation to any other employment, the State Government. Thus the expression 'Appropriate Government' means Central or State Government only.
- (b) **Commencement of this Act** means, in relation to an establishment or employment, the date on which this Act comes into force in respect of that establishment or employment.
- (c) **Employer:** The word 'employer' under the Equal Remuneration Act, 1976, has the meaning assigned to it in Clause (f) of Section 2 of the Payments of Gratuity Act, 1972. Clause (f) of Section 2 of that act provides as follows : "employer" means in relation to any establishment, factory, mine, oilfield, plantation, port, railway, company or shop – (i) belonging to or under the control of the Central Government, a person or authority appointed by the appropriate Government for the supervision and control of employees, or where no person or authority has been so appointed, the head of the Ministry or the Department concerned; (ii) belonging to, or under the

control of any local authority, the person appointed by such authority for the supervision and control of employees or, where no person has been so appointed, the chief executive officer of local authority and, (iii) in any other case, the person, who, or the authority which has the ultimate control over the affairs of the establishment, factory, mine, oilfield, plantation, port, railway, company or shop, and where the said affairs are entrusted to any other person, whether called a manager, managing director or by any other name, such person.

- (d) **“Remuneration”** Means the basic wage or salary, and additional emoluments what so ever payable, either in cash or in kind, to a person employed in respect of employment or work done in such employment, if the terms of the contract of employment, express or implied, were fulfilled.
- (e) **“Same work or work of a similar nature”**: This expression means work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions, by a man or a woman and the differences, if any, between the skill, effort and responsibility required of a man and those required of a woman are not of practical importance in relation to the terms and conditions of employment.
- (f) **“Worker”**: means a worker in any establishment or employment in respect of which this Act has come into force. Thus, the word ‘worker’ in the Act means both, man and woman worker in any establishment or employment.
- (g) Words and expressions used in this Act and not defined, but defined in the Industrial Disputes Act, 1947, shall have the meanings respectively assigned to them in that Act.

6.3 No Discrimination in Payment of Remuneration and Recruitment

Payment of Remuneration at Equal Rates to Men and Women Workers

Section 4 of the Act casts a duty upon every employer to pay equal remuneration to men and women workers for same work or work of a similar nature. The Section provides that no employer shall pay to any worker employed by him in an establishment or employment remuneration whether payable in cash or kind at rates less favorable than those at which remuneration is paid by him to

the workers of the opposites sex in such establishment for performing the same work or work of a similar nature. However, Section 4(2) puts an estoppels against an employer and requires that for the purpose of Compliance the provisions of Section 4(1) of the Act, no employer shall reduce the rate of remuneration of any worker.

Section 4(3) of the Act provides that where the rates of remuneration payable before the commencement of this Act for men and women workers for the same work or work of a similar nature are different only on the ground of sex in an establishment or employment then the higher (in cases where there are only two rates), or, as the case may be, highest (in cases where there are more than two rates) of such rates shall be the rate at which remuneration shall be payable, on and from such commencement, to such men and women workers. But the provision of the rate of Section 4(3) shall not entitle a worker to the revision of the rate of remuneration payable to him or her with reference to the service rendered by him or her before the commencement of this Act.

Recruitment without Discrimination on the ground of Sex

Section 5 of the Act casts a duty upon an employer not to make any discrimination while recruiting men and women workers for his establishment, or employment. The Section envisages that no employer on and from the date of the commencement of this no employer on and from the date of the commencement of this Act in his establishment or employment shall, while making recruitment for the same work or work of a similar nature, make any discrimination against women except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force. But the provisions of this section shall not affect any priority or reservation for scheduled castes or scheduled tribes, ex-servicemen, retrenched employees or any other class or category of persons in the matter of recruitment to the posts in an establishment or employment.

6.4 Advisory Committee

Constitution:

For the purpose of providing increasing employment opportunities for women, section 6 of the Act enacts that the appropriate Government shall constitute one or more Advisory Committees to advise it with regard to the extent to which women may be employed in such establishments or employments as the Central Government may, by notification, specify in this behalf. Every such Advisory Committee shall consist of not less than ten, persons who shall be nominated by the appropriate Government, and of which one-half shall be women.

Duties

The Advisory Committee in tendering its advice shall have regard to (i) the number of women employed in the concerned establishment or employment, (ii) the nature of work, (iii) hours of work, (iv) suitability of women for employment, (v) the need for providing increasing employment, and (vi) such other relevant factors as the Committee may think fit and proper. The Advisory Committee shall regulate its own procedure while considering the aforesaid factors and in arriving at its findings for tendering its advice in respect of a particular establishment or employment to the appropriate Government.

6.5 Authorities

Appointment:

Section 7 of the Act empowers the appropriate Government to appoint authorities for hearing and deciding claims and complaints under the Act. The Government may, by notification, appoint such officers, not below the rank of a Labour Officer, as the authorities for the purpose of hearing and deciding:

- (a) complaints with regard to the contravention of any provision of this Act; and
- (b) claims arising out of no-payment of wages at equal rates to men and women workers for the same work or of a similar nature.

Jurisdiction:

The Government while appointing such authorities, either by the same notification or subsequent order, can prescribe the local limits within which each such authority shall exercise its power jurisdiction.

The officers appointed as Authorities under sub-section (1) of Section 7 of the Act by the Central Government are all Assistant Labour Commissioners.

(Central) at Chief Labour Commissioner's Headquarters, New Delhi who have been given jurisdiction over whole of India and all Assistant Labour Commissioners (Central) in the regional offices at Bombay, Madras, Jabalpur, Kanpur, Dhanbad, Hyderabad, Ajmer, Asansol and Bhubaneswar, will function as Authorities within their regions respectively.

Similarly, every state government has empowered all Labour Officers as Authorities under the Act.

Procedure:

Every complaint or claim shall be made in writing in the prescribed form in triplicate. A single complaint may be made by or on behalf of or in relation to a group of workers if they are employed in the same establishment and the complaint relates to the same contravention. The complaint may be made by the worker himself or herself, or by any legal practitioner, or by any officer of a registered trade union authorized in writing to appear and act on his or her behalf. The complaint may also be made by any inspector appointed under Section 9 of the Act or by any other person, action with the permission of the Authority.

Where a complaint or claim is made to the authority, it may after giving the applicant and the employer an opportunity of being heard and after such an inquiry as it may consider necessary, direct:

- (a) In the case of a claim arising out of non-payment of wages at equal rates to men and women workers for the same work or work of a similar nature, that payment of that amount be made to the worker by which the wages payable to him exceed the amount actual paid;
- (b) In the case of a complaint, adequate steps be taken by the employer so as to ensure that there is no contravention of any provision of this Act.

Powers: Every such authority appointed by the appropriate Government under the Act shall have all the powers of a Civil Court under the Code of Civil Procedure for the purpose of a taking evidence and of enforcing the attendance of witnesses and compelling the production of documents; and for all the purposes of Section 195 of the code of Criminal Procedure, 1973. Every such authority shall be deemed to be a Civil Court.

Appeal: Any employer or worker aggrieved by any order made by an authority under Section 7(1) of the Act may, within thirty days from the date of the order, prefer and appeal to such authority as the appropriate Government may, by notification, specify in this behalf; and that authority may, after hearing the appeal, confirm, modify or reverse the order appealed against and no further appeal shall lie against the order made by such authority. If the appellate authority is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the specified period of thirty days, may allow the appeal to be preferred within a further period of thirty days but not thereafter.

When by any order of the authority of appellate authority under the Act money for the same work or work of a similar nature, from an employer due to men and women workers, the same is recoverable as an arrear of land revenue in the manner provided by Section 33-C of the Industrial Disputes Act, 1947.

The worker himself or herself or any other person authorized by him or her in writing, and in case of his or her death, his or her assignee or heirs may, within a period of one year from the date of assignee or heirs may, within a period of one year from the date of the order an on sufficient cause even after the expiry of one year, apply to the appropriate Government for the recovery of money due to him or her and if the Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue.

Under sub-section (6) of Section 7 of the Equal remuneration Act, 1976, the Central Government has appointed and empowered the Regional Labour, Commissioners (Central) at Bombay, Calcutta, Madras, Jabalpur, Kanpur, Dhanbad, Hyderabad, Ajmer, Asansol and Bhubaneswar as Appellate Authorities under the Act. Likewise, every state government has empowered its Labour Commissioners an Appellate Authority under the Act.

6.6 Miscellaneous

Employer's Duty to Maintain Register

Every employer should maintain register and muster-roll of both men and women workers employed in his establishment.

Inspectors

Appointment of Inspectors under the Act

Section 9 of the Act empowers the appropriate Government to appoint such persons as it may think fit to be inspectors for the purpose of making investigation as to whether the provisions of this Act and the rules made there under are being complied with by employers and may define the local limits within which an Inspector may make such investigation.

Powers of Inspectors

Every such Inspector appointed under the Act shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code. Accordingly, any person required by an Inspector to produce any register or other document or to give any information shall comply with such requisition.

An Inspector may, at any place within the local limits of his jurisdiction:

- (a) enter at any reasonable time, with such assistance as he thinks fit, any building, factory-premises or vessel;
- (b) require any employer to produce any register, muster-roll or other documents, relating to the employment of workers, and examine such documents;
- (c) take on the spot or otherwise, the evidence of any person for the purpose of ascertaining whether the provisions of this Act are being, or have been, complied with;
- (d) examine the employer, his agent or servant or any other person found in charge of the establishment or any premises connected therewith or any person whom the Inspector has reasonable cause to believe to be, or to have been a worker in the establishment.

Penalties

For the following acts of Commissions or omissions made by an employer. The act, by Section 10, provides to impose penalties. If after the commencement of this Act, any employer, being required by or under the Act, so to do:

- (a) Omits or fails to maintain any register or other document in relation to workers employed by him, or
- (b) Omits or fails to produce any register, muster-roll, or other document relating to the employment of workers, or

- (c) Omits or refuses to give any evidence or prevents his agent, servant, or any other person in charge of the establishment, or any worker from giving evidence, or
- (d) Omits or refuses to give any information, he shall be punishable with fine which may extend to one thousand rupees.
- (2) If after the commencement of this Act, any employer:
 - (a) makes any recruitment in contravention of the provisions of this Act, or
 - (b) makes payment of remuneration at unequal rates to men and women for the same work or work of a similar nature, or
 - (c) makes any discrimination between men and women workers in contravention of the provisions of this Act, or
 - (d) Omits or fails to carry out any direction made by the appropriate Government under sub-section made by the appropriate Government under sub-section (5) of Section 6 of the Act, he shall be punishable with fine which may extend to five thousand rupees.

If any person who is required to do so omits or refuses to produce to an Inspector any register or other document or to give any information, he shall be punishable with fine which may extend to five hundred rupees.

Offence by Companies

Section 11 of the Act provides that where an offence under this Act is committed by a company, every person who, at the time of the commission of the offence was 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. Where, if such person proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence, he will not be liable.

Second, where any 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 the company, such director, manager, secretary or such other office shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Cognizance and Trial of Offences

By Section 12 of the Act, a Metropolitan Magistrate or a Judicial Magistrate of the first class has been empowered to take cognizance of an offence punishable under this Act only upon a complaint in writing made to him. The section provides that no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act. The magistrate shall take cognizance of the offence punishable under this Act only upon a complaint made with the sanction of the appropriate Government or an officer authorized by it; and no Magistrates shall take the cognizance of the offence unless this complaint thereof is made within three months from the date of the sanction.

6.7 Summary

This Act provides for the payment of equal remuneration to men and women workers for the same work or work of a similar nature and it also seeks to provide for the prevention of discrimination on the ground of sex against women. The Act also provides for the setting up of an Advisory Committee to promote employment opportunities for women, on and from the date of the commencement of this Act, no employer in an establishment shall keep different rates for men and women workers for the same work or work of a similar nature. No employer shall make any discrimination while recruiting men and women workers for his establishment and employment except where the employment of women is prohibited or restricted by any law. However, it will not affect any priority or reservation for scheduled castes, scheduled tribes, ex-service men, etc.

The Act provides for the appointment of Authorities and Appellate Authorities for hearing and deciding complaints and claims. Assistant Labour Commissioners and Divisional Labour Commissioners (Central) are Authorities and Appellate Authorities respectively under the Act. The decision of the Appellate Authorities shall be final and no further appeal shall lie against his decision. Any appropriate Government can appoint Inspectors for investigation of offence and for compliance with provisions of this Act, and such Inspectors shall be deemed to be public servants. The Act also envisages imposing penalty for contravention of the provisions of the Act and the rules framed there under. It also provides for taking cognizance and trial of offences by Metropolitan or Judicial Magistrate of the first class.

6.8 Self Assessment Test

1. Discuss the objectives of the Equal Remuneration Act.
2. Discuss the commencement and effect of the Equal Remuneration Act. Is the principle of equal pay for equal work applicable in professional services?
3. Who is an Authority? Discuss the procedure for deciding claims and complaints arising out of the Equal Remuneration Act.
4. Discuss the Constitution, power and function of Advisory Committee under the Equal Remuneration Act.
5. Discuss the appointment and powers of Inspectors under the Equal Remuneration Act.
6. Discuss, when an employer becomes liable for being penalized, and also point out which court can take cognizance of offence under the Equal Remuneration Act.

6.9 Further Readings

The Equal Remuneration Act, 1976, and the Rules made there under.

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UNIT- 7

Conceptual Aspects of Social Security

Objectives

This unit aims at the following:

- to study Development on the Philosophy of Social Security.
- viewing Social Security as a charity to help the workman.
- to understand the concept of social security & its promotions, and
- to know the Statutory structure of Social Insurance and social assistance.

Structure:

- 7.1 Conceptual aspect of Social Security
- 7.2 Meaning and definition
- 7.3 Social assistance
- 7.4 Social Insurance VIS-À-VIS social assistance
- 7.5 Social Justice and Social Security
- 7.6 Characteristics of sound social security
- 7.7 Self-Assessment Test
- 7.8 Key Words
- 7.9 Further Readings

7.1 Conceptual Aspect of Social Security

After evolutionary stage, worker's attempt to deal with Economic Insecurity was launched out or and as a result of Economic Depression of 1930. This mobilization was the result of the assessment that Government social policies in all the advanced Countries were insufficient in guaranteeing to all works, a decent standard of living. The then existing measures of national insurance and Public assistance had failed to meet out the problems as these were sectional and dealt with effects rather than causes, in this context, it may impressed upon that at present the Social services providing financial benefits can be sound to be

meaningful only if the benefits provided are adequate in amount for what is considered a decent standard of living. They should cover economic risk of Industrial system and backed by other social services which aim at preventing and curing large scale distress.

It is said that the late Abraham EP-stein, the executive secretary of the American Association of Social Security is credited with anguishing the term "Social Security". The Social Security Act 1935 passed by the Roosevelt Administration in the U.S.A. was the first to use the term "Social Security" though in limited sense. It was law that took care of human needs and provided an economic structure of sound Social Security.

The Social Security Act of 1925 Provided for five told public grants:

1. Grant to the aged people, blind and dependent boys and weaker sections of the society.
2. Unemployment insurance grants and expansion of the employment services.
3. Setting up a federal scheme for old age insurance for workers of industrial and commercial establishment.
4. Creating federal funds for state public health scheme and rehabilitation under the vocational Rehabilitation Scheme.
5. Making and implementing Child health programme under the Superintendent, Federal Children's Bureau.

Social Security originated in the United States and from there it has spread through the length and breadth of the globe. As per William Haber and Cohen "Social Security has yet been used in such a variety of ways ad so broadly as to sometimes lose any value."

To V. George "Labour Government's Social Security Act 1938 provided the most comprehensive interpretation of Social Security at that time in New Zealand." The philosophy of the concept of social security is universally acknowledged as it has been accepted in principle that social security is the aim of all social welfare activities of all countries following different ideologies, social and varied political structures and secular economic policies. Ways adopted by the various countries may be different but the purpose is the same. Describing the system of social security Mr. George pointed out that Government preparation for social security

schemes in Britain started early in the war. In June, 1941 the coalition government appointed an interdepartmental committee under the chairmanship of Sir William Beveridge to undertake, with special reference to the inter-relation of the schemes of national insurance and allied services, including Workers compensation, and to make recommendations.

Effect of war not only enlarged the tempo of the developments for social security but it also affected the very nature of the concept of social security. Before the war, plans were put forward in piecemeal to deal with individual problems, such as sickness, unemployment or old age, but the trend, suspended, was to plan comprehensively social security plans, such as Beveridge plan and Marsh plan etc., were designed to provide adequate protection to entire population for the whole range of risks of the economic system. Since economic risk was proving to be one of the major risks, efforts were made to minimize these risks. Accordingly, the Declaration of Philadelphia included the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care.

7.2 Meaning and Definitions

As regards the definition of the term 'Social Security', it may be stated that there is no universally accepted definition of social security. Different definitions of the term stress different elements. Some definitions are very broad; other is narrow. Even International Labour Organization (ILO) which has done every valuable work in this field had to declare in 1949 that there does not yet exist an internationally accepted definition of social security. In 1961, the concept of social security varied greatly from country to country. This is due to the varied social and economic development of societies in different parts of the world. The need for economic protection is universal but the risks against which protection is deemed necessary and the methods adopted to protect against these risks are far from uniform. Social legislation, by definition, can conceive of the basic universal needs of the individual only in the form of the specific needs of the society of which he is part, with the result that a national social security scheme becomes a specific instrument catering for specific needs of a particular society.

Therefore, the social security, now, is used to mean the security that the society furnishes through appropriate organization against certain risks to which its members are exposed. It indicates that social security is a provision made by the society. It is social because it represent the culmination of collective efforts. Secondly, the provision is organised one.

International Labour Organization has defined the term 'Social Security' in better words as only such schemes as provide the citizens with benefits designed to prevent of cure disease, to support him when unable to earn and restore him to gainful activity." This definition seems to be appropriate to a greater extent. However, the definition has laid an emphasis on the working devices which are simply the means to achieve the objective of social security. It has been rightly remarked by Shri V.V.Giri that social security, as currently understood, is one of the dynamic concepts of the modern age which is influenced by social as well as economic policy. It is the security that the state furnishes against the risks which an individual of small means cannot, today, stand up by himself or even in private combination with his fellowmen.

Truly speaking, the members of society are exposed to various risks and insecurities, such as inadequate wages, irregularities in payment, illegal deductions and unregulated credit facilities, created income insecurity. Apart from these uncertain tenure, arbitrary dismissals and paying off created unemployment insecurity even for those who were fortunate enough to get a job after months and months of waiting. Bad conditions of work and lack of adequate precautions gave birth to occupational hazards and accidents. With the breakup of the joint family and village life, childhood, maternity, invalidity, sickness, old age and death of the bread winner become formidable problems before a worker requiring best and just solution through proper mechanism. In such conditions the devices which provide adequate security are considered to be relevant parts or measures of social security.

7.3 Social Assistance

It is a device organised by the state by providing case assistance and medical relief, to such members of the society who cannot get them from their own resources. Under this scheme invalids, aged persons and widows who are not receiving social insurance benefits because they or their husbands, as the case may

be, were not compulsorily insured, and whose incomes do not exceed a prescribed level, are entitled to special maintenance allowances at prescribed rates. Appropriate allowance in cash or partly in cash and partly in kind may also be provided for all corrective care. The I.L.O. defines social assistance scheme as "one that provides benefits to persons of small means granted as of right in amounts sufficient to meet a minimum standard of need and financed from taxation". Thus, it is a scheme of institutional charity. However it differs from charity in so far charity is voluntary; it has no legal basis while social assistance has a legal basis. It is organised under the provisions of a statute. The benefits arise as of right. Charity is unexpected and irregular while social assistance benefits are paid at specified intervals and they continue as long as the need remains. Thus, social assistance removes the social and moral stigma.

Under the scheme, the care of the poor cannot be left to voluntary charity and should be placed on a compulsory and statutory basis. The state had to intervene because individualized charity proved to be inadequate and the floating mass of paupers and destitute constituted a threat to society. Although, medieval in origin, this type of social assistance marks the beginning of 20th Century. It was centrally administered because three main factors: the simplicity and relative permanence of the need in question and of the assistance required to satisfy it, the ubiquity (universality) magnitude and peculiarity of the need, and justifying the setting up of special administrative machinery and the acuteness of the national interest in securing that the need is satisfied according to a uniform standard. Under the impact of social assistance, various social security measures have been taken for example, non-contributory old age pensions were established in New Zealand (1898), Australia (1901-08), France (1905) and Great Britain and Ireland (1908). Similarly, Mother's pension, Unemployment Assistance, Medical Assistance, and Rehabilitation of the disabled were also instituted. All such non-contributory schemes restrict their benefits to persons of insufficient means. This kind of social security measures increasingly came in conflict with the growing idea of equality and democracy. The social consciousness impelled those workers to think that they were being treated as reprobates or poor and, what were worse, as an object of pity. It may be argued that social assistance presumes that there is a class of people best suited to give charity and another which cannot live without charitable assistance.

7.4 Social Assistance VIS-A-VIS Social Insurance

In social assistance, the state or local bodies take steps to ameliorate the distress caused by the contingencies to the population in general. In this method, as indicated above, there are generally no contributory conditions. In concrete terms, social assistance includes non-contributory benefits towards the maintenance of children, mothers, invalids, the aged, the disabled and others. It also includes unemployment assistance. Social assistance can, therefore, be defined as a device for providing benefits, like exemption from taxation or general revenues to persons of small means in amounts sufficient to meet a minimum standard of needs. In social insurance, the persons concerned, their employers and the state make contribution, and mainly out of these contributions, benefits necessary to prevent want during unemployment, sickness, old age, and other contingencies are given as a right, subject to certain qualifying conditions. In other words, social insurance can be defined as a "device to provide benefits as of right for persons of small earnings, in amount which combine the contributive efforts of the insured with subsidies from the employer."

Both social assistance and social insurance have some common features. Both are social in approach and are organised under a law passed in this behalf. Both provide a legal title to benefits. However, both differ from each other in some respects. First social assistance is financed by the general tax payers, while social insurance is financed by tripartite or bipartite contributions. Secondly, social assistance aims at to provide minimum subsistence to those who cannot make it on their own. Hence, the beneficiary has to satisfy a 'means test' for being entitled to such benefits while social insurance schemes aim at to protect a minimum standard of living related to beneficiaries' immediate standard of living was reckoned by his daily earning.

Legislature for labour was initiated in India by the British rulers under pressure of Zealour Lancashire and Dundee in 1881. Their insistence and pressure were mainly responsible for most Indian Labour Laws till 1912. After the First World War, Labour movement started in our country with the establishment of the Madras Labour Union in 1918 to redress the distress caused by post-war rise in prices not followed suitably by rise in wages.

7.5 Social Justice & Social Security

Social justice presupposes two things- the equitable distribution of profits and other benefits of industry among industry and workers, and protection to the workers against harmful effects to their health, safety and morality. In the beginning, the position of a worker was that of a daily wage earner, which meant he was paid only for the day he actually worked. A workman was expected to accept all the hazards connected with his work as incidental to his employment. Until the passing of the Workmen's Compensation Act, 1923, no compensation was paid in case of an accident taking place in the course of employment. But the Workmen's Compensation Act, 1923 guaranteed to workmen compensation for any injury caused by an accident arising out of and in the course of employment. The Minimum Wages Act, Factories Act and Payment of Wages Act are a few other legislations based on the principle of social justice. These legislations fixed the hours of work, provisions for payment of overtime, leave rules, safety, health and welfare of labour in industry. Labour welfare in our country has a special significance for our Constitution provides for the promotion of welfare of people, for humane conditions of work and securing to all workers full enjoyment of leisure and social and cultural opportunities.

According to Bhagwati J. the Concept of Social Justice does not emanate from the fanciful notions of any particular adjudication but must be founded on a more solid foundation. In the opinion of Justice Gajendra Gadkar, "the concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of a welfare State." The Indian constitution enshrines the concept of social justice as one of the objects of the State. Art. 38 of the Constitution provides that "the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may, social order in which justice, social, economic and political, shall inform all the institutions of the national life.

Social justice is 'justice' according to social interest. So far as the application of the doctrine of social justice in the sphere of adjudication is concerned, it is subordinate to the fundamental rights and law contained in the Constitution. Secondly, it is also subservient to the statutory industrial law. Thirdly, social justice be done in disregard to law laid down by the Supreme Court. Social justice

does not mean doing everything for the welfare of labour to the utter disregard to the employer.

The idea of social justice is designed to undo the injustice of unequal birth and opportunity, to make it possible that wealth should be distributed as equally as possible and to provide that men shall have the material things of life in as equal measures as may be. While it is not possible to root out the difference between man and man, at least a minimum of the material things of life should be guaranteed to each man. President Roosevelt had rightly said that “there are some whose adverse circumstances make them unable to obtain the mere necessities of existence without the aid of others. To these less fortunate men and women, aid must be given by Government not as a measure of charity but as a social duty.” This duty is to be performed by the society through the state. Social justice, therefore, deals equitably and fairly, not between individuals but between classes of society.

7.6 Characteristics of Sound Social Security System

The conflict between the employer and the employees over the question of adequacy of their respective shares in social produce constitutes the crux of the labour problem, of which collective bargaining and industrial conflict are the two most important aspects. As industrialization advances, the workers is increasingly alienated from his previous socio-cultural world and thus faces various insecurities with regard to income and employment in addition to the natural ones (i.e., sickness, maternity and old age) for which the new order does not have structural Provision.

In ancient times, if a person was unable to work on a particular day, he was cared for by the community or by the members of his family. But now, urbanization has so deeply uprooted these values that in times of sickness, unemployment, old age and other similar contingencies, a worker has nothing to fall back upon. In modern times, social security is influencing both social and economic policy. Social security is influencing both social and economic policy. Social security is the security that the State furnishes against the risks which individual of small means cannot, stand up by himself.

Social security envisages that the members of a community shall be protected by collective action against social risks causing undue hardship and privation to individuals whose private resources can seldom be adequate to meet them. It covers through and appropriate organization, certain risks to which a person is exposed. These risks are such that an individual of small means cannot effectively provide for them by his own ability or foresight alone.

Social security is based on ideals of human dignity and social justice. The underlying idea behind social security measures is that a citizen who has contributed or is likely to contribute to his country's welfare should be given protection.

A social assistance scheme provides benefit for persons of small means granted as of right in amount sufficient to meet a minimum standard of need and financed from taxation and social insurance scheme provides benefits for persons of small earnings granted as of right.

Social security measures are significant from two view points. First, they constitute an important step towards the goal of a welfare state. Secondly, they enable workers to become more efficient and thus reduce wastage arising from industrial disputes. Social security impedes production and prevents formation of a stable and efficient labour force. Therefore, social security measures are not a burden but a wise investment which yields good dividends.

Members of a society have the right to social security and are entitled to realization through national efforts and international co-operation and in accordance with the organization and resources of each state of economic social and cultural rights indispensable for dignity and the free development of personality.

The role of International Labour Organization in creating standards of social insurance has been significant. The Social Security (Minimum Standards) Convention adopted in 1952 embodies universally accepted basic principle and common standards of social security.

A number of social security legislation has been enacted from time to time. The earliest of such legislation is the Workmen's Compensation Act, 1923 which ensures payment of compensation in case of a personal injury caused by an accident arising out of and in the course of employment. Maternity Benefit Act 1961 has also been passed by the Parliament. This Act primarily provides for

maternity leave to woman workers with wages. The Employees Provident Funds and Miscellaneous Act, 1952 provides for retirement benefits.

Employees State Insurance Act, 1948 provides social insurance compulsorily to the workers of industries. It has created a fund which will be spent for the following:

1. For Payment of benefit and medical treatment and attendance to the insured persons;
2. Provisions of medical benefit to the families of the insured person;
3. To meet the expenses and costs in connection with the medical treatment of the insured persons and their families.
4. For payment of the allowances and the fees of the members of the corporation/standing committee/medical benefit council/regional members/regional councils;
5. For payment of salaries and all allowances, gratuity or pension or contribution to P.F. or other funds of the officers and servants of the corporation;
6. For payment of the expenditure in connection with the officers and other services set out for the purpose of implementing this Act, establishment of hospital, dispensaries and other institutions.
7. For payment of contribution to State Government or local authorities towards the cost of medical treatment and attendance of the insured persons and their families including the cost of building and equipment.
8. To meet the audit expense of the accounts of the corporation;
9. To meet the cost of valuation of all assets and liabilities of the corporation;
10. To meet the cost of maintenance of E.S.I. court;
11. For meeting the expense in connection with any contract entered into by the corporation;
12. To meet the payment of any decree or award of any court or tribunal against the corporation or its officer or servant in execution of his duty;
13. To meet the costs and other charges to institutes or defending of any civil or criminal proceedings under this Act;
14. To meet the expenditure of such measures taken for the improvement of the health and welfare service of the injured person;

15. To meet the expenditure on rehabilitation of injured persons who have been injured or disabled.
16. All such other expenses as may be authorized by the corporation with the prior approval of the Central Government.

The welfare activities for the staff of the corporation, therefore, come within such categories. The construction of the staff quarters for the employees of the corporation or dispensaries is also a part of the welfare activity as declared by the Supreme Court in the case of *Bai Mali Mabu vs. State of Gujarat* (A.I.R. 1978, S.C.515). Further, it also laid down that E.S.I. fund can also be spent for such other purpose as may be authorized by the corporation from time to time by the Central Government which is closely connected with the working and implementation of the E.S.I. Scheme.

The fund is mainly composed of contributions collected from the employees and employers. All the contributions so collected and other moneys collected on behalf of the corporation is to be deposited in this fund. The purpose of the fund is to provide payment of various benefits to the insured person under this Act.

Further, the fund is also utilized for the purpose of meeting, the cost of administration of the corporation as also for making provisions for other purposes authorized by this Act.

The corporation may accept donations or gifts/grants from the Central or the State Government. It may also accept grant from any individual or a body of individuals for any of the purposes of this Act. All moneys so received shall be paid into Reserve Bank of India or any other Bank approved by the Central Government to the credit of the Employees State Insurance Fund Account. Such account shall be operated by such officers as may be authorized by the Standing Committee.

Insured persons are entitled to get six types of benefit i.e. (i) Sickness benefit, (ii) Maternity benefit, (iii) Disablement benefit, (iv) Dependents benefit, (v) Medical benefit and (vi) Funeral benefit.

Further in order to provide real benefits to the employees, the Act incorporates a provision for the disposal of disputes by the court in the following matters:

- (i) Any dispute or question relation to the term 'employee' and the contribution which an employee is liable to pay.

- (ii) The average daily wages of an employee under the E.S.I. Act;
- (iii) The rate of contribution payable by an employer whether principal or immediate employer; the question or dispute as to who is the principal employer;
- (iv) The question of the right of any person to any benefit including its amount and the duration of such benefit;
- (v) Any direction or orders issued by the corporation regarding review of dependent benefit;
- (vi) Any other question or matter which is connected with the principal employer/corporation/immediate employer/an employee.

The claims for which the employees will be entitled under the E.S.I. Act:-

- (a) Recovery of contribution from the Principal employer;
- (b) Recovery of claim amount by the principal employer from the immediate employer;
- (c) Claim for recovery of the excess amount paid as benefit to an employee;
- (d) Any other claim which is connected with the benefit under the E.S.I. Act.

All the above claims and matters shall be within the jurisdiction of the E.S.I. Court. No Civil court shall have jurisdiction to decide any question or dispute.

ESI Act provides under Sec. 6 that the right to receive any payment for any benefit under the E.S.I. Act shall not be assigned or transferred. Further, no cash benefit which is admissible under this Act is liable to be attached in execution of any decree or order of any court;

- (a) An employee under the E.S.I. Act shall not be entitled to receive for the same period the following benefits:-
 - (i) Both sickness and maternity benefits;
 - (ii) Both sickness and disablement benefits for temporary disablement;
 - (iii) Both maternity and disablement benefits for temporary disablement. However, when an employee is entitled to two or more benefits, he shall be free to elect any one of those which is more beneficial (Section 65).
- (b) Section 73 of the Act provides that no employer shall dismiss or punish his employee during the period of sickness. Further no employer shall discharge or reduce the status of an employee during the whole of the

period during which an employee is receiving maternity benefit or sickness benefit.

- (c) Section 72 of the Act provides that no employer by reason only of his liability to pay contribution shall either directly or indirectly reduce the wages of an employee.

Further, the employer is precluded from discontinuing or reducing any benefit which is admissible to an employee under the terms of service conditions. However, he may reduce or discontinue these benefits according to the provisions of the regulation made under the E.S.I. Act.

In case of an accident resulting in death the dependants are entitled to get compensation as shown in Column 1 of Schedule IV of the Workmen's Compensation Act, 1923. Column 1 contains monthly wages which a workman was getting and column 2 contains the amount of Compensation payable to a workman on death. The necessary condition for getting compensation for an accident causing death is that the death should have resulted from an injury sustained by the workman out of and in the course of employment. The crucial test is the actual death and not a supposed one as decided by the Supreme Court in the case of *Mackinnon Meckenzie vs. Mohammad Issac* (AIR 1970 S.C. 1906).

In case of temporary disablement resulting from an injury arising out of in the course of employment the compensation shall be payable in the shape of half monthly payments corresponding to the monthly wages which a workman was entitled to get at the time of accident as shown in column 1, Schedule IV. The fortnightly compensation will be available as in the column 4 corresponding to the wages in Schedule IV. The maximum limitation for such $\frac{1}{2}$ monthly compensation is five years. This $\frac{1}{2}$ monthly compensation will be available after the expiry of waiting period of three days from the date of disablement where such disablement continues for less than 28 days; in case of disablement continues for more than 28 days, the compensation for first three days shall be payable. However, the compensation is subject to the following limitations;

- (i) The amount of any payment or allowance which the workman has received during the period of disablement by way of compensation shall be deducted from the lump-sum payment, if any.

- (ii) half-monthly payment shall not be paid if it exceeds the amount by which half the amount of monthly wages of the workman before the accident exceeds half the amount due after accident.
- (iv) This half-monthly payment will come to an end on the ceasing of the disablement before half-monthly payment becomes due in such case proportionate compensation shall be paid as due for that tonight.

7.7 Self Assessment Test

1. Define 'Social Security' and explain its conceptual aspect.
2. Discuss the concept of Social Assistance and Social Insurance. Also point out the difference between Social Justice and Social Security.
3. Discuss the characteristics of sound Social Security system by referring to relevant Acts.

7.8 Key Words

(a) Social Security :	Social Security is a Security furnished by the Society through appropriate organization against certain risks to which its members are espoused.
(b) Social Assistance :	It is a device organised by the state by providing Cash Assistance and medical relief to such members of the society who cannot get them from their resources.
(c) Social Insurance :	It is a device to provide benefits as of rights, for persons of small earning, in amounts which combine the contributive efforts of the insured with subsidies from the employer.
(d) Social Justice :	It means and includes the equitable distribution of profits and other benefits of the industry among industry owner, and workers, and protection to the worker's against harmful effects to their health, safety and morality.

7.9 Further Readings

1. Labour & Industrial Law by N.D. Kapoor. Pub-M/s Sultan Chand & Sons
23 Daryaganj New Delhi.
2. Labour & Industrial Law by Malik.
3. Labour & Industrial Laws by S.N. Misra. Pub-Allahabd Law Agency,
Allahabad.

UNIT- 8

The Workman's Compensation Act, 1923

Objectives

After reading this unit, the students will be able to understand-

- The object
- The definition of the terms used in this Act;
- The rules regarding employer's liability for compensation;
- Other provisions regarding-
 - (a) Amount of Compensation.
 - (b) Distribution of Compensation
 - (c) Notice for Compensation
 - (d) Medical Examination

Structure

- 8.1 Introduction,
- 8.2 Aims and Objects of the Act,
- 8.3 Definitions under the Act,
- 8.4 Self-Assessment
- 8.5 Suggested Readings.

8.1 Introduction

The Workmen's Compensation Act, 1923 came into force on the first day of July, 1924. It applies to the whole of India, including Jammu and Kashmir. Its main object is to provide for the payment of compensation by certain classes of employers to their workmen for accidental injuries.

8.2 Aims and Objects of the Act:

The Royal Commission on Labour expressed the object of the Act in the following words: "The provision for compensation is not the only benefit flowing from Workmen's Compensation legislation but it has important effects in furthering work on the prevention of accidents, in giving workmen greater freedom from anxiety and in rendering industry more attractive."

The Workmen's Compensation Act provides social security to workmen and is a humanitarian measure. Prior to the passing of this Act, the employer was liable to pay compensation to his workmen for injury only if the employer was proved guilty of negligence. Even when the negligence of the employer was proved, he could avoid his liability by putting forward many defenses. In almost all the cases the defenses placed by the employer proved to be very harsh for workmen and it was almost impossible for a workmen to get relief in case of an accident.

The Workmen's Compensation Act, 1923 changed the law and proved a panacea for this evil. It considers compensation payable by an employer to his workmen in case of an accident as a measure of relief and social security. It enables a workman to get compensation irrespective of his negligence. It has also laid down the various amounts payable in case of an accident depending upon the type and extent of injury. The employer now knows the amount of compensation he has to pay and is saved of many uncertainties to which he was subject before the Act of 1923 come into force.

The main purpose of the Act is to provide special machinery to deal with the cases of compensation in case of accidents and to make arrangement for some prompt compensation to the injured workman who cannot afford to go to the Court of Law. The Act has proved of immense utility to both the workmen and employers and has resulted in bringing about better relations among them. It provides a simple, cheap and prompt procedure for the recovery of compensation and relieves the parties of unnecessary litigation.

8.2 Definitions

Section 2 gives the definitions of the terms used in the Act-some of the important definitions are as follows:

1. Dependent (Section 2(l) (d)). Section 2(l) (d) defines the term 'dependent' by giving a long list of persons covered by the term 'dependent.' In ordinary usage dependant refers to a person who depends upon another for his necessities. According to Sec 2(l) (d), there are 3 categories of dependants:

- (1) The following relations are dependants, whether actually so or not-a widow, a minor legitimate son, and unmarried legitimate daughter, or a widowed mother.
- (2) The following relations are dependants if they were wholly dependent on the earnings of the workman at the time of his death-a son or a daughter who has attained the age of 18 years and who is infirm.
- (3) The following relations are dependants if they were wholly or in part dependant on the earnings of the workman at the time of his death – (a) a widower, (b) a parent other than a widowed mother, (c) a minor legitimate son, an unmarried illegitimate daughter or a daughter legitimate or illegitimate daughter if married and a minor or if widowed and a minor, (d) a minor brother or an unmarried sister or widowed sister if a minor (e) a widowed daughter-in-law, (f) a minor child of a pre-deceased son, (g) a minor child of pre-deceased daughter where no parent of the child is alive, or (h) a paternal grand-parent if no parent of the workman is alive.

The father of an infant workman is a dependant if he can establish that he is really dependant on the earnings of the infant workman wholly or partly.

2. Employer (Sec. 2 (1)(e)) :

“Employer” includes-

- (a) Anybody of persons whether incorporated or not;
- (b) Any managing agent of an employer;
- (c) The legal representative of a deceased employer; and
- (d) Any person to whom the services of the workman are temporarily lent or let on hire to him while the workman is working for him.

The definition of the term 'employer' is not exhaustive. This includes a contractor also. Where the Government hired out some Lorries with drivers to a contractor it was held the contractor was the employer of the lorry drivers. (Krishna Aiyer v. The Superintending Engineer, P.W.D., Madras, ILR (1949) Mad. 578).

When a person is putting up a building and gets some workmen through a contractor and pays also through the contractor, the person who is putting up the building is the employer and not the contractor.

Whether a person is an employer or not is a question of fact depending on the facts of a particular case.

3. Disablement:

Disablement means loss of capacity to work or to move. Disablement of a workman may result in loss or reduction of his earning capacity. In the latter case, he is not able to earn as much as he used to earn before the disablement.

Disablement may be (1) partial, or (2) total. Further, it may be (i) permanent, or (ii) temporary.

Partial Disablement: (Sec. 2 (1) (g): This means any disablement as reduces the earning capacity of a workman as a result of some accident. Partial disablement may be temporary or permanent.

Temporary Partial Disablement: means any disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of accident which resulted in such disablement. Permanent partial disablement is one which reduces the earnings capacity of a workman in every employment which he was capable of undertaking at the time of injury.

The distinction between those two types of disablement depends on the facts as to whether all injury results in reduction earnings capacity in all employment which the workman was capable of doing or only in that particular employment which he was engaged at the time of injury.

The type of disablement suffered can be determined only from the facts of the case. Whenever an injury is suffered by a workman as a result of an accident, he becomes entitled to compensation even though his capacity to work may remain quit unimpaired but his eligibility as an employee may be diminished or lost. The Act is not limited only to physical disablement but extends to the reduction of earning capacity as well.

Total Disablement (Sec. 2 (1) (1) : It means such disablement whether of a temporary or permanent nature as incapacitates a workman for all work which he was capable of performing at the time of accident resulting in such disablement. It is deemed to result from every injury or from any combination of injuries where the aggregate percentage of the loss of earning capacity as specified in the list against those injuries amounts to one hundred per cent or more.

Where an employee becomes unfit for a particular class of job but is fit for another class which is offered to him by the employer, the worker/workman is entitled to claim compensation only on the basis of partial disablement and not total disablement.

4. Wages (Sec. 2 (1) (m)):

“Wages” includes any privilege or benefit which is capable of being estimated in money. It does not include travelling allowance or the value or any travelling concession or a contribution paid by the employer of a workman towards any pension or provident fund or a sum paid to a workman to cover any special expense entailed on him by the nature of his employment. “Wages” includes the following benefits:

- (i) Extra wages for an overtime and bonus.
- (ii) Dearness allowance and amenities for free quarter as well as free water.

The amount of wages which a workman receives is important in the sense that this amount determines whether the workman is entitled to claim compensation or not.

A workman whose wage exceed Rs. 500/- is not a workman for purposes of payment of compensation under the Act.

5. Workman (Sec. 2 (1) (n)):

“Workman” means any person who is –

- (i) a railway servant as defined in Section 3 of the Indian Railways Act, 1980, who is not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II, or

(ii) Employed on a monthly wages not exceeding Rs. 1,000/- in any such capacity as is specified in Schedule II this limit was raised from Rs. 500/- to Rs. 1000/- by the Workman's Compensation (Amendment) Act, 1976. Schedule II to the Act elaborates the definition of workman by giving a long list (consisting of 32 items) of persons who come within the category of workman. This includes:

"Person employed, otherwise than a clerical capacity or on a railway, to operate or maintain a lift, persons employed, otherwise than in a clerical capacity, in premises where a manufacturing process is carried on; persons employed as the master or as a seamen of a ship; persons employed for this purpose of loading, fuelling, constructing, repairing, demolishing, cleaning or painting any ship, or in repairing building, or in service of fire brigade, etc."

There must be a contract of employment between the employer and the workman and it does not matter whether such contract is expressed or implied, or oral or in writing. But before a person is treated as a 'workman' within the meaning of the Workmen's Compensation Act, three things have to be established-

- (i) That there is a contract or employment between the workman and the employer.
- (ii) That there is the relationship of master and servant between the two; and
- (iii) That the employment is for the purpose of the employer's trade or business.

If the employment is for the purpose of the employer's trade or business, it will not matter even if it is of a casual nature or for a very short duration or in a casual vacancy. Employer's trade or business means anything which occupies his time and attention and labour for the purposes of profit. It should be noted that where the workman is dead or has been injured, any reference to the workman includes a reference to his dependents. But workman does not include-

- (i) A person whose employment is of a casual nature, and who is employed in work not connected with the employer's trade or business; and
- (ii) Any person working in the capacity of a member of naval, military or air force.

6. Employer's Liability for Compensation (Sec. 3)

An employer is liable to pay compensation to a workman for personal injury caused to him by accident as well as for any occupational diseases contracted by him.

Personal Injury by Accident: An employer is liable to pay compensation to a workman if personal injury is caused to him by accident arising out of an in the course of his employment (Section 3 (I)).

The following conditions must be fulfilled before an employer can be held liable to pay compensation to a workman:

- (i) Injury is caused to the workman by an accident.
- (ii) Such accident arises out of an in the course of employment.

Personal Injury:

The word "Injury" means damage done to a workman by some accident. The Act contemplates compensation for personal injury. It is not necessarily confined to physical or mental injury. It includes psychological and physiological injury as well. Thus nervous shock causing incapacity to work is as much a personal injury as a broken limb. As such, even incidental strains are included in the word injury. For example, a workman in the course of his duties had frequently to go into a heating room and from there to a cooling room. One night the workman went into the cooling room and got pneumonia of which he died. The cause of his death was personal injury. It is essential that injury must be personal. An injury to the belongings of a workman does not entitle him for compensation.

7. Accident:

The word "accident" means some unlooked for mishap or untoward event which is not expected or designed by the injured workman himself even though there may be negligence. If an occurrence is unexpected and it is without any design on the part of the workman it is an accident. If a person become insane as a result of an accident and then commits suicide, the death is the result of a the accident and the compensation is awarded. But where insanity is not the direct result of accident, compensation is not awarded. A series of tiny accidents, each cumulatively producing final injury constitutes together an accident.

8. Arising out of and in the Course of Employment:

An accident arising out of employment necessarily occurs in the course of employment but an accident in the course of employment may not necessarily arise out of employment, though ordinarily it will. The employer is liable to pay compensation if personal injury is caused to a workman by an accident arising out of an in the course of employment. It is not enough that the injury arises in the course of employment. It must also arise out of employment. Thus a workman who is injured in the course of his employment would be entitled to compensation only if the employee met with the accident during the course of employment or in other words, the accident arose out of his employment. Thus the case of a roadman while working on a road was killed by lightening or where a worker lost his mental balance as a result of an injury by accident and committed suicide can be held accidents arose out of employment.

If a worker does something which from his nature is outside the scope of his employment, he takes upon himself an added risk and is not entitled to compensation. In order to prove that the injury arose out of employment the following two conditions must be fulfilled.

- (i) Injury must have resulted from some risk incidental to the duties of the service, or inherent in the nature or condition of employment, and
- (ii) At the time of injury worker must have been engaged in the business of the employer and must not be doing something for his personal advantage or benefit.

9. “In the Course of Employment”:

In order to claim compensation it is essential that the workman at the time of accident must be in the process of doing something in discharge of his duty under the contract of service. As a general rule, employment commences when the workman reaches his place of work and ceases when he leaves the place. The following are the exceptions to this general rule:

- (1) When a means of transport is provided by the employer for the purpose of going to and from the place of work and workmen use that transport, the time during which that transport is used by the workers, is also included in the course of employment.
- (2) When a workman is in the premises of employer, though he may not be actually working at the time, that time is included in the course of employment.

Thus where an employee was knocked down and killed by a train while returning from duty by crossing the platform area it was held that the accident arose out of and in the course of employment.

(3) The course of employment also includes the periods of rest granted to a workman provided he remains in the employer's premises during rest period. But if he goes outside the premises during the period and meets with an accident, the employer is not liable because the accident does not take place in the course of employment.

(4) If workman reaches the place of employment well in time and not too early before his employment begins, or if he is doing something to equip himself for the work, he is in course of employment.

10. Amount of Compensation (Sec. 4)

The amount of compensation payable to a workman depends (i) on the nature of the injury caused by accident, and (ii) the amount of the average monthly wages of the workman concerned. There is not distinction between an adult and a minor worker with respect to the amount of compensation. Section 4 provides for compensation for (1) death, (2) permanent total disablement, (3) Permanent partial disablement and, (4) Temporary disablement. The amount payable to a workman as compensation depends upon his monthly wages. Schedule (V) (which was substituted by the Workmen's Compensation (Amendment) Act. 1976) to the Act gives different amounts of compensation for different wage groups.

Compensation for Permanent total disablement is the amount mentioned in Column 3 of Schedule IV to the Act, which will be reproduced on the next page. Part II of Schedule I to the Act gives a long list of injuries deemed to result in permanent partial disablement along with the percentage of loss of earning capacity which is deemed to result in each case.

Section (4) provides that where permanent partial disablement results from an injury the amount of compensation is as follows:

(i) In the case of an injury specified in Part II of Schedule I, the amount of compensation is the product of column-3 of Schedule IV to the Act (i.e. the amount of compensation payable in case of permanent total disablement) and the percentage loss of earning capacity are 100 percentage in cases of loss of both hands or amputation at higher sties, loss of a hand and a foot; loss of sight to such

an extent as to render the claimant unable to perform any work for which eye-sight is essential, very severe facial disfigurement and Absolute deafness. 90 percent in cases of amputation through shoulder joint, amputation or both feet resulting in end bearing stumps, and amputation at hip; 60 per cent in case of Amputation below middle thigh (below knee); 50 per cent in cases of loss of four fingers of one hand amputation below knee with stump exceeding 3½ below knee but not exceeding 5%; 50 percent in case of loss of one eye, without complications, the other being normal/loss of vision of any eye, without complication or disfigurement of eye-ball, the other being normal; 30 percent in cases Loss of three fingers of one hand, amputation of one foot resulting in end-bearing, and loss of eye, without complication or disfigurement of eye-ball the other being normal; 20 percent in cases of loss of two fingers of one hand 14 percent in cases of loss of fingers of right or left hand 12 percent in cases of loss middle finger and so on. The percentage of claim will deteriorate according to non-seriousness of the cases.

Where more injuries than one is caused by the same accident, the amount of compensation is aggregated, but it cannot exceed the amount payable in case of permanent total disablement. It is the loss of earning capacity and not physical capacity that is to be estimated.

Compensation for Temporary Disablement

The total or partial is half-monthly payment of the sum shown in column 4 of Schedule IV. The compensation is payable on the 16th day (i) from the date of disablement, where such disablement lasts for a period of 28 days or more, or (ii) after the expiry of a waiting period of 3 days from the date of the disablement, where such disablement lasts for a period of less than 28 days. Thereafter, the compensation is payable half-monthly during the disablement or during a period of 5 years, whichever is shorter.

From any lump-sum or half-monthly payments to which a workman is entitled, the amount of any payment of allowance which the workman has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump-sum or of the first half-monthly payment may be deducted. But any sum received for medical treatment cannot be so deducted. On ceasing of the disablement before the date on which any half-monthly payment

falls due, the sum payable in respect of the half-month is the sum proportionate to the duration of the disablement in that half-month.

Compensation to be Paid When Due (Section 4-A):

Compensation payable as explained above must be paid as soon as it falls due. In case where the employer does not accept the liability for compensation to the extent claimed, he is bound to make provisional payment based on the extent of liability which he accepts, and such payments has to be deposited with the Commissioner or made to the workman, as the case may be. This does not prejudice the right of the workman to make any further claim.

Section 6 of the Act deals with the review of half-monthly payment to the workers: Any half-monthly payment payable under the Act may be reviewed by the Commissioner on the application of either the employer or the workman. The application must be accompanied by the certificate of a qualified medical practitioner that there has been a change in the condition of the workman. On review, the half-monthly payment may be (i) continued, or (ii) increased, or (iii) decreased, or (iv) ended, or (v) converted into a lump-sum (if the accident is found to have resulted in permanent disablement) less any amount which has been paid by way of half-monthly payments.

Communication of Half-Monthly Payments (Section 7) -

Any right to receive half-monthly payments may be agreement between the parties by redeemed by the payment of a lump-sum of such amount as may be agreed to by the parties. If the parties cannot agree on the lump-sum payment and the payments have been continued for not less the 6 months, either party may apply to the Commissioner for determination of the amount. In such a case, the amount determined by the Commissioner is payable.

Appointment of Commissioners:

(1) The State Government may, by notification in the Official Gazette, appoint any person to be a Commissioner for Workmen's Compensation for such¹¹ area as may be specified in the notification.

¹¹ The word "local" omitted by Act 64 of 1962, s. 7 (w. e. f. 1- 2- 1963).

(2) ¹²Where more than one Commissioner has been appointed for any¹³ area, the State Government may, by general or special order, regulate the distribution of business between them.]

(3) ¹⁴Any Commissioner may, for the purpose of deciding any matter referred to him for decision under this Act, choose one or more persons possessing special knowledge of any matter relevant to the matter under inquiry to assist him in holding the inquiry.

(4) ¹⁵Every Commissioner shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860)¹⁶.

Powers and procedure of Commissioners.- The Commissioner shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), for the purpose of taking evidence on oath (which such Commissioner is hereby empowered to impose) and of enforcing the attendance of witnesses and compelling the production of documents and material objects,¹ and the Commissioner shall be deemed to be a Civil Court for all the purposes of section 195 and of Chapter XXXV of the Code of Criminal Procedure, 1898 (5 of 1898)].

Power of Commissioner to require further deposit in cases of fatal accident:

(1) Where any sum has been deposited by an employer as compensation payable in respect of a workman whose injury has resulted in death, and in the opinion of the Commissioner such sum is insufficient, the Commissioner may, by notice in writing stating his reasons, call upon the employer to show cause why he should not make a further deposit within such time as may be stated in the notice.

(2) If the employer fails to show cause to the satisfaction of the Commissioner, the Commissioner may make an award determining the total amount payable, and requiring the employer to deposit the deficiency.]

Distribution of Compensation (Section 8)

Section 8 provides for the following rules regarding the distribution of compensation.

¹² Sub- section (2) ins., and the original sub- sections (2) and (3) renumbered (3) and 4) by Act 15 of 1933, s. 13.

¹³ The word " local " omitted by Act 64 of 1962, s. 7 (w. e. f. 1- 2- 1963).

¹⁴ *ibid*

¹⁵ *ibid*

1) Payment of compensation in respect of a workman whose injury has resulted in death, and payment of a lump-sum as compensation due to a woman or a person under legal disability must be made by deposit with the Commissioner. If the employer makes a direct payment to the dependents of the deceased workman or to a woman or person under legal disability, it is not deemed to be a payment of compensation.

2) In the case of a deceased workman, the employer may make to any dependant advances on account of compensation not exceeding Rs. 100/- in the aggregate or on the deposit of any money as compensation, the Commissioner may pay for workman's funeral expenses not exceeding Rs. 50/-.

3) In other case, e.g. where an adult male worker has been totally or partially disabled by an injury, the employer may either pay the amount of compensation amounting to not less than Rs. 10/- to the workman or deposit the same with the Commissioner who will then pay it to the workman.

4) The receipt of the amount by the Commissioner is a sufficient discharge in respect of any compensation deposited with him.

5) On the receipt/deposit of any money as compensation in respect of a deceased workman, the Commissioner shall deduct there from the actual cost of the workman's funeral expenses to an amount not exceeding Rs. 50/- and pay the same to the person by whom the expenses were incurred.

6) The Commissioner must, if he thinks necessary, cause notice to be published or to be served on each dependant calling upon the dependant to appear before him for determining the distribution of the compensation. If the Commissioner is satisfied that no dependant exists, he repays the money to the employer by whom it was paid.

7) The Commissioner must, on application by the employer, furnish a statement showing in detail all disbursements made from the compensation.

8) Compensation deposited in respect of a deceased workman is apportioned among the dependants or any of them in such proportion as the Commissioner thinks fit. It may in the discretion, the Commissioner be allotted to any one dependant.

9) Where any lump-sum deposited with the Commissioner to payable to a woman or a person under a legal disability, such sum may be invested, applied or

otherwise dealt with for the benefit of the woman or of such person during his disability, in such manner as the Commissioner may direct.

10) Where a half-monthly payment is payable to a person under a legal disability, the Commissioner may pay it to any dependant of the workman or to any other person whom the Commissioner thinks best fitted to provide for the welfare of the workman.

11) The Commissioner may, on account of neglect of children on the part of a parent or on account of the variation of circumstances of any dependant, or for any other sufficient causes, vary his earlier orders regarding distribution of compensation. No such order prejudicial to any person must be made unless such person has been given an opportunity of showing because why the order should not be made.

12) Where the Commissioner varies any order referred to in Para II by reason of the fact that payment of compensation to any person has been obtained by fraud, impersonation or other improper means, any amount so paid may be recovered in the manner laid down for the recovery of arrear of land revenue.

Compensation not to be assigned attached or charged. No lump-sum of half-monthly payment payable under the Act shall in any way be capable of being assigned or charged or be liable to attachment or pass to any person other than the workman by operation of law, nor shall any claim be set-off against the same. The object of this provision is to save workers from money-lenders and others (Section 9).

Notice for Compensation (Sec. 10)

No claim for compensation is entertained by the Commissioner unless the notice of accident has been given in the following manner:

1) The notice of the accident must be given as soon as practicable after the happening of the accident. The time limit of giving notice is 2 years from the occurrence of the accident or the date of death.

2) The notice must give the name and address of the person injured and state the cause of injury and the date of accident.

3) The notice must be served on the employer or upon any one of several employers or upon any person responsible to the employer for the management of any branch of the trade of business.

4) The notice may be served by delivery or by registered post or by entry in a notice book if such book is maintained by the employer.

The State Government may require any prescribed class of employers to maintain at the place of employment a notice book in the prescribed form for keeping the record of accidents. An omission to give a notice or any defect or irregularity in a notice not a bar to the entertainment of claim in the following cases:

(a) If the claim is preferred in respect of the death of a workman resulting from an accident which occurred on the premises of the employer or at any place under the direction of employer and the workman died on such premises or at such place, or died without having left the vicinity of the premises.

(b) If the employer had knowledge of the accident from any other source at or about the time when it occurred.

(c) If the Commissioner is satisfied that the failure to give notice was due to sufficient cause.

11. Claims

Claims for compensation must be preferred before the Commissioner within 2 years of the occurrence of the accident, or in case of death within 2 years from the date of death.

Where the personal injury is the contracting of an occupational disease, the accident is deemed to have occurred on the first of the days during which the workman was continuously absent from work due to disease.

In case of partial disablement due to the contracting of such disease, the period of 2 years is counted from the day the workman gives notice of his disablements.

12. Fatal Accidents (Sec. 10-A)

Where a Commissioner receives information from any source regarding fatal accidents, he may send by registered post a notice to the workman's employer. The notice requires the employers to submit, within 30 days of the service of the notice, a statement in the prescribed form giving the circumstances leading to the death of the workman. The employer has further to indicate whether in his opinion he is or is not liable to deposit compensation on account of death. If the employer feels that he is liable for compensation, he must make the deposit within 30 days of

the services of the notice. If he is of the opinion that he is not liable, he must indicate the grounds for such disclaimer. In case the employer has disclaimed liability, the Commissioner, after such inquiry as he may think fit, may inform any of the dependants of the deceased workman, that it is open to them to make a claim for compensation and may give them such other information as he may think fit.

Section 10-B provides that an employer, who is required to give a notice to any authority of an accident occurring on his premises resulting in death or serious bodily injury, must send a report to the Commissioner, giving the circumstances leading to the death or serious bodily injury within 7 days of the accident. Further, it also provided that if the State Government permits, the person required to give notice may instead of sending such report to the Commissioner send it to the authority to whom he is required to give notice.

Section 10-B does not apply to the factories to which the Employees state Insurance Act, 1948 applies.

13. Medical Examination (Sec. 11)

In certain cases, of accidents, the workman has to be medically examined in order to be entitled to claim any compensation. Section 11 of the Act gives the following rules for medical examination:

1) Where a workman gives notice of an accident and the employer before the expiry of 3 days from the date of the service of the notice, offers to have him examined free of charge by a qualified medical practitioner, the worker must submit himself for such an examination. Where a workman is in receipt of a half-monthly payment, he may also be required to submit himself for medical examination from time to time. The workman to submit himself for such examination from time to time in accordance with the rules framed for this purpose.

2) If the workman improperly refuses to submit himself to medical examination, the right to the compensation is suspended.

3) If the workman voluntarily leaves, without having been so examined, the vicinity of the place in which he was employed; his right to compensation is suspended until he returns and offers himself for such examination.

4) Where the workman who refused medical examination, subsequently dies, the Commissioner may if he thinks fit, direct the payment of compensation to the dependants of the deceased workman.

5) Where a right to compensation is suspended, no compensation is payable in respect of the period of suspension.

6) In case the injury of a workman has been aggravated due to his refusal to be attended by a qualified medical practitioner or his refusal to follow the instruction of the medical practitioner, the workman would get compensation only for the injury which would have been, had he been properly treated. He would not get any compensation for aggravated injury.

8.3 Self Assessment

- 1) Define the following terms as used in the Workman's Compensation Act:
 - (a) Partial Disablement;
 - (b) Wages,
 - (c) Workman
 - (d) Employer, and
 - (e) Dependent.
- 2) How far is an employer liable for compensation to a workman injured by an accident arising out of and in the course of his employment?
- 3) State the defenses available to employers in respect of liability to pay compensation to workmen before and after passing of the Workmen's Compensation Act, 1923?
- 4) Describe the provisions of the Workman's Compensation Act relating to (a) commutation of half-monthly payments, (b) distribution of compensation.
- 5) Discuss whether the employer is liable for compensation in the following cases:

- (a) A workman goes to attend to his work riding on a bicycle and is involved in an accident in the course of the journey to his work place.
- (b) A worker lost his medical balance as a result of an injury by accident and committed suicide.
- (c) A worker working in a shed was injured by the fall of a wall which was not the property of or under the control of the employer.

8.4 Suggested Readings:

1. Labour Law-by Udhiathira Munshi.
2. Industrial and Labour Law-By D.S. Chopra.
3. An Introducing to Labour and Industrial Laws-By S.N. Mishra
4. Handbook of Labour and Industrial Law-By P.L. Mallik
5. Workmen's Compensation Act, 1923- By G. Saran.**Hindi Books**
6. Sharmik Vidhi by Gopi Krishan, Agra
7. Sharmki Vidhiya by Indrajeet Singh.
8. Sharmik Vidhiya by Ganga Shaya Sharma.

UNIT- 9

The Employees State Insurance Act, 1948

Part - I

Objectives

After going through this unit, you shall be able to;

- Understand the concept of Social Security.
- Know the meaning of important term of the ESI Act.
- Appreciate that the courts have given liberal interpretation to the ESI Act so as to make available various benefits to maximum number of employees, which happens to be the ultimate objectives of the Act.
- Realized that in essence the ESI scheme is an insurance like scheme when in the covered employees get a right to benefits by paying contributions (with certain exceptions)

Structure

- 9.1 Introduction
- 9.2 Aims and Objectives of the Act
- 9.2 Definition
- 9.3 Contributions
- 9.4 Benefits
- 9.5 Summary
- 9.6 Further Readings

9.1 Introduction

Social Security existed in India since the Vedic ages. With a rapid transformation in the Social structure, the system of social security has also undergone a change. In 1948, there was a beginning of new era when Social

Insurance was given a legal provision for the first time in the country under the Employees State Insurance Act, 1948 (ESI Act).

No man is immunized against sickness, old age and death. These contingencies imperil the ability of the working man to maintain himself and his dependents with health and decency. Personal savings have not, and can never be an answer to this problem. The traditional nature of social assistance offered by the family, guilds and private institutions under the ancient system was deeply disturbed by the alien rule, the introduction of machines, and the process of industrialization. It being seemingly impossible for an individual, or a group or individuals to cope with, in the words of Lord W. Beveridge, the five giants viz. want, disease.

It was due to ignorance, squalor, and idleness that the concept of social security gained importance; it in essence implies the creation of family responsibility of the State for its citizens. The State has thus on the lines of a family, taken the charge of man in his journey "from the womb to the tomb" against economic distress resulting from any of the recognized hazards.

The scheme was inaugurated in Kanpur on 24th February 1952 (ESIC Day) by then Prime Minister Pandit Jawahar Lal Nehru. The venue was the Brijender Swarup Park, Kanpur and Panditji addressed a 70,000 strong gathering in Hindi in the presence of Pt. Gobind Ballabh Pant, Chief Minister Uttar Pradesh; Babu Jagjivan Ram, Union Labour Minister; Raj Kumari Amrit Kaur, Union Health Minister; Sh. Chandrabhan Gupt, Union Food Minister and Dr. C. L. Katial, the first Director General of ESIC.

The scheme was simultaneously launched at Delhi as well and the initial coverage for both the centers was 1,20,000 employees. Our first prime Minister was the first honorary insured person of the Scheme and the declaration form bearing his signature is a prized possession of the Corporation.

It is important to mention here that it blossomed as the first social security scheme in 1944, when the Govt. of the day was still British. The first document on social insurance was "Report on Health Insurance" submitted to the Tripartite Labour Conference, headed by Prof. B. P. Adarkar, an eminent scholar and visionary. The Report was acclaimed as a worthy document and forerunner of the social security scheme in India and Prof. Adarkar was acknowledged as "Chhota Beveridge" by none other than Sardar Vallabhbhai Patel. Sir, William Beveridge, as all know, was

one of the high priests of social insurance. The report was accepted and Prof. Adarkar continued to be actively associated with it till 1946. On his disassociation he strongly advocated management of the Scheme by an expert from ILO. In 1948 Dr. C.L.Katial, an eminent Indian doctor from London took over as the 1st Director General of ESIC and he steered the affairs of the fledgling Scheme till 1953.

Since the red letter day of 24th February in the annals of social security in India, there has been no looking back. A lighted lamp which is the logo of ESIC truly symbolises the spirit of the Scheme, lighting up lives of innumerable families of workers by replacing despair with hope and providing help in times of distress, both physical and financial.

During the 61 years of its existence, ESIC has grown from strength to strength and the Corporation owes it, most of all, to the commitment, dedication and perseverance of persons like Prof. Adarkar and Dr. Katial.¹⁷

The government of India has in the first instance introduced social security in a restricted manner through the enactment of the ESI Act, 1948 which is based on the report of Prof. B.P. Adarkar and notes on that report by Messrs Maurice Stack and Ragunath Rao of the ILO, the ESI Bill was passed on the 2nd April, 1948 and it received the assent of the Governor General on the 19th April 1948. The act applied to the whole of India except the state of Jammu and Kashmir. A statutory body named as the Employees State Insurance Corporation has been created under the act to administer the scheme. The scheme is financed by the ESI Fund which consists of contribution from employers, Employees and grants, donations and gifts from the central and state governments.

With the passage of time important amendments have been made to the original Act.

Applicability of the Act: Under Section 2(12) the Act is applicable to non-seasonal factories employing 10 or more persons. Under Section 1(5) of the Act, the Scheme has been extended to shops, hotels, restaurants, cinemas including preview theatres, road-motor transport undertakings and newspaper establishments employing 20* or more persons. Further under section 1(5) of the Act, the Scheme

¹⁷ http://www.esic.nic.in/about_us.php

has been extended to Private Medical and Educational institutions employing 20* or more persons in certain States/UTs. **Note: 14 State Govts. / UTs have reduced the threshold limit for coverage of shops and other establishments from 20 to 10 or more persons. Remaining State Governments/UTs are in the process of reducing the same.* The existing wage limit for coverage under the Act is Rs. 15,000/- per month (w.e.f. 01/05/2010).

9.2 Aims and Objectives of the ESI Act, 1948:

The ESI Act of Parliament in 1948 is a unique piece of Social Legislation in India. It aims at bringing about social justice to the poor Labour class of the land. The promulgation of Employees State Insurance Act, 1948 envisaged an integrated need based social insurance scheme that would protect the interest of workers in contingencies such as sickness, maternity, temporary or permanent physical disablement resulting in loss of wages or earning capacity and death due to employment injury.

The Act also guarantees reasonably good medical care to workers and their immediate dependents. Promulgation of the ESI Act, by the Central Govt. was to set up the ESI Corporation to administer the scheme. The benefits provided to the employees under the Act are also in conformity with ILO conventions. By sub-section (4) of section 1, the Act in the first place applies to all factories including the factories belonging to Government and other seasonal factories.

The appropriate Govt. (i.e. State Govt.) is empowered by the Act to extend the provisions of the Act or any one of them to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise, in consultation with the Corporation, with the approval of the Central Govt. after giving six months' notice of its intention of so doing by notification in the Official Gazette. The final notification issued by the State Govt. establishments, factories where manufacturing process is carried on with the help of ten persons or more with the aid of powers covered by the Act.

A factory or an establishment to which the ESI Act applies shall continue to be governed by the Act notwithstanding that the number of persons employed therein

at any time falls below the limit specified by or under the Act or the manufacturing process therein ceases to be carried on with the aid of power.

The provisions of the ESI Act have also been extended gradually to the following classes of establishments: a. Shops b. Hotels & Restaurants c. Road Motor Transport Undertakings d. Cinemas, including preview theatres e. Newspaper establishments Under section 1(5) of the ESI Act, the Appropriate Govt. is empowered to extend the scheme to any other establishment or class of establishments, industrial, commercial or agricultural in nature. Thus, a State Govt. may extend the provisions of the Act in consultation with the Employees State Insurance Corporation and with the approval of the Central Govt. after giving six months' notice of its intention in the Official Gazette.

This provision of the ESI Act, however are not applicable to factories or establishments run by the State Govt. / Central Govt. whose employees are otherwise in receipt of social security benefits substantially similar or superior to the benefits provided under the ESI Act. The case of each such Public Sector Undertaking is decided on merit by comparing the quality and quantity of benefits being provided to the employees by the concerned managements with those admissible under the ESI Act.

9.3 Definitions

All the definitions have been given as per the Employees State Insurance (Amendment) Act, 1989 (29 of 1989)

1. **Factory:**

Factory means any premises including the precincts there of:-

- (a) Where ten or more persons are employed or were employed for wages on any day of the preceding twelve months and in any part of which a manufacturing process being carried on with the aid of power, or is ordinarily so carried on, or
- (b) Where twenty or more persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power or is ordinarily so carried on.

But does not include a mine subjects to the provisions of the mines Act 1952 (35 of 1952 or railway running shed.

The real scope of the term "Factory" has been extended by various rulings of courts. Thus,

(i) The scope and objects of the ESI Act 1948 now covers a wider class of employees and the meaning of factory as defined in the Factories Act 1948 is different. The principles of decision on the provisions the Factories Act, 1948 cannot therefore, be extended to ascertaining the extent of application of this Act.

(ESIC V.S.M. Sriramula Naidu (1960) 10 FJR 238).

(ii) Where more than one establishment are located at different municipal premises, and identical manufacturing process are carried on in all such establishments Although the aid of power is taken in only some of the establishments still all the establishments would be taken to constitute a single unit for coverage under the ESI Act.

(ESIC V. Bengal Printing Works, 1984 LIC 1)

(iii) Separate buildings, even though located at some distance when used for one continuous manufacturing process will constitute a single factory.

(a) S.P. Verma V. ESIC 1973 (41) FJR 17 (All)

(b) Agents and Manufactures V. ESIC 1973 (9) DLT 500 (Del)

(iv) A petrol pump-cum-service station will be treated as carrying on a manufacturing process, and the ESI Act will be applicable if the number of employees exceeds 20 (Baranagar Service Station V. ESIC 1987 LLN 912).

(v) An establishment engaged in tailoring of clothes when adopting to iron them with the aid of power is deemed to be carrying on the process of treating its i.e. a manufacturing process.

Kalpana Dresses vs. Employees' State Insurance ... on 6 April, 1976
Equivalent citations: (1978) 80 BOMLR 359

(vi) Where only washing and cleaning process is run with power in such a way that coarse cloth is turned into fine cloth with the result that a superior marketable commodity is produced, then the process of washing and cleaning would be termed as a manufacturing process. (ESIC V. M/s. Triplex Dry cleaners, 1982 Lab, IC 944 (P&SH).

However dry cleaning business, even though using power, would not fall within the definition of 'factory'.

(vii) Where the main business of the concern was to attend to the defects, including servicing and repairing of air conditioner machines at office and also at the place of customers on their request or demand, and the employer was engaging more than 20 persons, it was held that the ESI Act would be applicable. (T.V. Punj V. Reg. Dr. ESIC 1982 Lab. IC Noc 102 (cal).

(viii) Where the company had established a hospital to render free medical service exclusively for the benefits of the employees of its factory and their families, it has been held that the ESI Act was Applicable to such a Hospital also act Ltd (1979) 1 Kant LJ 209; 1 Lab. LN 418: AIR 1979 NOC 145 (Kant) FJR 55 P. 307: FLR (39) 220

2. Principal Employer:

"Principal Employer" means:-

- (a) In factory the owner or occupier of the factory and includes the managing agent of such owner or occupier the legal representative of a deceased owner or occupier and where a person has been named as the manager of the factory under the factories Act. 1948 *63 of 1948), the person so named;
- (b) In any establishment under the control of any department of any Government of India, the authority appointed by such government in this behalf or where no authority is so appointed the head of the Department.
- (c) In any other establishment any person responsible for supervision and control of the establishment.

3. Immediate Employer:

"Immediate Employer" in relation to employees employed by or through him means a person who has undertaken the execution, on the premises of a factory or an establishment to which this Act applies or under the supervision of the Principal employer or his agent, of the whole or any part of any works which is ordinarily part of the work of the factory or establishment of the principle employer, or is preliminary to the work carried on in, or incidental to the purpose of, any such factory or establishment and includes a person by whom the services of any employer who has entered into a contract of service with him are temporarily bent or let on hire to the Principal employer and includes a contractor.

4. Employee:

“Employee” means any person employed for wages in to in connection with the work of a factory or establishment to which this Act applies and-

- (a) Who is directly employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment whether such work is done by the employee in the factory or establishment or elsewhere; or-
- (b) Who is employed by or through on immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or
- (c) Whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose service are so lent or let on hire has entered into a contract or service; and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch there of or with the purchase of raw materials for or distribution or sales of the product of, the factory or establishment, or any person engaged as an apprentice not being an Apprentice engaged under the Apprentice Act 1961 (52 of 1961) or under the standing order of the establishment.

But does not include;-

- (a) Any member of the Indian naval, military, or air forces; or
 - (b) Any person so employed whose wages (excluding remuneration for overtime work) exceed one thousand six hundred rupees a month.
- However, an employee whose wages (excluding remuneration for overtime work) exceed one thousand six hundred rupees month at any time after (and not before) the beginning of the contribution period shall continue to be an employee until the end of the period.

Some Important Court-Rulings Relating to the Term “Employee”

- (i) The employees of the Head quarter of company located in state are employees or a factory situated in another state for the purpose of the Act (Hemalatha Textiles V. ESIC (1975) I LLJ 497).

- (ii) Watch and Ward staff accounts staff, transport staff, and administrative staff employed for wages in connection with the work of the factory are employees under the Act. (Modi Industries Ltd. V. ESIC (1986) I LLN 714 (All))
- (iii) Hawkers Employed on fixed wages to sell the products of a factory are employees under the Act. American Express Bakery V. ESIC 1972 Lab IC-1069 (Bom.)
- (iv) Employers of a hotel working in its Kitchen where power is used to prepare articles, of food would come under the coverage of the Act (All India ITDC employees union V. Hotel Ashok, Bangalore (1984) Lab IC NOC (Kant).
- (v) A Gardener or workers engaged in building repairs. If employed on regular basis are employees under the Act. (Gnanmbikar Mills Ltd. V. ESIC (1970) II LLJ (Mao.)
- (vi) Workers working in the staff canteen of a factory have been termed as employees under the Act ESIC v. Shri Ram Chemical Industries – 1987 – II LLN 227 (Raj).
- (vii) Employees working in the canteen or cinema & theater, as well as cycle stand, were meant to provide better amenities to the customers and improvement of business and as such they were covered under the Act. (ESIC V. Royal Talkies – 1978 Lab IC 1245 (SC) : AIR (1978) SC-1478.
- (viii) The work of construction of additional building required for the expansion of a factory has been held to be ancillary, incidental or having some relevance to or link with the work of the factory and as such casual workers engaged in such construction would be covered by the Act.
 - (a) Reg. Dr. ESIC Madras V. South India Flour Mills (P) Ltd.
 - (b) ESIC V. Sri Sakhti Textiles Pvt. Ltd.,
 - (c) ESIC V.K. Ramchandran etc.,
1986 Lab IC 1193(SC); AIR 1986; 1986 (52) FLR 682
1986 LLR; 65 1986(2) LLJ 304; 1986 (2) Cur LR. 60
- (ix) Where gardeners and sweepers are employed by a company on part-time basis and were paid along with other regular employees, it has been held that the former were covered by the act. (Modern Equipment Co. Ambala Cantonment V. ESIC 1984 II LLN 560).

- (x) Casual workers engaged through independent contractor for the purpose of preparing food articles when spicily order for catering on contract basis were received by the employer would not be termed as employees. (Rg. Dr ESIC V PR Narbari Rao, 1986 Lab IC 1988 (Kar); Kr LT 1397.
- (xi) A part-time doctor engaged by the factory for ambulance room, was held to be an employee under the act. (TI Cycles of India V. ESIC(1977) Lab IC 1335; 1977 Mad LJ 511 D.B.)
- (xii) Employees paid on daily rate, or part-time basis employees engaged in playing band at marriage or social function would be treated as employees. (Hindu Jea Band V. ESIC 1986 LLR95; 1987 Lab IC 894; (1987) 54FLR44; 1987 cur LR 166).
- (xiii) Casual workers have been deemed as employees under the act.
 - (a) ESIC V. Oswal Woolen Mills Ltd. 1980 Lab IC 1064 (Pb & Hry); AIR 1980 NOC 184 (Pb & Hry).
 - (b) Thaigrajan Chettias V. ESIC Madurai 1963 (2) LLJ 207 AIR 1963 Mad. 361; 24 FJR 400;
 - (c) ESIC V. Ganapatia Pallai 1961 (1) LLJ 593
- (xiv) Employees of the contractor engaged for repairs site cleaning, construction of buildings etc are engaged for an activity which is required for running of the factory and is ancillary and incidental to and has relevance to or link with the object of the factory and hence such employees are employees of the factory covered under the Act. (Kirlosker Pnumatic Co. Ltd. V. ESIC 1987 I LLN 906)
- (xv) Employees of a canteen run by a contractor in the premises of an establishment catering to the needs of its employees of the establishment. (Reg. Dr. ESIC V. Kerala Kumudi 1987 II LLN 183 Ker (DB); 1987 LabIC 878.
- (xvi) A director of company when planted on remuneration to be the manager/managing director would be an employee.
 - (a) Non-Ferrous Rolling Mill (P) Ltd., V. Rg. Dr. ESIC Madras 1977 Lab IC 1706 (1711); 1977(2) Mad LJ-169 (b) ESIC V. Magrfarine and Refined Oils; 1983 (63) FJR-262 (Kant).

However, the Punjab High Court has held that a director being a principal employer is not an employ (Bombay Metal workers P. Ltd. V. Rg. Dr. ESIC 1985 Lab IC 1318).

- (xvii) A partner of a firm engaged for the work of the factory or establishment and being paid monthly will not be deemed as an employee. (ESI V. Ramanula Moteh Industries 1985 Lab IC 544; AIR 1985 SCC 218:
- (xviii) A member of a registered co-operative society holding it shares, when employed by the society for remuneration is an employee under the Act Pondicherry state Weavers Coop. Society Ltd. V. ESIC 1983 – I LL N 88 (Mad.)
- (xix) A free lancer such as an electrician or a carpenter doing some repair work of company is not an employee.
(Modern Equipment Co. Ambala Cantonment V. ESIC 1984 II LIIN 560).

Eligibility or Wage Ceiling Limit for Compensation:

From 01 May 2010 Employees' State Insurance (Central) Rules, 1950 Rule-50 is amended with amount Rs.15000/- in place of Rs.10000/-.

The following draft rules further to amend the Employees' State Insurance (Central) Rules, 1950 were published as required under sub-section (1) of Section 95 of the Employees' State Insurance Act, 1948 (34 of 1948) in the notification of the Government of India in the Ministry of Labour and Employment vide No. G.S.R. 164(E), dated the 26th February, 2010, in the Gazette of India, Part II, section 3, Sub-section (i), dated 27th February, 2010 for inviting objections and suggestions from all persons likely to be affected thereby till the expiry of the period of thirty days from the date on which the copies of the Gazette of India, in which the said notification was published, were made available to the public;

And whereas the copies of the said Gazette were made available to the public on 27th February, 2010;

And whereas, objections and suggestions received from persons likely to be affected thereby have been considered by the Government;

Now, therefore, in exercise of powers conferred by Section 95 of the Employees' State Insurance Act, 1948, the Central Government, after consultation

with Employees' State Insurance Corporation, hereby makes the following rules further to amend the Employees' State Insurance (Central) Rules, 1950, namely :-

1. These Rules may be called the Employees' State Insurance (Central) (Amendment) Rules, 2010.
2. These shall come into force from the 1st day of May, 2010.
3. In the Employees' State Insurance (Central) Rules, 1950, in Rules 50, for the words "ten thousand", wherever they occur, the words "fifteen thousand" shall be substituted.

5. Wages

"Wages" means II remuneration paid or payable in cash to an employee, if the terms of employment express or implied were fulfilled. It includes:-

- (i) Any payment to an employee in respect of any period of authorized leave, lock-out, strike which is not illegal or lay off; and
- (ii) Other additional remuneration, if any, paid at intervals not exceeding 2 months.

But the following are not wages:

- (i) Any contribution paid by the employer to n any pension fund or provident fund or paid under the Act.
- (ii) Any travelling allowance or the value of any travelling concession.
- (iii) Any sum paid to the person employed to defray special expenses made on him by the nature of his employment.
- (iv) Any gratuity pay able on discharge.

Some Important Court Ruling regarding Wages:

(A) Wages Include

- (a) Payment for overtime work (Sivraj Fine Litho Work Nagpur V. ESIC 1974 I LLJ-453).
- (b) House rent allowance night shift allowance; Incentive allowance heat gas and dust, allowance (Harihar Poly Fibres V. Reg. Dr. ESIC (1984) 4 SCC 324; 1984 SCC (L&S) 747.
- (c) Subsidy given for Life Insurance premium (ESIC V. Sri Ram Chemicals (1987) II LLN 227 (Raj)).

- (d) Payment to employees under a unilateral reward scheme (EISC V. Gedore tools India (P) Ltd. 1987 I LLN 653 (Pn & har)

(B) Wages do not include:

- (a) Incentive earnings and adoc allowances being paid under a settlement, stipulating the exclusion of such amount for computing wages.
(ESIC V. EID Party (India) Ltd. 1984 Lab IC-122 (Mad) DB.
- (b) Bonus by way of ex-gratia payment as a gesture of goodwill. (Reg. Dr. ESIC V. Bata Shoe Co. (1985) 4 SCC 460; 1986 SCC (L&S) 129).
- (c) Subsistence allowance paid during suspension (ESIC V. Kirlosker System Ltd., 1984 II LLN 780 (Kant) DB.
- (d) Tea allowance, and Milk allowance
(ESIC V. Gedora Tools India (P) Ltd., 1987 I LLN 653 Pn & Hry) DB.

6. Contribution:

“Contribution” means the sum of money payable to the corporation by the principal employer in respect of an employee and includes any amount payable by or on behalf of the employee in accordance with the provisions of the act.

7. Insured Person:

“Insured Person” means a person who is or was an employee in respect of whom contributions are or were payable under this Act and who is by reason thereof entitled to any of the benefits provided by this Act.

8. Family:

“Family” means all or any of the following relatives of an insured person namely:

- (a) Spouse
- (b) A minor legitimate or adopted child dependent upon the insured person;
- (c) A child who is wholly dependent on the earnings of the insured person and who is:-
 - (i) Receiving reduction, till he or she attains the age of twenty-one years;
 - (ii) An unmarried daughter;

(d) A child who is in firm by reason of any psychical or mental abnormality or injury and is wholly dependent on the earnings of the insured person, so long as the infirmity continues;

(e) Dependents

9. Employment Injury:

“Employment Injury” means a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment, being an insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India.

Some Important Court Rulings:

(i) Injury sustained by an employee as a result of an accident met with by him while he was walking back home to and from his factory along the public road at place for away from the factory premises was held to be an employment injury.

(EISC V. K. Krishnan (1978) 52 FJR 124 (Ker.)

(ii) The meaning of the word “injury” cannot be construed so as to confine it to a visible injury in the shape of some wound.

(Shyam Devi V. ESIC AIR 1964 ALL 427 (HC); 1961 (1) LLJ 725.

(iii) Employ deputed by the management to participate in a football match, meeting with an accident resulting death in his date while on his way to playground, held death was due to employment injury.

(ESIC. V. Parmeswaran Pillai (1976) 46 FJR 440 (Kar).

(iv) The place “in the course of employment” does not exclude a happening which takes place outside, both in time and place. The actual handling of tools. (Ajudhee Bal V. ESIC AIR 1959 MP-338).

(v) A person employed to load and unload the product of a manufacturing company while accompanying their tried to cross over the railway line to buy “bidis” for himself from a shop on the other side; but received serious injury from an oncoming train. It was held that he suffer from employment injury.

(ESIC V. Gulab Bux Mulla (1986) II LLn 503 (Bom) 1987 Lab IC 141).

Occupational Disease:

If employee employed in any employment specified in Part A of the Third Schedule, contracts any disease specified therein as an occupational disease peculiar to that employment, or

If an employee employed in the employment specified in Part B of that Schedule for a continuous period of not less than six months contracts any disease specified therein as an occupational disease peculiar to the employment, or

If an employee employed in any employment specified in Part C of that schedule for such continuous period as the corporation may specify in respect of each such employment contracting any disease specified therein as an occupational disease peculiar to that employment.

The contracting of the disease shall, unless the contrary is proved, be designed to be an employment injury arising out of and in the course of the employment.

10. Temporary Disablement

“Temporary Disablement” means a condition resulting from an employment injury which requires medical treatment and renders an employee, as a result of such injury, temporarily incapable of doing the work which he was doing prior to or at the time of injury.

11. Permanent Partial Disablement:

“Permanent Partial Disablement” means such disablement of a permanent nature, as reduces the earning capacity of an employee in every employment which he was capable of undertaking at the time of the accident resulting in the disablement.

However every injury specified in part II of the Second Schedule is deemed to result in permanent partial disability.

12. Permanent Total Disablement:

“Permanent Total Disablement” means such disablement of a permanent nature as incapacitates an employee for all work which he was capable of performing at the time of the accident resulting in such disablement.

However, permanent total disablement is deemed to result from every injury specified in part I of the Second Schedule or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity as specified in the said part II against those injuries, amounts to one hundred percent or more.

13. Dependent:

“Dependent” means any of the following relatives of a deceased injured person, namely:

- (i) A widow, a minor legitimate or adopted son, an unmarried legitimate or adopted daughter, a widowed mother;
- (ii) If, wholly dependent on the earning of the insured person at the time of his death, a legitimate or adopted son or daughter who has attained the age of eighteen years and is infirm;
- (iii) If, wholly or in part dependant on the earning of the insured person at the time of his death-
 - (a) A parent other than a widowed mother,
 - (b) A minor illegitimate son, an unmarried illegitimate daughter, or a daughter legitimate or adopted, or illegitimate if married and a minor, or if widowed and a minor.
 - (c) A minor brother or an unmarried sister or a widowed sister if a minor
 - (d) A widowed daughter-in-law
 - (e) A minor child of a pre-deceased son.
 - (f) A minor child of a pre-deceased daughter where no parent of the child is alive, or
 - (g) A paternal grand-parent if no parent of the insured is alive.

9.4 Contributions

The contribution payable under the ESI Act, 1948 in respect of an employee's comprise, of contribution payable by the employer and contribution payable by the employee.

(1) The contribution payable under this Act in respect of an employee shall comprise contribution payable by the employer (hereinafter referred to as the employer's contribution) and contribution payable by the employee (hereinafter referred to as the employee's contribution) and shall be paid to the Corporation.

(2) The contributions shall be paid at such rates as may be prescribed by the Central Government : Provided that the rates so prescribed shall not be more than the rates which were in force immediately before the commencement of the Employees' State Insurance (Amendment) Act, 1989 (29 of 1989).

(3) The wage period in relation to an employee shall be the unit in respect of which all contributions shall be payable under this Act.

(4) The contributions payable in respect of each wage period shall ordinarily fall due on the last day of the wage period, and where an employee is employed for part of the wage period, or is employed under two or more employers during the same wage period the contributions shall fall due on such days as may be specified in the regulations.

(5) (a) If any contribution payable under this Act is not paid by the principal employer on the date on which such contribution has become due, he shall be liable to pay simple interest at the rate of twelve per cent. per annum or at such higher rate as may be specified in the regulations till the date of its actual payment: Provided that higher interest specified in the regulations shall not exceed the lending rate of interest charged by any scheduled bank.

(b) Any interest recoverable under clause (a) may be recovered as an arrear of land revenue or under section 45-C to section 45-I.

Explanation: In this sub-section " scheduled bank " means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934).

The contributions are to be paid at such rates as are prescribed by the Central Government. However, the rate so prescribed will not be more than the rate which were in force immediately before the commencement of the employee's contribution is 2.25% and that of employer's contribution is 5% rounded to the next higher multiple of five paise, of the wages payable to an insured person during a wage period. However, no employee's contribution is payable by or on behalf of an employee whose daily wages during a wage period are below six rupees per day.

The unit in respect of which all contributions are to be paid is the wage period in relation to an employee.

The contribution to be paid in respect of each wage period ordinarily will fall due on the last day of the wage period. In case an employee is employed for part of the wage period, or is employed under two or more employers during the same wage period the contributions will fall due on such days as would be specified in the regulations.

The principal employee is liable in the first instance of pay in respect of every employee, whether directly, employed by him or by or through an immediate employee both the employer's contribution and the employee contribution. All contributions are to be paid to the corporation and the principal employer bears the expenses of remitting the same the principal employer, in case of his failure to pay the contribution. On the due dates, has to pay simple interest at the rate of twelve percent per annum or at such higher rate as may be specified in the regulations, till the date of its actual payment. However, such a higher rate will not exceed the lending rate of interest charged by any scheduled bank.

Any contribution payable under the Act including any interest for delay in payment is recoverable as arrear of land revenue.

A principal employer, in case of an employee directly employed by him (not being an exempted employee) is entitled to recover from the employee the employee's contribution by deduction of his wages and not otherwise. However, such deduction can be made from only such wages as relate to the period or part of the period in respect of which the contribution is paid. Further, the deduction cannot be in excess of the amount of employee's contribution for the period.

A principal employer, who has paid contribution in respect of an employee employed by or through an immediate employer, is entitled to recover the same (i.e., both the employee's and the employer's contribution) from the immediate employer either by deduction from any amount payable to him by the principal employer under any contract, or as debt payable by the immediate employer.

The immediate employer, having paid the amount of contribution relating to any employee to the principal employer, is entitled to recover the employee's contribution from the employee by deduction from wages and not otherwise (in manner similar to that as has been discussed above for the principal employer.)

Neither the principal employer nor the immediate employer is entitled to deduct the employer's contribution from any wages payable to an employee or otherwise to recover from him.

Contribution (both the employer's and the employee's contributions) are to be paid by the principal employer for each wage period. In respect of the whole or part of which, wages are payable to the employee.

The corporation is empowered to make regulations in respect of any matter concerning the payment and collection of contribution.

Some Important Court Ruling Relating to Contribution:

- (i) The ESI contribution is recoverable for the past period and it is immaterial that the employee did not avail of the benefits during that period. (South Indian Viscose Co-operative Store Ltd. V . ESIC 1986 (68) FJR 329 (Mad.)
- (ii) "Certain allowances like cycle allowance, travelling concession, uniform allowance, milk and tea allowance have been excluded from the preview of wages from the purpose of contribution.
(Asbestos Cement Product Ltd. V. ESIC Chandigarh Lab. IC 1982 p. 44
(ESIC V. M/S Pratap Names Label Factory 1982 Lab IC 41 (Delhi).
- (iii) The payment made by an employer in respect of "Paid History" is not wages and as such is not subject to special contribution by the employer.
(ESIC V. New Asarwa Mfg. Co. Ltd. 1981 Lab IC 90 (Guj).
- (iv) The ESI Corporation's right to recover contribution from an employer is not subject to limitation Act. (ESIC V. Ramdas Reddiar 1980 (56) FJR 490 (Mad).
- (v) Non-payment or delayed payment of ESI Contribution cannot be justified by an employer due to non-availability of finances.
(South India Viscose Cooperative Store Ltd. V. ESIC 1986 (68) FJR-329 (Mad).

9.5 Benefits

The ESI Act, 1948 provides for the following benefits;

- (1) Sickness Benefit
- (2) Maternity Benefit
- (3) Disablement Benefit
- (4) Dependant Benefit
- (5) Medical Benefit
- (6) Funeral Benefit (as per ESI (Amendment) Act, 1989 it is now termed as Funeral Expenses).

(1) Sickness Benefit:

Sickness Benefit is a periodical payment to an insured employee in the event of his sickness certified by a duly appointed Medical Practitioner or any person possessing such qualifications and experience as the corporation may specify.

The sickness benefits is intended to make up partially the wage loss suffered by an employee due to his absence from duty on account of sickness.

An insured employee is qualified of claim sickness benefit for sickness occurring during any benefit period if during the corresponding contribution period contribution in respect of him were payable for not less half of the contribution period (i.e. thirteen weeks) However, in the case of sickness occurring during the first benefit period. The employee is qualified to claim the benefit if during the corresponding contribution period, contributions in respect of him were payable for not less than half the number of days of that contribution period.

The sickness benefit is payable for the period of sickness subject to maximum 91 days in any two consecutive benefit period. However benefit is not payable for the first two days of sickness, except in the case where the spell of sickness for which such benefit was last paid is followed by another spell of sickness at an interval of not more than fifteen days.

Sickness benefit is Subject to the provisions of the Act and the regulations, a person shall be qualified to claim sickness benefit for sickness occurring during any benefit period if the contributions in respect of him were payable for not less than seventy-eight days in] the corresponding contribution period and shall be entitled to receive such benefit at the daily standard benefit rate for the period of his sickness : Provided that in case of a person who becomes an employee within the meaning of the Act for the first time and for whom a shorter contribution period of less than 156 days is available, he shall be qualified to claim sickness benefit if the contribution in respect of him were payable for not less than half the number of days available for working in such contribution period : Provided that he shall not be entitled to the benefits for the first two days of sickness [except] in the case of a spell of sickness following, at an interval of not more than fifteen days, the spell of sickness for which sickness benefits were last paid : Provided further that sickness benefits shall not be paid to any person for more than ninety-one days in any two consecutive benefit periods. (2) The daily rate of sickness benefit in respect of a person during any benefit period shall be seventy per cent of the standard benefit rate of that person during the corresponding contribution period rounded to the next higher rupee.

As a measure of incentive for family welfare planning an employee undergoing vasectomy/tubectomy operation is paid at twice the standard benefit rate for

maximum of seven days, in the case of a male employee and fourteen days in the case of a female employee.

2. Maternity Benefit:

Maternity Benefit is a periodical payment to an insured woman employee, certified to be eligible for such benefit by an appropriate authority. An insured woman, employee becomes eligible for the said benefit in case of confinement or miscarriage of sickness arising out of pregnancy, confinement, premature birth of child or miscarriage.

An insured women is qualified to claim maternity benefit for a confinement occurring or expected to occur in a benefit period if during the corresponding contribution period, contributions in respect of her were payable for not less than half of the contribution period. However, an insured women is also qualified to claim the maternity benefit for the first benefit period if during the corresponding contribution period, contributions in respect of her were payable for not less than half the number of days in the period.

The maternity benefit is payable for all days on which the insured women does not work for remuneration during period of twelve weeks of which not more than six weeks should precede the expected date of confinement.

In case the insured women dies during her confinement or during the period of sickness immediately following her confinement, leaving behind the child, maternity benefit is payable for the whole of that period to a person nominated by her. However, if the child also dies during the said period, then the benefits is payable for the day's upto and including the day of the death of the child to the person so nominated? If there is not such nominated person, in either case the benefit is payable to her legal representative.

In case of miscarriage, an insured woman is, subject to production of proof of miscarriage as required under the regulations, entitled to maternity benefit at the usual rate for all days on which she does not work for remuneration during a period of weeks immediately following her miscarriage.

An insured woman is entitled to additional maternity benefit at the usual rate in the event of sickness arising out of pregnancy, confinement, premature birth of a child or miscarriage, for all days of sickness on which she does not work for

remuneration for an additional period not exceeding 30 days. She is however, required to produce a proof of sickness as required under the regulations.

3. Disablement Benefit:

Disablement Benefit is periodical payment to an insured person suffering from disablement as a result of an employment injury subject to being certified in this behalf as required by the regulation.

Disablement benefit is payable for temporary disablement, permanent partial disablement and permanent total disablement. The Second Schedule of the Act specified injuries deemed to result in permanent partial and total disablements. The Third Schedule of the act, as has been discussed earlier specified certain occupational disease peculiar to certain employments, which are also deemed to be an employment injury "entitling the employee who contract such disease for receiving disablement benefit.

Rate of Disablement Benefit:

Disablement benefit is payable at the daily "full rate" which is 40% more than the standard benefit rate rounded to the next higher multiple of five paise corresponding to the average daily wages in the contributor, period corresponding to the benefit period in which the employment injury occurs.

Where an insured person sustains employment injury before the commencement of the first benefit period, the daily full rate of disablement benefit is to be ascertained as follows :-

1. Where a person sustains employment injury after the expiry of the first wage period in the contribution period in which the injury occurs, the "full rate" is the rate corresponding to the wage group in which his average daily wages during that wage period fall;

Where a person sustain employment injury before the expiry of the wage period in the contribution period in which the injury occurs, the full rate is the rate corresponding to the group in which wage actually earned, or which would have been earned had he worked for a full day on the date of accident fall.

Disablement benefit is payable on the basis of "full rate" in all types of disablement as follows;

- (i) For temporary disablement and permanent total disablement at the "full rate"
- (ii) For permanent partial disablement resulting from an injury specified in part II of the Second Schedule, at such a percentage of the "full rate" which is equal to the percentage of loss of earning capacity caused by that injury.
- (iii) For permanent partial disablement resulting from an injury not specified in Part II of the Second Schedule at such a percentage of the said "full rate" as is proportionate to the loss of earning capacity permanently caused by the injury.

Where more than one injuries are caused as a result of the same accident, the rate of benefit under points No., (ii) & (iii) above are to be aggregated, but in no case the total benefit so calculated will exceed the "full rate"

In cases of disablement that is not covered by point No. (i) (ii) & (iii) above, the disablement benefit is payable at such rate not exceeding the full rate as may be prescribed by the regulations.

In case of a temporary disablement, the disablement benefit is payable after a waiting period of three days (excluding the day of accident), and is payable for the whole period of disablement.

Disablement benefit is payable for life in case of permanent disablement whether partial or total.

Presumptions as to accident arising in the course of employment;

- (i) For the purpose of this Act. an accident arising in the course of an insured person's employment is presumed, in the absence of an evidence to the contrary, also to have arisen out of the employment.

- (ii) Accidents happening while acting in breach of regulations etc.

An accident is deemed to have arisen out of and in the course of an insured person's employment although he was at the time of the accident acting in contravention of the provisions of any law applicable to him, or of any orders given by or on behalf of his employer or that he was acting without instructions from his employer, if-

- (a) The accident would have been deemed so to have arisen and the act not been done in contravention as aforesaid or without instructions from his employer, as the case may be; and

- (b) The act was done for the purpose of and in connection with the employer's trade and business.
- (iii) Accident happening while travelling in employer's transport :
An accident happening while an insured person was travelling as a passenger by any vehicle (including a vessel and an air craft) to or from his place of work with the express or implied permission of his employer is deemed to arise out of and in the course of employment (notwithstanding that he was under no obligation to his employer to travel by that vehicle) on the following conditions :
 - (a) If the accident would have been deemed so as to have arisen had he been under such obligation; and
 - (b) If, at the time of accident the vehicle was being operated by or on behalf of his employer or some other person by whom it was provided in pursuance of arrangements made with his employer, and
Was not being operated in the ordinary course of public transport service.
- (iv) Accidents happening while meeting emergency :
An accident happening to an insured person in or about any premises at which he is for the time being employed for the purpose of his employer's trade or business is deemed to have arisen out of and in the course of his employment, if it happens while he is taking steps on an actual or supposed emergency at those premises, to rescue, succor or protect persons who are, or are thought to be, or possibly to be injured or imperiled, or to avert or minimize serious damage to property.

Determination of questions of disablement:

Any questions –

- (a) Whether the relevant accident has resulted in permanent disablement; or
- (b) Whether the extent of loss of earning capacity can be assessed provisionally or finally; or
- (c) Whether the assessment of the proportion of the loss of earning capacity is provisional or final, or
- (d) In the case of provisional assessment, as to the period for which such assessment shall hold good, are to be determined by a medical board constituted in accordance with the provision of the regulations.

An appeal against the decision of the medical board lies with the (a) – Medical Appeal Tribunal, with a further right to appeal to the ESI Court, or (b) directly to the ESI Court. The decision of the medical board or medical appeal tribunal can be reviewed in certain cases.

4. Dependent's Benefit:

Dependents benefit is periodical payment to the dependents of an insured person who dies as result of an employment injury.

The daily "full rate" of dependent's benefit and the method of ascertaining the same in respect of an employment injury before the commencement of the first period of benefit is the same as in the case of disablement benefit discussed earlier.

Rates and duration of Dependant's Benefit for different categories of dependants are:

- (a) In case of a widow the benefit is payable at $\frac{3}{5}$ th of the 'full rate' during her life or until remarriage if these are two or more widows, the amount is to be divided equally among them.
- (b) In case of a legitimate or adopted son the benefit is payable at $\frac{2}{5}$ of the "full rate" until he attains 18 years of age. However in the case of an infirm legitimate or adopted son who was wholly dependent on the earnings of the insured person at the time of his death, payment of the benefit is to continue till the period of infirmity.
- (c) In case, of a legitimate or adopted unmarried daughter the benefit is payable at the rate of $\frac{2}{5}$ th of the "full rate" until she attains 18 years of age or until marriage whichever is earlier. However, in the case of an infirm legitimate or adopted unmarried daughter who was wholly dependent on the earnings of the insured person at the time of his death, payment of the benefit is to continue till the infirmity lasts and she continues to be unmarried.
However, if the total of the dependant's benefit distributes as above among the widows, and legitimate or adopted sons and daughters of the deceased person exceeds at any time the "full rate", the share of each of the dependant is to be proportionately reduced so that the total amount of benefit thus payable does not exceed the "full rate".

Payment of dependent's benefit to other Dependents –

Where the deceased person does not leave any of the above mentioned dependents, the benefit is payable to other dependents as follows:

(a) To a parent or grand-parent at $3/10^{\text{th}}$ of the "full rate" for life if there are two or more parents or grand-parents, the amount payable is to be equally divided between them.

(b) To a male dependent (other than a parent or grand-parent) at $2/10^{\text{th}}$ of the "full rate" Until he attains the age of 18 years :

If, there are more than one such dependent the amount is to be equally divided between them and

(c) To a female dependant (other than a parent or grand-parent) at $2/10^{\text{th}}$ of the "full rate" until she attains 18 years of age or until remarriage whichever is earlier, or if widowed until she attains 18 years of age.

The Corporation is empowered to review the payment of dependents benefit whenever circumstances so warrant, and thus can continue increase, reduce or discontinue the payment.

5. Medical benefit:

Medical benefit is granted in the form of medical treatment for, and attendance on, insured persons. An insured person and at places where such benefit has been extended to his family, a member of his family are entitled to receive medical treatment and attendance in the following manner;

(a) in the form of out-patient treatment and attendance in a hospital, dispensary, clinic or other institution or

(b) by visits to home of the insured person; on

(c) by treatment as in-patient in a hospital or other institution.

Period of Medical Benefit:

A person is entitled to medical benefit during any period for which contributions are payable in respect of him or in which he is qualified to claim sickness benefit or maternity benefit or is in receipt of such disablement benefit as does not disentitle him to medical benefit under the regulations.

However, a person in respect of whom contribution ceases to be payable under the Act may be allowed medical benefit for such period and of such nature as provided under the regulations.

An insured person who ceases to be in insurable employment on account of permanent disablement shall, subject to payment of contribution and such other conditions as may be prescribed by the Central Government, to receive medical benefit till the date on which he would have vacated the employment on attaining the age of superannuation had he not sustained such permanent disablement.

Scale of Medical Benefit:

A person is entitled to receive medical benefit only of such kind and on such scale as may be provided by the State Government or by the corporation. He does not have the right to claim any medical treatment other than that provided by the dispensary, hospital clinic or other institution to which he is allotted, or that provided under regulations. An insured person or member of his family is not entitled on claim reimbursement from the Corporation of any expenses incurred in respect of any medical treatment, except that authorized under the regulations.

The State Government is required to provide for medical surgical and obstetric treatment for the insured persons and their families (where medical benefits have been extended to the families also). The State Government may, with the approval of the Corporation, arrange for medical treatment at clinic of medical practitioners on agreed scale.

The corporation may enter into agreement with a State Government regarding the nature and scale of the medical treatment to be provided and for sharing cost of the same;

The corporation may with the approval of the State Government, provide the medical treatment at its own level in such a case the State Government is to share the cost of benefit in a proportion agreed upon between them.

6. Funeral Expenses:

“Funeral Expenses” is payment towards the expenditure on the funeral of the deceased insured person. The amount is payable to:

- (a) the eldest surviving member of the family of the deceased insured persons; or
- (b) to the person who actually incurs the expenditure on the funeral of the deceased person where the latter either did not have a family, or was not living with his family at the time of his death.

The amount of funeral expenses payable is not to exceed five hundred rupees. A claim for payment of the expenses must be made within three months of the death of the insured person or within such extended period as allowed by the corporation or its authorized person.

Miscellaneous Provisions: Pertaining to Benefits:

- 1) The rights to receive benefits under the Act are not transferable or assignable.
- 2) No cash benefit payable under the Act is liable to attachment or sale in execution of any decree or order of any court.
- 3) No person is entitled to commute for a lump-sum any periodical payments admissible under the Act, excepting as provided in the regulations.
- 4) No person is entitled to receive in respect of any day on which he works and receives wages, sickness benefit or maternity benefit or disablement benefit for temporary disablement.
- 5) A person who is in receipt of sickness benefit or disablement benefit for temporary disablement is required (a) to remain under medical treatment and carry out the instructions as advised, (b) not to leave the area in which medical treatment has been provided, and (c) allow himself be examined by an authorized medical officer.
- 6) An insured person shall not be entitled to receive for the same period:
 - (a) both sickness and maternity benefit; or
 - (b) both sickness benefit and disablement benefit for temporary disablement; or
 - (c) both maternity benefit and disablement benefit for temporary disablement.

Where a person is entitled to more than one of the benefit mentioned above, he is entitled to choose which benefit he shall receive.
- 7) No employer by reason only of his liability for contributions payable under the Act, shall directly or indirectly reduce the wages of any employee, or discontinue or reduce benefits payable to him under the condition of his service which are similar to the benefits provided by the Act.

- 8) No employer shall dismiss, discharge or reduce or otherwise punish an employee during the period the latter is in receipt of sickness benefit or maternity benefit;

No employer shall, except as provided under the regulations dismiss, discharge, or reduce or otherwise punish an employee during the period he is in receipt of disablement benefit for temporary disablement, or is under medical treatment for sickness, or is absent from work as a result of illness duly certified in accordance with the regulations to arise out of pregnancy or confinement rendering the employee unfit for work.

9.6 Summary

The scheme of Employee's State Insurance is a beginning in the direction of providing social security initially to some of the working people in the lower wages groups and their dependants against economic distress resulting from disease, confinement, accidents and death, as has been envisaged in our constitution for our socialistic pattern of society. The scheme is based on the principle of co-operation in as much as the employee, the employer and the state pool down their resources for a common cause. While a claim to sickness, maternity and medical benefits is subject to payment of contribution, such a payment is not pre-condition to receive disablement and dependants, benefits and funeral expenses. The government has adopted a humanitarian approach to the problem by making necessary amendments in the Act, and the courts have given liberal interpretation to the Act, to enlarge its scope for the purpose of achieving the basic objective of safeguarding the interests of the working class.

9.7 Further Readings

1. Employees State Insurance Act, 1948
2. Employee State Insurance (Amendment) Act, 1989 (29 of 1989)
3. Dayal R-Labour and Industrial Law (1987): Allahabad Law Agency, Allahabad.
4. Kumar H.L. Labour Problems and Remedies (1988) Universal Book Traders, Delhi
5. Siha G. and Sinha P. Industrial Relations and Labour Legislation (1986) : Oxford and 1 BH Publishing Co. Pvt. Ltd., New Delhi.

UNIT- 10

The Employees State Insurance Act, 1948

Part - II

Objectives

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

- the role of the E.S.I. Corporation in the administration and implementation of the E.S.I. Act.
- the autonomous character of E.S.I. Corporation i.e. the areas in which the rules can be framed by the Corporation.
- the situations in which exemption from one or more provisions of the Act can be granted.
- the purposes for which the finances collected from contributions and other sources can be utilized.
- the machinery for the settlement of the disputes of the claims arising under the Act.

Structure:

- 10.1 Introduction
- 10.2 E.S.I. Corporation
- 10.3 Standing Committee
- 10.4 E.S.I. Fund
- 10.5 Adjudication of Disputes
- 10.6 Miscellaneous
- 10.7 Summary
- 10.8 Self-Assessment Test
- 10.9 Key Words
- 10.10 Further Readings

10.1 Introduction:

This unit has been prepared to acquaint you with the implementation aspect of the E.S.I. Act. The Corporation has been constituted to avoid delays the dispensation of benefits and also to have an autonomous status for its effective functioning.

The E.S.I. funds are created out of the contributions of employers and employees and other sources and can be spent for the purpose specified under the Act. The Act also provides for the creating of separate and distinct mechanism for the settlement of disputes arising out of the Act. This mechanism is known as Employees Insurance Court. It is a quasi-judicial body and appeals against its decisions can be referred to the High Court if substantial question of law is involved. In certain cases, exemption from the of the Act can be granted provided the benefits existing the establishment are better or superior to those available under the Act.

10.2 E.S.I. Corporation

This is a premier institution for the administration of social security and enjoys and autonomous status. It is managed on democratic principle in the sense that it is constituted by the representatives of the government, employers and the employees so that every point of view finds appropriate place. Its powers and duties are as follows:

1. It may employ the necessary staff for the efficient transaction of its business;
2. It may, in addition to the scheme of benefits, specified in the Act, promote measures for the improvement of the health and welfare of insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured. It may incur in respect of such measures expenditure from the funds of the Corporation within such limits as may be prescribed by the Central Government.
3. It can acquire, hold and sell or otherwise transfer any movable and immovable property.
4. It can, from time to time, invest any moneys which are not immediately required.
5. It may, with the prior sanction of the Central Government, raise loans and take measures for disbursing such loans.

6. It may constitute for the benefit of its staff provident or other benefit funds.
7. It may appoint such persons as Inspectors, as it thinks fit, for the purposes of this Act, within such local limits as it may assign to them.
8. It may, under Sec. 45-A, on the basis of information available to it, by order, determine the amount of contributions payable in respect of employees of a factory or establishment in respect of which no particulars, registers or records are submitted, furnished, or maintained.
9. It shall in each year frame a budget showing probable receipts and expenditure which it proposes to incur during the following year. It shall submit a copy of the budget for the approval of the Central Government before a specified date.
10. It shall maintain correct account of its income and expenditure in such form and in such a manner as may be prescribed by the Central Government. Such accounts shall be duly audited by auditors appointed by the Central Government.
11. It shall submit to the Central Government an annual report of its work and activities.
12. It shall, at intervals of five years, have a valuation of its assets and liabilities made by a valuer appointed with the approval of the Central Government.

10.3 Standing Committee

Standing Committee is constituted from amongst the members of the E.S.I. Corporation and its Chairman is nominated by Central Government. The main task of the Standing Committee is to facilitate and ensure the working of E.S.I. Corporation. The supervision and control over its activities and affairs are exercised by the Corporation. It will discharge and perform those functions which are assigned to it by the Corporation. It shall submit for the consideration and decision of the Corporation all such cases and matters as may be specified in the regulations made for the purpose from time to time. It may also, in its discretion, submit any other case or matter for the decision of the Corporation. In fact, it is an extended arm of the Corporation and helps Corporation in materializing its objects.

Powers of the Standing Committee: (1) Subject to the general superintendence and control of the Corporation, the Standing Committee shall administer the affairs of the Corporation and may exercise any of the powers and perform any of the functions of the Corporation.

(2) The Standing Committee shall submit for the consideration and decision of the Corporation all such cases and matters as may be specified in the regulations made in this behalf.

(3) The Standing Committee may, in its discretion, submit any other case or matter for the decision of the Corporation.

Medical Benefit Council

(1) The Central Government shall constitute a Medical Benefit Council consisting of :

(a) the Director General, the Employees' State Insurance Corporation, ex-officio as Chairman;

(b) the Director General, Health Services, ex-officio as Co-Chairman ;

(c) the Medical Commissioner of the Corporation, ex-officio ;

(d) one member each representing each of the States (other than Union territories) in which this Act is in force to be appointed by the State Government concerned ;

(e) three members representing employers to be appointed by the Central Government in consultation with such organizations of employers as may be recognized for the purpose by the Central Government ;

(f) three members representing employees to be appointed by the Central Government in consultation with such organizations of employees as may be recognized for the purpose by the Central Government; and (g) three members, of whom not less than one shall be a woman, representing the medical profession, to be appointed by the Central Government in consultation with such organizations of medical practitioners as may be recognized for the purpose by the Central Government.

(2) Save as otherwise expressly provided in this Act, the term of office of a member of the Medical Benefit Council, other than a member referred to in any of the clauses (a) to (d) of sub-section (1), shall be four years from the date on which his appointment is notified: Provided that a member of the Medical Benefit

Council shall, notwithstanding the expiry of the said period of four years continue to hold office until the appointment of his successor is notified.

(3) A member of the Medical Benefit Council referred to in clauses (b) and (d) of subsection (1) shall hold office during the pleasure of the Government appointing him.

Resignation of Membership: A member of the Corporation, the Standing Committee or the Medical Benefit Council may resign his office by notice in writing to the Central Government and his seat shall fall vacant on the acceptance of the resignation by that Government.

Cessation of Membership: A member of the Corporation, the Standing Committee or the Medical Benefit Council shall cease to be a member of that body if he fails to attend three consecutive meetings thereof.

Duties of Medical Benefit Council.—The Medical Benefit Council shall-

(a) Advise the Corporation and the Standing Committee on matters relating to the administration of medical benefit, the certification for purposes of the grant of benefits and other connected matters; and

(b) have such powers and duties of investigation as may be prescribed in relation to complaints against medical practitioners in connection with medical treatment and attendance ; and

(c) Perform such other duties in connection with medical treatment and attendance as may be specified in the regulations.

10.4 E.S.I. Fund

E.S.I. Fund is raised from the contributions of the employers and the employees and other sources like grants, donations or even loans. All the monies accruing to the fund shall either be paid into Reserve Bank of India or any other bank approved by the Central Governments. Its account shall be operated by such officers as may be authorized by the Standing Committee with the approval of E.S.I. Corporation. Its fund can be spent for the following purposes-

(i) Payment of benefits and provisions of medical treatment and attendance to insured persons and their families and defraying the charges and costs in connection therewith.

- (ii) Payment of fees and allowances to members of the Corporation, the Standing Committee and Medical Benefit Council, the Regional Boards Local Committee and Regional and Local Medical Benefit Councils;
- (iii) Payment of salaries, leave and joining time allowances, travelling and compensatory allowances, gratuities and compassionate allowances, pensions, contributions to provident or other benefit fund of officers and servants of the Corporation and meeting the expenditure in respect of offices and other services set up for the purpose of giving effect to the provisions of this Act;
- (iv) Establishment and maintenance of hospitals, dispensaries and other institutions for the benefit of insured persons and their families.
- (v) Payment of contributions to any State Government, local authority or any private body or individual, towards the cost of medical treatment and attendance provided to insured persons and their families.
- (vi) Defraying the cost of auditing the accounts of the Corporation and of the valuation of its assets and liabilities;
- (vii) Defraying the cost of the Employee's Insurance Courts set up under this Act;
- (viii) Payment of any sums under any contract into for the purposes of this Act by the Corporation or the Standing Committee or by any other officer duly authorized by the Corporation or the Standing Committee in that behalf;
- (ix) Payment of sums under any decree, order to award of any Court of Tribunal against the Corporation or any of its officers or servants for any done in execution of his duty or under a compromise or settlement of any suit or other legal proceeding or claim instituted or made against the Corporation;
- (x) Defraying the cost and other charges of instituting or defending any civil or criminal proceedings arising out of any action taken under this Act.
- (xi) Defraying expenditure, within the limits prescribed, on measures for the improvements of the health and welfare of insured persons and for the rehabilitation and reemployment of insured persons who have been disabled or injured; and
- (xii) Such other purposes as may be authorized by the Corporation with the prior approval of the Central Government.

10.5 Adjudication of Disputes

For the expeditious settlement of disputes arising out of the Act, separate machinery has been provided. This is known as Employees Insurance Court. This court is a quasi-judicial body and enjoys all the powers of the Civil Court, like summoning and enforcing the attendances of witnesses, compelling the discovery and production of documents and administering of oath and recording of evidence. It shall follow such procedure as will be laid decree passed in a suit by a Civil Court. If there are any statutory rules prescribing the procedure, the rules of natural justice shall be followed, which means that the persons involved in the dispute shall be given opportunity of being heard and decision shall be given in good faith.

The following questions or disputes can be raised before it:

(1) If any question or dispute arises as to:

- (a) whether any person is an employee within the meaning of this Act or whether he is liable to pay the employee's contribution, or
- (b) the rate of wages or average daily wages of an employee for the purposes of this Act, or
- (c) the rate of contribution payable by a principal employer in respect of any employee, or
- (d) the person who is or was the principal employer in respect of any employee, or
- (e) the right of any person to any benefit and as to the amount and duration thereof, or
- (ee) any direction issued by the Corporation under section 55-A on a review of any payment of dependants' benefits, or
- (f) * * * (Repealed)
- (g) any other matter which is in dispute between a principal employer and the Corporation, or between a principal employer and an immediate employer, or between a person and the Corporation or between an employee and a principal or immediate employer, in respect of any contribution or benefit or other dues payable or recoverable under this Act, or any other matter required to be or which may be decided by the Employees' Insurance Court under this Act, such question or dispute subject to the provisions of sub-section (2A) shall be decided by the Employees' Insurance Court in accordance with the provisions of this Act.

(2) Subject to the provisions of sub-section (2A), the following claims] shall be decided by the Employees' Insurance Court, namely:

(a) claim for the recovery of contribution from the principal employer ;
(b) claim by a principal employer to recover contributions from any immediate employer ;

(c) * * * (Repealed)

(d) claim against a principal employer under section 68 ;

(e) claim under section 70 for the recovery of the value or amount of the benefits received by a person when he is not lawfully entitled thereto ; and

(f) If any claim for the recovery of any benefit admissible under this Act.

2[(2A) If in any proceedings before the Employees' Insurance Court a disablement question arises and the decision of a medical board or a medical appeal tribunal has not been obtained on the same and the decision of such question is necessary for the determination of the claim or question before the Employees' Insurance Court, that Court shall direct the Corporation to have the question decided by this Act and shall thereafter proceed with the determination of the claim or question before it in accordance with the decision of the medical board or the medical appeal tribunal, as the case may be, except where an appeal has been filed before the Employees' Insurance Court under sub-section (2) of section 54-A in which case the Employees' Insurance Court may itself determine all the issues arising before it.

(2-B) No matter which is in dispute between a principal employer and the Corporation in respect of any contribution or any other dues shall be raised by the principal employer in the Employees' Insurance Court unless he has deposited with the Court fifty percent of the amount due from him as claimed by the Corporation : Provided that the Court may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this sub-section.

(3) No civil Court shall have jurisdiction to decide or deal with any question or dispute as aforesaid or to adjudicate on any liability which by or under this Act is to be decided by a medical board, or by a medical appeal tribunal or by the Employees' Insurance Court.

Any other matter which is in dispute-

- i. Between a principal employer and the Corporation, or
- ii. Between a principal employer and the Corporation, or
- iii. Between a person and the Corporation, or

- iv. Between an employee and a principal or immediate employer.

This appeal against its decision can be referred to High Court if a substantial question of law is involved. For example, whether tannery is a factory or not is a substantial question of law. Similarly, where there is a dispute about meaning of dependants is a substantial question of law, and so on.

Social Security Officers their functions and duties:

(1) The Corporation may appoint such persons as Social Security Officers, as it thinks fit, for the purposes of this Act, within such local limits as it may assign to them.

(2) Any Social Security Officer appointed by the Corporation under sub-section (1) (hereinafter referred to as Social Security Officer), or other official of the Corporation authorised in this behalf by it may, for the purposes of enquiring into the correctness of any of the particulars stated in any return referred to in section 44 or for the purpose of ascertaining whether any of the provisions of this Act has been complied with:

(a) require any principal or immediate employer to furnish to him such information as he may consider necessary for the purposes of this Act ; or

(b) at any reasonable time enter any office, establishment, factory or other premises occupied by such principal or immediate employer and require any person found in charge thereof to produce to such Social Security Officer or other official and allow him to examine such accounts, books and other documents relating to the employment of persons and payment of wages or to furnish to him such information as he may consider necessary; or

(c) examine, with respect to any matter relevant to the purposes aforesaid, the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises, or any person whom the said Social Security Officer or other official has reasonable cause to believe to be or to have been an employee ;

(d) make copies of, or take extracts from, any register, account book or other document maintained in such factory, establishment, office or other premises ;

(e) Exercise such other powers as may be prescribed.

A Social Security Officer shall exercise such functions and perform such duties as may be authorised by the Corporation or as may be specified in the regulations. 2 [(4) Any officer of the Corporation authorised in this behalf by it may, carry out re-inspection or test inspection of the records and returns submitted under section 44 for the purpose of verifying the correctness and quality of the inspection carried out by a Social Security Officer. 3 [45-A. Determination of contributions in certain cases. (1) Where in respect of a factory or establishment no returns, particulars, registers or records are submitted, furnished or maintained in accordance with the provisions of section 44 or any 4 [Social Security Officer] or other official of the Corporation referred to in sub-section (2) of section 45 is 5 [prevented in any manner] by the principal or immediate employer or any other person, in exercising his functions or discharging his duties under section 45, the Corporation may, on the basis of information available to it, by order, determine the amount of contributions payable in respect of the employees of that factory or establishment.] 6 [Provided that no such order shall be passed by the Corporation unless the principal or immediate employer or the person in charge of the factory or establishment has been given a reasonable opportunity of being heard.] 1 [Provided further that no such order shall be passed by the Corporation in respect of the period beyond five years from the date on which the contribution shall become payable.] (2) An order made by the Corporation under sub-section (1) shall be sufficient proof of the claim of the Corporation under section 75 or for recovery of the amount determined by such order as an arrear of land revenue under section 45-B 2 [or the recovery under section 45-C to section 45-I].

10.6 Miscellaneous

Claims under the Act:

ESI Rule 44 provides for the Claim for benefits: Every claim for a benefit payable under the Act shall be made in writing, in accordance with these regulations, to the appropriate Branch Office on the form appropriate for the purpose of the benefit for which the claim is made, or in such other manner as the appropriate office may, subject to its being in writing, accept as sufficient in the circumstances of any particular case or class of cases. Assistance for filling in the

form of claim in case of insured persons who cannot do so themselves shall be provided at the Branch Offices of the Corporation.

45. When claim becomes due: A claim for any benefit under the Act shall for the purposes of section 77 of the Act, become due on the following days : (a) for sickness benefit or for disablement benefit for temporary disablement for any period, on the date of issue of the medical certificate in respect of such periods ; provided that in cases where a person is not entitled to sickness benefit for the first two days of sickness, the due date shall be deferred by such days ; (b) for maternity benefit : (i) in case of confinement, on the date of issue, in accordance with these regulations, of the certificate of expected confinement or on the day six weeks preceding the expected date of confinement so certified whichever is later or, if no such certificate is issued, on the date of confinement ; and (ii) in case of miscarriage and in case of sickness arising out of pregnancy, confinement, premature birth of child or miscarriage, on the date of issue of the medical certificate of such miscarriage or sickness, as the case may be ; (c) for first payment of disablement benefit for permanent disablement, on the date on which an insured person is declared as permanently disabled in accordance with the Act and these regulations ; (d) for first payment of dependants' benefit, on the date of the death of the insured person in respect of whose death the claim for such benefit arises or, where disablement benefit was payable for that date, on the date following the date of death or, where the beneficiary becomes entitled to a claim on any subsequent date, on the date on which he becomes so entitled ; (e) for subsequent payments of disablement benefit for permanent disablement and for subsequent payments of dependants' benefit, on the last day of the month to which the claim relates ; and (f) for funeral expenses, on the date of the death of the insured person in respect of whose death the claim for such benefit arises.

46. Availability of claims forms: Claim forms shall be available to intending claimants from such persons and such offices of the Corporation as it may appoint or authorize for that purpose, and shall be supplied free of charge.

47. Claims on wrong form: Where a claim for any benefit has been made on an approved form other than the form appropriate to the benefit claimed, the Corporation may treat the claim as if it was made on the appropriate form : Provided that the Corporation may in any such case require the claimant to complete the appropriate form.

48. Evidence in support of claim: Every person who makes a claim for any benefit shall, in addition to the medical certificate and other forms specifically required under these regulations, furnish such other information and evidence for the purpose of determining the claim as may be required by the appropriate office, and, if reasonably so required, shall for that purpose attend at such office or place as the appropriate office may direct.

49. Defective claim: If, in the absence of due signature or of due certification, a claim is defective on the date of its receipt by an office of the Corporation, the office of the Corporation may in its discretion, refer the claim to the claimant and if the form is returned duly signed and/or certified within three months from the date on which it was so referred, the office may treat the claim as if it had been duly made in the first instance.

50. Claim for inappropriate benefit: Where it appears that a person who has made a claim for any benefit payable under the Act, may be entitled to a benefit other than that which he has claimed, any such claim may be treated as a claim in the alternative for that other benefit.

51. Authority for certifying eligibility of claimants: The authority which is to certify eligibility of claimants shall be the appropriate Branch Office in respect of sickness, maternity, temporary disablement benefits and funeral expenses and the appropriate Regional Office, in respect of permanent disablement and dependants' benefits.

52. Benefits when payable:

(1) Any benefit payable under the Act shall be paid — (a) in the case of sickness benefit, not later than 7 days ; (b) in the case of funeral expenses not later than 15 days ; (c) in the case of the first payment in respect of maternity benefit not later than 14 days ; (d) in the case of the first payment in respect of temporary disablement benefit not later than one month ; (e) in the case of first payment of permanent disablement benefit not later than one month ; (f) in the case of first payment of dependant's benefit not later than three months ; After the claim therefore together with the relevant medical or other certificates and any other documentary evidence which may be called for under these regulations has been furnished complete in all particulars to the appropriate office.

(2) Second and subsequent payments in respect of any maternity, temporary disablement, permanent disablement or dependants' benefit shall be paid along

with the first payment in respect thereof, or within the calendar month following the month to the whole or part of which they relate, whichever is later subject to production of any documentary evidence which may be required under these regulations.

(3) Where a benefit payment is not made within the time limits specified in sub-regulations (1) and (2) above, it shall be reported to the appropriate Regional Office and shall be paid as soon as possible.

(4) Benefits under the Act shall be paid in cash at a Branch Office on such days and working hours as may be fixed by the Director-General or such other officer of the Corporation, as may be authorised by him from time to time in this behalf or at the option of the claimant and subject to deduction of the cost of remittance by means of postal money orders or other orders payable through a post office, or by any other means which the appropriate office may in the circumstances of any particular case consider appropriate : Provided that the Corporation may waive the deduction of the cost of remittance in such cases as the Director-General may, from time to time, specify. Provided further that the Director-General may decide that in respect of certain areas/pay offices as may be specified by him from time to time, the payments shall be remitted through money order also at the cost of the Corporation subject to such restrictions as may be imposed by the Director-General from time to time.

(5) Where the payment of a benefit is to be made at a Branch Office, such office may insist upon the production of the Identity Card or other document issued in lieu thereof in respect of the insured person.¹⁸

(a) Bar to benefits in other Acts

If a person is entitled to benefits in other Acts, it shall not be entitled to receive similar benefits under E.S.I. Act. For example, if a person is getting compensation of employment injury under Workmen Compensation Act, 1923, he will not be entitled to get disablement benefit or dependent's benefit under E.S.I. Act.

(b) Certain benefits not to be combined

A person shall not be entitled to receive the following benefits for the same period :

¹⁸ <http://www.esic.nic.in/Tender/ESIReg1950.pdf>

- i. Sickness benefits and maternity benefits;
- ii. Sickness benefits and disablement benefits for temporary disablement;
- iii. Maternity benefits and disablement benefits for temporary disablement.

Thus, overlapping of benefits of the similar nature for the same period is to be avoided.

(c) Enhancement of Benefits

At any time, when its funds so permit, the Corporation may enhance the scale of any benefit admissible under the Act and the period for such benefit may also be extended. In certain cases the medical care for the families of insured persons can be extended if situation so demands. In other words, when there is hard case of chronic diseases such power can be exercised.

(d) Exemption from the provisions of the Act

If the existing level of benefits available in any establishment is superior to an better than the benefits available under the E.S.I. Act, such establishment can be granted exemption from the provisions of E.S.I. Act, initially for one year which can be extended on the basis of merits of the Case. Such exemption is granted after a team from E.S.I. Corporation ensures that there exists a case for such exemption. The final authority for grant of such exemption is the appropriate government.

(e) Recent Developments

The Government of India has proposed the E.S.I. Amendment Bill, 1989 where the following changes are intended to be introduced-

- (i) More autonomy to E.S.I. Corporation; for example, appointment of doctors for E.S.I. Hospitals can be made by the E.S.I. Corpn. Without referring to U.P.S.C.
- (ii) Covering employees getting more than Rs. 2500/-
- (iii) Setting up independent machinery for recovery of arrears of the E.S.I. contribution to avoid delay.
- (iv) Casual and unorganized workers are also to be covered under the scheme.
- (v) No application from an employer disputing the claim of the Corporation for payment of contribution or other dues shall be entertained by the Employees Insurance Court unless the employer deposits 50% of the amount claimed to the court.

(f) Rule Making Power

For the effective functioning of the E.S.I. Corporation it has right to make rules and regulations on following matters:

- (i) Time, place and procedure to be following for the meetings of the Corporation.
- (ii) Details of the payments of contribution, certification of sickness, eligibility for cash benefits, commutation of any payments and forms of claims.
- (iii) Certification and notice of pregnancy.
- (iv) Relaxation of eligibility conditions.
- (v) Returns to be submitted and records to be maintained by the various parties.
- (vi) Method of recruitment and the service conditions of the employees of the Corporation.
- (vii) Remission of contribution to the Corporation.
- (viii) The method of calculating the amount of cash benefit and assessing of money value of any benefit which is not cash benefit.
- (ix) Any other relevant under the Act.

10.7 Summary

Thus, E.S.I. Corporation is an autonomous body and is intended to effectively administer the various provisions of the Act. It has to avoid certain procedural delays and to release benefits expeditiously. E.S.I. fund is raised from the contributions of employer's employees and some other sources and spent for the purpose specified in the Act so that an appropriate financial control over the funds is exercised. For the settlement of disputes more effectively, distinct machinery has been created which is a quasi-judicial body and enjoys all the powers of the court. The appeal can be referred against its decisions to the High Court if substantial question of law is involved. There is no rigidity in the application of the provision of the Act and the exemption can be granted in certain deserving cases. Recently, Amendment Bill, 1989 is an attempt to bring about such changes which will improve the working of the Act.

See also.¹⁹

¹⁹ <http://www.esic.nic.in/Tender/ESIAct1948Amendedupto010610.pdf>

10.8 Self-Assessment Test

- a. Discuss the various agencies for the implementation of the provisions of the E.S.I. Act.
- b. Discuss the importance of E.S.I. Corporation and also its various functions and duties.
- c. Discuss the machinery for the settlement of disputes under the Act. When can an appeal be filled against its decisions?
- d. Write short notes on-
 - i. Standing Committee
 - ii. Conditions for the exemption from the Act.
 - iii. E.S.I. Fund

10.9 Key Words

ESI Corpn.	:	A premier institution for the effective and efficient administration of the Act which enjoys an autonomous status.
E.S.I. Fund	:	Raised from the contributions of employer and employees and other sources and the money from its can be spent only for the purposes specified under the Act.
Exemption	:	Can be granted to such establishments which have the benefits superior to those available under the Act.
Employees Insurance Court	:	This is a distinct and specialized machinery for the settlement of disputes arising out of the Act, which enjoys the powers of a Civil Court. Appeal against its decision can be referred to the High Court if substantial question of law is involved.

10.10 Further Readings

1. G.c. Hallen : Dynamics of Social Security in India
2. Mamoria and Mamoria : Industrial Labour, Social Security and Industrial Place in India
3. N.H. Gupta : Social Security Legislation for Labour in India
4. Indian Labour Journal
5. Labour Law Journal
6. Indian Labour Year Books
7. The E.S.I. Act, 1948
8. Report of National Commission on Labour
9. Indian Express dated 1.8.1989

UNIT- 11

The Maternity Benefit Act, 1961

Objectives

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

- The importance of welfare legislation.
- It should be appreciated how this legislation attempts to protect the interest of women workers during pregnancy and after child birth.
- There are Prohibitions of Employment of Women during a certain period and other protections provided to them.

Structure

- 11.1 Introduction
- 11.2 Maternity Protection by the ILO
- 11.3 The Maternity Benefit Act, 1961
- 11.4 Definitions
- 11.5 Prohibitions of Employment of Women during a certain period
- 11.6 Conditions of Payment of Maternity Benefit
- 11.7 Notice of Claim
- 11.8 Benefits
- 11.9 Other Protections
- 11.10 Summary
- 11.11 Key Words
- 11.12 Self Assessment
- 11.13 Further Readings

11.1 Introduction

The Maternity Benefit Act aims at regulating employment of women for certain periods before and after child birth and to provide for maternity benefit and certain other benefits. The Act extends to the whole of India and it applies to every establishment which is a factory, mine or plantation including the one belonging to

the Government and to every establishment, employing persons for the exhibition of equestrian, acrobatic, and other performances. However the benefit under this Act, cannot be enjoyed simultaneously with the benefit of maternity under the Employees State Insurance Act, 1948.

11.2 Maternity Protection by the ILO

Maternity protection was first dealt with in an International Labour Organization Convention in 1919 which was revised by a subsequent Convention in 1952. While the former Conventions applied to Industry and Commerce, the latter covers industry, non-industrial occupations including domestic work and agricultural occupations. The two Conventions apply to workers of public or private undertakings, irrespective of age, nationality, race or creed, whether married or unmarried. However, the 2nd Convention mentioned above authorizes exception for family undertakings. It also allows for exceptions for certain categories of non-industrial occupations, for agricultural undertakings, other plantations, for domestic work, for wages in private households for women wage earners working at home, and for transport by sea.

The Conventions provide that the period of maternity leave shall be at least twelve weeks, out of which six weeks shall be a period of compulsory leave after confinement. The leave shall also be extended in case of illness arising out of pregnancy or confinement.

During her leave, the woman shall be entitled to receive cash and medical benefits. The rate of cash benefit should be sufficient for the full and health maintenance of herself and her child in accordance with a suitable standard of living. Medical benefits should include pre-natal confinement, and postnatal care as well as hospitalization care where necessary. Freedom of choice of doctor and of hospital should be respected. The benefits should be provided either by means of compulsory social insurance or by means of public funds. Both the Conventions exclude that the employer be individually liable for the cost of the benefits so as to prevent discriminatory measures with regard to employment of women and also to avoid any difficulties of obtaining payment.

Another significant point that is provided by the Conventions is the provision for interruption of work for the purpose of nursing the child after the maternity leave is over. Finally, the conventions prohibit that the notice of dismissal be given to a woman during her absence from work on maternity leave or at such a time that the notice would expire during such absence.

Along with the 2nd Conventions of Maternity Benefit (No. 103) the ILO adopted a Recommendation (No. 95) which advocates some more precise measures and sets some higher standards such as the extension of the leave to 14 weeks in certain and the finding of cash benefits at a higher rate, equaling where practicable 100 percent of the woman's previous earnings. The Recommendations also dealt with the medical benefits, with facilities, for nursing mothers and infants with protection of employment and with protection of the health of employed women during the maternity period.

It has to be noted that the standards set forth by the Conventions on maternity protection were much above the levels of most national legislations on this subject. However, in many countries, there exist laws relating to maternity benefit for the working women. In India, a statute regulating this benefit was enacted in 1961.

11.3 The Maternity Benefit Act, 1961

Prior to the enactment of Central Legislation, almost all states in India had their own statutes for regulating employment of women for certain periods before and after child birth and to provide for maternity benefits to them. The Central Act aims at reducing the disparity that was prevailing due to non-uniform legislations¹ on the same subject. The Act applies to all establishment including mines, factories and plantations.

11.4 Definitions

'Maternity Benefit' is a payment to woman worker at the rate of average daily wages for the period of her actual absence immediately preceding and including the day of delivery and for six weeks immediately following that day. This payment has to be made weekly in case of woman working in a daily wages basis and monthly in the case of a woman working on a monthly wage basis. The Act does not define the term 'Maternity Benefit' as such, but it gives the ingredients of it in section 5 of the Act.

The Act aims at providing benefits to women in connection with delivery and even in case of miscarriage. The terms delivery is defined in section 3(c) as the Birth of a child. A child is defined so as to include a still-born child (Section 3(b)) 'Miscarriage' according to section 3(j) means expulsion of the contents of pregnant uterus at any period prior to or during the twenty sixth week of pregnancy but does not include any miscarriage, the causing of which is punishable under the Indian Penal Code.

11.5 Prohibition of Employment of Women during a Certain Period

Sections 4 of the Act specially prohibits the employment, of and work by a woman during the six weeks immediately following the day of her delivery or her miscarriage. It also provides that a woman, on her request, will not be employed on arduous work during a period of one month before proceeding on maternity leave. The section reads:

- (1) No employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery or her miscarriage.
- (2) No woman shall work in any establishment during the six weeks immediately following the day of her delivery or her miscarriage.
- (3) Without prejudice to the provision of Section 6, no pregnant woman shall, on a request being made by her in this behalf be required by her employer to do during the period specified in sub-section (4) any work which is of arduous nature or which involves long hours of standing, or which in any way is likely to interfere with her pregnancy or the normal development of fetus, or likely to cause her miscarriage or otherwise adversely affect her health.
- (4) The period referred to in sub-section (3) shall be-
 - (a) the period of one month immediately preceding the period of six weeks before the date of her expected delivery.
 - (b) any period during the period of six weeks for which the pregnant woman does not avail of the leave of absence under Section 6.

11.6 Conditions of Payment of Maternity Benefit

According to the Act, maternity benefit is payable to every woman worker in an establishment under the following conditions:-

5. Right to payment of maternity benefit.- ²⁰[(1) Subject to the provisions of this Act, every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day.]

Explanation.--For the purpose of this sub-section, the average daily wage means the average of the woman's wages payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she absents herself on account of maternity, ²¹[the minimum rate of wage fixed or revised under the Minimum Wages Act, 1948 or ten rupees, whichever is the highest.]

(2) No woman shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than ²²[eighty days] in the twelve months immediately preceding the date of her expected delivery:

Provided that the qualifying period of ²³[eighty days] aforesaid shall not apply to a woman who has immigrated into the State of Assam and was pregnant at the time of the immigration.

Explanation.--For the purpose of calculating under this subsection the days on which a woman has actually worked in the establishment, ²⁴[the days for which she has been laid off or was on holidays declared under any law for the time being in force to be holidays with wages] during the period of twelve months immediately preceding the date of her expected delivery shall be taken into account.

²⁵[(3) The maximum period for which any woman shall be entitled to maternity benefit shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery:]

Provided that where a woman dies during this period, the maternity benefit shall be payable only for the days up to and including the day of her death: 1*[Provided

²⁰ Subs. by Act 61 of 1988, s. 4 (w.e.f. 10-1-1989).

²¹ *ibid*

²² Subs. by Act 61 of 1988, s. 4 (w.e.f. 10-1-1989).

²³ *ibid*

²⁴ *ibid*

²⁵ *ibid*

further that where a woman, having been delivered of a child, dies during her delivery or during the period immediately following the date of her delivery for which she is entitled for the maternity benefit, leaving behind in either case the child, the employer shall be liable for the maternity benefit for that entire period but if the child also dies during the said period, then, for the days up to and including the date of the death of the child.]

5A. Continuance of payment of maternity benefit in certain cases:

²⁶ [5A. Continuance of payment of maternity benefit in certain cases.- Every woman entitled to the payment of maternity benefit under this Act shall, notwithstanding the application of the Employees' State Insurance Act, 1948 (34 of 1948), to the factory or other establishment in which she is employed, continue to be so entitled until she becomes qualified to claim maternity benefit under section 50 of that Act.]

5B. Payment of maternity benefit in certain cases:

Every woman--

- (a) who is employed in a factory or other establishment to which the provisions of the Employees' State Insurance Act, 1948 (34 of 1948), apply;
- (b) whose wages (excluding remuneration for overtime work) for a month exceed the amount specified in sub-clause (b) of clause (9) of section 2 of that Act; and
- (c) who fulfils the conditions specified in sub-section (2) of section 5, shall be entitled to the payment of maternity benefit under this Act.]

Thus 1. She must have actually worked in an establishment of the employer for a period on net less than 80 days in 12 months immediately preceding the date of her expected delivery. It has to be noted that in computing this 80 days, the days of lay-off will also be counted.

2. The maximum period for which a woman would be entitled to maternity benefit shall be twelve weeks. Six weeks of which, upto and including the day of her expected delivery and six weeks immediately following that day. If the woman dies during this period, then the maternity benefit shall be paid only for the day's upto and including the day of her death. However, if the woman dies during her delivery or during the period of six weeks immediately following the day of delivery, after having been delivered of a child and the child survives her, then the

²⁶ ibid

employer shall be bound to pay maternity benefit for a period of six weeks immediately following the day of the delivery but if the child also dies during the period mentioned above, then the benefit is payable only for the days upto and including the day of the child's death (Section 5). In case of death of the woman worker, the amounts have to be paid to the nominee under Section 6 of the Act.

Apart from the general conditions specified under Section 5, the Act provide for a special conditions under Section 5B which reads:-

Every Woman-

- (a) who is employ factory or other establishment to which the provision of the Employee's State Insurance Act, 1948 apply
- (b) whose wages (excluding remuneration for overtime work) for a month exceed the amount specified in sub clause (b) of clause (a) of Section 2 of the Act, and
- (c) who fulfils the conditions specified in sub-section (2) of Section 5 shall be entitled to the Payment of Maternity Benefit under this Act.

According to the sub-section (2) of Section 2 nothing contained in the Maternity Benefit Act are applicable to establishment covered by the ESI Act. However, the Section 58(b) provides that this Act apply to a particular group of women workers in establishments covered by the ESI Act. according to the sub-clause (b)of clause (9P of Section 2 of the ESI Act, any person whose wages excluding remuneration for overtime work exceed one thousand six hundred rupees a month will not be treated as an employee for the purpose of the Act, Therefore, the employees who are getting more wages than the amount specified and are working in establishment covered by the ESI Act will get the provision (Sec. 5A) is that every woman entitled to get the be so entitled until she becomes qualified to claim maternity benefits under Section 50 of the ESI Act, even if the establishment in the she is working is covered by the ESI Act. according to Section 50 of the ESI Act, an insured woman will be qualified to claim maternity benefit only if the contributions in respect of her were payable for not less than half the number of days in the corresponding contribution period. Hence, the statue protects the interest of women workers who are employed in establishment that are covered by the ESI Act and are not entitled to the benefit due to technicalities.

11.7 Notice of Claim

Every woman, who is entitled to get the benefit under the Act has to give a notice in the prescribed form of the employer and should nominate in the notice, the person who shall be entitled to receive the benefit on her behalf. She is also duty bound to state that she will not work in any other establishment during the period for which she receives maternity benefits from an employer. If she violates this condition, the benefit payable to her may be forfeited. The employer on receipt of the said notice has to permit the woman to absent herself from the establishment during the period for which she receives the maternity benefit. This makes provisions for absence of the woman employees during the period for which she receive the maternity benefit instead of the earlier provision for absence for a period of six weeks only after the day of delivery. According to sub-section (5) of Section 6, the amount of maternity benefit for the period preceding the date of her expected delivery shall be paid to her in advance on production of proof that the woman is pregnant and the amount due for the subsequent period shall be paid by the employer to her within 48 hours of production of proof that the woman has been delivered of a child.

However, the failure of giving a notice under this section will not disentitle a woman worker to maternity benefit or any other amount under the Act, if she is otherwise entitled to it.

11.8 Benefits

A woman protected under this Act has to get maternity benefit at the rate of the average daily wage for the period of her actual absence. For calculating the average daily wages, the wages payable to her during the period of three calendar months immediately preceding the date from which she absents herself on account of maternity has to be considered. An explanation to the sub-section provides that a woman worker is entitled to the wages payable according to the Minimum Wages Act 1948 or ten rupees whichever is higher.

Another benefit provide under the Act is that of medical bonus. A woman worker is entitled to receive from her employer a medical bonus of two hundred and fifty rupees if no prenatal confinement and postnatal care is provided for by the employer free of charge.

Apart from the monetary benefits and the leave in connection with the delivery, a woman is entitled to leave with wages at the rate of maternity benefit, for a period of six weeks immediately following the day of her miscarriage.

A woman worker is entitled to an additional leave, in case she happens to suffer from any illness arising out of pregnancy, delivery, premature birth of child or miscarriage. In such an event she is entitled to leave with wages at the rate of maternity benefit for a maximum period of one month. (Section 10).

Leave for illness arising out of pregnancy, delivery, premature birth of child, or miscarriage.- A woman suffering from illness arising out of pregnancy, delivery, premature birth of child or miscarriage shall, on production of such proof as may be prescribed, be entitled, in addition to the period of absence allowed to her under section 6, or, as the case may be, under section 9, to leave with wages at the rate of maternity benefit for a maximum period of one month.

Every woman who returns to duty after the delivery of a child is entitled to have two breaks of prescribed duration, apart from the usual intervals, for nursing the child, until the child attains the age of fifteen months. A similar provision for nursing breaks is also found in the Factories Act, 1948. Under the Factories Act, the employer has to provide facilities for mothers of children under the age of six years, for feeding them at the necessary intervals, (Section 48 (3) (d) of the Factories Act, 1948.

11.9 Other Protections

Apart from the prohibition of employment of work by woman the statute affords protection from deduction of Wages (Section 13) in cases where she is allowed to do lighter work instead of the regular work provided to her prior to pregnancy. The employees are further prohibited from discharging or dismissing a woman worker from work under the provisions of the Act. According to Section 12, when a woman absents herself from work in accordance with the provisions of the Act it is unlawful for the employer to discharge or dismiss her on account of such absence or to give notice of discharge or dismissal on such a day that the notice will expire during such absence or to vary to her disadvantage, any of the conditions of her service. Any discharge or dismissal not in accordance with these provisions will not have any effect on the maternity benefit or medical bonus payable to the woman. However, in case of gross misconducts for which the

penalty of dismissal is prescribed, the employer is legally bound to communicate the order in writing to the woman concerned and deprive her of the maternity benefit and medical bonus. In that event the worker is entitled to file an appeal to the appellate authority within the time limits (with 60 days from the date on which order of such deprivation or discharge or dismissal is communicated to her). The decision of the appellate authority is final in this regard.

Like other labour legislations, this enactment also contains provisions for penalties for the contravention of the Act or rules made under the Act by the employer and recovery of the benefits is penal liability imposed on the employer for obstructing inspector. The employer is legally bound to exhibit the abstract of the provisions of the Act and rules for the information of the workers concerned.

11.10 Summary

The Maternity Benefit Act, 1961 ensures the payment of maternity benefit to a woman worker at a specified rate. The Act also makes provision for providing leave for woman worker in connections with delivery or miscarriage, by a pregnant woman worker. Where the ESI Act is applicable, this Act has no application, but in some specific cases, the Maternity Benefit Act, applies to women workers who are employed in establishment covered by the ESI Act.

11.11 Key Words

Maternity Benefit: All the benefits available to a woman worker as per the Maternity Benefit Act, 1961.

Nominee: The persons who shall be entitled to receive the benefit on behalf of the woman worker. She has to nominate such person as her nominee in a notice in the prescribed form to the employer.

Medical Bonus: An amount payable by the employer to the woman worker if no prenatal confinement and postnatal care is provided by the employer free of charge.

11.12 Self Assessment

1. What are the conditions under which maternity benefit is provided for a woman worker under the Maternity Benefit Act?
2. What are the benefits that are provided by the Maternity Benefit Act for a woman worker?

3. Explain the various protections available for a woman worker who is enjoying maternity benefits.
4. Write short notes on:
 - (a) Nursing breaks
 - (b) Forfeiture of benefit
 - (c) Medical bonus
 - (d) Discharge during Maternity leave

11.13 Further Readings

The Maternity Benefit Act, 1961.

UNIT- 12

E.P.F. & Misc Provisions Act, 1952

Part - I

Objective

After going through this Unit you should be able to :

- Describe the application of the Act.
- Understand various definitions under the Employee's Provident Funds and Miscellaneous Provisions Act, 1952.
- Discuss various provisions of the Employee's Provident Fund Scheme, 1952. Family Pension Scheme 1971 and the Deposits Linked Insurance Scheme, 1976.

Structure

- 12.1 Introduction
- 12.2 Extent and Application
- 12.3 Definitions
- 12.4 Employee's Provident Funds Scheme
 - 12.4.1 Matters for which provision may be made in the Scheme
 - 12.4.2 Members of the Fund
 - 12.4.3 Contribution
- 12.5 Employee's Family Pension Scheme, 1971
 - 12.5.1 Contribution
 - 12.5.2 Matters for which provision may be made in the Scheme
- 12.6 Employee's Deposit-Linked Insurance Scheme
- 12.7 Sum-up
- 12.8 Some useful books
- 12.9 Check your progress
- 12.10 Answers to check your progress
- 12.11 Key Words

12.1 Introduction

This unit is aimed at familiarizing you with the provisions and application of the Employee's Provident Fund and Miscellaneous Provisions Act, 1952.

In view of its constitutional commitment to provide social and financial security against old age or invalidity of industrial employees and their dependents after employee's death, the Government of India on March 4, 1952, passed the Employees Provident Funds Act, 1952. The Act which was enforced w.e.f. 1st November 1952, originally applied to six major industries (Cement, Cigarettes, Engineering Products (Electrical, Mechanical or General, Paper, Textile, Iron and Steel). These industries were mentioned in Schedule I of the Act. Later on the Act authorized the Central Government to apply the provisions of this Act to establishments or class of establishments which are not covered by the Act. Whenever the Act is applied to any new establishment or industries, it is notified in the official Gazette. Today the Act is applicable to 173 industries and covers 1.38 crore subscribers engaged in 1.66 Lakh factories and other establishments.

In view of the above objects the Act includes three Schemes which provide for the institution of contributory Provident Fund, Family Pension Fund and Deposit Linked Insurance Fund, for the welfare of the employees working in factories and other establishment covered by the Act. Accordingly the first scheme framed was Employee's Provident Funds Scheme, which came into force w.e.f. November 1, 1952. After one year of implementation, the working of the Act and the Employee's Provident Fund Scheme were evaluated and the order to remove the deficiencies, the original Act was amended to empower the Central Government to apply the provisions of the Act to such factories which were not covered by the Act. By an amendment in 1956, the Central Government was empowered to apply the provisions of the Act to non factory establishments such as Hotels. By an amendment in 1958, establishments belonging to the government and local authorities were brought within the ambit of the Act. The Act till 1960 was applicable to those establishments which employed 50 or more employees but by an amendment in 1960, the Act was made applicable to establishment employing 20 or more persons. This limit of 20 employees is likely to be brought further down to 10.

It was observed that the Act did not take sufficient care of the family in case the employee meets with an untimely death. Therefore, through an amendment (The Provident Fund Laws Amendment Act, 1971) the Act was amended. The amended Act was to be known as the 'Employees' Provident Funds and Family Pension Funds Act 1952. This amendment introduced the Employee Family Pension Scheme. The scheme provides to create a fund to be known as Family Pension Fund for the purpose of providing family pension and life insurance benefits to the employees of establishments covered by the Act, by transfer of portion of employer and employees share of Provident Fund. In addition to it, the Central Government also contributes towards this fund. This scheme provides a long term protection to the families of worker member who dies prematurely in employment.

Lastly, with a view to provide life insurance benefits to the employees of any establishment or class of establishments covered by this Act, the Act was again amended w.e.f 1st August 1976, empowering the Central Government to frame Employee's Deposit Linked Insurance Scheme and the Act was finally renamed as Employee's Provident Funds and Miscellaneous Provisions Act, 1952.

The Act was drastically amended in 1988 whereby now the Central Provident Fund Commissioner is empowered to apply the provisions of this Act, to those establishments which are not covered by the Act.

All the three schemes under the Act are designed to induce the employee member to save a portion from his current earnings and make some provision for his own future and that of his dependents in the event of his retirement, retrenchment, discharge or early death etc.

12.2 Extent and Application

The Act is applicable throughout the territory of India except the state of Jammu and Kashmir and applies to (a) every establishment which is a factory engaged in any industry specified in Schedule I and in which at least twenty persons are employed.

In this way under Section 1 (3) (a) above, the Act is applicable to an establishment which is a factory, provided:

(i) the factory is engaged in any of the industries mentioned in Schedule I, and

(ii) the factory employees twenty or more persons.

Explaining the extent of words establishments which is a factory engaged in any industry specified in Schedule I. the Supreme Court stated that the Act is applicable even to a factory which is engaged in two or more connected industrial activities one of which is primary and the other is subsidiary or incidental and in such cases in order to determine the character of the factory, its primary activity will be considered.

Another interesting situation might arise with regard to a factory, in a part of which manufacturing of an item is undertaken which is covered by Schedule I and in the other part non scheduled products are manufactured and the combined strength of the employees in the two factories is twenty or above twenty. In such a case even though the number of employees in scheduled industry is less than twenty, the Act will be applicable because the total strength of the two factories is twenty. The spirit of the Act does not require that the factories should be exclusively engaged in the industry specified in Schedule I.

For the purpose of removing the doubts Section 2-A of the Act declares that where an establishment consists of different departments or has branches, whether situated in the same place or in different places, all such departments and places shall be treated as part of the same establishment.

You have read that the factory should employ at least twenty persons. The questions can be how to determine this number because there may be employees who are employed by the establishment for a short duration or for any purpose. The question came for consideration in R.P.F. Commissioner-A.P. V T.S. Hariharan (1971) 22 FLR 260 and the court held that considering the language of the Act, the number of persons is to be considered by taking into account the general requirements of the establishment for its regular works which should also have a commercial nexus with its general financial capacity and stability.

Besides, the Central Government may apply the provisions of this Act even to establishment employing less than twenty employees. Whenever the Central Government desire to do so, it should give not less than two months notice of its intention to do so, by notification in the Official Gazette.

In addition to above, clause (4) of section 1 of the Act empowers the Central Provident Fund Commissioner that where it appears to him, whether on an application made to him in this behalf or otherwise, that the employer and the majority of the employees have agreed that the provisions of this Act should be made applicable to their establishment. On receipt of such an application, the Commissioner may by notification in the Official Gazette, apply the provisions of this Act to that establishment on and from the date of such agreement or from any subsequent date specified in the agreement.

Section 1(5) of the Act provides that an establishment once governed by this act shall continue to be governed by this Act even when the number of persons employed therein at any time falls below twenty.

Section 3 contemplates that where immediately before this Act becomes applicable to an establishment there is an existence a provident fund which is common to the employees employed in that establishment and employees in any other establishments, the Central Government may direct that the provisions of this Act shall also apply to such other establishments. Such notification should however be published in the Official Gazette.

12.3 Definitions

Section 2 of the Act defines various terms used in this Act and stipulates that unless the context otherwise requires-

‘appropriate government’ means

- (i) in relation to an establishment belonging to, or under the control of the Central Government or in relation to an establishment connected with a railway company, a major port, a mine or an oilfield or a controlled industry, or in relation to an establishment having departments or branches in more than one state, the Central Government and
- (ii) in relation to any other establishment, the State Government;

Abovementioned definition of ‘appropriate government’ in relation to an establishment means either the State Government or the Central Government. Central Government shall be the appropriate government in relation to-

- (a) every establishment belonging to, or under the control of the Central Government, or

- (b) in relation to an establishment connected with a railway company, a major port, a mine an oilfield or a controlled industry; or
- (c) any establishment having departments or branches in more than one state.

In relation to any other establishment, the State Government is the appropriate Government.

“Authorized office” means the Central Provident Fund Commissioner, Additional Central Provident Fund Commissioner, Deputy Provident Fund Commissioner, Regional Provident Fund Commissioner or such other officer as may be authorized by the Central Government, by notification in the Official Gazette.

Section 2(aa) inserted in the Act with effect from 1st August 1988 as above in a inclusive manner.

“Basic Wages” means all emoluments which are earned by an employee while on duty or (on leave or on holiday with wages in either case) in according with the terms of the contract of employment and which are paid or payable in cash to him.

The word emolument means advantages arising from employment (eg. Salary or fees) or anything earned by an employee while he is actually on duty, during the term of his employment. In this way compensation paid to an employee for periods of lock-out cannot be classified as waged because it was not earned while on duty. The term basic wages exclude the following.

- (i) the cash value of any good concession.
- (ii) any dearness allowance,
- (iii) any presents made by the employer.

In *Greshyam & Co. v R.P.F. Commissioner*, 1976, Lab. I.C. 131, a question arose that whether an inam can form a part of basic wages? It was held that since bonus is excluded from the definition of basic wages, inam which is an incentive for production will not constitute basic wages. On the other hand maternity benefits and sickness allowance payable to the employee in accordance with the terms of contract of employment form part of basic wages. **“Contribution”** means a contribution payable in respect of a member under a scheme or the contribution payable in respect of an employee to whom the Insurance scheme applies.

As you have already learnt that for providing various benefits to the employees under this Act, the Central Government has framed ‘Employees’

Provident Fund Scheme, Employee's Family Pension Scheme and Employee's Deposit Linked Insurance Scheme. The Act further provides to establish corresponding Funds, into which payments shall be made in accordance with the statutory requirements. A reading of Chapter V of the Employee's Provident Fund Scheme would reveal that the primary liability to contribute to those Funds is that of the employer, with respect to himself and with respect of employees who are members of these schemes.

In N.K. Industries (Pvt.) Ltd. Kanpur V R.P.F. Commissioner U.P.A.I.R 1958A, 474, no demand was made by the Assistant Provident Fund Commissioner to the employer for three years to make contributions. It was held that because it is employer's responsibility to pay both the contribution payable by himself and in respect of employees directly employed by him and in respect of employees employed by or through a contractor and also the administrative charges. If the demand to contribute has not been made, it does not mean that employer's liability has been waived.

After making the contribution with respect to (employer and the employee) and also on behalf of the members employed by or through a contractor, employer may recover the amount of employees share from the wages of the employee. In respect of employees employed by or through a contractor, the contractor shall recover the contribution payable by such employee and shall pay the same to the principal employer. In addition to the amount recovered from such employees, the contractor shall also pay equal amount of contribution as employer's contribution and also the administrative charge. One interesting situation may arise here that after contributing if the employer, fails to deduct the amount of contribution from the wages of the employee, what is employer's remedy? In N.K. Industries Pvt. Ltd. V. R.P.F. Commissioner, it was held that the employer cannot complain for his neglect. The employer is liable to contribute for both category of employees i.e. employees employed directly by him and employees employed through or by a contractor.

Section 12 of the Act directs the employer that in order to reduce their liability to make contribution to the employee's Provident Fund or the Insurance Fund, they cannot reduce the wages of any employee. It is therefore stipulated that the total quantum of benefits available to an employee in the form of old age pension, gratuity, provident fund or life insurance, to which the employee is

entitled under the express or implied terms of employment agreement, shall not be reduced by an employer. In consolidated Crop Protection Pvt. Ltd. V Hema Chandra Rao 1977 Lab I.C. 251, under a voluntary scheme, the employer and employee's rate of contribution was 10% and 12.½% respectively. Subsequently, replacing the original scheme, a new scheme was applied to the organization under which employer's statutory liability to contribute was at the rate of 8% only. It was held that because the earlier rates of contribution were more beneficial to the employees hence the employer continue to be liable to make contribution at the old rate of 10%.

“Controlled Industry” means an industry the control of which by the Union has been declared by the Central Act to be expedient in the public interest.

All industries specified in the First Schedule of the Insurance (Development and Regulation) Act 1951 have been taken under the control of the Union, in the public interest, Hence these industries may be called the controlled industries.

“Employer”

- (i) The term employer has been defined in the Act from two points of view;
- (ii) Employer in relation to an establishment which in a factory here the work 'employer' means any of the followings:
 - (a) the owner or occupier of the factory. The work owner or occupier includes the agent of such owner or occupier.
 - (b) the legal representative of a deceased owner or occupier, and
 - (c) Manager (if any person has actually been named as a manager of a factory) in compliance with the provisions of clause (f) of Sub section (a) of Section 7 of the Factories Act, 1948.
- (iii) Employer in relation to any other establishment in this case any of the following, shall be the employer:
 - (a) any person or authority which has the ultimate control over the affairs of the establishment.
 - (b) if the affairs of the establishment have been entrusted to a manager, managing director or managing agent, then such manager, managing director or managing agent, shall be the employer of that particular non factory establishment.

In this way, any person or authority who commands ultimate control over the factory/non factory establishment, is the employer.

“Employee” means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets his wages directly or indirectly from the employer, and includes any person:

- (i) employed by or through a contractor in or in connection with the work of the establishment.
- (ii) engaged an apprentice, not being an apprentice engaged under the Apprentices Act, 1961, or under the standing order of the establishment.

In order to be an employee of an establishment, following conditions must be fulfilled:

- (i) Person should be employed for wages, in any kind of work, manual or otherwise-A person is an employee of an establishment if he has been engaged for doing clerical, manual or any kind of work and in lieu of his work he gets his wages and includes persons employed by or through a contractor, in or in connection with the work of the establishment. It is for this reason that in P.M. Patel V Union of India (1986) 1 Sec. 32, works engaged for rolling beedi at their home and then supplying to the beedi manufactures, were held to be employees.
- (ii) The person is employed in or in connection with the work of an establishment when we say that the person should have been employed in or in connection with the work of an establishment, it implies that the work of employed person should have some direct or indirect connection with his employer’s establishment. In South India Research Institute V R.P.F. Commissioner, (1981) 59 F.J.R. 160 (P.A.P.) a person doing liaison at Delhi for an organization established in Vijayawada, was held to be an employee of the establishment.

From this description can you find out who amongst the persons mentioned below can be termed as employee?

- (a) Hospital Staff of the establishment
- (b) Watch and ward staff,
- (c) Driver for running lorry attached to the factory, and

(d) Mali for maintaining lawns of the factory.

Our answer is that they all are employees.

Presently an employee earning Rs. 15000/- is eligible for P.F. (2014-15)

“Exempted Employee” – It means an employee to whom the Employee’s Provident Fund Scheme or the Employee’s Deposit Linked Insurance Scheme, as the case may be, would, but for the exemption granted under Section 17 have applied.

“Exempted Establishment” It means an establishment in respect of which an exemption has been granted under Section 17 from the operation of all or any of the provisions of any of the schemes. An establishment shall be called an exempted establishment whether such exemption has been granted to the entire establishment as such or to any person or class of persons employed in the establishment.

“Factory” means any premises, including the precincts thereof in any part of which a manufacturing process is being carried on, or is ordinarily so carried on whether with the aid of power or without the aid of power.

The word ‘premises’ signifies a building or series of buildings. Premises being a work with wide expression may mean land or building or both. However, the word ‘precincts’ includes also the open area or compound, round about the building. Hence all building which are included within the precincts and which are defined by a common compound, may be regard as one premises for the purpose of this Act, even though different articles are manufactured in different buildings. In other words a premise means a built up area and the word ‘precincts’ means a bounded area. In Metro Motors Pvt. Ltd. V R.P.F. Commissioner Punjab A.I.R. 1959 Punj. 80, the petitioner had a shop where cars were sold. About a half Km. away from the shops he had a factory (service station) in the premises of which manufacturing of bus bodies was carried on. It was held that since there is no connection between the two premises, the two place cannot be termed as the precincts of the same premises. In order to be precincts of the same premises there should be some connection between the two premises.

In case two different processes are necessary to complete the manufacture of a particular product and these two processes are carried on at two different places, both the places taken together would constitute the factory.

If a company, has a factory at one place and the administrative office, necessary for the working of the factory is in a different city, both the places would

be taken together to determine the employment strength of the establishment. If the total strength of employees in all the units if they constitute one integrated whole whether at one place or at different places is twenty or more than twenty, the Act would be applicable to all.

“Family Pension Fund” means the Family Pension Fund established under the Family Pension Scheme. With the object of providing the benefits of family pension and life assurance to the employees of any establishment or class of establishment to which this Act applies Section 6-A of the Act empowers the Central Government to frame Employees’ Family Pension Scheme.

As soon as possible, after framing of the Family Pension Scheme, There shall be established a Employee’s Family Pension Fund into which shall be paid from time to time in respect of every member employees.

(a) such portion, not exceeding one fourth, of the amount payable under Section 6 as contribution by the employer as well as the employee, as may be specified in the Pension Scheme.

(b) such sums as are payable by the employer of the exempted establishment under sub-section (6) of Section 17, and

(c) such sums being not less than the amount payable in pursuance of clause(a) out of the employer’s contribution under Section 6 as the Central Government may specify.

This fund shall vest and be administered by the Central Board.

“Family Pension Scheme” means the Employees’ Family Pension Scheme framed under Section 6-A of the Act. in order to meet all the expenses required on connection with the administration of Pension Scheme, other than the expenses towards the cost of any benefits provided by or under this Scheme, the Central Government shall pay the necessary funds.

“Fund” means the Provident fund established under a scheme. Section 5(1) of the Act empowers the Central Government to frame a Scheme to be called the employees’ Provident Fund Scheme. The object of this scheme is to establish provident funds under this Act for employees or for any class of employees. The scheme shall also specify the establishments or class of establishments to which this scheme shall apply. After the framing of the scheme, as soon as possible, in accordance with the provisions of this Act and the Scheme, a fund shall be established. The fund shall be known as the Employees’ Provident Fund.

Section 5-A of the Act stipulates for the constituting a Central Board. The provident Funds shall best and be administered by the Central Board.

“Industry”- It means any industry specified in Schedule I and includes any other industry added to this Schedule by notification under Section 4.

Section 4 empowers the Central Government, that it may by notification in the Official Gazette, add to Schedule I any other industry in respect of the employees. The Central Government (now this power has been delegated to the Central Provident Fund Commissioner) may do so when it is of the opinion that a provident fund scheme should be framed under this Act, and then the industry so added shall for the purposes of this Act, be deemed to be an industry specified in Schedule I. any notification so issued shall be laid before Parliament, as upon as may be, after it is issued.

The question for decision in *Superintend and Remembrance of legal Affairs Vs. Sri Krishna Bidi Factory, 1976 Lab.I.C. 1361 (Cal.)* was whether manufacture of bidi within the definition of ‘industry’. It was held that within the meaning of this Act bidi manufacturing is not an industry because it was not specifically mentioned within the Category of tobacco industry in Schedule I of the Act later on, by an amendment in Schedule I, bidi manufacturing was specifically included as industry.

“Insurance Fund”- It means the Deposit-Linked Insurance Fund established under Sub- (2) of Section 6 (c). for the purpose of providing life insurance benefit to the employees of any establishment or class of establishments to which this Act applies, the Central Government may frame a Scheme to be called the Employees’ Deposit-Linked Insurance scheme. As soon as may be after the framing of the Insurance Scheme, there shall be established a Deposit Linked-Insurance Fund. Like Provident Fund, this fund too shall vest in the Central Board. The manner in which the Insurance fund is to be administered shall be prescribed in the Insurance Scheme.

A distinguishing feature of this fund is that unlike other Funds, the liability to contribute into this fund is only of the employer and the Government. The employee members are not required to make any contribution.

“Insurance-Scheme”- It means the Employees’ Deposit-Linked Insurance Scheme framed under sub-Section (1) of Section 6-C of this Act.

For providing life insurance benefit to the employees, the Central Government may frame a scheme to be known as employees' Deposit-linked Insurance Scheme.

"Manufacture" or "Manufacturing Process"- It means any process for making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal.

Manufacture or manufacturing process includes not only making but also altering or otherwise adapting or treating any article with a view to its use, transport, delivery, disposal or sale. Thus where a company dealt in automobile accessories and also maintained a workshop for repairing and servicing of vehicles, the activities of the establishment were held to come within the expression 'manufacture' under this section in *Lawly Sen & Co Vs. R.P.F. Commission, Bihar*. (1959/1 Lab. L.J. 272)

"Member"- It means a member of the Fund.

"Occupier of a factory"- It means the person who has ultimate control over the affairs of the factory. In case the affairs of the factory are entrusted to a managing agent, such managing agent shall be deemed to be the occupier of the factory.

Occupier signifies not only the owner of the establishment but also anyone who is legally entitled to control the affairs of the factory/establishment. A person who himself does not occupy the establishment but carries on the work through an agent, would still be called the occupier provided the ultimate control is in his hands.

Paragraph 36-A of the scheme enjoins upon every employer, in relation to his factory/establishment and to which this Act is applicable, to furnish to the Regional Provident Fund Commissioner in Form 5-A particulars of occupier of the factory.

"Prescribed"- It means prescribed by rules made under this Act. the work prescribed in common parlance means to lay down as a rule or direction.

"Recovery Officer"- It means any officer of the Central Government, State Government or the Board of Trustees constituted under Section 5-A, who may be authorized by the Central Government, by notification in the official Gazette to exercise the powers of a Recovery Officer under this Act.

“Scheme”- It means the Employee’s Provident Fund Scheme framed under section 5 of the Act. You have already read about it under 2(h) above.

“Tribunal”- It means the Employee’s Provident Fund Appellate Tribunal. Section 7-D of the Act contemplates that the Central Government may constitute one or more Appellate Tribunals to be known as the Employee’s Provident Fund Appellate Tribunal to exercise the powers and discharge the functions conferred upon it, by the Act. Appointment of such a Tribunal should be notified in the Official Gazette. The notification shall also specify that the tribunal shall have jurisdiction in respect of establishment situated within the stipulated areas.

12.4 Employees Provident Fund Scheme 1952:

In exercise of the powers conferred by Section 5 of the Act, the Central Government framed this ‘Scheme’ to be called the Employees’ Provident Fund Scheme 1952. The object of the scheme is to establish Provident Funds under this Act for employees or for any class of employees covered by this Act. The scheme inter alia specified the establishment or class of establishment to which it shall be applied. However, the appropriate Government may exempt any establishment/employee from the operation of all or any of the provisions of the scheme. It was further stipulated in the scheme that after framing of the ‘scheme’ as soon as may be, in accordance with the provisions of the Act and the scheme, a ‘Fund’ shall be established to be known as the Employee’s Provident Fund.

Section 6-D of the Act contemplated that every scheme viz, The Employees’ Provident Fund Scheme, Family Pension Scheme and the Insurance Scheme, as soon as may be, after it is framed shall laid before each House of Parliament. If both Houses agree to make any amendment in the Scheme or that the scheme should not be framed at all, the scheme shall thereafter have effect only in such amended form or be of no effect, as the case may be.

12.4.1 Matter for which provision may be made in the scheme:

Schedule II

- (i) The employees or class of employees who shall join the Fund, and the condition under which employees may be exempted from joining the Fund or from making any contribution.

- (ii) The time and manner in which contribution shall be made to the Fund, by employees and by or on behalf of employees (whether employed by him directly or by or through a contractor) the contributions which an employee may, if he so desires, make under section and the manner in which such contributions may be made. The manner in which employees' contribution may be recovered by contractors for employees employed by or through such contractors.
- (iii) The payment by the employer of such sums of money as may be necessary to meet the cost of administering the Fund and the rate at which and the manner in which the payment shall be made.
- (iv) The constitution of any committee for arising any Board of Trustees.
- (v) The opening of regional and other offices of any Board of Trustees.
- (vi) The manner in which account shall be kept, the investment of moneys belonging to the Fund in accordance with any direction issued or conditions specified by the Central Government, the preparation of the budget, the audit of account and the submission of reports to the Central Government or any specified Government.
- (vii) The conditions under which withdrawals from the Fund may be permitted and any deduction of or forfeiture may be made and the maximum amount of such deduction or forfeiture.
- (viii) The fixation by the Central Government in consultation with the board of trustees concerned of the rate of interest payable to members.
- (ix) The form in which an employee shall furnish particulars about himself and his family whenever required.
- (x) The nomination of a person to receive the amount standing to the credit of a member after his death and the cancellation or variation of such nomination.
- (xi) The registers and records to be maintained with respect to employees and the returns to be furnished by employees or contractors.
- (xii) The form or design of any identity card, token or disc for the purpose of identifying any employee, and for the issue, custody and replacement thereof.
- (xiii) The fees to be levied for any of the purpose specified in this schedule.

- (xiv) The contraventions or defaults which shall be punishable under sub section (2) of section 14.
- (xv) The further powers, if any, which may be exercised by Inspector.
- (xvi) The manner in which accumulation in any existing provident fund shall be transferred to the Fund under section 15, and the mode of valuation of any assets which may be transferred by the employers in this behalf.
- (xvii) The condition under which a member may be permitted to pay premium on life insurance from the Fund.
- (xviii) Any other matter, which is to be provided for in the scheme or which may be necessary or proper for the purpose of implementing the scheme.

12.4.2 Member of the Fund:

Under paragraph 26 of the scheme following classes of employees are entitled and required to join the Fund-

- (1)(a) Except an excluded employee, every employee employed in or in connection with the work of a factory or other establishment covered by this scheme are not only entitled but are required to become a member of the Fund from the day this paragraph comes into force in the establishment.
- (b) Excepting an excluded employee, every employee, employed in or in connection with the work of a factory, or other establishment to which the scheme applies is not only entitled but is required to become a member of the Fund, from the day this paragraph comes into force in the impugned establishment if on the date of such coming into force, such employee is a subscriber to a provident fund maintained in respect of the impugned establishment or in respect of any other factory/establishment, to which this Act applies, under the same employer.
- (2) Once the paragraph comes into force in a factory/other establishment, every employee employed in or in connection with the work of the impugned factory/other establishment, other than an excluded employee who has not become a member already shall also be entitled and required to become a member of the fund from the date of joining the factory/establishment.
- (3) Clause 3 tells us about an excluded employee that such an employee employed in or in connection with the work of a factory/other establishment to which the scheme applies shall, on ceasing to be an excluded employee,

be entitled and require to become a member of the fund from the date he ceased to an excluded employee.

- (4) Paragraph 27 and 27A of the scheme gives an opportunity to an exempted employee or to a class of exempted employees that they be allowed to become a member of the Fund. When an exempted employee or a class of exempted employees so selects to become a member of the Fund or on the expiry or cancellation of an order under the paragraph, every employee shall forthwith become a member thereof.
- (5) Every employee who is a member of a private provident fund maintained in respect of an exempted factory/other establishment and who but for the exemption would have become and continued as a member of the fund shall on joining a factory/other establishment to which this scheme applies become a member of the fund forthwith.
- (6) On a written joint request of an employee and his employer, an officer not below the rank of Assistant Provident Fund Commissioner may enroll such employee as a member of the Fund or allow him to contribute or more than rupee three thousand five hundred of his pay per month if this scheme is applicable to his factory/other establishment and the employee is already a member of the Fund. After the employees' request has been accepted he shall be entitled to the benefits and shall be subject to the conditions of the Fund. Employee's request cannot be granted unless his employer gives an undertaking in writing that he (employer) shall comply with all statutory provisions in respect of such employee and shall also pay the payable administrative charges.

12.4.3 Contribution

The position, in the following circumstances of the employer's liability to contribute in respect of employees employed by him shall be at the rate of 8.33% of the basic wages payable to each employee to which the scheme applies-

- (i) Factory/other establishment in which less than 50 persons are employed,
- (ii) any sick industrial company as defined in section 3 of the sick industrial companies Act, 1985,
- (iii) any other establishment which at the end of any financial year accumulated losses equal to or exceeding the entire assets and has also suffered cash

losses in such financial year and the financial year immediately preceding such financial year.

- (iv) those establishment/other establishment which were contributing at the rate of 6¼% prior to August 1, 1988. In other factory/other establishment the contribution is payable at the rate of 10% of the basic wages. However in case of an establishment or class of establishments which the Central Government may specify in the Official Gazette, from time to time, under the first provision to sub section (1) of section 6 of the Act, the rate of contribution shall be at the rate of 10% of basic wages etc. Appendix II of the Act enumerates the list of industries/classes of establishment in respect of which the statutory rate has been enhanced to 10%.

Under the Act, there are 98 industries/classes of establishment in respect of which the statutory rate of contribution has been enhanced to 10% of basic wages under the scheme, e.g. cement, cigarette, matches, crockery, plywood, indigo etc.

The contribution payable by the employee shall be equal to the contribution payable by the employer in respect of such employee. However an employee to whom the scheme applies, if he so desires, may pay more than the amount prescribed above, subject to the condition that employer shall not be under an obligation to pay any contribution over and above his contribution payable under the Act.

Paragraph 29 further stipulates that contribution shall be calculated on the basis of the wages, dearness allowance (including the cash value of any food concession) and retaining allowance (if any) actually drawn during the whole month.

Under Section 5A provision of establishment of Central Board is provided which is as under:

(1) The Central Government may, by notification in the Official Gazette, constitute, with effect from such date as may be specified therein, a Board of Trustees for the territories to which this Act extends (hereinafter in this Act referred to as the Central Board) consisting of the following [persons as members], namely:

- (a) a Chairman and a Vice-Chairman] to be appointed by the Central Government;
(aa) the Central Provident Fund Commissioner, ex officio];

- (b) not more than five persons appointed by the Central Government from amongst its officials;
 - (c) not more than fifteen persons representing Governments of such States as the Central Government may specify in this behalf, appointed by the central Government;
 - (d) [ten persons] representing employers of the establishments to which the Scheme plies, appointed by the Central Government after consultation with such organizations of employers as may be recognized by the Central Government in this behalf; and
 - (e) [ten persons] representing employees in the establishments to which the Scheme applies, appointed by the Central Government after consultation with such organizations of employees as may be recognized by the Central Government in this behalf.
- (2) The terms and conditions subject to which a member of the Central Board may be appointed and the time, place and procedure of the meetings of the Central Board shall be such as may be provided for in the Scheme.
- (3) The Central Board shall, [subject to the provisions of section 6A] [and section 6C], administer the fund vested in it in such manner as may be specified in the Scheme.
- (4) The Central Board shall perform such other functions as it may be required to perform by or under any provisions of the Scheme, [Family Pension Scheme and the Insurance Scheme].
- (5) The Central Board shall maintain proper accounts of its income and expenditure in such form and in such manner as the Central Government may, after consultation with the Comptroller and Auditor-General of India, specify in the Scheme.
- (6) The accounts of the Central Board shall be audited annually by the Comptroller and Auditor-General of India and any expenditure incurred by him in connection with such audit shall be payable by the Central Board to the Comptroller and Auditor General of India.
- (7) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the Central Board shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General has, in connection with the audit of Government

accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers, documents and papers and inspect any of the offices of the Central Board.

(8) The accounts of the Central Board as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded to the Central Board which shall forward the same to the Central Government along with its comments on the report of the Comptroller and Auditor-General.

(9) It shall be the duty of the Central Board to submit also to the Central Government an annual report of its work and activities and the Central Government shall cause a copy of the annual report, the audited accounts together with the report of the Comptroller and Auditor-General of India and the comments of the Central Board thereon to be laid before each House of Parliament.]

Under Section 5B of the Act, provisions for State Board shall be made which is as under:

(1) The Central Government may, after consultation with the Government of any State, by notification in the Official Gazette, constitute for that State a Board of Trustees (hereinafter in this Act referred to as the State Board) in such manner as may be provided for in the Scheme.

(2) A State Board shall exercise such powers and perform such duties as the Central Government may assign to it from time to time.

(3) The terms and conditions subject to which a member of a State Board may be appointed and the time, place and procedure of the meetings of a State Board shall be such as may be provided for in the Scheme.]

12.5 Employee's Family Pension Scheme 1971

In 1971, the Employee's Provident Funds Act 1952 was amended by the Labour Provident Fund laws (Amendment) Act, 1971 and the Act was renamed as Employee's Provident Funds and Family Pension Funds Act, 1952. The reason for bringing the amendment was the Act was found lacking to provide desired the protection to the families of the workers dying prematurely in service. With the object, in addition to the existing provident Fund Scheme, a new scheme – The Family Pension Scheme was added to the Act. This scheme came into force w.e.f.

1st march 1971, the Pension scheme is designed to provide the benefits of life assurance and family pension to the employees of all factories and other establishment to which the Act is applicable or shall be applied under sub-section (3), or sub-section (4) of section 1 or section 3 thereof. The pension scheme may provide that any of its provisions shall take effect either prospectively or retrospectively on such dates as may be specified in this behalf in the Pension Scheme.

Regarding the membership of the scheme, the provision is that an employee who was a member of the Employees Provident Fund or exempted provident fund as on 28-2-1971 and having opted to join the Employees Provident Fund Scheme on becoming a member of the Employees Provident Fund or exempted. Provident fund on or after the enforcement of this scheme, 1-3-1971, to that factory/other establishment.

Section 6-A(2) stipulates that as soon as may be after the framing of the Family Pension Scheme, shall be established, a Family Pension Fund.

Government has established a new scheme which is as under:

EMPLOYEE'S PENSION SCHEME, 1995 (Updated as on 01.10.2008) THE EMPLOYEE'S PENSION SCHEME, 1995:

SCHEDULE THE EMPLOYEES' PENSION SCHEME, 1995:

In exercise of the powers conferred by Section 6A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), the Central Government hereby makes the following Scheme, namely:-

1. Short title, commencement and application (1) This Scheme may be called the Employees' Pension Scheme, 1995; (2) (a) This Scheme shall come into force on 16th day of November, 1995; (b) Subject to the provisions of this Scheme the employees have an option to become the members of the Scheme with effect from the 1st April, 1993 ; (3) Subject to the provisions of Section 16 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, this Scheme shall apply to the employees of all factories and other establishments to which the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 applies or is applied under sub-section (3) or sub-section (4) of Section 1 or Section 3 thereof.

2. Definitions (1) In this Scheme unless the context otherwise requires :--

(i) **"Act"** means the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) ;

(ii) **"actual service"** means the aggregate of periods of service rendered from the 16th November, 1995 or from the date of joining any establishment whichever is later to the date of exit from the employment of the establishment covered under the Act;

(iii) **"Commissioner"** means a Commissioner for Employees' Provident Funds appointed under Section 5D of the Act ;

(iv) **"Contributory service"** means the period of 'actual service' rendered by a member for which the contributions to the fund have been 1[received or are receivable] ; (1. Subs. by G.S.R 134 dated 28th February 1996, for the word "received" (w.e.f 16th March 1996))

(v) **"eligible member"** means an employee who is eligible to join the "Employees' Pension Scheme";

(vi) **"Existing Member"** means an existing employee who is a "Member of the Employees' Family Pension Scheme, 1971";

(vii) **"Family" means** (i) wife in the case of male member of the Employees' Pension Fund; (ii) husband in the case of a female member of the Employees' Pension Fund ; and (iii) sons and 2[***] daughters of a member of the Employees' Pension Fund ; 2. The word "unmarried" omitted, ibid (w.e.f. 16 th March, 1996) Explanation. The expression "sons" and "daughters" shall include children 3[legally adopted by the member] 3. Subs. Ibid., for "adopted by the member legally before death in service" (w.e.f. 16th March, 1996)

(viii) **"Pension"** means the pension payable under the Employees' Pension Scheme and also includes the family pension admissible and payable under the Employees' Family Pension Scheme, 1971 immediately preceding the commencement of the Employees' Pension Scheme, 1995 with effect from the 16th November, 1995.

(ix) **"Member"** means an employee who becomes a member of the Employees' Pension Fund in accordance with the provisions of this Scheme. 4.[**"EXPLANATION - -** An employee shall cease to be the member of Pension Fund from the date of attaining 58 years of age or from the date of vesting admissible benefits under the Scheme, whichever is earlier,"] (4. Inserted. by G.S.R. dated the 22nd February, 1999 (w.e.f 6.3.99)

(x) **"Non-Contributory Service"** is the period of "actual service" rendered by a member for which no contribution to the "Employees' Pension Fund" has been

5[received or are receivable] 5. Subs. by G.S.R. 134 dated the 28th February, 1996, for the word "received" (w.e.f. 16th March,1996)

(xi) **"orphan"** means a person, none of whose parents is alive 6[***].6. Certain words omitted, ibid. (w.e.f. 16th March, 1996).

(xii) **"past service"** means the period of service rendered by an existing member from the date of joining Employees' Family Pension Fund till the 15th November, 1995.

(xiii) **"Pay"** means basic wages, with dearness allowance, retaining allowance and cash value of food concessions admissible, if any.

(xiv) **"Pension Fund"** means the Employees' Pension Fund set up under sub-section (2) of Section 6A of the Act.

(xv) **"pensionable service"** means the service rendered by the member for which contributions have been 7[received or are receivable] (7. Subs. By G.S.R. 134 dated the 28th February 1996, (w.e.f. 16th March,1996). 8[(xvi)"permanent total disablement" means such disablement of permanent nature as incapacitates an employee for all work which he/she was capable of performing at the time of disablement, regardless whether such disablement is sustained in the course of employment or otherwise;] (8. Subs. By G.S.R. 134 dated the 28th February 1996, (w.e.f. 16th March,1996)

(xvii) **"Table"** means Table appended to this Scheme.

(xviii) The words and expressions defined in the Act but not defined in this Scheme shall have the same meaning as assigned to them in the Act.

3. Employees' Pension Fund: (1) From and out of the contributions payable by the employer in each month under Section 6 of the Act or under the rules of the Provident Fund of the establishment which is exempted either under clauses (a) and (b) of sub-section

(1) of Section 17 of the Act or whose employees are exempted under either paragraph 27 or paragraph 27-A of the Employees' Provident Fund Scheme, 1952, a part of contribution representing 8.33 per cent of the Employee's pay shall be remitted by the employer to the Employees' Pension fund within 15 days of the close of every month by a separate bank draft or cheque on account of the Employees' Pension Fund contribution in such manner as may be specified in this behalf by the Commissioner. The cost of the remittance, if any, shall be borne by the employer.

(2) The Central Government shall also contribute at the rate of 1.16 per cent of the pay of the members of the Employees' Pension Scheme and credit the contribution to the Employees' Pension Fund: Provided that where the pay of the member exceeds 1[rupees six thousand and five hundred] per month the contribution payable by the employer and the Central Government be limited to the amount payable on his pay of 9[rupees six thousand and five hundred] only 9. Subs. by G.S.R.383 (E) dated the 24.5.2001 (w.e.f. 1.6.2001).

(3) Each contribution payable under sub-paragraphs (1) and (2) shall be calculated to the nearest rupee, fifty paise or more to be counted as the next higher rupee and fraction of a rupee less than fifty paise to be ignored.

(4) The net assets of the Family Pension Scheme, 1971 shall vest in and stand transferred to the Employees' Pension Fund.

4. Payment of contribution (1) The employer shall pay the contribution payable to the Employees' Pension Fund in respect of 10[each member] of the Employees' Pension Fund employed by him directly or by or through a contractor. (10. Subs. by G.S.R.134 dated the 28th February, 96, for "the member" (w.e.f. 16th March, 1996)

(2) It shall be the responsibility of the principal employer to pay the contributions payable to the Employees' Pension Fund by himself in respect of the employees directly employed by him and also in respect of the employees employed by or through a contractor. 11[Provided that the Central Government shall pay the contribution payable to the Employees' Pension Fund in respect of an employee who is a person with disability under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996) and under the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999) respectively, up to a maximum period of three years from the date of commencement of membership of the Fund.] (11. Inserted by GSR No. 252(E) dated 31-3-2008(w.e.f. 1-4-2008)

5. Recovery of damages for default in payment of any contributions 12[(1) Where an employer makes default in the payment of any contribution to the Employees' Pension Fund, or in the payment of any charges payable under any other provisions of the Act or the Scheme, the Central Provident Fund Commissioner or such officer as may be authorised by the Central Government, by

notification in the Official Gazette, in this behalf, may recover from the employer by way of penalty, damages at the rates given below :-

TABLE

S.No.	Period of default	Rates of damages (Percentage of arrears per annum)
(1)	(2)	(3)
(a)	Less than two months	Five
(b)	Two months and above but less than four months	Ten
(c)	Four months and above but less than six months	Fifteen
(d)	Six months and above	Twenty Five

(12. Substituted by GSR No. 688(E) dated 26-09-2008(w.e.f. 26-9-2008)

(2) The damages shall be calculated to the nearest rupee, 50 paise or more to be counted as the nearest higher rupee and fraction of a rupee less than 50 paise to be ignored.

13[6. Membership of the Employees' Pension Scheme Subject to sub-paragraph (3) of paragraph 1, the Scheme shall apply to every employee –

(a) who on or after the 16th November, 1995, becomes a member of the Employees' Provident Fund Scheme, 1952, or of the Provident Funds of the factories and other establishments exempted by the appropriate Government under section 17 of the Act, or in whose case exemption has been granted under paragraph 27 or 27-A of the Employees' Provident Fund Scheme, 1952, from the date of such membership;

(b) who has been a member of the ceased Employees' Family Pension Scheme, 1971 before the commencement of this Scheme from 16th November, 1995;

(c) Who ceased to be a member of the Employees' Family Pension Scheme, 1971 between 1st April, 1993 and 15th November, 1995 and opts to exercise his option under Paragraph 7;

(d) who has been a member of the Employees' Provident fund or of Provident Funds of factories and other establishments exempted by the appropriate Government under section 17 of the Act or in whose case exemption has been granted under Paragraph 27 or 27A of the Employees' Provident Fund Scheme, 1952, on 15 th November, 1995 but not being a member of the ceased Employees' Family Pension Scheme, 1971 opts to exercise his option under paragraph 7]. 13. Subs. by G.S.R.134 dated 28th February, 1996 (w.e.f. 16th March, 1996)

Explanation – An employee shall cease to be the member of Pension Fund from the date of attaining 58 years of age or from the date of vesting admissible benefits under the Scheme, whichever is earlier.

14.["6 A Retention of membership A member of the Employees' Pension Fund shall continue to be such member till he attains the age of 58 years or he avails the withdrawal benefit to which he is entitled under para 14 of the Scheme, or dies, or the pension is vested in him in terms of para 12 of the Scheme, whichever is earlier."] 14. Inserted by G.S.R. dated 22nd February 1999 (w.e.f. 6.3.99)

15[7. Option for joining the Scheme-- (1) Members referred to under sub-para (c) of Paragraph 6 who have died between 1st April, 1993 and 15th November, 1995 shall be deemed to have exercised the option of joining the Scheme on the date his death.

(2) Members referred to in sub-paragraph (c) of paragraph 6 who are alive shall have the option to join the Scheme as per the provisions of paragraph 17 from the date of exit from the employment.

(3) Members referred to in sub-paragraph (d) of paragraph 6 shall have the option to join the Scheme as per the provisions of Paragraph 17 from 16th November, 1995.] 15. Subs. by G.S.R.134 dated the 28th February, 1996 (w.e.f 16th March, 1996)

8. Resolution of doubts: If any doubt arises whether an employee is entitled to become a member of the Employees' Pension Fund, the same shall be referred to the Regional Provident Fund Commissioner who shall decide the same: Provided that both the employer and the employee shall be heard before passing final order in the matter.

9. Determination of eligible service: The eligible service shall be determined as follows: (a) In the case of "new entrant" the "actual service" shall be treated as eligible service. The total actual service shall be rounded off to the nearest year. The fraction of service for six months or more shall be treated as one year and the service less than six months shall be ignored. Explanation. In the case of employees employed seasonally in any establishment the period of "actual service" in any year, notwithstanding that such service is less than a year shall be treated as a full year. (b) In the case of the "existing member" the aggregate of actual service and the 'past service' shall be treated as eligible service. Provided that if there is any period in the "past service" for which the contributions towards the Family

Pension Scheme, 1971 has not been received, the said period shall count as eligible service only if the contributions thereof have been received in the Employees' Pension Fund. Explanation: For the purpose of this sub-paragraph the total past service for less than six months shall be ignored and the total past service for six months and above shall be rounded to a year.

10. Determination of Pensionable Service: (1) The pensionable service of the member shall be determined with reference to the contributions 16[received or receivable] on his behalf in the Employees' Pension Fund. 16. Subs. by G.S.R. 134 dated the 28th February, 1996 for "received" (w.e.f. 16th March, 1996) (2) In the case of the member who superannuates on attaining the age of 58 years, and/or who has rendered 20 years pensionable service or more, his pensionable service shall be increased by adding a weight age of 2 years.

11. Determination of Pensionable Salary: (1) Pensionable salary shall be average monthly pay drawn 17[in any manner including on piece-rate basis] during the contributory period of service in the span of 12 months preceding the date of exit from the membership of the Employees' Pension Fund. 17. Ins. ibid (w.e.f. 16th March, 1996).

18 [" Provided that if a member was not in receipt of full pay during the period of twelve months preceding the day he ceased to be the member of Pension Fund, the average of previous 12 months full pay drawn by him during the period for which contribution to the pension fund was recovered, shall be taken into account as pensionable salary for calculating pension.] 18. Inserted by G.S.R. 66 dated 22nd February, 1999 (w.e.f. 6.3.1999)

(2) If during the said span of 12 months there are noncontributory periods of service including cases where the member has drawn salary for a part of the month, the total wages during the 12 months span shall be divided by the actual number of days for which salary has been drawn and the amount so derived shall be multiplied by 30 to work out the average monthly pay.

(3) The maximum pensionable salary shall be limited to 19[Rupees six thousand and five hundred /Rs.6500/-] per month. 20[Provided that if at the option of the employer and employee, contribution paid on salary exceeding 21[Rupees six thousand and five hundred /Rs.6500/-] per month from the date of commencement of this Scheme or from the date salary exceeds 22[Rupees six thousand and five hundred /Rs.6500/-] whichever is later, and 8.33 per cent share of the employers

thereof is remitted into the Pension Fund, pensionable salary shall be based on such higher salary.] 20. Inserted *ibid* w.e.f 16.3.96. 19 & 21 & 22 . Subs. By GSR 774 (E) dated the 8.10.2001 (w.e.f. 1.6.2001)

23[12. Monthly Member's Pension: (1) A member shall be entitled to:

(a) superannuation pension if he has rendered eligible service of 10 years or more and retires on attaining the age of 58 years;

(b) early pension, if he has rendered eligible service of 10 years or more and retires or otherwise ceases to be in the employment before attaining the age of 58 years;

(2) In the case of a new entrant the amount of monthly superannuation pension or early pension, as the case may be, shall be computed in accordance with the following factors, namely: - Monthly member's pension = Pensionable salary X Pensionable service Divided by 70.

(3) In the case of an existing member in respect of whom the date of commencement of pension is after 16th November, 2005:

(i) Superannuation/early pension shall be equal to the aggregate of:

(a) Pension as determined under sub-paragraph (2) for the period of Pensionable service rendered from the 16th November, 1995 or Rs 635/- per month whichever is more;

(b) Past service pension shall be as given below:

S.No.	Years of Past Service	Salary upto Rs.2500/- per month	Salary more than Rs.2500/- per month
I	(i) Upto 11 years	80	85
II	(ii) More than 11 years but upto 15	95	105
III	(iii) More than 15 years but less than 20 years	120	135
IV	Beyond 20 years	150	170

The amount under column (2) or column (3) above, as the case may be shall be multiplied by the factor given in Table B corresponding to the period between 16-11-95 and the date of exit to arrive at past service pension payable.

(ii) The aggregate of (a) and (b) calculated as above shall be subject to a minimum of Rs. 800/- per month provided the eligible service is 24 years. Provided further if it is less than 24 years, the pension as computed above shall be reduced proportionately subject to a minimum of Rs. 450/- per month

(4) In the case of an existing member and in respect of whom the date of commencement of pension is between 16th November, 2000 and 16th November, 2005

(i) the superannuation/early pension shall be equal to the aggregate of :

(a) pension as determined under sub-paragraph (2) for the period of service rendered from the 16th November, 1995 or Rs. 438/- per month whichever is more;

(b) past service pension as provided in sub-paragraph (3)

(ii) The aggregate of (a) and (b) calculated as above shall be subject to a minimum of Rs. 600/- per month provided the eligible service is 24 years. Provided further that if it is less than 24 years the pension shall be proportionately less subject to the minimum of Rs. 325/- per month.

(5) In the case of an existing member and in respect of whom the date of commencement of pension is before 16th November 2000 (i) the superannuation/early pension shall be equal to the aggregate of : (a) pension as determined under sub-paragraph (2) for the period of service rendered from the 16th November, 1995 per month or Rs.335/- per month whichever is more. (b) past service pension as provided in sub-paragraph (3) (ii) The aggregate of (a) and (b) calculated as above shall be subject to the minimum of Rs. 500/- per month, provided the eligible service is 24 years. Provided further that if it is less than 24 years the pension shall be proportionately lesser but subject to the minimum of Rs. 265/- per month.

(6) Except as otherwise expressly provided hereinafter the monthly members pension under sub-paragraphs (2) to (5) mentioned herein above, as the case may be, shall be payable from a date immediately following the date of completion of 58 years of age notwithstanding that the member has retired or ceased to be in the employment before that date.

(7) A member, if he so desires, may be allowed to draw an early pension from a date earlier than 58 years of age but not earlier than 50 years of age. In such cases, the amount of pension shall be reduced at the rate of 24[four per cent] for every year the age falls short of 58 years] . 23. Subs. by G.S.R. 431(E), dated the

15.6.2007 (w.e.f. 16.11.1995), 24. Substituted instead of three percent vide GSR 688(E), dated 26.9.2008 (w.e.f. 26.9.2008)

(8) If a member ceases to be in the employment by way of retirement or otherwise earlier than the date of superannuation from which pension can be drawn, the member may, on his option, either be paid pension as admissible under this Scheme on attaining the age exceeding 50 years or he may be issued a scheme certificate by the Commissioner indicating the pensionable service, the pensionable salary and the amount of pension due on the date of exit from the employment. If he/she is subsequently employed in an establishment coverable under this Scheme, his/her earlier service as per the scheme certificate shall be reckoned for pension along with the fresh spell of pensionable service. The member postponing the commencement of payment of pension under this paragraph shall also entitled to additional relief sanctioned under this Scheme from time to time: Provided that if the member does not take up an employment coverable under this Scheme, but dies before attaining the age of 58 years, the amount of contributions received in his case shall be converted into a monthly widow pension/children pension. The widow pension in such cases shall be calculated at the scale laid down in Table 'C' and the children pension at 25 per cent thereof for each child (upto two). If there is no widow then the orphan pension shall be payable at the rate of 75 per cent of the amount which would have been payable as a widow pension subject to the provisions of the paragraph 16.

25[12A. * * *] 25. Deleted vide GSR 688(E), dated 26.9.2008 (w.e.f. 26.9.2008)

26[13. * * *] 26. Deleted vide GSR 688(E), dated 26.9.2008 (w.e.f. 26.9.2008)

14. Benefits on leaving service before being eligible for monthly member's pension:

(1) If a member has not rendered the eligible service prescribed in paragraph 27[9] on the date of exit, or on attaining 58 years of age whichever is earlier, he/she shall be entitled to a withdrawal benefit as laid down in Table 'D' or may opt to receive the scheme certificate provided on the date he/she has not attained the 58 years of age: 27. Subs. by G.S.R. 134, dated the 28th February, 1996 (w.e.f 16th March 1996). Provided that an existing member shall receive additional return of contributions for his/her past service under the Employees' Family Pension Scheme, 1971 computed as withdrawal-cum retirement benefits as per Table 'A' multiplied by the factor given in Table 'B'.

15. Benefits on permanent and total disablement during the service:

(1) A member, who is permanently and totally disabled during the employment shall be entitled to pension as admissible under sub-paragraph (2) to (5) of paragraph 12 as the case may be subject to a minimum of Rs. 250/- per month notwithstanding the fact that he/she has not rendered the pensionable service entitling him/her to pension under paragraph 12 provided that she/he has made at least one month's contribution to the Pension Fund.

(2) The monthly member's pension in such cases shall be payable from the date following the date of permanent total disablement and shall be tenable for the life-time of the member.

(3) A member applying for benefits under this paragraph shall be required to undergo such medical examination as may be prescribed by the Central Board to determine whether or not he or she is permanently and totally unfit for the employment which he or she was doing at the time of such disablement.

16. Benefits to the family on the death of a member: (1) 28[Pension to the family] shall be admissible from the date following the date of death of the member if the member dies.

(a) while in service, provided that at least one month's contribution has been paid into the Employees' Pension Fund, or

(b) after the date of exit but before attaining the age of 58, from the employment having rendered service entitling him/her to monthly member's pension but 1[before the commencement of pension payment or]

(c) after commencement of payment of the monthly member's pension Note: The cases where a member has rendered less than 10 years eligible service on the date of exit but has retained the membership of the Pension Fund, and dies before attaining the age of 58 years, shall be regulated under sub-paragraph (8) of paragraph 12. 28. Subs. by G.S.R. 134 dated the 28th February, 1996 (w.e.f. 16th March 1996).

(2) (a) The monthly widow pension shall be :

(i) in the cases covered by clause (a) of sub-paragraph (1), equal to the monthly members pension which would have been admissible as if the member had retired on the date of death or Rs 450/- or the amount indicated in Table 'C' whichever is more.

(ii) in the cases covered by clause (b) of sub-paragraph (1), equal to the monthly members pension which would have been admissible as if the member had retired on the date of exit or 29[Rs. 450/- per month] or the amount indicated in Table 'C' whichever is more.

(iii) in the cases covered by clause (c) of sub-paragraph (1), equal to 50 per cent of the monthly members pension payable to the member on the date of his death subject to a minimum of 29[Rs. 450/- per month.] 29. Subs. by G.S.R. dated 12th January, 2000 30[(iv) in all the cases, where the amount of family pension sanctioned under the Ceased Family Pension Scheme, 1971 and is paid/payable under this scheme is less than Rs. 450/- per month, the amount of family pension in such cases shall be enhanced to Rs. 450/- per month.]30. Ins. Ibid. (w.e.f. 29.1.2000)

(b) the monthly widow pension shall be payable upto the date of death of the widow or remarriage whichever is earlier. Note:- In cases where there are 2 or more widows, family pension shall be payable to the eldest surviving widow. On her death it shall be payable to the next surviving widow, if any. The term "eldest" would mean seniority with reference to the date of marriage.

(3) Monthly children pension:

(a) If there are any surviving children of the deceased member, falling within a definition of family, they shall be entitled to a monthly children pension in addition to the monthly widow/widower pension.

(b) Monthly children pension for each child shall be equal to 25 per cent of the amount admissible to the widow/widower of the deceased member as monthly widow pension payable under sub-paragraph (2) (a) (i) provided that minimum monthly children pension for each child of the deceased member shall not be less than 31[Rs. 150/- per month.] 31. Subs. by G.S.R dated 12th January 2000

32[(c) Monthly children pension shall be payable until the child attains the age of 25 years.] 32. Subs. by G.S.R. 134, dated the 28th February, 1996 (w.e.f. 16th March, 1996).

(d) The monthly children pension shall be admissible to maximum of two children at a time and will run from the oldest to the youngest child in that order. 33 ["(e) If a member dies leaving behind a family having son or daughter who is permanently and totally disabled such son or daughter shall be entitled to payment of monthly children pension or orphan pension, as the case may be, irrespective of age and

number of children in the family in addition to the pension provided under clause (d)".] 33. Inserted by G.S.R. 66 dated 22nd February, 1999 (w.e.f. 6.3.99)

(4) (a) If the deceased member is not survived by any widow but is survived by children falling within the definition of family or if the widow pension is not payable, the children shall be entitled to a monthly orphan pension equal to 75 per cent of the amount of the monthly widow pension as payable under subparagraph (2) (a) (i) provided that minimum monthly orphan pension for each orphan shall not be less than 34[Rs. 250/- per month.] 34. Subs. by G.S.R 41 dated 12th January 2000 (w.e.f.29.1.2000) (b) In the event of death or remarriage of the widow/widower after sanctioning of widow/widower pension the children shall be entitled in lieu of the monthly children pension, to a monthly orphan pension from the date following the date of death/remarriage of the widow/widower.

35](c) The monthly orphan pension shall be admissible to a maximum of 2 orphans at a time and shall run in order from the oldest to the youngest orphan.] 35. Ins. by G.S.R. 134, dated the 28th February, 1996 (w.e.f 16th March 1996).

(5) (a) A member who is not married or who does not have any living spouse and/or an eligible child may nominate a person to receive benefits as laid down hereinafter provided that in the event of his/her acquiring a family subsequently, the nomination so made shall become void. In the event of death of the member such a nominee shall be entitled to receive a monthly pension equal to the monthly widow pension, as admissible under sub clauses (I) and (ii) of clause (a) of subparagraph (2). 36[(aa) If a member dies leaving behind no spouse and/or an eligible child falling within the definition of family and no nomination by such deceased member exists, the widow pension shall be paid under sub-clauses (I) and (ii) of clause (a) of sub-paragraph 2 either to dependent father or dependent mother as the case may be. On grant of Pension to such dependant father and in the event of death of the father pensioner, the admissible pension shall be extended to the surviving mother lifelong]36. Inserted by G.S.R.66 dated 22nd February, 1999. (w.e.f 6.3.99) (b) If the deceased member had not rendered pensionable service on the date of exit from the employment which would have made him entitled to a monthly members pension under paragraph 12, but had opted to retain the membership of this Scheme under sub-paragraph (8) of paragraph 12, the 37[nominee or the dependant father or the dependant mother as the case may be]

shall be entitled to return of capital as provided in sub-paragraph (1) of paragraph 13. 37. Sub. by G.S.R dated 22nd February, 1999 (w.e.f 6.3.99)

38[16A. Guarantee of pensioner benefits: None of the pensioner benefits under the Scheme shall be denied to any member or beneficiary for want of compliance of the requirement by the employer under sub-paragraph (1) of paragraph 3 provided, however, that the employer shall not be absolved of his liabilities under the Scheme.] 38. Inserted by G.S.R. 134 dated the 28th February 96 (w.e.f. 16th March 1996)

39[17. Payments on exercise of option (1) Beneficiaries of the deceased members of Employees' Family Pension Scheme, referred to in sub-para (1) of paragraph 7, shall receive higher of the benefits available under the Employees' Family Pension Scheme, 1971 and under this Scheme. (2) Members referred to in sub-paragraph (2) of paragraph 7 shall have the option to join the Scheme by returning the amount of withdrawal benefit received, if any, together with interest at the rate of 8.5% per annum from the date of payment of such withdrawal benefit and date of exercise of the option, to receive monthly pension as per the provisions of this Scheme. (3) Members referred to in sub-paragraph (3) of paragraph 7 shall be deemed to have joined the ceased Employees' Family Pension Scheme, 1971, with effect from 1.3.1971 on remittance of past period contribution with interest thereon.] 39. Subs. by G.S.R. 134, dated the 28th February, 1996 (w.e.f 16th March, 1996) 40

[17A. Payment of Pension: The claims, complete in all respects submitted along with the requisite documents shall be settled and benefit amount paid to the beneficiaries within thirty days from the date of its receipt by the Commissioner. If there is any deficiency in the claim, the same shall be recorded in writing and communicated to the applicant within thirty days from the date of receipt of such application. In case the Commissioner fails without sufficient cause to settle a claim complete in all respects within thirty days, the Commissioner shall be liable for the delay beyond the said period and penal interest at the rate of 12 per cent per annum may be charged on the benefit amount and the same may be deducted from the salary of the Commissioner.] 40. Ins. by GSR 376 dated the 27th October, 1997 (w.e.f. 8th November 1997)

18. Particulars to be supplied by the employees already employed at the time of commencement of the Employees' Pension Scheme; Every person who is entitled to become a member of the Employees' Pension Fund shall be asked

forthwith by his employer to furnish and that person shall, on such demand, furnish to him for communication to the Commissioner particulars concerning himself and his family in the form prescribed by the Central Provident Fund Commissioner.

19. Preparation of Contribution Cards: The employer shall prepare an Employees' Pension Fund Contribution Card in respect of each employee who has become a member of the Employees' Pension Fund.

20. Duties of Employers: (1) Every employer shall send to the Commissioner within three months of the commencement of this Scheme, a consolidated return of the employees entitled to become members of the Employees' Pension Fund showing the basic wage, retaining allowance, if any, and dearness allowance including the cash value of any food concession paid to each of such employees; Provided that if there is no employee who is entitled to become a member of the Employees' Pension Fund, the employer shall send a "Nil" return. (2) Every employer shall send to the Commissioner within fifteen days of the close of each month a return in respect of the employees leaving service of the employer during the preceding month. Provided that if there is no employee leaving service of the employer during the preceding month the employer shall send a "NIL" return. (3) Every employer shall maintain such accounts in relation to the amounts contributed by him to the Employees' Pension Fund as the Central Board may, from time to time, direct and it shall be the duty of every employer to assist the Central Board in making such payments from the Employees' Pension Fund to his employees as are sanctioned by or under the authority of the Central Board. (4) Notwithstanding anything contained in this paragraph, the Central Board may issue such directions to the employers generally, as it may consider necessary or expedient, for the purpose of implementing the Scheme, and it shall be the duty of every employer to carry out such directions.

21. Employer to furnish particulars of ownership: Every employer in relation to a factory or other establishment to which the Act applies or is applied hereafter shall furnish to the Commissioner particulars of all the branches and departments, owners, occupiers, directors, partners, managers or any other person or persons who have the ultimate control over the affairs of such factory or establishment and also send intimation of any change in such particulars, within fifteen days of such change, to the Commissioner by registered post.

22. Duties of contractors: Every contractor shall, within seven days of the close of every month, submit to the principal employer a statement showing the particulars in respect of employees employed by or through him in respect of whom contributions to the Employees' Pension Fund are payable and shall also furnish to him such information as the principal employer is required to furnish under the provisions of this Scheme to the Commissioner.

23. Allotment of Account 41[Numbers] 41. Subs. by G.S.R 134, dated the 28th February, 1996 (w.e.f 16th March, 1996) (1) For purposes of this Scheme, where the member has already been allotted or is allotted hereafter an account number under the Employees' Provident Fund Scheme, 1952, he shall retain the same account number. (2) In the case of employees of the establishments exempted from the Employees' Provident Fund Scheme, 1952, under Section 17 of the Act, who are members of the Employees' Family Pension Fund the account number already allotted shall be retained by them. (3) In the case of employees of the establishments exempted from the Employees' Provident Fund Scheme, 1952, under Section 17 of the Act, who are not members of the Employees' Family Pension Fund but opt to become members of the Employees' Pension Fund and in case of new employees of such establishments, fresh account numbers shall be allotted by the Commissioner.

24. Declaration by persons taking up employment after the Fund has been established: The employer shall before taking any person into employment, ask him, her to state in writing whether or not he is a member of the Employees' Pension Fund and, if he/she is, also ask him/her to furnish a copy of the Scheme Certificate issued by the Commissioner to him/her in respect of the past employment in terms of paragraph 12 as the case may be. If the person concerned was not in employment previously or had availed of return of contribution in respect of his/her previous employment, he/she shall, on demand by the employer, furnish to him, for communication to the Commissioner particulars concerning him/herself and his/her family in the Form prescribed by the Central Provident Fund Commissioner. 42[Provided that if such person is a person with disability, the aforesaid Form shall further contain such particulars as are necessary for such person.] 42. Inserted by GSR No. 252(E) dated 31-3-2008(w.e.f. 1-4-2008)

25. Employees' Pension Fund Account: The account called the "Employees' Pension Fund Account" shall be opened by the Commissioner in such manner as

may be specified by the Central Board with the approval of Central Government.

26. Investment of the Employees' Pension Fund: (1) All moneys accruing to Employees' Pension Fund Account except the contributions of the Central Government shall be invested in accordance with the provisions of paragraph 52 of the Employees' Provident Funds Scheme, 1952. (2) Net assets of the Family Pension Fund as on the 16.11.95 shall merge in the Pension Fund and remain invested in the Public Account of the Government of India. The future Central Government's contribution accruing to the Pension fund from 17th November, 1995 onwards shall also be invested in the Public Account of the Government of India.

27. Disposal of the Fund: (1) Subject to the provisions of the Act and this Scheme, the Fund shall not, except with the prior sanction of the Central Government be expended for any purpose other than the payments envisaged in this Scheme, for continued payment of Family Pension, life assurance benefit and retirement-cum withdrawal benefits sanctioned under the Employees' Family Pension Scheme, 1971, prior to the date of introduction of this Scheme or which may be sanctioned under that Scheme after the 16th November, 1995 in respect of cases arising before that date. 43[(2) All administrative expenses shall be met from the 'Central Administration Account' as specified in paragraph 49 of the Employees' Provident Funds Scheme, 1952. However, the cost of remittance of Pension shall be charged on the Pension Fund] 43. substituted by GSR 3 dated 29.12.2006

28. 44 [Omitted] 44. substituted by GSR 3 dated 29.12.2006

29. Forms of Accounts: The accounts of the Employees' Pension Fund, as also the Employees' Pension Administration Account shall be maintained by the Commissioner in such form and in such manner as may be specified by the Central Board with the approval of the Central Government.

30. Audit: The accounts of the Employees' Pension Fund including the administrative expenses incurred in running this Scheme shall be audited in accordance with the instructions issued by the Central Government in consultation with Comptroller and Auditor-General of India.

31. Rounding up of the Benefits: All items of benefits shall be calculated to the nearest rupee, 50 paise or more to be counted as the next higher rupee and fraction of a rupee less than 50 paise shall be ignored.

32. Valuation of the Employees' Pension Fund and review of the rates of contributions and quantum of the pension and other benefits: 45[(1) The Central Government shall have an annual valuation of the Employees' Pension Fund made by a Valuer appointed by it.] 45. Subs. by G.S.R. 134, dated the 28th February, 1996 (w.e.f 16th March 1996) (2) At any time, when the Employees' Pension Fund so permits the Central Government may alter the rate of contributions payable under this Scheme or the scale of any benefit admissible under this Scheme or the period for which such benefit may be given.

33. Disbursement of Pension and other benefits: 46[The Commissioner shall with the approval of the Central Board enter into arrangement for the disbursement of pension and other benefits under this Scheme with disbursing agencies like Post Offices or Nationalized Banks or Treasuries or Scheduled Commercial banks including Regional Rural banks or Co-operative Banks. The commission payable to the disbursing agencies and other charges incidental thereto shall be met as provided in paragraph 27 of this Scheme.] 46. Modified by GSR 746(E), dated the 27.9.2001 (w.e.f. 28.9.2001)

34. Registers, Records, etc.: The Commissioner shall, with the approval of the Central Board, prescribe the registers and records to be maintained in respect of the employees, the form or design of any identity card, token or disc for the purpose of identifying any employee or his nominee or a member of a family entitled to receive the pension and such other forms/formalities as have to be completed in connection with the grant of pension and other benefits or for the continuance thereof subject to such periodical verification as may be considered necessary.

35. Power to issue directions: The Central Government may issue, such directions as may be deemed just and proper by it for resolving any difficulty in the disbursement of pension and other benefits or for resolving any difficulty in implementation of this Scheme.

36. Regional Committee: The Regional Committee set up under paragraph 4 of the Employees' Provident Fund Scheme, 1952, shall advise the Central Board, on such matters, in relation to the administration of this Scheme as the Central Board may refer to it from time to time and in particular, on - - (a) progress of recovery of contributions under this Scheme both from factories and establishment exempted under Section 17 of the Act and other factories and establishments covered under

the Act. (b) expeditious disposal of prosecutions. (c) Speedy settlement of claims relating to pension and other benefits under this Scheme.

37. Annual Report: The Central Board shall cause to be included in the Annual Report on the working of the Scheme prepared under paragraph 74 of the Employees' Provident Fund Scheme, 1952, a report on the working of this Scheme during the previous financial year.

38. Application of the provisions of the Employees' Provident Fund Scheme, 1952: In regard to matters for which either there is no provision or there is inadequate provisions in this Scheme the corresponding provisions in the Employees' Provident Fund Scheme, 1952, shall apply.

47[39. Exemption from the operation of the Pension Scheme: The appropriate Government may grant exemption to any establishment or class of establishments from the operation of this Scheme, if the employees of the establishments are either members of any other pension scheme or proposed to be members of a pension scheme wherein the pensionary benefits are at par or more favorable than the benefits provided under this Scheme. Where exemption is granted to any establishment or class of establishments under this paragraph, withdrawal benefits available to the credit of the employees of such establishment(s) under the ceased Family Pension Scheme, 1971, shall be paid, subject to the consent of the employees, to the pension fund of the establishment(s) so exempted. An application for exemption under this paragraph shall be presented to the Regional Provident Fund Commissioner having jurisdiction by the establishment or class of establishments, together with a copy of the pension scheme of the establishment (s) and other relevant documents, as may be called for by him. On receipt of such an application, the Regional Provident Fund Commissioner shall scrutinize it, obtain the recommendations of the Central Provident Fund Commissioner and submit the same to the appropriate Government for decision, pending disposal of application for exemption under this paragraph employers' share of the contribution shall not be remitted to the pension fund as envisaged in sub-paragraph (1) of paragraph 3. An application for exemption presented under this paragraph shall be disposed of within a period of six months from the date of its receipt or such further time as may be extended for reasons to be recorded in writing. If the application for exemption is not disposed of within the period so specified, the exemption applied for shall be deemed to have been granted.

Explanation. - - For the purpose of this paragraph, the period of six months will count from the date on which the application for exemption is given in complete form to the satisfaction of the Regional Provident Fund Commissioner.] 47. Subs. by G.S.R. 134, dated the 28th February, 1996 (w.e.f 16th March 1996)

48[39-A. Submission of Return:—The employer of the exempted establishment or class of establishments and/or the Board of Trustees of the exempted establishment or class of establishments shall submit a monthly return to the Commissioner in Form –1 FORM 1

Monthly Return to be submitted by the exempted establishments/class of establishments/Board of Trustees.

1. DETAILS OF ESTABLISHMENT:

- (a) Name of the establishment with the full address: -----
- (b) Code No. allotted by the Employees Provident Fund Organization: -----

2. DETAILS OF EMPLOYEES (INCLUDE ALL BRANCHES/UNITS ETC :

- (a) No. of employees as at the end of : previous month
- (b) No. of employees who joined during the month :
- (c) No. of employees who left service during the month :
- (d) No. of employees as at the end of the month [(a) +(b) –(c)] :
- (e) Out of (d) above no. of excluded employees:
- (f) No. of Pension Fund members as at the end of the month [Please furnish the above mentioned details unit wise situated as different places. Attach separate sheet, if necessary] :

3 CONSTITUTION OF BOARD OF TRUSTEES :

- (a) Date on which the present Board was constituted : DD MM YYYY
- (b) Its term : YEARS
- (c) Total number of Trustees :
 - (i) Employees' Representatives :
 - (ii) Employer's Representatives :

4 WAGES, CONTRIBUTIONS ETC.

- (a) Amount of gross wages liable to Pension Contribution : Rs.
- (b) Rate of contribution to Pension Fund : %
- (c) Amount of Pension contribution to be transferred for the current month: Rs.
- (d) Amount of arrears due, if any, for transfer to the Board of Trustees at: Rs. the end of the previous month

- (e) Total of (c) & (d): Rs.
- (f) Amount actually transferred to the Board of Trustees: Rs.
- (g) Balance due, if any, for transfer to the Board of Trustees [(e)-(f)]: Rs.
- (h) Whether the interest payable under Section 7Q of the Act for the belated transfer of Funds, if any, has been paid? : YES NO
- (i) Amount of interest still payable at the end of the month : Rs.

5 DETAILS OF PENSIONERS:

- (a) No. of Pensioners at the end of the month:
- (i) Member (Self) Pensioners:
- Superannuation Pension:
- Early Pension: --Disablement Pension:
- (ii) Spouse Pensioners:
- Death in service:
- Death away from service:
- Death as pensioner:
- (iii) Children Pensioner:
- Normal Children: --
- Disabled Children (Life-long pension):
- (iv) Orphan Pensioner:
- (v) Nominee Pensioner:
- (vi) Dependent Parents Pensioner:
- (b) Total amount of Pension paid during the month: Rs.

6 DETAILS OF EXIT CASES

- (a) No. of Persons who have taken Withdrawal benefit during the month. :
- (b) Amount paid during the month No. of exit cases where Scheme certificate has been issued. : Rs.

7 DETAILS OF INVESTMENT

- (a) Amount lying invested in the Pension Fund in the beginning of the month:
- (b) Amount received during the month:
- (i) By way of Contribution from the employer Current month Arrears, if any : Rs. Rs. Rs.
- (ii) Encashment of matured securities/deposits: Rs.
- (iii) Interest/dividend on investments: Rs.
- iv) Other transfer-in-cases: Rs.

- (v) Damages, if any: Rs.
- (vi) Interest on belated payments, if any: Rs.
- (vii) Miscellaneous, if any (Please specify): Rs.
- (C) Payments made during the month: Rs.
- (d) Amount invested during the month: Rs. Securities --Central Government: Rs. -
-State Governments: Rs. --Others, if any: Rs. Deposits --Public Financial
Institutions Banks: Rs.
- (e) Whether pattern of investment followed? : YES NO (f) If so, classify the
percentage (i) Securities --Central Government: % --State Government: % --
Others: % (ii) Deposits --Public Financial Institutions/Banks: Rs. (iii) Annuity
purchased from Life Insurance Corporation: Rs. (g) Amount lying un-invested in
Cash/Bank: Rs.

8 MODE OF DISBURSEMENT : (Tick one) --Through Bank: --Through Post
Offices: --Through LIC by purchase of Annuity --Others, if any, (please specify): **9**

RULES OF ESTABLISHMENT'S PENSION FUND:

Details of amendment, if any carried out during the month to make the Rules at
par with the Statutory Pension Scheme (Employees' Pension Scheme, 1995)
Date Signature with official seal of the Employer/Trustees of the Board]

48. Ins. by G.S.R, 747 (E) dated the 27th September 2001 (w.e.f. 28th September,
2001)

49[39-B. Transfer Value: --In case exemption is granted to any establishment or
in the case of a member being transferred from pension fund of one exempted
establishment to another pension fund of exempted establishment or statutory
pension fund or vice-versa, a transfer value payment will be made which will
consist of the following:- (a) Withdrawal benefit relating to past service period
upto 15-11-1995 as per Table-A multiplied by Table-B factor for the period between
16-11-1995 to the date of exemption/transfer, and (b) Transfer value for
pensionable service as per Table-E for the service rendered from 16-11-1995 or
from the date of joining the establishment to the date of exemption/transfer as the
case may be. (c) In the event of cancellation of exemption granted under Para 39,
transfer of fund will be made as per the conditions mentioned in the exemption
notification.] 49. Ins. by G.S.R. 430(E) dated the 19th May, 2003 (w.e.f. 23rd May,
2003)

40. Information to the Central Government: The Central Board shall furnish such information to the Central Government from time to time in respect of the income and expenditure from the Employees' Pension fund account in such manner as may be directed by the Central Government.

41. Interpretation: Where any doubt arises with regard to the interpretation of the provisions of this Scheme, it shall be referred to the Central Government who shall decide the same.

42. Punishment for failure to submit return, etc.: If any person,

(a) deducts or attempts to deduct from the wages or other remuneration of the member, the whole or any part of the employer's contribution, or

(b) fails or refuses to submit any return, statement or other documents required by this Scheme or submits a false return, statement or other documents, or makes a false declaration, or

(c) obstructs any Inspector or other official appointed under the Act or this Scheme in the discharge of his duties or fails to produce any record for inspection by such inspector or other officials, or

(d) is guilty of contravention of or non-compliance with any other requirement of this Scheme, he shall be punishable with imprisonment which may extend to one year or with fine which may extend to five thousand rupees or with both.

43. Payment of pension in the case of a person charged with the offence of murder

(1) If a person, who in the event of the death of a member of the Pension Fund is eligible to receive pension of the deceased under paragraph 12 or paragraph 16, is charged with the offence of murdering the member or for abetting the commission of such an offence, his claims to receive pension shall remain suspended till the conclusion of the criminal proceedings instituted against him for such offence.

(2) If on the conclusion of the criminal proceedings referred to in sub-paragraph (1), the person concerned is: (a) convicted for the murder or abetting in the murder of the member, he shall be debarred from receiving pension which shall be payable to other eligible members if any, of the family of the member; or (b) acquitted of the charge of murder or abetting the murder of the member, pension benefit shall be payable to him.

50[43A. Special provisions in respect of International Workers:- The Scheme shall, in its application to International Workers as defined in paragraph 83 of the

Employees' Provident Fund Scheme, 1952 be subject to the following modifications, namely:-

(1) For clause (xv) of paragraph 2, the following clause shall be substituted, namely:- (xv) "pensionable service" means the service rendered by the member covered by an international social security agreement for which contributions have been received or are receivable, the period of service rendered and considered as eligible under such agreement.

(2) For sub-para (1) of paragraph 10, the following subparagraph shall be substituted, namely:-

10. Determination of pensionable service: - (1) The pensionable service of the member covered by an international social security agreement shall be determined with reference to the contributions received or are receivable on his behalf in the Employees' Pension Fund, the period of service rendered under a relevant social security programme and considered as eligible for benefits shall be added only for the purpose mentioned under such agreement. (3) For paragraph 11, the following paragraph shall be substituted, namely:-

11. Determination of pensionable salary: - The pensionable salary shall be the average monthly pay drawn in any manner including on piece-rate basis during the contributory period of service of the membership of the Employees' Pension Fund.

(4) For paragraph 14, the following paragraph shall be substituted, namely:-

14. Benefits on leaving service before being eligible for monthly members' pension: - (1) If a member not being an Indian employee, hailing from a country with which India has entered into a social security agreement, has not rendered the eligible service prescribed in paragraph 9 of the date of exit, or on attaining the 58 years of age, whichever is earlier, he/she shall be entitled to a benefit as may be prescribed in the said Agreement on reciprocal basis. (2) If a member not being an Indian employee hailing from a country with which India has not entered into a social security agreement, has not rendered the eligible service specified in paragraph 9 on the date of exit, or on attaining the 58 years of age, whichever is earlier, his/her entitlement to the withdrawal benefit under paragraph 14 shall be, on the principle of reciprocity, as may be available to Indian employees in that country.] 50. Inserted vide GSR 705(E) dt.1.10.2008 (w.e.f. 1.10.2008)

44. Repeal and savings: (1) On commencement of this Scheme, the Employees' Family Pension Scheme, 1971, in force immediately before such commencement

shall cease to operate with effect from the 16th November, 1995. (2) Notwithstanding anything contained in sub-paragraph (1) every nomination made under the Employees' Family Pension Scheme, 1971, and every form regarding the details of Family of an employee for the purposes of the Employees' Family Pension Scheme, 1971 shall be deemed to have been made under the provisions of this Scheme. (3) All orders/authorizations/Pension Payment Orders issued under the Family Pension Scheme, 1971, shall be deemed to have been made under this Scheme.

TABLE A

(WITHDRAWAL BENEFIT)

No. of full years' contribution paid (1)	Proportion of pay payable at cessation of membership (2)
1	0.20
2	0.41
3	0.62
4	0.84
5	1.06
6	1.29
7	1.51
8	1.75
9	1.98
10	2.23
11	2.47
12	2.72
13	2.98
14	3.24
15	3.51
16	3.78
17	4.05
18	4.34
19	4.62
20	4.92
21	5.21
22	5.52

23	5.83
24	6.14
25	6.46
26	6.79
27	7.12
28	7.46
29	7.81
30	8.16
31	8.52
32	8.89
33	9.26
34	9.64
35	10.03
36	10.43
37	10.83
38	11.24
39	11.66
40	12.08

51[TABLE B
 FACTOR FOR COMPUTATION OF PAST SERVICE BENEFIT
 UNDER THE CEASED FAMILY PENSION SCHEME FOR EXISTING
 MEMBERS ON EXIT FROM THE EMPLOYMENT

YEARS (1)	FACTOR (2)
Less than 1	1.039
Less than 2	1.122
Less than 3	1.212
Less than 4	1.309
Less than 5	1.413
Less than 6	1.526
Less than 7	1.649
Less than 8	1.781
Less than 9	1.923

Less than 10	2.077
Less than 11	2.243
Less than 12	2.423
Less than 13	2.616
Less than 14	2.826
Less than 15	3.052
Less than 16	3.296
Less than 17	3.560
Less than 18	3.845
Less than 19	4.152
Less than 20	4.485
Less than 21	4.843
Less than 22	5.231
Less than 23	5.649
Less than 24	6.101
Less than 25	6.589
Less than 26	7.117
Less than 27	7.686
Less than 28	8.301
Less than 29	8.965
Less than 30	9.682
Less than 31	10.457
Less than 32	11.294
Less than 33	12.197
Less than 34	13.173]

51. Subs. by G.S.R. 438(E), dated the 10th June, 2008

TABLE C EQUIVALENT WIDOW PENSION

Salary at day of Equivalent widow pension death not more than

(1)
(Rupees)

Equivalent widow pension

(2)
(Rupees) Upto

300	250
350	327
400	343
450	359
500	375
550	391
600	408
650	425
700	442
750	459
800	476
850	493
900	510
950	527
1000	544
1050	561
1100	578
1150	595
1200	612
1250	629
1300	646
1350	664
1400	682
1450	700
1500	718
1550	736
1600	754
1650	772
1700	797
1750	808
1800	826
1850	844
1900	862
1950	880

2000	898
2050	916
2100	935
2150	973
2250	992
2300	1011
2350	1030
2400	1049
2450	1068
2500	1087

And similarly

2550 1106, 2600 1125, 2650 1144, 2700 1163, 2750 1182, 2800 1201, 2850 1221, 2900 1241, 2950 1261, 3000 1281, 3050 1301, 3100 1321, 3150 1341, 3200 1361, 3250 1381 3300 1401 3350 1421 3400 1441 3450 1461 3500 1481 52 [3550 1501 3600 1521, 3650 1541, 3700 1561, 3750 1581, 3800 1601, 3850 1621, 3900 1641, 3950 1661, 4000 1681, 4050 1701, 4100 1721, 4150 1741, 4200 1751, 4250 1761, 4300 1771, 4350 1781, 4400 1791, 4450 1801, 4500 1811, 4550 1821, 4600 1831, 4650 1841, 4700 1851, 4750 1861, 4800 1871, 4850 1881, 4900 1891, 4950 1896, 5000 1901, 5050 1906, 5100 1911, 5150 1916, 5200 1921, 5250 1926, 5300 1931, 5350 1936, 5400 1941, 5450 1946, 5500 1951, 5550 1956, 5600 1961, 5650 1966, 5700 1971, 5750 1976, 5800 1981, 5850 1986, 5900 1991, 5950 1996, 6000 2001, 6050 2006, 6100 2011, 6150 2016, 6200 2021, 6250 2026, 6300 2031, 6350 2036, 6400 204, 6450 2046, 6500 2051.]

52 Ins. by G.S.R. 747 (E), dated the 27th September, 2001 (w.e.f. 28th September, 2001).

53[***] 53. "Note" omitted by G.S.R. 747 (E), dated the 27th September, 2001 (w.e.f. 28th September, 2001).

54[TABLE D

Return of contribution on exit from the employment

Year of Service	Proportion of wages at exit
1	1.02
2	1.99
3	2.98
4	3.99
5	5.02

6	6.07
7	7.13
8	8.22
9	9.33

Note : The above table is based on a flat addition in benefit.] 54. Subs. by G.S.R. 438(E), dated the 10th June, 2008 55

TABLE -E
(TRANSFER OF CONTRIBUTION FROM EMPLOYEES' PENSION SCHEME, 1995 TO EXEMPTED OR OTHER PENSION FUND OR VICE -VERSA)

Number of full year's contribution period	Proportion of pay payable on last contribution month
1	0.978
2	1.979
3	3.003
4	4.051
5	5.124
6	6.221
7	7.345
8	8.494
9	9.671]

55. Ins. by G.S.R. 430 (E) dated the 19th May, 2003 (w.e.f. 23rd May, 2003)²⁷

12.5.1 Contribution

Paragraph 9 of the scheme tells us about the contributions and provides that in respect of every employee of a factory/other establishment to which this scheme is applicable, shall be paid from time to time-

- (1) From and out of the contributions of Employees Provident Fund, payable by the employer and the employee in each month under section 6 (you have read it in 4.3 above) of the Act, a part of the contribution representing 1-1/6% of the employee's pay along with an equivalent amount of 1-1/6% from and out of the employer's contribution shall be remitted by the employer to the Family Pension Scheme.
- (2) In addition to it the Central Government shall also contribute at the rate of 1-1/6% of the pay of the members of the Family Pension Fund.

²⁷ http://www.epfindia.com/Circulars/EPS95_update102008.pdf

(2-A) The commissioner (in case of an exempted establishment this shall be done by the authority in charge of the provident fund) on being satisfied that there is a period of service without wages which is to be treated as reckonable service (for the meaning of reckonable service see V of key words) shall remit to the Pension Fund, from and out of the amounts contributed respectively, by the employer and employee and lying to the member's credit together with interest thereon, in the Fund or in the provident fund of the exempted establishment, as the case may be, an amount equal to the contributions payable at the rates specified in such paragraph 1 (above) by the employer and the employee for the said period and the Central Government shall also contribute for the said period an amount equal to the contributions payable at the rates specified in such paragraph (2).

Paragraph 10 of the scheme prescribes the rules regarding the payment of contribution. It is same as you have already read with respect to the Provident Funds Scheme that in the first instance, the employer shall pay both the contribution payable to the Pension Fund, by himself and also on behalf of the member of the Pension Fund employed by him directly or by or through a contractor, the contributions payable to the Pension fund by such member.

In case of employees employed by or through a contractor, the contractor shall recover the contribution payable to the pension fund by such employees and shall pay to the principal employer the amount so recovered together with an equal amount of contribution payable to the pension fund by the employer.

It should be reiterated that it is the responsibility of the principal employer to pay both the contribution payable to the pension fund by himself in respect of the employees directly employed by him and also in respect of the employees directly employed by him and also in respect of the employees employed by or through a contractor.

It should be remembered that the employer cannot deduct the employer's contribution payable to the Pension Fund from the wage of the member of the Family Pension Fund nor he can recover it from the member employee in any other way.

It should be further noted that the amount of contribution paid by the employer or a contractor on behalf of a member of the pension fund shall be recoverable by means of deduction from the wages of the member of the pension fund and in no other way. Such deduction can be made only from the wage which is paid in respect of the period in respect of which the contribution to the pension fund is payable except where the employee has in writing given a false declaration at the time of joining service with the said employer or a contractor that he was not already a member of the Family Pension Fund.

However if the deduction could not be made on account of an accidental mistake or a clerical error, such deduction may be made from the subsequent wages but for that can be done after obtaining the consent (in writing) or the Inspector.

12.5.2 Matters for which provision may be made in the Family Pension Scheme:

Section 6-A(u) of the Act stipulates that the pension scheme may provide for all or any of the matters specified in the schedule III which are as follows:

1. The employees or class of employees to whom the Family Pension scheme shall apply and the time within which option to join that scheme shall be exercised by those employees to whom the said scheme does not apply.
2. The portion of employer's and employees contribution which may be credited to the Family Pension Fund and the manner in which it may be credited.
3. The contribution by the Central Government to the Family Pension Fund and the manner in which such contribution is to be made.
4. The manner in which the accounts of the pension fund shall be kept and the investment of moneys belonging to the pension fund with the Central Government at the rate of interest which shall not be less than five and a half percent per annum.
5. The form in which an employee shall furnish particulars about himself and his family whenever required.
6. The nomination of a person to receive the assurance amount due to the employee after his death and the cancellation or variation of such nomination.

7. The registers and records to be maintained in request of employees, the form or design of any identity card, token or disc for the purpose of identifying any employee, or his nominee or a member of family entitled to receive the pension.
8. The scales of family pension and the assurance amount.
9. The manner in which the exempted establishment have to pay the contributions (both employer's and employee's shares towards the Family Pension Fund and the submission of returns) relating thereto.
10. The mode of disbursement of family pension and the arrangements to be entered into with such disbursing agencies as may be specified for the purpose.
11. The manner in which the expenses incurred in connection with the administration of the pension scheme may be paid by the Central Government to the Central Board.
12. Any other matter which is to be provided for in the Family Pension Scheme or which may be necessary or proper for the purpose of implementing the Pension scheme.

12.6 Employee's Deposit Linked Insurance Scheme:

The Employee's Provident Funds and Family Pension Funds Act, 1952 was again amended in 1976 and the new Act was named as the Employee's Provident Funds and Miscellaneous Provisions Act, 1952.

The Central Government, in exercise of powers conferred under section 6-C of the Act, framed the new social security scheme and named it as the Employee's Deposit Linked Insurance Scheme 1976. The object of the scheme is to provide life insurance benefits to the employees of any establishment or class of establishments to which this Act applies and also to the members of the coal mines Provident Fund Act. the provisions of this scheme came into force with effect from 1st Aug. 1976. The scheme has 21 paragraphs only. The Insurance scheme may provide that any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in this behalf, in the scheme.

The benefit of insurance provided to the members of the scheme is linked to the amount lying in deposit in the provident fund to the credit of member employee.

The distinguish in features of this scheme are:

- (i) If the member employee dies, his dependents would be entitled to receive an additional payment equivalent to three years average balance at the credit of the deceased member employee in his provident fund account provided the balance amount lying to the credit of the deceased member employee in his provident fund account is at least one thousand rupees.

To avail the benefit of this scheme the member is not required to contribute any additional premium. Only the employer and the Central Government makes payment for this purpose.

In order to achieve the objectives of this scheme after framing of the Insurance scheme, a fund shall be established. This fund shall be known as Deposit Linked Insurance Fund. From time to time the employer shall pay such amount as may be prescribed by the Central Government but it shall not be more than one percent of the aggregate of the basic wages, dearness allowance and retaining allowance (if any) for the time being payable to an employee. Employer is liable to pay in respect of every such employee, in relation to whom he is the employer. Presently the employer is liable to pay at the rate of 0.50% of the total wages of an employee. In addition to it the Central Government shall also contribute to the insurance fund in relation to each employee, of any establishment or class of establishment to which this Act applies. The Central Government shall contribute an amount representing one half of the contribution which an employer is required to make as above.

Employers and Central Government's liability to contribute does not end here. The employer shall pay into the insurance fund such further sums of money, as the Central Government may determine, from time to time, in order to meet the expenses in connection with the administration of insurance scheme, other than the expenses towards the cost of any benefits provided by or under this scheme. Employer's liability here shall not exceed one fourth of the contribution which he is required to make above. Likewise the Central Government shall also contribute to the insurance fund such further sums of money representing one half of the

further sums payable by the employer in the preceding paragraph. This further contribution too shall be used to meet only the expenses in connection with the administration of the insurance scheme. It is therefore clear that this amount cannot be used to meet the expenses towards the cost of any benefits provided by or under this scheme.

As in the case of earlier funds, this fund too shall vest and be administered by the Central Board in such manner as may be specified in the insurance scheme. The insurance scheme may provide for all or any of the matters specified in schedule IV of the Act, which are as follows:

1. The employees or class of employees who shall be covered by the insurance scheme.
2. The manner in which the accounts of the insurance fund shall be kept and the investment of money belonging to the insurance fund subject to such pattern if investment as may be determined by order, by the Central Government.
3. The form in which an employee shall furnish particulars about himself and the members of his family whenever required.
4. The nomination of a person to receive the insurance amount due to the employee after his death and the cancellation or variation of such nomination.
5. The registers and records to be maintained in respect of employees, the form or design of any identity card, token or disc for the purpose of identifying any employee or his nominee or member of his family entitled to receive the insurance amount.
6. The scales of insurance benefits and conditions relating to the grant of such benefits to the employees.
7. The manner in which the amount due to the nominee or the member of the family of the employee under the scheme is to be paid including a provision that the amount shall not be paid otherwise than in the form of a deposit in a savings bank account, in the name of such nominee or member of a family, in any corresponding new bank specified in the First Schedule to the Banking Companies Act, 1970.
8. Any other matter which is to be provided for in this scheme or which may be necessary or proper for the purpose of implementing this scheme.

New Status:

The Minister of State (IC) for Labour and Employment, Shri Bandaru Dattatreya has said that the Employees' Provident Funds & Miscellaneous Provisions (EPF & MP) Act, 1952 is applicable to the establishments employing 20 or more workers. The Employees' Pension Scheme 1995 is one of the Schemes under the Act. Government has notified a minimum pension of Rs. 1000/- per month to the pensioners under Employees' Pension Scheme, 1995. Further, the Government is implementing Indira Gandhi National Old Age Pension Scheme. All citizens above the age of 60 years and living below poverty line are eligible for benefits under the scheme. For persons above the age of 80 years, the amount of pension has been raised from Rs. 200 to Rs. 500 per month. In a written reply in the Lok Sabha today, Shri Bandaru Dattatreya said that the statistics regarding total number of workers employed in the organised sector in the country is not maintained centrally. However, as on 31.03.2014, total number of members under the EPF & MP Act, 1952 are 1178.13 lakhs. There are 310 lakhs contributory members as on 30.06.2014.

The Minister said that a proposal to reduce the threshold limit from 20 to 10 for coverage under EPF & MP Act, 1952 is under consideration of the Government to bring more workers under the ambit of the Act.

12.7 Sum up:

The Central Government has been concerned to ameliorate the working conditions and to provide post retirement benefits to industrial workers as well as to the employees of other establishments. With this view in 1952 the Central Government passed the employees Provident Fund Act, 1952. A scheme has also been framed under the Act, with the name the Employees Provident Fund scheme 1952. The object of the Act and the scheme is to provide the benefit of provident Fund to the members of the scheme. The Act is applicable to those industries which are covered under schedule I of the Act.

In 1971, another social welfare legislation, in the form of Employee's Family Pension Scheme, 1971 was passed by the Central Government. This scheme aimed at providing the benefits of life assurance, retirement cum withdrawal benefit and benefits of family pension to the family of the member of the scheme. The scheme is applicable to those who on the date of implementation of the 'scheme' became member of the scheme and also to those who became members of the 'scheme' later on. Under the scheme, a fund has been created to be known as the Employee's Family Pension Fund. Both the employee and the employer are required to contribute into this fund, at the stipulated rate. The Central Government shall also contribute this fund.

Last social welfare scheme framed under the Act has been named as the Employee's Deposit linked insurance scheme 1976. This scheme is aimed at providing the benefit of life insurance to the employees of any factory/other establishment or class of establishments to which the Employee's Provident Fund and Miscellaneous Provisions Act 1952 applies. The distinguishing feature of this scheme is that for availing the benefit of this scheme the members are not required to make any contribution. Only the employer and the Central Government contribute to the fund created under the scheme, in the ratio of 2:1.

12.8 Some Useful Books

1. Industrial Law by P.L. Malik : Eastern Book Company, Lucknow.
2. Swamy's Treaties of Employees Provident Funds : Swamy Publisher(P) Ltd. Madras.
3. Commentaries on the Employee's Provident Funds and Miscellaneous Provisions Act-1952 by K.D. Srivastava, Eastern Book Company, Lucknow.

12.9 Check Your Progress

A- Which of the following statements are true:

- (i) Employees' Provident Funds and Miscellaneous Provisions Act was passed in 1952.
- (ii) Power to apply the provisions of this Act to establishment not covered by this Act, vests with the Central Government.

- (iii) The Act is applicable to every establishment in which twenty or more persons are employed.
- (iv) The liability to pay their respective contribution lies both on the employer and the employee.
- (v) The employee is the occupier of the factory.
- (vi) If the manufacturing process is carried on only in a part of the premises, the whole premises would be termed as factory.
- (vii) 'Scheme' means the Employee's Provident Funds Scheme and 'Fund' means the Employee's Provident Fund created under the Scheme.
- (viii) Central Government is empowered to exempt an employee from the operation of the provisions of the Employee's Provident Fund Scheme.
- (ix) The employees are liable to pay the amount payable as administrative charge.
- (x) The Employees Family Pension Scheme came into force w.e.f. 1st March, 1971.
- (xi) One of the objects of the Employee's Deposit Linked Insurance Scheme 1976 is to provide retirement cum withdrawal benefit also to the members of the scheme.
- (xii) The employees who are members of the Deposit Linked Insurance Scheme 1976 are required to pay contribution at the rate of 8.33 percent of their pay.
- (xiii) Central Government shall also contribute to the Insurance Fund an amount equal to that which an employer is required to make.

B. Fill in the Blanks:

- (i) Today, the Employee's Provident Funds and Miscellaneous Provisions Act, 1952 is applicable to industries and covers.....crore subscribers.
- (ii) The object of the Act and the Scheme is to the employees to..... apportion from hisearnings.
- (iii) Any scheme framed under this Act, when framed shall be laid before House of.....
- (iv) Scheme means.....

- (v) Under the Employee's Provident Funds Scheme 1952 the amount of employee's contribution shall be to the contribution payable by the employer in respect of him.
- (vi) An exempted employee means an employee to whom the Employee's Provident Fund Scheme or the Scheme would (as the case may be), but for the granted under Section 17, have applied.
- (vii)means the Employee's Provident Fund.
- (viii) The Employee's Provident Funds Scheme has paragraphs.
- (ix) Employee's Deposit Linked Insurance Scheme 1976 has been framed under Section Of the Act.
- (x) Under the Employee's Deposit Linked Insurance Scheme, the employer's liability to contribute cannot be more than.....percent of the pay, payable to an employee.
- (xi) The Insurance Scheme may provide for all or any of the matters specified in Schedule.....of the Act.
- (xii) To overall the benefit to the Insurance Scheme, the employee is required to contribute.....contribution.

12.10 **Answers to Check Your Progress**

- A.**(i) False (because in 1952 when the Act was introduced its name was Employee's Provident Fund Act, 1952).
(ii) False (iii) True (iv) False (v) False (vi) True (vii) True (viii) False (ix) False (x) True (xi) False (xii) False (xiii) False
- B.**(i) 173 and 1.38
(ii) induce, save, current
(iii) each, Parliament
(iv) Employee's Provident Funds Scheme, 1952
(v) equal
(vi) Insurance, exemption
(vii) Fund
(viii) 81
(ix) 6-C

- (x) One
- (xi) IV
- (xiii) Nil

12.11 Key Words

- (i) **Dearness Allowance:** - all cash payments made to an employee on account of a rise in the cost of living, house rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment.
- (ii) **Wages:** - Emoluments paid to an employee by way of recompense for his labour.
- (iii) **Retaining Allowance:** - Allowance paid to an employee to retain his service in the establishment particularly during the period of any interval.
- (iv) **Inter-alia:** - In addition to other matters.
- (v) **Reckonable Service :-** It means service rendered by a member of the Family Pension Fund in respect of which contributions are payable under the scheme includes any period of service in respect of which no wages are drawn by such member on account of closure of the establishment, strike, lockout or leave without pay or for any other reason, of a similar nature or otherwise and in respect of when both the member's and employer's shares of contribution are payable by diversion from his Provident Fund Account as provided in sub-para 2-A of Paragraph 9 of this Scheme and also includes any period of service in respect of which wages are drawn but no contributions are payable in respect of which wages are drawn but no contributions are payable in terms of sub-paragraph (4) of Paragraph 9.

12.12 Terminal Questions

1. Define and explain the following terms used in the Employee's Provident Funds and Miscellaneous Provisions Act 1952:
 - (i) Appropriate Government
 - (ii) Basic Wages
 - (iii) Contribution
 - (iv) Employer

- (v) Employee
- (vi) Factory
- (vii) Exempted Employee

2. Write a note on the scope and objects of the Employee's Provident Funds and Miscellaneous Provisions Act, 1952.
3. Discuss in detail the provisions of the Employee's Provident Fund and Miscellaneous Provision Act, 1952 relating to the Fund.
4. Describe the constitution, powers and functions of the Employee's Provident Funds Appellate Tribunal.
5. Describe the salient features of the Employee's Provident Funds Scheme 1952.
6. Describe the rules relating to the membership under the Employees Provident Funds Scheme, 1952.
7. Write a note on 'exemption' for the Scheme under the Employee's Provident Funds Scheme, 1952.

UNIT – 13

E.P.F. & Misc Provisions Act, 1952

Part - II

Objectives

After going through this unit you should be able to :

- Enumerate various provisions with respect to exemption of an establishment under the Employees' Provident Fund Act, 1952.
- Understand the rules regarding administration of the scheme.
- Discuss rules relating to infancy benefits.
- Describe miscellaneous relating to the Scheme.
-

Structure

13.1 Introduction

13.2 Power to Exempt

13.3 Establishment to which the Act does not apply

13.4 Administration of the schemes

13.4.1 Constitution of the Central Board

13.4.2 State Board

13.4.3 Appointment of officers

13.4.4 Legality of the acts done

13.4.5 Delegation

13.4.6 Determination of Moneys Due from Employers

13.4.7 Mode of Recovery of Moneys Due from Employers

13.4.8 Recovery of Moneys by Employers and Contractors

13.4.9 Protection against Attachment

13.4.10 Priority of Payment of Contributions over other Debts

13.4.11 Inspector

13.5 Infancy benefits

13.6 Miscellaneous

- 13.6.1 Default in Paying Contribution or Default to make the Payment
- 13.6.2 Offences by Companies
- 13.6.3 Cognizance and Trial of offences
- 13.6.4 Power to Recover damages
- 13.6.5 Power of Court to Make Orders
- 13.6.6 Special Provisions Relating to Existing Provident Funds
- 13.6.7 Transfer of Accounts
- 13.6.8 Liability in Case of Transfer of Establishment

13.7 Sum up

13.8 Check Your Progress

13.9 Answers to Check your Progress

13.10 Terminal Questions

13.11 Suggested Readings

13.1 Introduction

The provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and the Schemes framed there under stipulate that the Act is not applicable to certain categories of establishments. In addition to it, the appropriate Government and the Central Provident Fund Commissioner are also respectively empowered to exempt any establishment or any employee (or class of employees) from the operation of all or any of the provisions of any of the three schemes framed under the Act. Such exemption when granted must be notified in the Official Gazette. The appropriate Government may grant the exemption subject to such conditions as may be specified in the notification. The exemption thus granted may be operative prospectively or retrospectively.

Under the Act, a fund shall be created, which shall vest and be administration by the Central Board. In this unit you would read about the Central Board and other agencies created to help the Central Board in fulfilling its objectives.

Lastly the Act had taken care of nascent establishments by providing that the Act shall not apply to them until the expiry of three years. The underlying idea is to grant time to such establishments, so that they may gain a firm footing, to be able

to pay, in future, contribution in accordance with the provisions of this Act and the Scheme, in respect of employees employed by them.

13.2 Power to Exempt

Power to exempt any establishment from the operation of all or any of the provisions of any Scheme vests in the appropriate Government. However, the power to exempt any employees of a class of employees or any establishment from the operation of all or any of the provisions of the Family Pension Scheme (Section 17 (1-C) of the Insurance Scheme vests with the Central Provident Fund Commissioner (Section 17 (2-A)). The exemption shall be granted by a notification in the official Gazette and subject to such conditions as may be specified in the notification. The exemption from the Scheme may be granted prospectively or retrospectively (Section 17 (1)).

You may like to know why any establishment, employee or a class of employees would seek exemption from the operation of the provision of any of the Schemes? When the employer of an establishment, to which this Act applies, wishes to seek exemption, his object is to give a Scheme to his employees, which is better than the Scheme provided under the Act and is also better than a scheme offered by any other establishment of similar nature. In this way, the exemption is beneficial to the employees.

The spirit of the Act is that no exemption shall be granted to an establishment unless the majority of the employees of that establishment are also interested in the exemption. Hence, whenever an application for exemption is made, before that, the employer is required to display a notice and also a copy of exemption application along with provident fund rules framed by him, so that the employees of that establishment may communicate their objections, if any, to the Regional Provident Fund Commissioner, within fifteen days. After receiving the objections, the Commissioner shall communicate them to the appropriate Government along with his recommendations on the exemption application.

The appropriate Government may grant exemption to the establishment, to which this Act applies, only when it is satisfied that the proposed rules of its provident fund with respect to the rate of contribution are not less favorable than those specified in Section 6 of the Act. the Government shall further examine that

other provident fund benefits granted under the proposed Scheme are not less favorable to the employees than the benefits provided under this Act or under any Provident Fund Scheme in relation to the employees in any other establishment of a similar character (Section 17 (1)(a)). In practice before granting the exemption, appropriate Government grants relaxation of one year to the connected establishment (now called relaxed industry) and examines the working of administration of establishment's scheme.

Those establishment may also be granted exemption, the employees of which are already in enjoyment of benefits in the nature of provident fund, pension or gratuity and the appropriate Government after examining them, is of the opinion that such benefits, separately or jointly are on the whole not less favorable to such employees than the benefits provided under this Act or any Scheme in relation to employees in any other establishment of a similar character (Section 17 (1) (b)).

The appropriate Government shall not grant any exemption, as above, without consulting the Central Board. On being asked by the appropriate Government, the Central Board shall forward its views on exemption to the appropriate Government within such time limits as may be specified in the Scheme.

The newly inserted clause 1-A of Section 17 tells us the consequences of exemption granted to an establishment under above discussed clause (a) of sub-Section (1) and provides that :

- (a) the provisions of Sections 7, 7-A, 8 and 14-B shall, so far as may be, apply to the employer of the exempted establishment. In addition to it the employer shall be bound to abide by the conditions, if any, prescribed by the appropriate Government, while granting the exemption. If the employer of the exempted establishment contravenes or make default in complying with ant of said provisions or conditions or any other provisions of this Act, he shall be punishable under Section 14, as if the exempted establishment had not been exempted under the said clause (a);
- (b) The employer shall establish a Board of Trustees for the administration of the provident fund. The Board of Trustees shall consist of such number of members as may be specified in the Scheme.
- (c) The Scheme shall also prescribe the terms and conditions of services of members of the Board of the Board of Trustees;

- (d) The Board of Trustees constituted as above shall-
- (i) Maintain detailed accounts to show the contributions credited, withdrawals made and interest accrued in respect of each employer;
 - (ii) Submit such returns to the Regional Provident Fund Commissioner or any other officer as the Central Government may direct from time to time,
 - (iii) Invest the provident fund monies in accordance with the directions issued by the Central Government from time to time,
 - (iv) Transfer (where necessary), the provident fund accounts of any employee;
 - (v) Perform such other duties as may be specified in Scheme.

If the employer fails to comply with any of the conditions subject to which the exemption has been granted, the authority which granted the exemption, may by order in writing, cancel the exemption.

Now coming to sub-clause (1-B) which again deals with the Board of Trustees and says that where the Board of trustees contravenes or makes default in complying with, any provisions of clause (d) above the Trustees of the Board shall be deemed to have committed an offence under sub-Section (2-A) of Section 14. For which they shall be punishable with imprisonment which may extend from one month to six months. In addition to the imprisonment, the defaulter shall be liable to a fine which may extend to five thousand rupees.

Let us now learn about the exemption from the provisions of the Family Pension Scheme. Sub-clause (1-C) ordains that the Central Provident Fund Commissioner may, by notification in the official Gazette, and subject to such conditions as may be specified in the notification, exempt, an employee or class of employees or any establishment from the operation of all or any of the provisions of the Family Pension Scheme. Such exemption may be retrospective or prospective in operation. The exemption will be granted only when such employee, class of employees or the employees of such establishment is or are in enjoyment of benefits in the nature of family pension, and in the opinion of the Central provident Fund Commissioner, the benefits are on the whole not less favorable to such employee than the benefits provided under this Act or the Family Pension Scheme is relation to employees in any other establishment of a similar character.

The employer of an exempted establishment or of an exempted employee of an establishment, to which the provisions of the Family Pension Scheme apply,

shall pay to the Family Pension Fund such portion of the Employer's contribution as well as the employee's contribution to its provident fund, as may be specified in the family Pension Scheme. The manner, in which such payment is to be made, shall also be specified by the Family Pension Scheme (Section 17 (6)).

The exemption granted as above, may be cancelled by an order in writing, by the authority which granted the exemption, if the employer fails to comply with any of the conditions imposed in the exemption order.

Under Clause (2) any Scheme may make provision for exemption of any person or class of persons employed in any establishment to which the Provident Fund Scheme applies, from the operation of all or any of the provisions of the Scheme, if such person or class of persons is entitled to benefits in the nature of provident Fund, gratuity or old age Pension and such benefits, separately or jointly, are on the whole not less favorable than the benefits provided under this Act or under the Scheme.

The exemption granted may be cancelled by an order in writing by the authority which granted the exemption, if the employer fails to comply with any of the conditions of exemption.

Clause (2-A) authorizes the Central Provident Fund Commissioner and lays down the same principles as above, with respect to the Insurance Scheme that the Central Provident Fund Commissioner, on the request of the employer, may be notified in the official Gazette, and subject to such condition in the official Gazette, and subject to such conditions as may be specified in the notification, exempt, whether retrospectively or prospectively, any establishment from the operation of all or any of the provisions of the Insurance Scheme. Before granting exemption, the Commissioner would satisfy himself that the employees of such establishment are in enjoyment of benefits in the nature of life insurance whether linked to their deposit in provident fund or not and such benefits are more favorable to such employees than the benefits admissible under the Insurance Scheme. One more thing which the Commissioner is required to see is that the employees are not required to make any separate contribution or payment of premium for obtaining insurance benefits. The exemption is liable to be cancelled if the employer fails to comply with the conditions of exemption.

It is further provided by clause (2-B) that without prejudice to the provisions of sub-section (2-A) above, the Insurance Scheme itself may provide for the

exemption of any person or class of persons employed in any establishment and covered by that scheme, from the operation of all or any of the provisions thereof, if the benefits in the nature of life insurance admissible to such person or class of persons are more favorable than the benefits provided under the Insurance Scheme. Such exemption may be cancelled by the authority which granted the exemption, if the employer fails to comply with any of the conditions subject to which the exemption is granted.

When exemption under Section 17 has been granted either to an establishment or to an employee as such or to a class of persons employed in an establishment, from the operation of all or any of the provisions of any scheme, then the employer of such employee(s)/establishment is liable to certain duties. These duties are mentioned in sub-paragraph (3) of Section 17 as follows :

- (a) The employer shall in relation to gratuity, pension and provident fund, with respect to above mentioned employee(s), shall maintain such accounts, submit such returns, make such investment, provide for such facilities for inspection and pay such inspection charges as may be directed by the Central Government.
- (b) After the exemption has been granted then without the leave of the Central Government, the employer shall not reduce the total quantum of benefits in the nature of pension, gratuity or provident fund to which any such person or class of persons were entitled at the time of exemption.
- (c) Where an exempted employee leaves his employment and obtains re-employment in another establishment to which this Act applies, then the former employer shall transfer the amount of accumulations to the credit of departing employee, in the provident fund of the establishment left by him, to the credit of departing employee, in the provident fund of the establishment left by him, to the credit of that employee's account in the provident fund account of the establishment in which he is re-employed or in the 'Fund' established under the 'Scheme' as the case may be.

Provisions have been made under sub-section 1-A of Section 17 with respect to the Insurance Scheme. It says that where, in respect of any person or class of persons employed in any establishment, an exemption is granted under sub-section

(2-A) or sub-section (2-B), from the operation of all or any of the provisions of the Insurance Scheme (you would recollect that the exemption might be granted even to a single employee or a class of employees as such or to the whole establishment), the employer of such establishment is liable to following duties :

- (a) He shall maintain such accounts, submit such returns, make such investments, provide for such facilities for inspection, and pay such inspection charge as the Central Government may direct. These things are to be done in relation to the benefits in the nature of life insurance, and in relation to the insurance fund maintained by the establishment, to which any such person or class of persons is entitled.
- (b) After the exemption has been granted to an establishment, than without the permission of the Central Government, the employer shall not reduce the total quantum of benefits in the nature of life insurance to which any such person or class of persons was entitled immediately before the date of exemption.

You have read above that the exemption granted under sub-section (1), sub-section (1-C), sub-section (2), sub-section (2-A) or under sub-section (2-B), may be cancelled, if the employer fails to comply with any of the conditions, subject to which the exemption was granted. When the exemption is so cancelled, the amount of accumulations, standing to the credit of every employee, to whom the exemption applied, in the provident fund, the family pension fund or under the insurance fund of the establishment in which he is employed, together with any amount forfeited from the employer's share of contribution to the credit of the employee who leaves the employment before the completion of the full period of service, shall be transferred, to the credit of his account in the 'Fund', the Family Pension Fund or the Insurance Fund, as the case may be. The time within which the amount of contribution has to be transferred and the manner in which the transfer is to be effectuated, shall be specified by the 'Scheme', the Family Pension Scheme or the Insurance Scheme, as the case may be.

13.3 Establishment to which the Act does not apply

Section 16

Expressly exempts certain establishment from the operation of this Act. They are as follows:

- (a) Any establishment registered under the co-operative Societies Act, 1912, or under any other law for the time being in force in any State relating to Co-operative societies, employing less than fifty persons and working without the aid of power; or
- (b) Any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to Be benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits, or
- (c) Any other establishment set up under any Central, provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits; or
- (d) Any other establishment newly set up, until the expiry of a period of three years from the date on which such establishment is or has been, set up. (An establishment shall not be deemed to be newly set up merely by reason of a change in its location).
- (e) In addition to it, if the Central Government is of the opinion that having regard to the financial position of any class of establishments or other circumstance of the case, it is necessary so to do, than it may exempt that class of establishments from the operation of this Act for a specific period.

Such exemption when granted should be notified in the Official Gazette and should specify the period of exemption and the conditions, if any, subject to which the exception has been granted. The exemption may be granted retrospectively or prospectively.

13.4 Administration of the Schemes

The fund, The Family Pension Fund and the Insurance Fund established under various Schemes created under the Act, vests in a Board of Trustees called the Central Board. The Central Board administers the Funds in such manner as is specified in the relevant Scheme.

The Central Board is constituted by the Central Government. Likewise for the States, the State Board is constituted by the Central Government, in consultation with the concerned State Government. When these Boards are constituted, a notification to this effect is made in the Official Gazette and the date of their constitution is also notified in the official Gazette. While the Central Board administers the Fund in respect of employees, employed in the establishments, under the jurisdiction of the Central Government, the State Board does the same work in respect of establishments covered by this Act and under the jurisdiction of the appropriate State Government.

These Boards are body corporate with perpetual succession and common seal and may sue and be sued in their respective name.

Central Board and state Board are constituted on the principle of tripartite representation-representatives of the Government (both of the Central Government and State Government), representatives of the employers and the representatives of the employees.

13.4.1 Constitution of the Central Board

Section 5-A of the Act provides that the Central Board shall consist of a chairman and a Vice-Chairman to be appointed by the Central Government. The Central Provident Fund Commissioner too shall be appointed to the Board. Besides, a maximum of fifteen members, from amongst the officials of the Central Government, shall be appointed by the Central Government, to act as members of the Board. In order to represent the views of State Governments of such States, as the Central Government may specify in this behalf too shall be appointed by the Central Government, with a view to represent the employers of the establishments to which the Scheme applies, the Central Government shall appoint a maximum of ten persons. The appointment shall be made after consultation with such organizations of employers as may be recognized by the Central Government in this behalf.

To safeguard the interest of the employees, a maximum of ten persons representing employees in the establishment to which the 'Scheme' applies, shall be appointed by the Central Government, after consultation with such organizations of employees as are recognized in this behalf, by the Central Government.

The Scheme shall, in relation to the Central Board, lay down provisions for the following matters :

- (a) Terms and conditions for the appointment of a member of the Central Board;
- (b) Time, place and procedure of the meetings of the Central Board;
- (c) Manner in which the Fund (which as you have already read, vests in the Central Board), shall be administered;
- (d) Functions that the Central Board would be required to perform.
- (e) Rules and the manner, regarding maintaining proper accounts of income and expenditure of the Central Board (whole framing these rules the Central Government is required to consult the Comptroller and Auditor General of India).

The Central Board is required to submit to the Central Government an annual report of its work, which shall be laid before each House of Parliament, to assist the Central Board, the Central Government may appoint may by notification in the official Gazette, appoint an executive Committee.

13.4.2 State Board

A Board of Trustees may be constituted by the Central Government, for a State. This Board may be called a state board. The Central Government would constitute the State Board after consultation with the Government of the concerned State. When constituted it would be notified in the Official Gazette. The manner in which the State Board would be constituted would be prescribed by the Scheme. The Scheme shall also specify the terms and conditions for the appointment as a member of the State Board and also the time, place and procedure of the meetings of the State Board.

The powers and duties of the State Board shall be such as shall be assigned to it by the Central Government from time to time.

13.4.3 Appointment of Officers

Besides the Central Provident Fund Commissioner, who shall be the Chief Executive Officer of the Central Board, the Central Government may appoint a Financial Adviser and Chief Accounts Officer, to assist him in the discharge of his duties.

Central Board is also empowered to make other appointments. These posts include Additional Central Provident Fund Commissioners, Deputy provident Fund Commissioners, Regional Provident Fund Commissioners, Assistant Provident Fund Commissioners and such other officers and employees, as the Board considers necessary for the efficient administration of various Schemes framed under the Act. However in case of an appointment to a post carrying a scale of pay equivalent to the scale of pay of any Group 'A' or Group 'B' post under the Central Government can only be made after consultation with the Union Public Service Commission. Such consultation is not necessary if the person to be appointed is at the time of his appointment, a member of the Indian Administrative Service, or is in the service of the Central Government or a State Government or the Central Board in a Group A or Group B post.

The State Board is also authorized to appoint such staff as it may consider necessary. State Board can make appointments only after seeking prior approval from the State Government.

13.4.4 Legality of Acts done

Section 5-DD of the Act Provides that any act done by or proceeding taken either by the Central Board (Executive Committee) or by the State Board shall not be invalidated or questioned merely on the ground that at the time of taking the action or taking the proceedings, there was some defect in the constitution or there existed some vacancy in any of the above mentioned bodies.

13.4.5 Delegation

Both the Central Board and the State Boards are empowered are empowered to delegate their functions. While the State Board may delegate its functions to its Chairman or to any of its officers, the Central Board may delegate to its Chairman or to the Executive Committee, such of its powers and functions under this Act, as it may deem necessary for the efficient administration of various Schemes framed

under the Act. the delegation can be unconditional or subject to conditions and limitations, specified in this regard by the Board.

13.4.6 Determination of Moneys Due from Employers

Section 7-A of the Act empowers, the Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner or any Assistant Provident Fund Commissioner, to exercise the below mentioned powers, with a view to have efficient administration of the Provident Fund Scheme, the Family Pension Scheme or the Insurance Scheme, to a factory/or other establishment, to which this Act is applicable :

- (a) To determine the amount due from any employer under any provision of this Act, the Scheme, the Family Pension Scheme or the Insurance Scheme;
- (b) To conduct such enquiry as the above mentioned authorities deem necessary to determine the liability of the employer;
- (c) To make an order on the basis of enquiry of the amount due from the employer.

The officer conducting the enquiry for the purpose mentioned in clause (a) above, shall have the same powers as are vested in a Court under the code of Civil Procedure, 1908, for trying a suit in respect of the following matters, namely :

- (i) Enforcing the attendance of any person or examining him on both;
- (ii) Requiring the discovery and production of documents;
- (iii) Receiving evidence on affidavit;
- (iv) Issuing commissions for the examination of witnesses.

It is to be further noted that any such inquiry shall be deemed to be a judicial proceeding. It is incumbent upon person conducting the inquiry that before passing any order in the inquiry, the authority must give a reasonable opportunity to the employer to represent his case.

13.4.7 Mode of Recovery of Moneys Due from Employer

Section 8 empowers the Central Provident Fund Commissioner or such other officer as may be authorized, to recover any amount due from the employer, under the provision of this Act in the same manner as an arrear of land revenue.

The amounts mentioned below may be recovered from the employer of any establishment to which any Scheme or the Insurance Scheme applies, namely-

- (i) Any contribution payable to the Fund or to the Insurance Fund; or
- (ii) Damages recoverable under Section 14-B; or
- (iii) Accumulations required to be transferred under sub-section (2) of Section 15 or under sub-section (5) of Section 17; or
- (iv) Any charges payable by the employer under any other provisions of this Act or of any provision of the Provident Fund Scheme or the Insurance Scheme.

Section 8 empowers the appropriate Government also to recover from the employer in relation to an exempted establishment any amount due in respect of the following matters namely :

- (i) And damages recoverable under Section 14-B; or
- (ii) any charges payable by the employer to the appropriate to the appropriate Government under any Provisions of this Act or under any of the conditions specified under Section 17; or
- (ii) Contribution payable by him toward the Family Pension Scheme or the Insurance Scheme under Section 17

13.4.8 Recovery of Moneys by Employers and Contractors

The amount of employer's contribution as well as the employer's contribution and any charges necessary for meeting the cost of administering the Fund, paid or payable by an employer in respect of an employee employed by or through a contractor may be recovered by such employer from the contractor. Section 8-A further provides that such recovery may be made either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

The contractor may in turn recover from such employee the amount of employee's contribution by deduction from the basic wages, dearness allowance and retaining allowance (if any), payable to such employee. In no case, the contractor shall be entitled to deduct the employer's contributions or any charges, mentioned above, a from the basic wages, dearness allowance, and retaining allowance (if any) payable to an employee employed by or through him. Protection against Attachment.

13.4.9 Protection Against Attachment

Any amount standing to the credit of any member in the Fund, Family Pension Fund or the Insurance Fund, shall not, in any way whatsoever, be capable of being assigned or charged. Nor can such amount be attached under any decree or order of any Court in respect of any debt or liability incurred by the member. Even an official assignee appointed under the Presidency-Town-Insolvency Act 1909 or any receiver appointed under the Provincial Insolvency Act, 1920 shall not be entitled to, or have any claim on, any such amount (Section 10).

It is to be further noted that the amount standing to the credit of a member in the Fund (in case of an exempted employee here we mean amount standing to the credit of the exempted employee in a provident fund) Family Pension Fund or the Insurance Fund as the case may be at the time of such members death and payable to his nominee under the Scheme (or the rules of the provident fund) shall vest in the nominee and shall be free from any debt or other liability incurred by the deceased or the nominee before the death of the member or of the exempted employee. It is to be further noted that such amount shall not be liable to attachment under any decree or order of any Court.

13.4.10 Priority of Payment of Contributions over other Debts

If any employer is adjudicated insolvent or an order for winding up of a company is made, in such a situation, payments mentioned below, shall be given priority over debts of the employer, namely:

- (i) any contribution payable to the Fund or the Insurance Fund; or
- (ii) damages payable under Section 14-B; or
- (iii) accumulations required to be transferred under Section 15(2); or
- (iv) any charges payable by the employer under any other provision of this Act or of any provision of the Scheme or the Insurance Scheme such as charges payable to the appropriate government and the charges payable under any of the conditions specified in Section 17.

The above mentioned provisions relating to priority of debts is similarly applicable to employees of exempted establishments. Priority to the above payments is given over other of the employer or the company, if such

contributions, damages, accumulations or charges were deemed to be included among the debts specified in the following Act namely;

- a) Section 49 of the Presidency-towns Insolvency Act, 1990;
- b) Section 61 of the Provincial Insolvency Act, 1920;
- c) Section 530 of the Companies Act, 1956.

Section 11(2) of the Act stipulates that if any amount is due from the employer, which may be in respect of employee's contribution deducted from the wages of the employee or may be with respect to the employer's contribution, in such a situation the amount so due shall be deemed to be first charge on the assets of the establishment. Not only this, such amount shall be paid in priority to all other debts.

13.4.11 Inspectors (Section 13)

For the purpose of the Act, the Scheme, the Family Pension Scheme or the Insurance Scheme, the appropriate Government may, by notification in the official Gazette, appoint such persons as Inspectors, as it thinks fit. The inspector so appoint shall function within the areas of their jurisdiction.

Power of the Inspectors

Any Inspector so appointed may for the purpose of inquiring whether any of the provisions of this Act for any Scheme, Family pension Scheme or the Insurance Scheme have been complied with by the employer, may do the following;

- a) require an employer or any contractor from whom any amount is recoverable under Section 8-A furnish such information as he may consider necessary;
- b) may at any reasonable time enter and search any establishment or any premises connected with it and may require any one found in charge at that place to produce before him for examination any accounts, books, registers and other documents relating to the employment of persons or the payment of wages in the establishment;
- c) he may examine with respect to any matter relevant to any of the purpose mentioned above, any employer or any contractor, from whom any amount is recoverable under Section 8-A, his agent or servant or any premises connected therewith and also to any person whom the Inspector has

reasonable cause to believe to be or to have been, an employee in the establishment.

- d) he may make copies of or take abstracts from, any book, register or other document maintained in relation to the establishment. He may seize such book, register or other document or portions thereof as he may consider relevant, in cases where he has reason to believe that any offence under this Act has been committed by the employer.
- e) He may exercise such other powers as may be vested in him by the Scheme or by the Insurance Scheme.

Every Inspector so appointed is deemed to be public servant within the meaning of Section 21 of the Indian Penal Code and the provisions of the code of Criminal Procedure, 1898 shall so far as may, shall apply to every search of seizure made under the authority of a warrant issued under Section 98 of the said code.

13.5 Infancy Benefits

With a view to protect the establishments from the additional burden of making contribution to provident fund in respect of its employees, Section 16 of Act provides that this Act shall not apply to any establishment newly set up until the expiry of three years from the date on which the establishment is or has been set up. With the object of removal of doubts, the Act further says that an establishment shall not be deemed to be newly set up merely by reason of change in its location.

The Central Government has been empowered by clause (2) of Section 16 to exempt establishments from the operation of this Act, provided it is of the opinion that having regard to the financial position of any class of establishments or other circumstances of the case, it is expedient or necessary, not to do. When a decision to this effect has been taken, it shall be notified in the Official Gazette. The exemption may be total or subject to certain conditions, to be specified in the Official Gazette. Central Government has been further empowered to exempt, both retrospectively or prospectively. The period for which the exemption would be granted, too would be specified in the notification.

However a word of caution, in view of *Visva Bharti v R.P.F. Commissioner* 1983 lab IC 38, it would be remembered that the financial position of any establishment is not the sole criterion which will entitle an establishment to an exemption under Section 16(2) of the Act. other circumstances too shall also have to be considered. This description implies that whenever it has to be found whether a particular establishment is an infant factory or not, all the facts and circumstances should be taken together, than only we may arrive at a conclusion.

The real test is “to find out whether on the entire complex of facts of a given case, it can be concluded that the original legal entity, the establishment has come to an end and had been succeeded by a fresh legal entity”. The fresh entity is entitled to the infancy benefits, if the answer to this questions is in yes.

Another situation where the question of applicability of this section might arise in, when an establishment goes into liquidation. When an establishment goes into liquidation, only this does not imply that the factory has ceased to function forever, nor does it imply that manufacturing process will not take place in the factory simply because the establishment has gone into liquidation, thereby entitling in to the infancy benefits.

In *K.B. Jacob v R.P.F. Commissioner* 1987 Lab. IC. 1139 the court prescribed that whenever a newly set up establishment claims to have the protection of this section, the onus of proof lies on the authorities of the alleged new establishment to prove that the new establishment is in reality a new one and not a continuation of an existing establishment. But whenever the authority to required to decide such issue they should follow the principles of natural justice and the question of whether the new establishment is or is not entitled to the benefits of Section 16, cannot be decided without giving the employer and the employees, an opportunity of being heard.

13.6 Miscellaneous

Penalties and Offences

Section 14 deals with imposition of penalties on individuals for committing various offense, while Section 14-A deals with imposition of penalties on companies for committing offences, under the Act. Section 14-AA prescribed enhanced punishment for one who having been convicted by a Court of an offence

punishable under this Act, the Scheme, the pension Scheme or the insurance Scheme commits the same offence again is liable for every such subsequent offence is liable to imprisonment for at least two year and maximum upto five years. In addition to imprisonment to the offender is liable to a fine of twenty five thousand rupees.

Under Clause (1) of Section 14 anyone who, with the object of avoiding any payment to be made by himself under this Act or under any of the three Schemes or of enabling any other person to avoid such payment, knowingly makes or causes to be made any false statement or false representation shall be punishable with fine of five thousand rupees or imprisonment for a term upto one year or with both.

13.6.1 Default in paying contribution or default to make the payment of administrative charges, inspection charges etc.

An employer who does not pay contribution to the Fund payable under Section 6 or defaults in the payments of inspection charges under Section 17(3) or does not pay the administrative charges payable by the employer under Paragraph 38 of the Scheme shall be punishable with imprisonment for a term which may extend to three years but:

- a) in case of default in payment of the employee's contribution which has been deducted by the employer from the employee's wages, the imprisonment shall not be less than one year and also a fine of ten thousand rupees;
- b) in any other case punishment shall not be less than six months and the fine shall be five thousand rupees;

However in specific cases the Court may, for any adequate an special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term (14(1-A)).

An employer who does any of the below mentioned acts shall be punishable under Clause (1-B) of Section 14, with imprisonment for a term which may be anything between six months to one year and shall also be liable to fine which may extend to five thousand rupees. Courts discretion, in suitable cases, to award leaser punishment in guaranteed in this Clause.

An employer's liability arises under the following circumstances:

- a) the employer defaults in paying contribution to the Deposit Linked Insurance Scheme, or

- b) Defaults in maintaining accounts, submitting returns, making investments, etc. with respect to the Insurance Scheme under Section 17 (3-A)(a).

Section 14(2) stipulates that the Provident Fund Scheme, the Insurance Scheme or the pension Scheme may provide that any person who contravenes, or makes default in complying with, any of the provisions thereof shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to four thousand rupees, or with both.

Whoever contravenes or makes default in complying with any provision of this Act or of any condition subject to which exemption was granted under Section 17 shall, if no other penalty is elsewhere provided by or under this Act for such contravention or non-compliances, be punishable with imprisonment for a period which may extend to six months, but which shall not be less than one month, and shall also be liable to fine which may extend to five thousand rupees.

13.6.2 Offences by Companies

If an offence under this Act or under any of the three Schemes is committed by a company, every persons, who at the time the offence was committed was 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 the proceeded against and punished accordingly (Section 14-A).

The In charge of the company will 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.

13.6.3 Cognizance and Trial of Offences

When an offence under this Act or any of the three Schemes has been committed, the Court will take cognizance of the offence when a report in writing, of the facts of constituting such offence made with the previous sanction of the Central Provident Fund Commissioner or any other officer as may be authorized by the Central Government, by notification in the official Gazette, in this behalf, by an Inspector appointed under Section 13.

13.6.4 Power to Recover Damages

An employer, under Section 14-b, is liable to pay damages under may or all of the following circumstances, namely;

- a) if the employer defaults in the payment of any contribution to the employee's Provident Fund, Family Fund or the Insurance Fund;
- b) he fails to transfer accumulations required to be transferred by him under sub-section (2) of Section 15 or sub-section (5) of Section 17, or
- c) he defaults in the payments of any charges payable under any other provisions of this Act, the Scheme or the Insurance Scheme or under any of the condition specified under Section 17.

In the above mentioned conditions, the Central Provident Fund Commissioner or such other officer as may be authorized by the Central Government, by notification in the Official Gazette in this behalf, may recover from the defaulting employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme.

This rule is subject to the following conditions:

- (i) before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard, and
- (ii) the Central Board may reduce or waive the damages levied as above in case of a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction, subject to such terms and conditions as may be specified in the Scheme.

13.6.5 Power of Court to make orders: (Section 14-C)

The court is empowered to award any punishment to a defaulter who commits any of the following acts namely:

- (i) the employer is convicted of an offence of making default in the payment of any contribution to the Fund, Pension Fund or the Insurance Fund, or
- (ii) the employer fails to transfer the accumulations required to be transferred by him under Section 15 or Section 17 (5)(2). Or

In the above mentioned conditions, Court may, in addition to award punishment for the default, may require the employer to pay the amount of

contribution or to transfer the accumulations, as the case may be, in respect of which the offence was committed.

If the employer fails to comply with the Court's order in the stipulated time, the employer shall be deemed to have committed "any further offence" for which he shall be punished with imprisonment in respect thereof under Section 14 and shall also be liable to pay fine which may extend to one hundred rupees for every day after such expiry on which the order has not been complied with.

13.6.6 Special provisions relating to existing provident funds

Every employee who is a subscriber to any provident fund of an establishment to which the Act applies shall, pending the application of a Scheme to the establishment in which he is employed, continue to be entitled to the benefits accruing to him under the provident fund, and the provident fund shall continue to be maintained in the same manner and subject to same conditions as it should have been if this Act had not been passed.

When as Scheme is applied to an establishment, the accumulations in any provident fund of the establishment, standing to the credit of the employees who become members of the fund established under the existing scheme shall, subject to the provisions, if any, contained in the new Scheme, be transferred to the Fund established under the new Scheme and shall be credited to the accounts of the employees entitled thereto in the Fund.

13.6.7 Authorizing Certain employers to maintain provident fund accounts

The Central Government under Section 16-A(1), may authorize the employer, by an order in writing, to maintain a provident fund account in relation to his establishment, subject to such terms and condition as may be specified in the Scheme.

For seeking the permission the employer should make the application to the Central Government, magnifying that majority of employees of the establishment are also desirous for it. Such application can be made by the employer of an establishment employing one hundred or more persons.

The Central Government shall not grant such permission to an employer who has committed any default in the payment of provident fund contribution or had

committed any other offence under this Act during the three years immediately preceding the date of such authorization.

Once the establishment has been granted permission to maintain a provident fund account as above, the employer of such establishment shall maintain such account, submit such return, deposit the contribution in such manner, provide for such account, submit such return, deposit the contribution in such manner, provide for such facilities for inspection pay such administrative charges and abide by such other terms and conditions, as may be specified in the Scheme.

The permission, as above, may be cancelled by the Central Government, if the employer fails to comply with any of the terms and conditions of the authorization or if the employer commits any offence under any provisions of this Act.

The authorization can be cancelled by the Central Government only after giving the employer, a reasonable opportunity of being heard.

13.6.8 Transfer of Accounts (Section 17-A)

Where an employee employed in an establishment to which this Act applies leaves his job and obtains re-employment in any other establishment to which this Act does not apply, the amount of accumulations to the credit of such employee in the Fund, or, as the case may be, in the provident fund of the establishment left by him shall be transferred, to the credit of his account in the provident fund of the establishment in which he is re-employed, if the employee so desires and the rules in relation to that provident fund permit such transfer.

Another situation may be where an employee employed in an establishment to which this Act does not apply, leaves his employment and obtains re-employment in another establishment to which this Act applies, the accumulations to the credit of such employee in the provident fund of the establishment left by him may, be transferred to the credit of his account in the Fund or, as the case may be to the provident fund of the new establishment provided the employees so desires and the rule in the relation to such provident fund permit the transfer (Section 17-A(2)).

13.6.9 Liability in Case of Transfer of Establishment (Section 17-B)

Where an employer in relation to an establishment, transfers that establishment in whole or in part, by sale, gift, lease or license or in any other manner whatever, the employer and the person to whom the establishment has been transferred, shall jointly and severally be liable to pay the contributions and other sums due from the employer under many provisions of this Act, the Scheme or the Pension Scheme, as the case may be, in respect of the period upto the date of such transfer.

The transfer shall be liable upto the value of the assets obtained by him by such transfer.

13.7 Sum Up

In this unit you have read about appropriate Government's power to exempt an establishment from the operation of the provisions of this Act and the Schemes framed there under. When such exemption has been granted, the employer is no more required to follow the provisions of the Scheme but is governed by the Scheme formed by him and approved by the Government. One thing that you have read is that the assumption may be from the operation of all of any of the provisions of the Schemes and the exemption may be either retrospective or prospective in operation. Before granting the exemption the appropriate Government shall take into consideration the objections, if any, of the employees of that establishment, views of the Commissioner and shall consult the Central Board. Such exemption may be cancelled if the employer fails to comply with the conditions subject to which the exemption has been granted.

The Act further lays down as to how the Scheme and the Fund established there under shall be administered. The Fund shall vest and be administered by the Central Board. Certain other agencies have been created under the Scheme to help the Central Board in achieving its objectives. In this unit the constitution and powers of the Central Board and other agencies have been discussed. A unique position is that both the Central Board and the State Boards are empowered to delegate their functions.

This unit also tells you about the infancy benefits. These benefits are available to establishments under the Act. the establishments which are entitled to those benefits are not required to make contributions under the Act and the

Schemes, in respect of their employees. The establishment are exempted for a period of three years from the date, from which the manufacturing process starts in that establishment. The spirit in granting these benefits is that the establishments of nascent age, should not be made to contribute, in respect of their employees, till they become strong enough to contribute.

13.8 Check Your Progress – A

Which of the following statements are true:

- (i) power to grant exemption to an establishment from the operation of the provisions of this Act vests in the Central Government.
- (ii) It is a prerogative of an employer to apply or not apply for an exemption and the employees have no role in the whole process of obtaining exemption.
- (iii) Once the exemption has been granted to an establishment the employer is not required to comply with the requirements of the 'Scheme'.
- (iv) Before exemption is granted to an establishment, the appropriate Government shall consult the Central Board.
- (v) The Central Provident Fund Commissioner may exempt an employee from the operation of the provisions of the Family Pension Scheme.
- (vi) Once the exemption has been granted to an establishment the employer is empowered to reduce the total quantum of benefits payable to the employees to minimize his burden.
- (vii) The fund vests in the Central Government and shall be administered by the Central Government.
- (viii) The Central Board consists of representative of Central Government and organizations of employers only.
- (ix) If a person to be appointed a member of the Central Board, is a member belonging to the Indian Administrative Services, consultation with the Union Public Service Commission is not necessary.
- (x) Infancy benefits are available to every establishment until the expiry of three years from the date on which the establishment had been established.
- (xi) For availing the benefits of Section 16, the relevant date is the date on which for first time the manufacturing process started in that factory.

- (xii) Central Government may exempt any establishment from the operation of this Act, if the financial position of that establishment requires so.
- (xiii) Whenever the ownership of any organization changes hand, it means and end of that establishment, consequently when the new management commences the establishment a new, the new management is entitled to the infancy, benefits granted by Section 16 of the Act.
- (xiv) Section 14-A of the Act deals with imposition of penalties on individuals for committing various offence.

B. Fill in the blanks:

- a) The rules regarding power to grant exemption to an
Under this Act is governed by Section under this Act is governed by Section of the Act.
- b) When an application for exemption has been received then the shall be consulted, who will appraise the with its views.
- c) When an establishment has been granted exemption under this Act, than without the permission of the the employer shall not reduce the benefits paid to the employees before the date of exemption.
- d) The exemption granted to an establishment under this Act may be if the employer to comply with any of the conditions, subject to which the was
- e) Section of the Act lays down the constitution of the Central Board.
- f) Maximum number of members who may be appointed to the Central Board as the representative of employees is
- g) Both the Central Government and the State Boards are empowered to their functions.
- h) Section of the Act deals with the provisions relating to infancy benefits available to an establishment under this Act.

- i) An employer who does not pay contribution to the Fund, payable under Section 6 of the Act shall be punishable with imprisonment for a term which may extend to Years.
- j) When an employee employed in an establishment to which this Act applied leaves his job and obtains re-employment in any other establishment to which this Act does not apply, the amount of accumulations to the credit of such employees in the Fund shall be transferred to the credit of his account in the of the establishment in which he is

13.9 Answers to Check Your Progress

A.

- (i) False
- (ii) False
- (iii) True
- (iv) True
- (v) True
- (vi) False
- (vii) False
- (viii) False
- (ix) True
- (x) True
- (xi) True
- (xii) True
- (xiii) False
- (xiv) False

B.

- a) Establishment, 17
- b) Central Board, appropriate Government
- c) Central Government
- d) Cancelled, Fails, exemption, granted
- e) 5-A
- f) Ten
- g) Delegate

- h) 16
- i) Three
- j) Provident fund, reemployed.

13.10 Terminal Questions

- 1) Describe various provisions relating to appropriate Government's power to exempt an establishment from the operation of the provisions of this Act.
- 2) Describe the provisions of law relating to the cancellation of an order of exemption.
- 3) Write a detailed note of the role of the Central Board.
- 4) Describe the constitution of the Central Board and also describe the circumstances and subject to what restrictions the powers may be delegated by the Central Board?
- 5) Describe the law relating to determination of moneys due from employer and also the mode of recovery of moneys from an employer.

13.11 Suggested Reading

- 1) The Employee's Provident Fund Act, 1952.

UNIT- 14

The Law Relating to Gratuity

Objectives

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

- Appreciate the basic principles governing gratuity,
- Appreciate the development of the practice of paying gratuity, and
- Understand the various provisions of the Payment of Gratuity Act, 1972.

Structure

- 14.1 Structure
- 14.2 Concept of Gratuity
- 14.3 Gratuity and other Superannuation benefits
- 14.4 The Payment of Gratuity Act, 1972
- 14.5 Definitions
- 14.6 Payment of Gratuity
- 14.7 Economic Implications of Gratuity
- 14.8 Conclusion
- 14.9 Key Words
- 14.10 Self Assessment
- 14.11 Further Readings

14.1 Introduction

Gratuity was originally treated as a payment, gratuitously made by an employer to his employee at his pleasure. However, the practice of employers paying such an amount, opened the way for employees to demand the same. Gradually, such demands gave rise to industrial disputes. As a result of a series of decisions of the industrial tribunals, this payment began to be regarded as legitimate claim of the workman.

There is evidence to show that the payment of gratuity existed since the late nineteenth century or early 20th century. An example is the practice of the Railways to pay gratuity to its employees on retirement or resignation after 15 years of service. When the Royal Commission on Labour in India studied the problem, they felt that the period of fifteen years as insisted by the Railways should be modified. The commission opined:

“the limitation now placed upon the grant of a gratuity to a subordinate on retirement or resignation after 15 years’ qualifying service should be modified to permit his voluntary withdrawal from service, if so incline, without any qualification except that of adequate previous notice of his intention.”

14.2 Concept of Gratuity

As mentioned above, gratuity means graciousness, a kindness, a gift etc. often in return for services rendered by a servant to his master. It was consideration and it was given freely or without recompense and was not a matter of right. It was not founded on any legal liability but was a mere bounty given out of appreciation of the works of an employee by the employer.

Very often gratuity was intended to help the workmen after retirement. It was treated as a reward paid to the workmen for long and faithful service rendered by them to the employer. Apart from these observations, there is no definition of gratuity in the Pay of Gratuity Act, 1972. A Gratuity was treated as a part of welfare fringe benefits. Even before it became a statutory right of the employee, demands were made by the workers from gratuity and industrial tribunals have considered it favorably. The amount was supposed to support the wage earner who all of a sudden loses it due to old age or other physical disability. Industrial jurisprudence, therefore, recognized gratuity as a retiral benefit, and regarded it as a compulsory payment, particularly in units which did not have other social security benefits like provident fund or pension schemes. In the case of prosperous establishments, tribunals considered the claim of the workmen for gratuity favorably in spite of other social security provisions. Some other employers provided benefit on the basis of some voluntary agreements. All these developments induced more and more workers to demand gratuity from their employers.

Position Before 1972 : Generally, gratuity claims could be sustained only if the employer was in a position to pay it. In other words, the employer's financial capacity to pay was treated as an important criteria by the adjudicators for determining the quantum of gratuity. In *Indian & Acetylene Co. Ltd. Employees Union v. Indian Oxygen & Acetylene Ltd.*², the Labour Appellate Tribunal enumerated some factors to be taken into consideration by the adjudicator before framing a scheme of gratuity, they were:

1. The broad aspects of financial capacity of the employer;
2. The profit making capacity of the employer;
3. The profit earned by the employer in the past;
4. The extent of the services of the employer;
5. The charges of the employer to replenish them; and
6. The claim of the capital invested by him, having regard to the risk involved.

In fact until this decision of the Labour Appellate Tribunal there were no serious attempts to systematise the payment of gratuity. For some time these factors were considered to be satisfactory. Later when these factors were cited before the Supreme Court, in *Bharatkhan Textile Manufacturing Co. Ltd. v. Textile Labour Association*³ it observed that these factors cannot be treated as exhaustive, as there could be other material considerations like provident fund, pension etc. which has a bearing upon the retirement income of an employee. Gratuity was generally determined on the basis of the needs of the workmen, economic conditions prevailing and other benefits available to the workman on his retirement. In short judicial solution of questions on gratuity was made only on an adhoc basis and the lack of a uniform pattern, and the scheme for the payment of gratuity was not present. This lacuna was noted by the Supreme Court and called for a legislative action in *Delhi Cloth and General Mills Co. Ltd. v. its Workmen*⁴. There the Court recommended that a reasonably uniform scheme might be evolved by the legislature which could prevent judicial battle over the issue between the employers and workmen. The Supreme Court was hopeful that such a legislation will, while eliminating the cause of friction between the employer and the employee conduct certainty and uniformity in the matter of gratuity.

After the decision of the Supreme Court in the *Delhi Cloth Mills Case* the National Commission on Labour headed by Justice Gajendra Gadkar brought out

its report. The Commission examined and reported almost on all aspects of Labour relations in India. To the great surprise of many industrial law experts, the Commission did not make any specific recommendation with respect to gratuity. Similarly the Commission did not suggest any legislative measure. As the Commission felt that the law relating to gratuity was only in the initial stages, the Commission left it to the process of evolution.

Hence, it could be seen that the decisions relating to gratuity were taken on an adhoc basis by the adjudications and that they were to bear in mind the financial capacity of the employer to pay and the importance of keeping the economic balance by resorting to the principle, region-cum-industry.

Judicial pronouncements favored the creation of a fund because the employer could pay the gratuity from the interest accrued on it. Similarly, the Supreme Court held that in order to judge whether the financial position of the employer would bear the strain of gratuity scheme, the first step was to find out the number of retirements, per year and then to enquire whether the employer could be expected to bear the burden from year to year.

Hence it could be seen that much uncertainty prevailed in this area. The legislation in the regard clarified the legal position regarding the payment of gratuity.

14.3 Gratuity and Other Retrial Benefits

Pension and provident fund are some benefits which accrue on retirement apart from gratuity. In order to appreciate the concept of gratuity and appreciate the concept in a better way, a comparison of it with the other benefits is necessary.

Gratuity and Pension : Both gratuity and pension are considered and paid for an orderly and humane elimination from industry of Superannuated or disabled employees who but for such retiring benefits would continue in employment even though they function inefficiently. Both relate to payment of money to a workman on retirement of employment due to ill health or on attaining the age of retirement. An apparent difference between the two is only that gratuity is paid as lump sum and pension, very often is a periodic payment of a specified sum. Gratuity and Provident Fund: Like gratuity, provident fund is also a sum which is intended to give an employee a support on retirement. The object sought to be achieved by

gratuity and provident fund is the same. However, in order to obtain this the employee has to contribute a part of his wages unlike the gratuity. It is a lump sum payment as a retrial benefit on superannuation or on termination of service for specific reasons. As Justice Subba Rao put it, provident fund itself may not be sufficient to meet the requirements of a works old age or to provide for his dependents, during his life time or after his death, therefore, gratuity is an additional form of relief for him to fall back upon⁵. The payment of provident fund is governed by the Employees Provident Fund Act 1952 and the employees coming within the scheme of the Act, are entitled to the benefit of the statute. In many industrial concerns, schemes similar to that of the provident Fund Act have been adopted and followed. In the case of provident fund, along with the contribution of the worker, the employer is also expected to contribute. So when the lump sum payment of provident fund is made, the employer is bearing only a part of the payment. In the case of gratuity, there is no such sharing and the entire payment has to be made by the employer.

14.4 The Payment of Gratuity Act, 1972

With the growth of industrialization more and more cases arose, claiming gratuity. As there was no statute on this, the State of Kerala enacted a legislation⁶ for payment of gratuity to workers employed in factories, plantations, shops and establishments. Similarly West Bengal also brought forth a legislation⁷ for payment of gratuity.

Following the pattern adopted by the Kerala and West Bengal governments, some other State Governments also took steps to enactment similar legislation. Hence, it became necessary for the Centre to enact a statute on the subject to ensure a uniform pattern of payment of gratuity through-out the country. As a consequence, the payment of Gratuity Act, 1972 was passed. The Act provides for payments of gratuity to employees engaged in factories, mines, oil fields, plantations, ports, railway companies, shop and other establishments.

14.5 Definitions

‘Employee’ means any person other than an apprentice employed on wages, not exceeding two thousand and five hundred rupees per month or such higher

amount as the Central Government may, having regard to the general level of wages, by notification, specify in any establishments, factory, mine, oil field, plantation, port, railway, company, or shop to do any skilled, semi-skilled, or unskilled manual supervisor, technical or clerical work, whether the terms of such employment are express or implied and whether or not such person is employed in a managerial or administrative capacity but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity" Section 2(e).

According to the explanation added to the definition in the case of an employee who has been employed for a period not less than five years, on wages, not exceeding the amount for the time being specified by or under the definition (at present Rs. 2500/-) is employed at any time thereafter on wage exceeding that amount, gratuity in respect of the period during which such employee was employed or wages not exceeding that amount has to be determined on the basis of wages received by him during that period.

"Employer" means in relation to any establishment factory, mine, oil field plantation, port railway, company or shop.

i) belonging to, or under the control of the Central Government or State Government, a person or authority appointed by the appropriate government for the supervision and control of employees, or where no person or an authority has been appointed, the head of the Ministry or the department concerned.

ii) belonging to or under the control of any local authority, the person appointed by such authority for the supervision and control of employees or where no person has been so appointed the chief executive officer of the local authority.

iii) in any other case, the person who or the authority which has the ultimate control over the affairs of the establishment, factory, mine, oilfield, plantation, port, railway, company or shop and where the said affairs are entrusted to any other person whether called a manager, managing director or by any other name, such person (sec. 2(f)).

'Family' in relation to an employee shall be deemed to consist to:

i) in the case of a male employee, himself, his wife, his children, whether married or unmarried, his dependent parents, the dependents parents of his wife and the widow and children of his predeceased son, if any;

ii) in the case of a female employee, herself, her husband, her children, whether married or unmarried, her dependent parents and the dependents parents of her husband and the widow and children of her predeceased son if any (sec. 2(h)).

In case, the personal law of an employee permits the adoption of a child, such adopted child will become part of the family of the employee. Similarly, if the child of an employee is give in adoption to some other person that child will cease to be a member in the family of the employee.

Retirement means termination of the services of an employee otherwise than an superannuation (Sec. 2(q)). Section 2(r) defines 'Superannuation'. In relation to an employee, it means the attainment by the employee of such age as fixed in the contract or conditions of service as the age on the attainment of which the employee shall vacate the employment.

Though, the words retirement and superannuation are synonymous, in the statute they are used in contradiction to each other. Retirement covers cases of termination of service not to the attainment of a certain age. Superannuation on the other hand means the attainment by the employee of such age as fixed in the contract or conditions of service as the age on the attainment of retirement has a wider meaning than the normal meaning ascribed to it. The commonly understood meaning of the word 'retirement' has been given to the word superannuation. Superannuation takes place automatically on the employee reaching a particular age, for which no notice is required and hence termination cannot include superannuation.

The other definitions appearing in the discussion are that of the completed years of service and continuous service. Completed year of service according to section 2(b) means continuous service for one year. Section 2(c) defined continuous service. According to section 2(c) continuous service means continuous service as defined in Section 2A of the Act. This section was added to the Act by a major amendment in the year 1980. The present section makes the definition abundantly clear and the explanation added to the section under clause 2 besides being clarificatory in nature, liberalizes the provisions of the Act for calculating the number of days on which an employee's has actually worked. Such days will include (1) days on which an employee has been laid off under (a) an agreement or (b) under the law applicable to the establishment in which the employee is working (2) earned leave utilized with full wages; (3) absence due to temporary disablement

caused by accident in course of his employment and (4) maximum of twelve weeks of maternity leave utilized by a female employee. The statutory provision reads:

For the purpose of this Act:

- 1) an employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave, not being absent in respect of which order treating the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment, layoff strike or lockout or cessation of work due to any fault of the employee....
- 2) Where an employee, not being an employee, employed in a seasonal establishment, is not in continuous service within the meaning of clause (1), for any period of one year or six months he shall be deemed to be in continuous service under the employer.
 - a) for the said period of one year, if the employee during the period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
 - i) one hundred and ninety days in the case of an employee employed below the ground in mine or in an establishment which works for less than six days in a week; and
 - ii) two hundred and forty days, in any other case,
 - b) for the said period of six months, if the employee during the period of six calendar months, preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than-
 - i) ninety five days in the case of an employer employed below the ground in a mine or in an establishment which works for less than six days in a week and
 - ii) one hundred and twenty days in other case;
- 3) Where an employee, employed in a seasonal establishment, is not in continuous service within the meaning of clause (1) for any period of one year or six months, he shall be deemed to be in continuous service under

the employer for such period if he has actually worked for not less than 28 (twenty five) percent of the number of days on which the establishment was in operation during such period (Section 2A)

‘Wages’ according to section 2(s) means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of employment and which are paid or are payable to him in cash and includes, dearness allowance, but does not include any bonus, commission, house rent, allowance, over-time wages and any other allowance.

14.6 Payment of Gratuity:

In accordance with the provision of the Act, gratuity has been made payable on the termination of an employee’s employment which means on the cessation of relationship of employer and employee. This cessation may take place in many ways. The employee may resign his job or abandon it or he may retire on reaching a particular age, generally known as the age of superannuation or his services may be put to an end by the employer by retrenching him or dismissing him or discharging him from service. Death is yet another factor which results in the termination of an employee.

Now let us have a look at the provisions for the payment of gratuity. Section 4(1) reads:

“Gratuity” shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years.

- a) on his superannuation, or
- b) on his retirement or resignation, or
- c) on his death or disablement due to accident or disease;

Provident that the completion of continuous service of five years shall not be necessary where the termination of the employment of an employee is due to death or disablement.”

The statute further provides that in case of an employee, the gratuity payable to him shall be paid to his nominee or if no nomination has been made to his heirs.

The amount of gratuity payable is fixed by sub-section (2) of Section 4 for every completed year of service of part thereof in excess of six months, the employer is bound to pay gratuity at the rate of fifteen days wages based on the rate of wages last drawn by the employee concerned. In the case of a piece rated employee daily wages has to be calculated on the average for a period of three months immediately preceding the termination of his employment. In the case of an employee, employed in a seasonal establishment, the employer has to pay the gratuity at the rate of seven days for each season.

Section 4 among other things, prescribes a limit for the quantum of gratuity, the amount payable as gratuity shall not exceed fifty thousand rupees. Similarly while computing the gratuity payable to an employee who is employed after his disablement on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period and his wages for the period subsequent to his disablement shall be taken to be the wages so reduced. This sub-section (4) of Section 4 would not come into play where the disabled employee is re-employed after termination of his employment due to disablement and in such a case he will have earned his gratuity and the re-employment will give rise to new contract of service. Only point in such case is that the new employment must come within the enabling provision under sub-section (1) of Section 4.

Sub-section 6 of the section is to be analyzed in a different perspective. It is in fact a forfeiture clause. It may be argued that the subsection has been introduced in recognition of the principle that a gratuity is paid to workman for not only long and continuous service but for service which is meritorious as well.

Sub-section 6 of section 4 reads:

“Notwithstanding anything contained in sub-section (1)-

- (a) The gratuity of an employee, whose service have been terminated for any act, willful omission, or negligence causing any damage or loss, or destruction of property any damage or loss, or destruction of property belonging to the employer shall be forfeited to the extent of the damage or loss so cause;
- (b) the gratuity payable to an employee may be wholly or partially forfeited-

- (i) if the service of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or
- (ii) if the service of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence if committed by him in the course of his employment.

The sub-section concentrates on the significance of meritorious service for enabling an employee to gratuity. A controversy regarding the forfeiture of gratuity was set at rest by the Supreme Court in *Delhi Cloth & General Mills Co. Ltd. v. Its Workmen*⁸, the court observed;

“It was urged that the tribunal was in error in denying to the workmen the gratuity when employment is determined on the ground of misconduct. It was urged that it is now a rule settled by decisions of this court, that the employer is bound to pay a gratuity notwithstanding termination of employment on the ground of misconduct. It may be noticed that in *Rashtriya Mill Mazdoor Sangh Case* (1957 ICR 561) and in *Ahmedabad Mill Owner’s Association Case* (1954-I 349) provision was expressly made denying gratuity to the workman dismissed for misconduct. But in later cases, a less rigid approach was adopted. In *Garment Cleaning Works Case* (1961-I LLJ 513) this court observed at p. 516 ‘on principle if gratuity is earned by an employee for long and meritorious service, it is difficult to understand why the benefit thus earned by long and meritorious service should not be available to the employee even though at the end of such service he may have been found guilty of misconduct which entails his dismissal. Gratuity is not paid to the employee gratuitously or merely as a matter of boon. It is paid to him for the service rendered by him, to the employer and when it is once earned, it is difficult to understand why it should necessarily be denied to him, whatever may be the nature of misconduct for his dismissal.....

Later judgment of the Supreme Court upheld the view that gratuity should not be denied even if termination of employment was for misconduct. The principle which the Supreme Court has established is not subject to the provisions of the Act.

Though the employer has a right to forfeit gratuity, of an employee, the forfeiture cannot exceed the actual damage or loss occurred to the employer on

account of an omission of the employee. However, in cases, of termination of service on account of moral turpitude, the statute prescribes no restrictions. In all other cases, the statute provides that the gratuity payable to the employee should be paid.

The statute further provides that the employee who was completed on year of service shall nominate one or more persons of his family for the purpose of distributing gratuity. This is with a view to avoid possible litigation by the heirs of the employers for gratuity in case of death of the employee before actually receiving the amount. If a nominee falls outside the scope of the family, the nomination will be void.

It is very important point to note that an amount payable under the statute is made available to the beneficiary concerned. Section 7 of the Act specified the procedure for the distribution of gratuity. Section 7 casts two functions (1) it obliges a person eligible for the payment of gratuity or any other person authorized in writing by him to apply in writing to the employer for the payment thereof; and (2) casts a duty on the employer to determine the amount of gratuity and intimate it in writing to that person and the controlling authority under the Act. It is a statutory duty of the employer to arrange payments of gratuity to the employee or his nominee. The Act provides that the employer has to arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the employee. An additional clause (3A) Added to the section further provides that if employer fails to pay the amount within the stipulated time, the employer is liable to pay simple interest at a rate specified by the Central Government. In the case of dispute over the payment of gratuity, the controlling authority is vested with quasi-judicial functions to decide the issue. The controlling authority after due enquiry and after giving the parties an opportunity of being heard has to determine the issue. If the authority that an amount is due to the employee, the authority has to direct the employer to pay the amount to the employee, by reposting the same with the authority. The amount return has to pay the amount to the concerned employee when the applicant is the employee or the nominee or the guardian of a nominee.

To avoid any dissatisfaction among the parties a right of appeal has been conferred upon the person aggrieved by the order of the controlling authority (under Sub-section (4) and such appeal can be filled before the appropriate government or such other authority specified by the appropriate Government sub-

section (7)). However, no appeal by an employer will be admitted unless at the time of preferring the appeal the appellant has deposited an amount equal to the amount of gratuity payable with the appellate authority or has to produce a certificate issued by the authority (controlling authority) that the amount has been deposited with him. The appellate authority after giving the parties an opportunity of being heard, shall confirm, modify or reverse the decisions of the controlling authority.

Hence, it can be seen that sec. 7 is a self contained and complete machinery itself. It provides for the determination of disputes arising out of payment of gratuity under the Act. However it has to be noted that this does not bar the right of an employee from approaching the labour court under Sec. 33C of the Industrial Disputes Act, 1947. Similarly the writ jurisdiction of the High Court has also not been taken away.

If the amount of gratuity payable under the Act is not paid by the employer within the prescribed time, the controlling authority, on an application by the persons concerned, is entitled to issue a certificate for the amount to the collector. The collector is entitled to recover the same from the employer as if it is an arrear of land revenue and the collector is authorized to collect the amount with interest thereon and to pay the same to the person concerned. It is further provided that the amount of such interest in no case shall exceed the amount of gratuity.

With the enactment of the Act, several controversies and vagueness in the area of gratuity have been set at rest to a great extent. Though the Act does not define gratuity, it lay down unequivocally the conditions and circumstances under which gratuity is earned and become payable. The initial concept of gratuity has changed and is now a compulsory payment on superannuation, retirement, death or disablement of the employee.

14.7 Economic Implication of Gratuity

At the time of retirement though a lump sum amount is paid to an employee, the financial burden of gratuity was rarely considered to be an undue strain on the financial position of the employer. This financial burden on the employer not only contributes to the economic betterment and social security of the employee but also leads to industrial peace and harmony resulting in higher production and

consequently more profits for that industry apart from reduction in taxation. Regarding the burden cast by gratuity on the employer the Supreme Court in *Sone Valley Port Land Cement Co. v. Its Workmen*⁹ observed:

“There are two ways of looking at this matter of the burden of a gratuity scheme. One is to capitalize the burden on actuarial basis and that would naturally show theoretically that the burden would be heavy. The other is to look at the scheme and that shows that generally speaking not more than three to four percent of the employees retire each year. If the burden is calculated on the basis of this approach as it should be there is in our opinion no reason to interfere with the view of the tribunal that the appellant can bear this burden.”

Employer will have to give the amount of gratuity at the time of retirement of an employee. Therefore, the amount has to be readily available with the employer. A practical suggestion was advanced by the Supreme Court in *Bhurhanpur Tapti Mills Co. Ltd. v. Bhurhanpur Tapti Mill Mazdoor Sangh*¹⁰

“A scheme for gratuity, no doubt, imposes a burden on the finances of the concern that the pressure is ex-facie distributed over the years, for it is limited to number of retirements each year. The employer is not required to provide the whole amount at one. He may create a fund if he likes, and pay from the interest which accrues on a capitalized sum determined actually that is one way of providing the money. Ordinarily the payment is made each year to those who retire. To judge whether the financial position would bear the strain the average number of retirement per year must be found out”.

The employer's contribution to his workers gratuity scheme may be justified in the following manner. The employee is doing work for the employer and thereby adding the revenue for the employer. The revenue accruing to him includes an element of depreciation. Machinery and other fixed assets are scrapped and replaced after their production capacity is exhausted. This practice of depreciation and scrapping are not applicable in the case of workers, who are human beings. They live and their living cost continue even after their usefulness as an agent of production is reduced to naught. The worker has therefore a right of maintenance when his physical facilities decline to such an extent as to hinder him from any gainful physical work. It is the duty of the employer to bear the burden of his waste after the employer has exhausted the workers industrial life and no employer can therefore be permitted to throw his retired workmen to destitution. It provide for

the old age security of his retired workmen. It is only just and proper that lifelong subsistence is provided to the worker from the profession he adopts and serves even though he may not be able to work the whole life due to old age or other liability or disability.

14.8 Conclusion

From the above discussion, it could be seen that the difficulty of not having a uniform standard for the payment of gratuity was done away with the introduction of a central legislation in this regard. Earlier, stray instances of payment of gratuity by some of the employers out of sense of charity gradually opened out the gates for the employees to demand the same as a right. This right found a formal legal expression in the Payment of Gratuity Act, 1972.

14.9 Key Words

Gratuity : A lump sum amount payable by the employer on termination of an employee's employment. The amount is payable to the employee only after he has rendered continuous service for not less than five years.

Termination of Service : For the purpose of the Payment of gratuity Act, termination of service will include superannuation, retirement or resignation, death or disablement due to accident or disease.

Quantum of Gratuity : Amount of gratuity payable to an employee on termination of service. For every, completed year of service or part thereof in excess of six months, the employee is entitled to gratuity at the rate of fifteen days wages based on the last drawn wages. The maximum amount of gratuity shall not exceed rupees fifty thousand.

14.10 Self Assessment

Answer the following question in not more than one and half page each:

1. What are the salient features of the Payment of gratuity Act, 1972?
2. Distinguish gratuity from other retirement benefits likes pension and provident fund?
3. Mention briefly the law relating to gratuity before the enactment of the Payment of Gratuity Act, 1972?

4. What are the conditions that enable an employee for gratuity?

14.11 Further Readings

Maresh Chandram, GRATUITY LAW, N.M. Tripathi, Bombay.

D.S. Chopra, PAYMENT OF GRATUITY ACT, Eastern Law House, Calcutta.

UNIT– 15

Case Laws

Objectives

After going through this unit you would be able to acquaint with

- How cases are dealt with the courts.
- How commission 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.

Structure

Express Newspaper Ltd. Vs Union of India A.I.R. 1958 S.C. 578

- 15.A.** (1) Introduction
(2) Facts and Contentions
(3) Judgment
(4) Conclusion
(5) Self Assessment Test

Royal Talkies Hyderabad and other Vs E.S.I. Corporation – F.J.R. 1978

S.C. 319

- 15.B.** (1) Introduction
(2) Facts and Contentions
(3) Judgment
(4) Conclusion
(5) Self Assessment Test

Sayaji Mills Ltd. Reg. P.F. Commissioner 1985 I L.L.J. 238 S.C.

- 15.C.** (1) Introduction
(2) Facts and Contentions
(3) Judgment
(4) Conclusion
(5) Self Assessment Test

15.A. Express Newspaper Limited
Versus
Union of India
A.I.R. 1958 S.C. 578

(Judges N.H. Bhagwati, B.P. Sinha, Jafer Imam, J.L. Kapur and P.B. Gajendra Gadkar)

1) Introduction

This case is related to

- (i) Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955
- (ii) Constitution Articles 14, 19(1) (a) (g) and 32
- (iii) Industrial Disputes Act, 1947 Section 2 (rr)
- (iv) Minimum Wages Act, 1948 Section 4

2) Facts and Contentions

Several Write petitions were filed under Article 32 of the Constitution challenging the validity of the working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 and the decision of the Wage Board constituted there under. The Validity of the Act was challenged on the grounds that the provisions thereof were violative of the fundamental rights guaranteed by the constitution under Article 19(1)(a)(g) and 14. The decision of the Wage Board was challenged on various grounds. The main ground was that implementation of the decision of Wage Board would be beyond the capacity of the employees and would result in their utter collapse. The respondents contended in their reply that none of the fundamental rights guaranteed under Articles 19(1)(a)(g) 14 and 32 were infringed by the impugned Act and the functions of the Wage Board were not judicial or quasi judicial in character, the fixation of the rates of wages was legislative act and not a Judicial one, the decision of the Wage Board was arrived at after taking into consideration all the criteria for the fixation of Wages Under Section 9(1) of the Act.

3) Judgment

The Apex court held that Wages have been classified in three categories viz. (1) The living Wage (2) The Fair Wage and (3) The Minimum Wage

Living Wage

Justice Higgins defined living wages as one Appropriate for the normal needs of an average employee regarded as a human being living in a civilized community. The Living wage must provide not merely for absolute essentials such as Food shelter and clothing, but for a condition for frugal comfort, provision for evil days etc. as well as regard for the special skill of an artisan if he is one.

The Royal Commission of the Basic Wage for the Commonwealth of Australia observed that Living wage represents a slightly higher level than that of subsistence, providing not only for the material needs of food, shelter and body covering but also for certain comforts, such as clothing sufficient for body comfort and to maintain the wearer's instinct of self respect and decency, some insurance against the more important misfortunes death, Disability and fire, good education for the children, some amusement and some expenditure for self development.

The United Provinces Labour Enquiry Committee Classified levels of living standard in four categories viz (i) The Poverty Level (ii) The Minimum subsistence level (iii) The Subsistence plus level and (iv) The Comfort level.

Court held that the living wage should enable the male earner to provide for himself and his family not merely the bare essentials of food, Clothing and shelter, but a measure of frugal comfort, including education for the children, Protection against ill health, requirements of essential social needs and a measure of Insurance against the more important misfortunes including old age.

Minimum Wage

The Court held that the level of the National income is so low at present that it is generally accepted that the country cannot afford to prescribe by law a minimum wage which would correspond to the Concept of the Living wage, Most of employers and some provincial Governments consider that the minimum wage can at present be only a bare subsistence of life but for the preservation of the efficiency of the worker, for this purpose, the minimum wage must also provide for some measure of Education, Medical requirements and Amenities.

There is also a distinction between a bare subsistence or minimum wage and a statutory Minimum wage. The former is a wage which would be sufficient to cover the bare physical needs of a worker and his family, that is, a rate which has got to be paid to the worker irrespective of the capacity of the Industry to pay. If an industry is unable to pay its workmen at least a bare minimum wage, it has no right to exist.

The statutory minimum wage however is the minimum which is prescribed by the statute and it may be higher than the bare subsistence or minimum wage, Providing for some measure of education, medical requirements and amenities.

Fair Wage:

Indian National Trade Union Congress defines Fair wage as a step towards the progressive realization of a living wage. Court held that while the lower limit of the fair wage must obviously be the minimum wage, the upper limit is equally set by what may broadly be called the capacity of Industry to pay. This will depend not only on the present economic position of the Industry but on its future prospects. Between their two limits the actual wages will depend on a consideration of the following factors and in the light of the comments given below:

- i) The productivity of labour
- ii) The prevailing rates of wages in the same or similar occupations in the same or neighboring localities
- iii) The level of the national income and its distributions;

Fair wages is thus a mean between the living wage and the minimum wage and even the minimum wage contemplated above is something more than the bare minimum of subsistence wage which would be sufficient to cover the bare physical needs of the worker and his family, a wage which would provide also for the preservation of the efficiency of the worker and for some measure of education, medical requirements and amenities.

Court held that minimum wage, fair wage and living wage are not fixed and static. With the growth and development of national economy living standards improve and wages also expand and improve. Minimum wages have to be fixed irrespective of capacity of Industry to pay.

Freedom of Press

Article 19(1)(a) of the Constitution guarantees to all citizens the right to freedom of speech and expression. Art 19(2) lays down restriction on exercise of right regarding freedom of expression. Freedom of Speech and expression includes within its scope the freedom of Press. The freedom of press rests on the assumptions that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public. Such freedom is the foundation of free government of a free people. The purpose of such a guarantee is to prevent public authorities from assuming the guardianship of the public mind and freedom of press involves freedom of employment or Non-employment of the necessary means of exercising this right or in other words, freedom from restriction in respect of employment in the editorial force.

The press is however, not immune from the ordinary forms of taxation for support of the government nor from the application of the General laws relating to Industrial relations. While therefore no such immunity from the general laws can be claimed by the press, it would certainly not be legitimate to subject the press to laws which take away or abridge the freedom of Speech and expression or which would curtail circulation and thereby narrow the scope of dissemination of information, or fetter its freedom to choose its means of exercising the rights or would undermine its independence by driving it to seek government aid. Laws which single out the press for laying upon it excessive and prohibitive burdens which would restrict the circulation, impose a penalty on its right to choose the instruments for its exercise or to seek an alternative media, prevent newspaper from being started and ultimately drive the press to seek government aid in order to survive, would therefore be struck down as Unconstitutional. Such laws would not be saved by Art. 19(2) of the Constitution. The regulation of service conditions is the main object, which is ought to be achieved by the impugned Act. it is impossible to say that the Act was designed to affect the freedom of Speech and expression enjoyed by the petitioner. The Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 was enacted for improvement in the working conditions of Journalists and to undue preference or a prejudicial treatment was being meted out to the newspaper Industry, while introducing this Act.

The Capacity of Industry to pay wages was one of the essential circumstance to be taken into consideration by the wage board whether it be for the fixation of rates, of wages or the scales of wages which were included within rate of wages.

The decision of the Wage board appointed under the Act, was challenged by newspaper owners as Illegal and void on following grounds.

- i) Reconstitution of the Board was ultravires and unauthorized by the Act as it stood at the time, the rules having been published only on 30th June 1956;
- ii) The decision by a majority was unwarranted by the Act and since there was no provision in the Act, the rules providing for the same went beyond the Act and therefore ultravires.
- iii) The procedure followed by the Board offended the principles of natural justice and was therefore invalid.
- iv) The decision was invalid, because no reasons were given, it did not disclose reasons for arriving on such decision by Board.
- v) The Board was not authorized by the Act to fix the salaries of Journalists except in relation to a particular establishment and not on all India basis of all newspapers taken to gather.
- vi) The decision was bad as it did not disclose that the capacity to pay off any particular establishment was ever taken into consideration.
- vii) The Board had no authority to render a decision which was retrospective in operation.
- viii) The Board was handicapped for want of cost of living Index.

The Apex court has hold that decision of the Wage Board was ultravires under the Act itself, as the Board contravened the mandatory requirement of Section 9 of the Working Journalists (conditions of service) and Miscellaneous Provisions Act. The Supreme Court further discussed the points raised and held as under:

- i) There was nothing objectionable in the reconstitution of Board.
- ii) Rules were framed in view of the powers given under Section 20 of the Act, as such rules were valid.
- iii) The Procedure followed by Board could not be held valid as the decision taken by the Board was ultravires.

- iv) It was not necessary for the Board to give reasons for reaching on a logical conclusion.
- v) There was nothing in the Act to prohibit the treating of several newspaper establishments though in different parts of the country as one newspaper establishment for the purpose of fixing the rates of wages.
- vi) The essential pre-requisite of deciding the wage structure was to consider the capacity of the Industry to pay. As this essential condition for the fixation of Wage structure had been completely ignored by the Wage Board it had contravened the mandatory requirements of Section 9 and in consequence its decision was ultravires the Act itself.
- vi) The Wage Board certainly had the jurisdiction and authority to pronounce a decision which could be retrospective in effect from the date of its appointment and there was no legal flow in the Wage Board prescribing that its decision should be retrospective in operation in the manner indicated by it.
- vii) The statistics regarding the costs of Living index were available to the Wage board and it could not be said that the Wage Board was in any manner handicapped in that respect.

4) Conclusion

The provisions of the Working Journalists (Conditions of Service) and Miscellaneous provisions Act, 1955 and the decision of Wage Board constituted there under was challenged under Article 32 of the Constitution in Apex court. The Court hold that Act was valid but the decision of the Wage Board was ultravires, as the Board contravened the mandatory requirement of Section 9 of the Act.

5) Self Assessment

1. Describe in brief the Facts of the Case.
2. Write in brief the Judgment of the Case.
3. Define and distinguish minimum wage, Fair wage and Living wage.
4. On that grounds the decision of the Wage Board was declared ultravires by the Supreme Court.

**15.B. Royal Talkies, Hyderabad and Others
Versus
Employees State Insurance Corporation
F.J.R. 1978 SC 319**

(Judges V.R. Krishna Iyer and D.A. Desai)

1) Introduction

- i) This case is related to Employees State Insurance Act, 1948 Section 2(9), 2(17), 4D, 45-A
- ii) Constitution, Articles 38, 39, 41, 43, 43A, 136.

2) Facts and Contentions

The appellants were owners of theaters situated in Hyderabad and Secunderabad, exhibiting films. In regard to Employees of canteens and cycle stands, situated in Cinema halls, notices for payments of contributions were issued by the authorities under the Employee State Insurance Act. Thereupon the owners of theatres filed application under Sec. 75 of the Employees State Insurance Act before the Employees Insurance Court for a declaration that the provision of the Act were not applicable to their theatres and that they were not liable to pay contribution in respect of the persons employed in canteens any cycle stands attached to their theaters. The Insurance Court after considering the relevant lease deeds and other evidence noticed that all these canteens were within the premises of the Cinema theaters. The management of all these Cinema theaters pay the Electricity Charges due in respect of these canteens. The employees working in these canteens were employed only by the contributors or tenants who run the

canteens and they alone were responsible for the Salaries payable to these employees. The management of Cinema theaters had absolutely no supervisory control over the persons employed in these canteens. The Insurance Court held that after considering all relevant facts, it was clear that these canteens were meant primarily for the purpose of convenience and comfort of those visiting the Cinema theaters and cycle stands were meant exclusively for the convenience of persons visiting the theatres. The Insurance Court found that the owners of theatres were principal employers with reference to the person employed by contractors in the canteens and Cycle stands attached to the theatres and rejected the application filled by owners under Section 75 of the Act.

The disappointed theatre owners appealed under Section 82, which was also dismissed. Ultimately special Leave to Appeal was filed in Supreme Court under Art, 136 of the Constitution.

3) Judgment

Article 38, 39, 41, 42, 43 and 43-A of the Constitution show concern for workers and their welfare since Independence. This legislative motivation has found expression in many enactments. In view of the complexities of modern business organizations the principle employer is made primarily liable for payment of contribution in respect of every employees. Whether directly employed by him or by or through an immediate employer. There is no doubt that a Cinema theatre is an establishment and that the appellants as theater owners, are principal employer, being persons responsible for the supervisions and control of the establishment.

The scope of the definition of employers is apparently wide and in the field of Labour jurisprudence and welfare legislation statutory construction must have due regard to part IV of the Constitution. "Unless the person employed, he is not an employee. The employee must be employed in or in connection with the work of an establishment. He may not work directly for the establishment, he may not work statutorily obligatory in the establishment, he may not even not do anything which is primary or necessary for the survival or smooth running of the establishment, it is enough if the employee does some work which is ancillary, incidental or has relevance to or link with the object of the establishment. Surely, an amenity or facility for the customers who frequent the establishment has

connection with the work of an establishment, Taking the present case, an establishment like a cinema theatre is not bound to run a canteen or keep a cycle stand but no one will deny that a canteen service, a toilet service, a Car park or Cycle stand surely have connection with the cinema theatre and even further the venture. On the other hand, a Bookstall where Scientific works or tools are sold or a stall where religious propaganda is done, may not have anything to do with the Cinema establishment and may, therefore, be excluded on the score that the employees do not do any work in connection with the establishment, that is the theatre.

The Primary test in the substantive clause being thus wide, the employees of the canteen and the Cycle stand may be correctly described as employed in connection with the work of the establishment. The whole goal of the statute is to make the principal employer liable of the Insurance of hundred kind of employee on the premises, whether they are there in the work or are merely in connection with the work of the establishment. Section 2(9)(i) cover only employees who are directly employed by the principal employer. In the present case, the employees concerned are admittedly not directly employed by the Cinema proprietors, Sec. 2(9)(ii) provides that if an employee is employed through someone else, but works (a) on the premises of the establishment, or (b) under the Supervision of the principal employer or his agent On work which is ordinarily part of the work of establishment or which is preliminary to the work carried on in or incidental to the purpose of the establishment, is an employee under the Employees State Insurance Act, 1948.

4) Conclusion

In the instant case appellants are owners of theatres. They leased out canteen and Cycle stand to contractors. The contractors employed their own servant to run canteen and Cycle stand. In regard to the persons so employed, the owners of theatres were treated as 'Principal employers' and Notices of Demand were issued to them calling upon them to pay contribution under Employees State Insurance Act. Owners raised objection before Employees Insurance Court as they were not liable to pay contribution for the employees kept by contractors. Being unsuccessful filed Special Leave petition in apex court. The Supreme Court held the owners liable to pay compensation.

5) Self Assessment Test

1. Describe in brief the Facts of the case.
2. Write in brief the Judgment of the case.
3. Assess the Responsibilities of Principal employer.
4. How the Principal employer is liable to pay contribution under Employees State Insurance Act for employed by contractor.

15.C Sayaji Mills Ltd. Versus Regional Provident Fund Commissioner 1985 I L.L.J. 238 S.C.

(Judges E.S. Vankatramiah and R.B. Misra)

1) Introduction

The case is related to Section 16 of Employees Provident Fund and Miscellaneous Provisions Act, 1952 being a clause granting exemption to the employer from the liability to make contributions, if a period of three years has elapsed from the date of the establishment of a factory, the Act would become applicable provided other conditions are satisfied.

2) Facts and Contentions

Prior to December, 1954 a Company called Hirgi Mills Ltd. was carrying on the business of manufacture and sale of Textile goods in its factory situated at fergusson Road, Lower parel Bombay. The company was ordered to be wound up by the High Court of Bombay and its assets were ordered to be sold by the Official Liquidator. The appellant which was a Public limited company purchased the above said factory. Workman had been discharged and the goodwill of the company in liquidation had not been acquired by the appellant. There was discontinuance of the work at the factory for some time. The appellant re-started

factory on November 22, 1955 after investing some fresh capital in the business, renovated the machinery and also employed workman on fresh contracts. Appellant commenced to produce certain new type of goods at factory after obtaining a new license to run it. When by the end of February 1956 the Regional Provident Fund Commissioner made certain enquiries about the working of the factory in order to enforce the Employee Provident Funds and Miscellaneous Provisions Act, 1952 against it the appellant raised objection stating that he factory was an infant factory as it had established it on November 12, 1955 and the period of three years had not elapsed from that date. The appellant claimed exemption from the operation of the Act relying upon Sec. 16(1)(b) thereof when the Regional Provident Fund Commissioner was not convinced about is explanation the appellant filled a write petition under Art. 226 of the Constitution before the High Court of Bombay, challenging the applicability of the Act to the factory. The Writ petition was however withdrawn and thereafter the appellant filed a Suit before the City Civil court at Bombay for a declaration that he Act and the scheme framed there under could not be enforced against the factory until the expiry of three years from November 12, 1955 and the appellant was not liable to make contribution under the Act. The suit was resisted by the Regional Provident Fund Commissioner contending that the Act was applicable to the factory when it was in the hands of Hirji Mills Limited and hence it did not cease to apply merely because there was discontinuance in the working of the factory for a short period and there was change of ownership. The factory could not be treated as having been newly established on November 12, 1955 and hence the exemption under Section 16(1)(b) of the Act was not available. The trial court dismissed the suit with costs.

The trial court held that continuity of the old factory had not been broken and as such the appellant was liable to make contributions under the Act. the judgment of the trial court was upheld by the Bombay High Court. The appellant filled Leave to Special Appeal in the Apex Court.

3) Judgment

The Supreme Court held that the Act was a beneficial legislation and Section 15 of the Act being a clause granting exemption to the employer from the liability to make contributions, Section 16 should receive a strict construction. The certain for earning exemption under Section 16 (1) (b) of the Act is that a period of

three years has not yet elapsed from the date of the establishment of the factory in question. It has no reference to the date on which the employer who is liable to make contributions acquired title to the factory. The Act also does not state that any kind of stoppage in the working of the factory would give rise to a fresh period of exemption. The work in a factory which is one established may be interrupted on account of factory holidays, Strike, Lockouts, temporary breakdown of machinery, Periodic repairs to be effected to the machinery in the factory, Non-availability of raw materials, paucity of finance etc. interruptions in the running of a factory which is governed by the Act brought about by any of the reasons mentioned above cannot be construed as resulting it cannot be said that a new factory is or has been established. On the resumption of the manufacturing work in the factory, it would continue to be governed by the Act.

The Apex court observed that it was not a case where the old factory was reduced into scrap and a new factory was erected in its place. Nor is it to be said that there was total discontinuity brought about between the old factory and the factory which was restarted after the appellant purchased it. The stoppage of production was brought about temporarily and factory was restarted after it was sold to the appellant by the official liquidator. The finding of fact recorded by the trial court in this case which is affirmed by the High Court clearly establishes that it was the same old factory which recommenced the production on November 12, 1955. What is of significance is that a substantial number of workmen and staff who were working under the former management had been employed by the appellant though it is claimed that they had entered into new contracts of employment. More investment of additional capital or effecting of repair to the existing machinery before it was restarted the diversification of the lines of production or change of ownership would not amount to the establishment of a new factory attracting the exemption under Section 16 (1)(b) of the Act.

4) Conclusion

Special leave to appeal was granted before Supreme Court by Sayaji Mills Limited seeking exemption from application of Employees Provident Fund and Miscellaneous Provident Act, 1952, on the ground that factory was purchased in 1955 in liquidation proceedings and it restarted on Nov. 12, 1955. Section 16(1)(b) of the Act provided for exemption for the years for new establishments. The Apex

Court held that factory was already in existence as such Section 16(1)(b) was not applicable in the present case and owners were liable to make contribution of the employees under the Act.

5) Self Assessment Test

1. Describe in brief the facts of the case.
2. Write in brief the Judgment of the case.
3. Examine in detail the Provisions of Section 16 of the Act.

UNIT-16:

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

Objectives

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

- the Act defines sexual harassment at the work place and creates a mechanism for redressal of complaints. It also provides safeguards against false or malicious charges.
- the Act is to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto.
- the Act aims to provide women's the right to work with dignity

Structure

- 16.1 Introduction
- 16.2 Definitions under the Act
- 16.3 Constitution of Internal Complaint Committee
- 16.4 Constitution of Local Complaint Committee
- 16.5 Complaint of Sexual Harassment
- 16.6 Inquiry into the Complaint
- 16.7 Duties of the Employer *also Sec. 22
- 16.8 Duties and the Power of District Officer
- 16.9 Role of Government
- 16.10 Cognizance of offence by court
- 16.10 Penalties under the Act
- 16.11 Summary
- 16.12 Terminal Question

16.13 Further Readings

16.1 Introduction

Sexual harassment of women in public or private places is very universal phenomenon. Women also face sexual harassment at workplaces and they need protection from sexual harassment. Government of India feeling the necessity of this passed **The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act in the year 2013.**

This Act is to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto.

Whereas sexual harassment results in violation of the fundamental rights of a woman to equality under articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment.

Act provides the protection against sexual harassment and amid the right to work with dignity are universally recognized human rights by international conventions and instruments such as Convention on the Elimination of all Forms of Discrimination against Women, which has been ratified on the 25th June, 1993 by the Government of India.

Feeling urgent need it is expedient to make provisions for giving effect to the said Convention for protection of women against sexual harassment at workplace the Act will ensure that women are protected against sexual harassment at all the work places, be it in public or private. This will contribute to realization of their right to gender equality, life and liberty and equality in working conditions everywhere. The sense of security at the workplace will improve women's participation in work, resulting in their economic empowerment and inclusive growth.²⁸

The Act uses a definition of sexual harassment which was laid down by the Supreme Court of India in *Vishaka v. State of Rajasthan* (1997).²⁹ Article 19 (1) g of the Indian Constitution affirms the right of all citizens to be employed in any

²⁸ Press Information Bureau, Government of India (4 Nov.10). Protection of Women against Sexual Harassment at Workplace Bill, 2010, Retrieved 13 Sept.12.

²⁹ Chakrabarty, Rakhi (4 September 2012) "Sexual harassment at workplace Bill passed". *Times of India*. Retrieved 13 Sept. 2012.

profession of their choosing or to practice their own trade or business. Vishaka v. State of Rajasthan case has established that actions resulting in a violation of one's rights to 'Gender Equality' and 'Life and Liberty' are in fact a violation of the victim's fundamental right under Article 19 (1) g. The case ruling establishes that sexual harassment violates a woman's rights in the workplace and is thus not just a matter of personal injury.³⁰ Under the Act, which also covers students in schools and colleges as well as patients in hospitals, employers and local authorities will have to set up grievance committees to investigate all complaints. Employers who fail to comply will be punished with a fine of up to 50,000 rupees.

The legislative progress of the Act has been a lengthy one. The Bill was first introduced by women and child development minister Krishna Tirath in 2007 and approved by the Union Cabinet in January 2010. It was tabled in the Lok Sabha in December 2010 and referred to the Parliamentary Standing Committee on Human Resources Development. The committee's report was published on 30 November 2011.³¹ In May 2012, the Union Cabinet approved an amendment to include domestic workers.³² The amended Bill was finally passed by the Lok Sabha on 3 September 2012.³³ The Bill was passed by the Rajya Sabha (the upper house of the Indian Parliament) on 26 February 2013. It received the assent of the President of India and was published in the Gazette of India, Extraordinary, Part-II, Section-1, dated the 23rd April 2013 as Act No. 14 of 2013.

Chapter one of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is Preliminary with **Short title, extent and commencement which is as under:**

1. This Act may be called the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
2. It extends to the whole of India.
3. It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

³⁰ Sexual harassment of women at workplace bill 2012 passed by Lok Sabha, 6 September 2012.

³¹ *The Telegraph* (Calcutta) (18 April 2012). "Watch what you say". Retrieved 13 September 2012.

³² Polanki, Pallavi (28 August 2012). "Bill against sexual harassment a boost to domestic workers". *First Post*. Retrieved 13 September 2012.

³³ (3 September 2012). "Lok Sabha passes bill against sexual harassment in the workplace". Retrieved 13 September 2012.

16.2 Definitions

2. Definitions under the Act:

In this Act, unless the context otherwise requires, various definitions are as under:

a. "Aggrieved woman" means

- i. in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent;
- ii. in relation to a dwelling place or house, a woman of any age who is employed in such a dwelling place or house;

b. "Appropriate Government" means

- i. in relation to a workplace which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly—
 - a. by the Central Government or the Union territory administration, the Central Government;
 - b. by the State Government, the State Government;
- ii. in relation to any workplace not covered under sub-clause (i) and falling within its territory, the State Government;

c. "Chairperson" means the Chairperson of the Local Complaints Committee nominated under sub-section (1) of section 7;

d. "District Officer" means an officer notified under section 5;

e. "Domestic worker" means a woman who is employed to do the household work in any household for remuneration whether in cash or kind, either directly or through any agency on a temporary, permanent, part time or full time basis, but does not include any member of the family of the employer;

f. "Employee" means a person employed at a workplace for any work on regular, temporary, ad hoc or daily wage basis, either directly or through an agent, including a contractor, with or, without the knowledge of the principal employer, whether for remuneration or not, or working on a voluntary basis or otherwise,

whether the terms of employment are express or implied and includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name;

g. "Employer" means:

i. in relation to any department, organization, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority, the head of that department, organization, undertaking, establishment, enterprise, institution, office, branch or unit or such other officer as the appropriate Government or the local authority, as the case may be, may by an order specify in this behalf;

ii. in any workplace not covered under sub-clause (i), any person responsible for the management, supervision and control of the workplace.

Explanation.—For the purposes of this sub-clause "management" includes the person or board or committee responsible for formulation and administration of policies for such organization;

iii. in relation to workplace covered under sub-clauses (i) and (ii), the person discharging contractual obligations with respect to his or her employees;

iv. in relation to a dwelling place or house, a person or a household who employs or benefits from the employment of domestic worker, irrespective of the number, time period or type of such worker employed, or the nature of the employment or activities performed by the domestic worker;

h. "Internal Committee" means an Internal Complaints Committee constituted under sec. 4;

i. "Local Committee" means the Local Complaints Committee constituted under sec.6;

j. "Member" means a Member of the Internal Committee or the Local Committee, as the case may be;

k. "Prescribed" means prescribed by rules made under this Act;

l. "Presiding Officer" means the Presiding Officer of the Internal Complaints Committee nominated under sub-section (2) of section 4;

m. "Respondent" means a person against whom the aggrieved woman has made a complaint under section 9;

n. "Sexual harassment" includes any one or more of the following unwelcome acts or behavior (whether directly or by implication) namely:—

- i. physical contact and advances; or
- ii. a demand or request for sexual favors; or
- iii. making sexually colored remarks; or
- iv. showing pornography; or
- v. any other unwelcome physical, verbal or non-verbal conduct of sexual nature;

o. "Workplace" includes—

- i. any department, organization, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society;
- ii. any private sector organization or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organization, unit or service provider carrying on commercial, professional, vocational, educational, entertain-mental, industrial, health services or financial activities including production, supply, sale, distribution or service;
- iii. hospitals or nursing homes;
- iv. any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;
- v. any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey;
- vi. a dwelling place or a house;

p. **"Unorganized sector"** in relation to a workplace means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten.

16.3 Constitution of Internal Complaint Committee

Provisions of Internal Complaints Committee require the reference of Section 21. **Under Chapter II Section 4 of the Act "Constitution of Internal Complaints Committee" is provided which is as under:**

1. Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the "Internal Complaints Committee":

Provided that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices.

2. The Internal Committee shall consist of the following members to be nominated by the employer, namely:—

a. a Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees:

Provided that in case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to in sub-section (1):

Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organization;

b. not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge;

c. one member from amongst non-governmental organizations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment: Provided that at least one-half of the total Members so nominated shall be women.

3. The Presiding Officer and every Member of the Internal Committee shall hold office for such period, not exceeding three years, from the date of their nomination as may be specified by the employer.
4. The Member appointed from amongst the non-governmental organizations or associations shall be paid such fees or allowances for holding the proceedings of the Internal Committee, by the employer, as may be prescribed.
5. Where the Presiding Officer or any Member of the Internal Committee,-
 - a. contravenes the provisions of section 16; or
 - b. has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or
 - c. he has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or
 - d. has so abused his position as to render his continuance in office prejudicial to the public interest, such Presiding Officer or Member, as the case may be, shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.

Under Section 21 the Committee to submit annual report

1. The Internal Committee or the Local Committee, as the case may be, shall in each calendar year prepare, in such form and at such time as may be prescribed, an annual report and submit the same to the employer and the District Officer.
2. The District Officer shall forward a brief report on the annual reports received under sub-section (1) to the State Government.

Under Chapter III Constitution of Local Complaints Committee and other provisions are as under:

Sec- 5: Notification of District Officer

The appropriate Government may notify a District Magistrate or Additional District Magistrate or the Collector or Deputy Collector as a District Officer for every District to exercise powers or discharge functions under this Act.

Sec- 6: Constitution and jurisdiction of Local Complaints Committee

1. Every District Officer shall constitute in the district concerned, a committee to be known as the "Local Complaints Committee" to receive complaints of sexual harassment from establishments where the Internal Complaints Committee has not

been constituted due to having less than ten workers or if the complaint is against the employer himself.

2. The District Officer shall designate one nodal officer in every block, taluka and tehsil in rural or tribal area and ward or municipality in the urban area, to receive complaints and forward the same to the concerned Local Complaints Committee within a period of seven days.

3. The jurisdiction of the Local Complaints Committee shall extend to the areas of the district where it is constituted.

Sec- 7: Composition:

Tenure and other terms and conditions of Local Complaints Committee

1. The Local Complaints Committee shall consist of the following members to be nominated by the District Officer, namely:—

a. a Chairperson to be nominated from amongst the eminent women in the field of social work and committed to the cause of women;

b. One Member to be nominated from amongst the women working in block, taluka or tehsil or ward or municipality in the district;

c. two Members, of whom at least one shall be a woman, to be nominated from amongst such non-governmental organizations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment, which may be prescribed:

Provided that at least one of the nominees should, preferably, have a background in law or legal knowledge:

Provided further that at least one of the nominees shall be a woman belonging to the Scheduled Castes or the Scheduled Tribes or the Other Backward Classes or minority community notified by the Central Government, from time to time;

d. the concerned officer dealing with the social welfare or women and child development in the district, shall be a member ex officio.

2. The Chairperson and every Member of the Local Committee shall hold office for such period, not exceeding three years, from the date of their appointment as may be specified by the District Officer.

3. Where the Chairperson or any Member of the Local Complaints Committee—

e. contravenes the provisions of section 16; or

- f. has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or
 - g. has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or
 - h. has so abused his position as to render his continuance in office prejudicial to the public interest, such Chairperson or Member, as the case may be, shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.
4. The Chairperson and Members of the Local Committee other than the Members nominated under clauses (b) and (d) of sub-section (1) shall be entitled to such fees or allowances for holding the proceedings of the Local Committee as may be prescribed.

Sec.8. Grants and audit:

1. The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the State Government grants of such sums of money as the Central Government may think fit, for being utilized for the payment of fees or allowances referred to in sub-section (4) of section 7.
2. The State Government may set up an agency and transfer the grants made under sub-section (1) to that agency.
3. The agency shall pay to the District Officer, such sums as may be required for the payment of fees or allowances referred to in sub-section (4) of section 7.
4. The accounts of the agency referred to in sub-section (2) shall be maintained and audited in such manner as may, in consultation with the Accountant General of the State, be prescribed and the person holding the custody of the accounts of the agency shall furnish, to the State Government, before such date, as may be prescribed, its audited copy of accounts together with auditors'

16.5 Complaint of Sexual Harassment

In Chapter IV of the Act provisions of Complaint of sexual harassment has been given which areas under:

Sec. 9: Complaint of sexual harassment

1. Any aggrieved woman may make, in writing, a complaint of sexual harassment at work place to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident:

Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing:

Provided further that the Internal Committee or, as the case may be, the Local Committee may, for the reasons to be recorded in writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.

2. Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section.

Sec. 10. Conciliation

1. The Internal Committee or, as the case may be, the Local Committee, may, before initiating an inquiry under section 11 and at the request of the aggrieved woman take steps to settle the matter between her and the respondent through conciliation:

Provided that no monetary settlement shall be made as a basis of conciliation.

2. Where a settlement has been arrived at under sub-section (1), the Internal Committee or the Local Committee, as the case may be, shall record the settlement so arrived and forward the same to the employer or the District Officer to take action as specified in the recommendation.

3. The Internal Committee or the Local Committee, as the case may be, shall provide the copies of the settlement as recorded under sub-section (2) to the aggrieved woman and the respondent.

4. Where a settlement is arrived at under sub-section (1), no further inquiry shall be conducted by the Internal Committee or the Local Committee, as the case may be.

Sec.11. Inquiry into complaint

1. Subject to the provisions of section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if prima facie case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code, and any other relevant provisions of the said Code where applicable:

Provided that where the aggrieved woman informs the Internal Committee or the Local Committee, as the case may be, that any term or condition of the settlement arrived at under sub-section (2) of section 10 has not been complied with by the respondent, the Internal Committee or the Local Committee shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to the police:

Provided further that where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.

2. Notwithstanding anything contained in section 509 of the Indian Penal Code, the court may, when the respondent is convicted of the offence, order payment of such sums as it may consider appropriate, to the aggrieved woman by the respondent, having regard to the provisions of section 15.

3. For the purpose of making an inquiry under sub-section (1), the Internal Committee. or the Local Committee, as the case may be, shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit in respect of the following matters, namely:—

- a. summoning and enforcing the attendance of any person and examining him on oath;
- b. requiring the discovery and production of documents; and
- c. any other matter which may be prescribed.

4. The inquiry under sub-section (1) shall be completed within a period of ninety days.

Section 11 has following provisions for Inquiry Into complaint

1. Subject to the provisions of section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if prima facie case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code, and any other relevant provisions of the said Code where applicable:

Provided that where the aggrieved woman informs the Internal Committee or the Local Committee, as the case may be, that any term or condition of the settlement arrived at under sub-section (2) of section 10 has not been complied with by the respondent, the Internal Committee or the Local Committee shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to the police:

Provided further that where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.

2. Notwithstanding anything contained in section 509 of the Indian Penal Code, the court may, when the respondent is convicted of the offence, order payment of such sums as it may consider appropriate, to the aggrieved woman by the respondent, having regard to the provisions of section 15.

3. For the purpose of making an inquiry under sub-section (1), the Internal Committee. or the Local Committee, as the case may be, shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit in respect of the following matters, namely:—

- a. summoning and enforcing the attendance of any person and examining him on oath;
- b. requiring the discovery and production of documents; and
- c. any other matter which may be prescribed.

4. The inquiry under sub-section (1) shall be completed within a period of ninety days.

16.6 Inquiry into the Complaint

Chapter V of the Act provides for the Inquiry into Complaint with following provisions:

Sec.12. Action during pendency of inquiry

1. During the pendency of an inquiry, on a written request made by the aggrieved woman, the Internal Committee or the Local Committee, as the case may be, may recommend to the employer to—
 - a. transfer the aggrieved woman or the respondent to any other workplace; or
 - b. grant leave to the aggrieved woman up to a period of three months; or
 - c. grant such other relief to the aggrieved woman as may be prescribed.
2. The leave granted to the aggrieved woman under this section shall be in addition to the leave she would be otherwise entitled.
3. On the recommendation of the Internal Committee or the Local Committee, as the case may be, under sub-section (1), the employer shall implement the recommendations made under sub-section (1) and send the report of such implementation to the Internal Committee or the Local Committee, as the case may be.

Sec.13. Inquiry Report

1. On the completion of an inquiry under this Act, the Internal Committee or the Local Committee, as the case may be, shall provide a report of its findings to the employer, or as the case may be, the District Officer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties.
2. Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer and the District Officer that no action is required to be taken in the matter.
3. Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be—
 - i. to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed;

ii. to deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine, in accordance with the provisions of section 15:

Provided that in case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment it may direct to the respondent to pay such sum to the aggrieved woman:

Provided further that in case the respondent fails to pay the sum referred to in clause (II), the Internal Committee or, as the case may be, the Local Committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

4. The employer or the District Officer shall act upon the recommendation within sixty days of its receipt by him. Punishment for false or malicious complaint and false evidence

Sec.14. Punishment for false or malicious complaint and false evidence

1. Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer or the District Officer, as the case may be, to take action against the woman or the person who has made the complaint under sub-section (1) or sub-section (2) of section 9, as the case may be, in accordance with the provisions of the service rules applicable to her or him or where no such service rules exist, in such manner as may be prescribed:

Provided that a mere inability to substantiate a complaint or provide adequate proof need not attract action against the complainant under this section:

It is provided further that the malicious intent on part of the complainant shall be established after an inquiry. Inquiry should be in accordance with the procedure prescribed, before any action is recommended.

2. Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that during the inquiry any witness has given false evidence

or produced any forged or misleading document, it may recommend to the employer of the witness or the District Officer, as the case may be, to take action in accordance with the provisions of the service rules applicable to the said witness or where no such service rules exist, in such manner as may be prescribed.

Sec.15. Determination of compensation

For the purpose of determining the sums to be paid to the aggrieved woman under clause (ii) of sub-section (3) of section 13, the Internal Committee or the Local Committee, as the case may be, shall have regard to

- a. the mental trauma, pain, suffering and emotional distress caused to the aggrieved woman;
- b. the loss in the career opportunity due to the incident of sexual harassment;
- c. medical expenses incurred by the victim for physical or psychiatric treatment;
- d. the income and financial status of the respondent;
- e. feasibility of such payment in lump sum or in installments.

Sec.16. Prohibition of publication or making known contents of complaint and inquiry proceedings

Notwithstanding anything contained in the Right to Information Act, 2005, the contents of the complaint made under section 9, the identity and addresses of the aggrieved woman, respondent and witnesses, any information relating to conciliation and inquiry proceedings, recommendations of the Internal Committee or the Local Committee, as the case may be, and the action taken by the employer or the District Officer under the provisions of this Act shall not be published, communicated or made known to the public, press and media in any manner:

Provided that information may be disseminated regarding the justice secured to any victim of sexual harassment under this Act without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the aggrieved woman and witnesses.

Sec.17. Penalty for publication or making known contents of complaint and inquiry proceedings

Where any person entrusted with the duty to handle or deal with the complaint, inquiry or any recommendations or action to be taken under the provisions of this Act, contravenes the provisions of section 16, he shall be liable for penalty in

accordance with the provisions of the service rules applicable to the said person or where no such service rules exist, in such manner as may be prescribed.

Sec.18. Appeal

1. Any person aggrieved from the recommendations made under sub-section (2) of section 13 or under clause (i) or clause (ii) of sub-section (3) of section 13 or subsection (I) or sub-section (2) of section 14 or section 17 or non-implementation of such recommendations may prefer an appeal to the court or tribunal in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed.

2. The appeal under sub-section (1) shall be preferred within a period of ninety days of the recommendations.

16.7 Duties of the Employer *also Sec. 22

Chapter VI of the Act provides for the Duties of Employer with following provisions:

Sec.19. Duties of employer

Every employer shall—

- a. provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace;
- b. display at any conspicuous place in the workplace, the penal consequences of sexual harassments; and the order constituting, the Internal Committee under subsection (I) of section 4;
- c. organize workshops and awareness programs at regular intervals for sensitizing the employees with the provisions of the Act and orientation programs for the members of the Internal Committee in the manner as may be prescribed;
- d. provide necessary facilities to the Internal Committee or the Local Committee, as the case may be, for dealing with the complaint and conducting an inquiry;
- e. assist in securing the attendance of respondent and witnesses before the Internal Committee or the Local Committee, as the case may be;

- f. make available such information to the Internal Committee or the Local Committee, as the case may be, as it may require having regard to the complaint made under sub-section (1) of section 9;
- g. provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code or any other law for the time being in force;
- h. cause to initiate action, under the Indian Penal Code or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place;
- i. treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;
- j. monitor the timely submission of reports by the Internal Committee.

Sec.22. Employer to include information in annual report

The employer shall include in its report the number of cases filed, if any, and their disposal under this Act in the annual report of his organization or where no such report is required to be prepared, intimate such number of cases, if any, to the District Officer.

16.8 Duties and the Power of District Officer

The District Officer shall,—

- a. monitor the timely submission of reports furnished by the Local Committee;
- b. take such measures as may be necessary for engaging non-governmental organizations for creation of awareness on sexual harassment and the rights of the women.

16.9 Role and Powers of Government

Government plays a very key role in protection of Women from Sexual Harassment thus it has been provided special powers which are as under:

Sec.23. Appropriate Government to monitor implementation and maintain data

The appropriate Government shall monitor the implementation of this Act and maintain data on the number of cases filed and disposed of in respect of all cases of sexual harassment at workplace.

24. Appropriate Government to take measures to publicize the Act

The appropriate Government may, subject to the availability of financial and other resources, —

- a. develop relevant information, education, communication and training materials, and organize awareness programs, to advance the understanding of the public of the provisions of this Act providing for protection against sexual harassment of woman at workplace,
- b. formulate orientation and training programs for the members of the Local Complaints Committee.

Sec.25. Power to call for information and inspection of records

1. The appropriate Government, on being satisfied that it is necessary in the public interest or in the interest of women employees at a workplace to do so, by order in writing,—
 - a. call upon any employer or District Officer to furnish in writing such information relating to sexual harassment as it may require;
 - b. authorize any officer to make inspection of the records and workplace in relation to sexual harassment, who shall submit a report of such inspection to it within such period as may be specified in the order.
2. Every employer and District Officer shall produce on demand before the officer making the inspection all information, records and other documents in his custody having a bearing on the subject matter of such inspection.

Sec.26. Penalty for non-compliance with provisions of Act

1. Where the employer fails to—
 - a. constitute an Internal Committee under sub-section (1) of section 4;
 - b. take action under sections 13, 14 and 22; and
 - c. contravenes or attempts to contravene or abets contravention of other provisions of this Act or any rules made there under, he shall be punishable with fine which may extend to fifty thousand rupees.

2. If any employer, after having been previously convicted of an offence punishable under this Act subsequently commits and is convicted of the same offence, he shall be liable to-CO twice the punishment, which might have been imposed on a first conviction, subject to the punishment being maximum provided for the same offence:

Provided that in case a higher punishment is prescribed under any other law for the time being in force, for the offence for which the accused is being prosecuted, the court shall take due cognizance of the same while awarding the punishment;

ii. Cancellation, of his license or withdrawal, or non-renewal, or approval, or cancellation of the registration, as the case may be, by the Government or local authority required for carrying on his business or activity.

Sec.29. Power of appropriate Government to make rules

1. The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

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

- a. the fees or allowances to be paid to the Members under sub-section (4) of section 4;
- b. nomination of members under clause (c) of sub-section (1) of section 7;
- c. the fees or allowances to be paid to the Chairperson, and Members under sub-section (4) of section 7;
- d. the person who may make complaint under sub-section (2) of section 9;
- e. the manner of inquiry under sub-section (1) of section 11;
- f. the powers for making an inquiry under clause (c) of sub-section (2) of section 11;
- g. the relief to be recommended under clause (c) of sub-section (1) of section 12;
- h. the manner of action to be taken under clause (i) of sub-section (3) of section 13;
- i. the manner of action to be taken under sub-sections (1) and (2) of section 14;
- j. the manner of action to be taken under section 17;
- k. the manner of appeal under sub-section (1) of section 18;

- l. the manner of organizing workshops, awareness programs for sensitizing the employees and orientation programs for the members of the Internal Committee under clause (c) of section 19; and
 - m. The form and time for preparation of annual report by Internal Committee and the Local Committee under sub-section (l) of section 21.
3. Every rule made by the Central Government under this Act shall be laid as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.
4. Any rule made under sub-section (4) of section 8 by the State Government shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

Sec.30. Power to remove difficulties

1. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to it to be necessary for removing the difficulty:
Provided that no such order shall be made under this section after the expiry of a period of two years from the commencement of this Act.
2. Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

16.10 Cognizance of Offence by Court

Sec.27. Cognizance of offence by courts

1. No court shall take cognizance of any offence punishable under this Act or any rules made there under, save on a complaint made by the aggrieved woman or

any person authorised by the Internal Committee or Local Committee in this behalf.

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

3. Every offence under this Act shall be non-cognizable.

Sec.28. Act not in derogation of any other law

The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

16.10 Penalties under the Act

Various Penalties for non-compliance with provisions of Act are as under:

Sec.26. Penalty for non-compliance with provisions of Act

1. Where the employer fails to

a. constitute an Internal Committee under sub-section (1) of section 4;

b. take action under sections 13, 14 and 22; and

c. contravenes or attempts to contravene or abets contravention of other provisions of this Act or any rules made there under, he shall be punishable with fine which may extend to fifty thousand rupees.

2. If any employer, after having been previously convicted of an offence punishable under this Act subsequently commits and is convicted of the same offence, he shall be liable to-^{CO} twice the punishment, which might have been imposed on a first conviction, subject to the punishment being maximum provided for the same offence:

Provided that in case a higher punishment is prescribed under any other law for the time being in force, for the offence for which the accused is being prosecuted, the court shall take due cognizance of the same while awarding the punishment;

ii. Cancellation, of his license or withdrawal, or non-renewal, or approval, or cancellation of the registration, as the case may be, by the Government or local authority required for carrying on his business or activity.

Major Features of the Act:

The Act defines sexual harassment at the work place and creates a mechanism for redressal of complaints. It also provides safeguards against false or malicious charges.

- The definition of “aggrieved woman”, who will get protection under the Act is extremely wide to cover all women, irrespective of her age or employment status, whether in the organised or unorganized sectors, public or private and covers clients, customers and domestic workers as well.
- While the “workplace” in the Vishaka Guidelines is confined to the traditional office set-up where there is a clear employer-employee relationship, the Act goes much further to include organizations, department, office, branch unit etc. in the public and private sector, organized and unorganized, hospitals, nursing homes, educational institutions, sports institutes, stadiums, sports complex and any place visited by the employee during the course of employment including the transportation.
- The Committee is required to complete the inquiry within a time period of 90 days. On completion of the inquiry, the report will be sent to the employer or the District Officer, as the case may be, they are mandated to take action on the report within 60 days.
- Every employer is required to constitute an Internal Complaints Committee at each office or branch with 10 or more employees. The District Officer is required to constitute a Local Complaints Committee at each district, and if required at the block level.
- The Complaints Committees have the powers of civil courts for gathering evidence.
- The Complaints Committees are required to provide for conciliation before initiating an inquiry, if requested by the complainant.
- Penalties have been prescribed for employers. Non-compliance with the provisions of the Act shall be punishable with a fine of up to ₹50,000. Repeated violations may lead to higher penalties and cancellation of license or registration to conduct business.^[12]

Through the Criminal Law (Amendment) Act, 2013, Section 354 was added to the Indian Penal Code that stipulates what consists of a sexual harassment offence and what the penalties shall be for a man committing such an offence. Penalties

range from one to three years imprisonment and/or a fine. Additionally, with sexual harassment being a crime, employers are obligated to report offences.^[13]

Criticism of the Act:

Brinda Karat, serving in the Rajya Sabha as a Communist Party of India (Marxist) member for West Bengal initially complained that the Bill does not cover women in the armed forces and excludes women agricultural workers, "a gross injustice to agricultural workers who are the single largest female component of work force in the country." However, the final bill includes the clause "No woman shall be subjected to sexual harassment at any workplace" (clause 3.1), and is considered to have addressed those concerns.³⁴ In the May 2012 draft Bill, the burden of proof is on the women who complain of harassment. If found guilty of making a false complaint or giving false evidence, she could be prosecuted, which has raised concerns about women being even more afraid of reporting offences.³⁵ Before seeing the final version of the bill, lawyer and activist Vrinda Grover said, "I hope the Bill does not have provisions for penalizing the complainant for false complaints. This is the most under-reported crime. Such provision will deter a woman to come forward and complain."³⁶ Zakia Soman, a women's rights campaigner at Action Aid India said that "it helps to have a law and we welcome it, but the crux will lie in its implementation once it is enacted."³⁷

Manoj Mitta of The Times of India complained that Bill does not protect men, saying it "is based on the premise that only female employees needed to be safeguarded."³⁸

Nishith Desai Associates, a law group, wrote a detailed analysis that included concerns about the role of the employer in sexual harassment cases. They called out the fact that there is no stipulated liability for employers in cases of employee-to-employee harassment, something upheld in many other countries. They also viewed the provision that employers are obligated to address grievances in a timely manner at the workplace as problematic because of potentially uncooperative employees. Furthermore, the law requires a third-party non-governmental

³⁴ The Hindu Parliament passes Bill to prevent sexual harassment at workplace 26 February 2013

³⁵ Nishith Desai Associates, Veena Gopalakrishnan, Ajay Singh Solanki and Vikram Shroff, India's new labour law - prevention of sexual harassment at the workplace, Lexology, 30 April 2013

³⁶ Shajan Perappadan, Bindu (4 September 2012). "Safety net at hand". *The Hindu*. Retrieved 13 September 2012.

³⁷ CNN-IBN (5 September 2012). "India moves to protect women from sexual harassment at work". Retrieved 13 September 2012.

³⁸ Manoj Mitta, Indian men can be raped, not sexually harassed, Times of India, 16 August 2012.

organization to be involved, which could make employers less comfortable in reporting grievances, due to confidentiality concerns.³⁹

16.11 Summary

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is a legislative act in India that seeks to protect women from sexual harassment at their place of work. It was passed by the Lok Sabha (the lower house of the Indian Parliament) on 3 September 2012. It was passed by the Rajya Sabha (the upper house of the Indian Parliament) on 26 February 2013.⁴⁰ The Bill got the assent of the President on 23 April 2013.⁴¹ The Act came into force from 9 December 2013.⁴²

The introductory text of the Act is: This is an Act to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto.

Whereas sexual harassment results in violation of the fundamental rights of a woman to equality under articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment;

And Whereas the protection against sexual harassment and the right to work with dignity are universally recognized human rights by international conventions and instruments such as Convention on the Elimination of all Forms of Discrimination against Women, which has been ratified on the 25th June, 1993 by the Government of India;

And Whereas it is expedient to make provisions for giving effect to the said Convention for protection of women against sexual harassment at workplace.⁴³

According to the Press Information Bureau of the Government of India:

³⁹ Nishith Desai Associates, Veena Gopalakrishnan, Ajay Singh Solanki and Vikram Shroff, India's new labour law - prevention of sexual harassment at the workplace, Lexology, 30 April 2013

⁴⁰ "The Sexual Harassment Bill undermines the innovative spirit of Vishaka" – Naina Kapur, Lawyer and Equality Consultant". *Bar and Bench*. 1 March 2013. Retrieved 2 March 2013.

⁴¹ "The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 Published in The Gazette of India". Press Information Bureau. Retrieved 26 April 2013.

⁴² "Law against sexual harassment at workplace comes into effect". *Times of India*. Retrieved 14 December 2013.

⁴³ "The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013". PRS Legislative Research. Retrieved 26 April 2013.

The Act will ensure that women are protected against sexual harassment at all the work places, be it in public or private. This will contribute to realization of their right to gender equality, life and liberty and equality in working conditions everywhere. The sense of security at the workplace will improve women's participation in work, resulting in their economic empowerment and inclusive growth.⁴⁴

The Act uses a definition of sexual harassment which was laid down by the Supreme Court of India in *Vishaka v. State of Rajasthan* (1997).⁴⁵ Article 19 (1) g of the Indian Constitution affirms the right of all citizens to be employed in any profession of their choosing or to practice their own trade or business. *Vishaka v. State of Rajasthan* established that actions resulting in a violation of one's rights to 'Gender Equality' and 'Life and Liberty' are in fact a violation of the victim's fundamental right under Article 19 (1) g. The case ruling establishes that sexual harassment violates a woman's rights in the workplace and is thus not just a matter of personal injury.⁴⁶

Under the Act, which also covers students in schools and colleges as well as patients in hospitals, employers and local authorities will have to set up grievance committees to investigate all complaints. Employers who fail to comply will be punished with a fine of up to 50,000 rupees.

The legislative progress of the Act is lengthy. The Bill was first introduced by Women and Child Development Minister Krishna Tirath in 2007 and approved by the Union Cabinet in January 2010. It was tabled in the Lok Sabha in December 2010 and referred to the Parliamentary Standing Committee on Human Resources Development. The committee's report was published on 30 November 2011.⁴⁷ In May 2012, the Union Cabinet approved an amendment to include domestic workers.⁴⁸ The amended Bill was finally passed by the Lok Sabha on 3 September 2012.⁴⁹ The Bill was passed by the Rajya Sabha (the upper house of the Indian Parliament) on 26 February 2013. It received the assent of the President of India

⁴⁴ Press Information Bureau, Government of India (4 November 2010). Protection of Women against Sexual Harassment at Workplace Bill, 2010. Retrieved 13 September 2012.

⁴⁵ Chakrabarty, Rakhi (4 September 2012) "Sexual harassment at workplace Bill passed". *Times of India*. Retrieved 13 September 2012.

⁴⁶ Lawyer's Collective, Sexual harassment of women at workplace bill 2012 passed by Lok Sabha, 6 September 2012

⁴⁷ *The Telegraph* (Calcutta) (18 April 2012). "Watch what you say". Retrieved 13 September 2012 and Thorpe, Edgar (ed.) (2012). *The Pearson Current Event Digest 2011-2012*, pp. 3-4. Pearson Education India. ISBN 8131761789

⁴⁸ Polanki, Pallavi (28 August 2012). "Bill against sexual harassment a boost to domestic workers".

⁴⁹ *New York Daily News* (3 September 2012). "Lok Sabha passes bill against sexual harassment in the workplace".

and was published in the Gazette of India, Extraordinary, Part-II, Section-1, dated the 23rd April 2013 as Act No. 14 of 2013.

Further Measures taken by Government to deal with problem of Sexual Harassment of Women at workplace;

The Union Ministry of Women and Child Development had issued advisories to all State/UT Government on 23rd December, 2013 to ensure effective implementation of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The Ministries/Departments in Government of India have also been advised on 12th November, 2014 to ensure the compliance of the Act. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 mandates that all the workplace which include any department, organization, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society having more than 10 workers to constitute Internal Complaint Committee (ICC) for receiving complaints of sexual harassment.

The Act cast an obligation upon all the employers to constitute Internal Complaint Committee. If any employer fails to constitute an Internal Complaint Committee, or contravenes or attempts or abets contravention of other provisions of this Act or any rules made there under, he shall be punishable with fine which may extend to fifty thousand rupees.

The Supreme Court of India laid down formal guidelines for dealing with sexual harassment at the workplace in the case of Vishakha Vs. State of Rajasthan in the year 1997. As per the laid down guidelines, all workplaces are mandated to constitute a complaint committee to deal with complaints of sexual harassment. Taking forward the Supreme Court guidelines, the Ministry has been stressing for setting up of such Committees in every workplace.

At present, there is no proposal to amend the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

This information was given by Union Minister of Women and Child Development, Smt. Maneka Gandhi in a written reply to Lok Sabha.

Government of India , Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel and Training) on Dated the 27th November 2014 issued this Office Memorandum for Alignment of Service Rules with the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013.

1. The undersigned is directed to say that the 'Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act. 2013' {SHWW (PPR) Act} has been promulgated on 22nd April 2013. Further to the Act, the 'Sexual Harassment of Women at Workplace (Prevention. Prohibition and Redressal) Rules, 2013' were notified on 9.12.2013. The Act and the Rules framed there under provide a redressal mechanism for handling cases of sexual harassment at workplace. The Act and Rules are available at the website of the Ministry of Women and Child Development (wcd.nic.in) under Legislation/Acts.

2. The CCS (Conduct) Rules, 1964 and CCS (CCA) Rules, 1965 have been amended vide Notifications of even number published as G.S.R. 823(E2 and G.S.R.822 (E) in the Gazette of India - Extraordinary dated 19-11-2014. These are available on this Department's website www.persmin.gov.in

3. So far as Central Government employees are concerned, provisions already exist in the CCS (Conduct) Rules 1964 defining sexual harassment. Further, the proviso to Rule 14(2) of the 008 (CCA) Rules 1965 provides that the complaints committee established in each Ministry or Department or office enquiring into such complaints shall be deemed to be the inquiring authority appointed by the disciplinary authority and the committee shall hold the inquiry so far as practicable in accordance with the procedure laid down in those rules. Similar provisions exist in the relevant service rules of the Central Government servants not governed by CCS (Conduct) Rules / CCS (CCA) Rules.

4. Sexual harassment as defined rule 3-0 of Co8 (Conduct) Rules, 1964 in has been amended vide Notification of even number dated 19-11-2014 (copy enclosed). The amended rule is as follows:

"Rule 3C - Prohibition of sexual harassment of working women (1) No Government servant shall indulge in any act of sexual harassment of any woman at any work place.

(2) Every Government servant who is in charge of a work place shall take

appropriate steps to prevent sexual harassment to any woman at such work place.

Explanation- 1 For the purpose of this rule,

(a) "sexual harassment" includes any one or more of the following acts or behavior, (whether directly or by implication), namely:-

- (i) physical contact and advances; or
- (ii) demand or request for sexual favors; or
- (iii) sexually colored remarks; or
- (iv) showing any pornography; or
- (v) any other unwelcome physical, verbal, non-verbal conduct of a sexual nature.

(b) The following circumstances among other circumstances, if it occurs or is present in relation to or connected with any act or behavior of sexual harassment may amount to sexual harassment

- (i) implied or explicit promise of preferential treatment in employment; or
- (ii) implied or explicit threat of detrimental treatment in employment ; or
- (iii) implied or explicit threat about her present or future employment status; or
- (iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or
- (v) humiliating treatment likely to affect her health or safety.

(c) "workplace" includes,

- (i) any department, organization, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the Central Government;
- (ii) hospitals or nursing homes;
- (iii) any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;
- (iv) any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey;
- (v) a dwelling place or a house."

5. All Ministries/Departments are advised that the following procedure may be adopted while dealing with complaints of sexual harassment:-

(i) Sexual harassment will include any one or more of the Acts or behavior defined in Rule 3-C of the 003 (Conduct) Rules 1964 read with Sec 3(2) of SHWW (PPR) Act.

(ii) The Committee constituted in each Ministry/ Department/ office under the CCS (Conduct) Rules, 1964 shall inquire into complaints of sexual harassment in accordance with the provisions of Section 4 of the SHWW(PPR) Act.

(iii) The Committee will as far as practicable follow the procedures prescribed in CCS (CCA) Rules 1965 for conduct of the inquiry.

(iv) If any complaint is received directly by the committee, the same shall be referred to the appropriate disciplinary authority and the Committee shall inquire into the complaint on the complaint being referred to it by the disciplinary authority.

6. In addition, the Committee will have the powers to recommend to the employer:-
a) to transfer the aggrieved woman or the charged officer to any other workplace; or
b) to grant leave to the aggrieved woman up to a period of three months. (The leave granted to the aggrieved woman under this section shall be in addition to the leave she would be otherwise entitled to.)

c) to grant such other relief to the aggrieved woman as may be prescribed; or
d) to deduct from the salary or wages of the charged officer such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs. Any amount outstanding at the time of cessation of the services of the charged officer due to retirement, death or otherwise may be recovered from the terminal benefits payable to the officer or his heirs. Such compensation will not amount to penalty under Rule 11 of 008 (CCA) Rules in terms of the Explanation (ix) to Rule 11 inserted vide Notification of even Number dated 19-11-2014.

7. it may also be noted that the Committee may recommend action to be taken against the person who has made a complaint, if the Committee arrives at the conclusion that the allegation is malicious or the aggrieved woman or the person making the complaint has made the complaint knowing it to be false or has produced any forged or misleading document. The Committee may also recommend action against any witness if it comes to the conclusion that such witness has given false evidence or produced any forged or misleading document.

8. Attention is also invited to the following provisions of SHWW (PPR) Act: Sec 16 & 17 : Prohibition of publication or making known contents of complaint,

inquiry proceedings and recommendations of the Committee.
Sec 19: Duties of employer. This may be read with provisions of Rule 3(C) (2) of 8 (Conduct) Rules.

Sec 21, 22 of SHWW (PPR) Act and Rule 14 of the SHWW (PPR) Rules Annual Reports.

9. All the Ministries/Departments are requested to bring the contents of this OM to the notice of all officers and staff working under them. The Ministries/ Departments are also requested to advise the PSEs/ Autonomous Bodies under their administrative control to align their service rules with the SHVWV (PPR) Act/ Rules.

16.12 Terminal Question

1. Define Sexual Harassment of Women at the Workplace.
2. Explain Remedies available to Women against the Sexual Harassment at the Workplace
3. In the light of Vishaka Case explain Sexual Harassment of Women at the Workplace

16.13 Further Readings

1. India: India's New Labour Law - Prevention Of Sexual Harassment At The Workplace Last Updated: 9 May 2013, Article by Veena Gopalakrishnan, Ajay Singh Solanki and Vikram Shroff
2. Sexual Harassment At The Workplace, Indira Jaisingh, Universal
3. sexual harassment at workplace - a detailed analysis of the sexual harassment of women at workplace (prevention, prohibition and redressal) act, 2013 *ritu gupta*, ISBN: 9789351430537, 2013
4. What Is Sexual Harassment? From Capitol Hill to the Sorbonne **Abigail C. Saguy, University of California Press, 2004.**
5. The Law of Sexual Harassment: A Critique **Mane Hajdin, Susquehanna University Press, 2003.**
6. Women and Workplace Discrimination: Overcoming Barriers to Gender Equality, **Raymond F. Gregory, Rutgers University Press, 2003.**