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SELF-LEARNING MATERIAL

LABOUR LAWS

DHR 202

SELF-LEARNING MATERIAL

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Course Title: LABOUR LAWS

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DHR 202 LABOUR LAWS

UNIT 1: THE WORKMEN'S COMPENSATION ACT, 1923

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1.1 LEARNING OBJECTIVES

After completion of this unit you are expected to know the following aspects of the Workmen's Compensation Act, 1923:

- ☐ ☐ The organization of the act and different provisions of compensations under the act.
- ☐ ☐ Calculation of compensation amount to the beneficiaries.
- ☐ ☐ Limitations of applicability of the act.

1.2 INTRODUCTION

The Workmen's Compensation Act, 1923 is one of the earliest labour welfare and social security legislation enacted in India. Rapid mechanisation of industries in India and consequent complexities in the work and social lives of the workers created scope for the labour protection act. The requirement was also necessitated by workers' differential skill levels at work to deal with machinery and livelihood hardship arising from accidents at workplace. In July 1921, the provisional views of the Government of India were published which were accepted by the local governments as well as different worker's associations of the country. In June 1922, a committee was constituted to deliberate on the issue. Based on the recommendations of the committee the Workmen's Compensation Bill was introduced in the Legislature. Finally, in 1923, the bill was accepted and recognised as the Workmen's Compensation Act and was put into force on 1st July 1924. As an additional advantage, the act has established the importance of the installations

of different safety devices at the workplace by the employers. Moreover, it ensured adequate medical treatment for their workmen in case of accidents. The Act was first amended in 1933 by the Workmen's Compensation (Amendment) Act, 1933, followed by amendments in 1938, 1946, 1959, 1962, 1984, 1989, 1995, and 2009. The last amendments raised the monetary compensation in the event of death from ` 80,000 to ` 1.2 lakh. In cases of permanent disability, the compensation has been increased from ` 90,000 to ` 1.4 lakh. The money for performing funeral has been doubled from ` 2,500 to ` 5,000.

1.3 OBJECTIVES OF THE WORKMEN'S COMPENSATION ACT

The objectives of the Workmen's Compensation Act may be summarised under the following points :

- 1) Provide workmen and/or their dependents some relief or to consider compensation payable by an employer to his workmen in case of accidents arising out of and in the course of employment and causing either death or disablement of workmen as a measure of relief and social security.
- 2) Provide for payment by certain classes of employers to their workmen compensation for injury by accident.
- 3) To enable a workmen to get compensation irrespective of his negligence.
- 4) It lays 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 came into force.

1.4 EMPLOYERS' DEFENSES BEFORE THE ACT

Before the enactment of the Workmen's Compensation Act 1923, the employer was liable to pay compensation only if he voluntarily declares his responsibility for the workman concerned or if he was guilty of negligence. In cases of established guilt of negligence, the employer could get rid of his liability by following any one or all of the following defenses:

1. **The Doctrine of Assumed Risks:** The doctrine follows from the rule *Volenti Non Fit Injuria*. It means that if the worker (employee) voluntarily takes up the risk of working in an accident-prone area, the employer may deny the liability for injuries.
2. **The Doctrine of Common Employment:** When several employees work together for a common purpose, it is known as common employment. In case of common employment, if one of the employees is injured by some act or omission of another, the employer is not liable to pay compensation for the injury.
3. **The Doctrine of Contributory Negligence:** If the employee encounters accidental damages due to own mistakes or negligence, the employee is not entitled to damages for injury. However, under the Workmen's Compensation Act 1923, the employer is liable to pay compensation irrespective of negligence. The Act looks upon compensation as relief to the workman and not as damages payable by the employer for a wrongful act.

1.5 THE FATAL ACCIDENT ACT, 1855

Prior to the Workmen's Compensation Act, 1923, the Indian Government passed the Fatal accident Act, 1855. The act of 1855 also created certain provisions relating to compensation of workers mental and physical losses arising out of accidental mishaps at workplace. The act provides legislative measures for the compensation to families for loss occasioned by the death of a person caused by 'actionable wrong'. According to legal dictionary, the phrase 'actionable wrong' means wrongful referring to the conduct of such character as to subject the actor to civil liability under executable law. 'Wrongful act', 'neglect' and/or 'default' are the components of 'actionable wrong' as per the provisions of the concerned act. Under section 1A of the Fatal Accidents Act, 1855, compensation awarded for loss of dependency, worked out by applying the principle of multiplier is a part of damages "proportioned to the loss resulting from the death"¹. Every such action or suit shall be for the benefit of the wife, husband, parent and child, if any, of the person whose death shall have been so caused, and shall be brought by and in the name of the executor, administrator or representative of the person deceased². However, not more than one action or suit shall be brought for, and in respect of the same subject-matter of complaint. The plaintiff (the applicant) shall have to provide full particulars of the person or persons for whom, or on whose behalf, such action or suit shall be brought, and of the nature of the claim in respect of which damages shall be sought to be recovered.

1.6 SCOPE & COVERAGE OF THE WORKMEN'S COMPENSATION ACT, 1923

The Act is applicable throughout India including³ the State of Jammu & Kashmir. The Act provides for the payment of compensation by certain classes of employers to their workmen, for injury by accidents. The Act is applicable only to those workmen working in industries as specified in the Act. The Act affords protection to a workman from losses or injury caused by accident arising out of and in the course of employment subject to certain exceptions as laid down in the Act. It is also applicable to the workman recruited by companies/establishments registered in India and sent for work abroad. It applies to:

- (a) All railway servants not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any capacity as is specified in Schedule II to the Act;
- (b) Persons employed in any such capacity as is specified in Schedule II to the Act. Schedule II includes persons employed in factories, mines, plantations, mechanically propelled vehicles, construction works and certain other hazardous occupations. In all, there are 48 employments listed in the Schedule ; and
- (c) Persons employed in employments added to Schedule II by the State Government in exercise of the powers conferred on them under section 2(3) of the Act. There is no wage limit for coverage under the Act. However, it should be noted that the Act does not apply to those workers who are insured under the Employees' State Insurance Act 1948. According to the Section 53 of the Employees' State Insurance Act:

An insured person or his dependants shall not be entitled to receive or recover, whether from the employer of the insured person or from any other person, any compensation or damages under the Workmen's Compensation Act, 1923 (8 of 1923), or any other law for the time being in force or otherwise,

in respect of an employment injury sustained by the insured person as an employee under this Act. (Act 44 of 1966, sec. 25, for the original section 53 (w.e.f. 28-1-1968))

1.7 RULES AND DEFINITIONS UNDER THE WORKMEN'S COMPENSATION ACT, 1923

Under section 3(I) of the act it is mentioned that if personal injury is caused to a workman by accident arising out of and in course of employment, his employer shall be liable to pay compensation. Thus, the employer is liable when

- (a) injury is caused to a workman by *accident* and
- (b) the accident arises *out of and in course of employment*.

An occupational disease⁴ is deemed to be an injury by accident and the employer is liable to pay compensation. The section itself provides that in certain cases of injury, no compensation is payable. Section 3(2) of the Act provides that an occupational disease "shall be deemed to be an injury by accident within the meaning of this section and, unless the contrary is proved, the accident shall be deemed to have arisen out of, and in the course of, the employment." Section 3 of the Act also provides the following cases for non-payment of compensation to the employee:

- (a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding three days.
- (b) in respect of any injury not resulting in death, caused by an accident which is directly attributable to-
 - (i) the workman having been at the time thereof under the influence of drink or drugs, or,
 - (ii) the willful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or, the willful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen. Under the Act, unless there is anything repugnant in the subject or context, the following definitions are adopted as final and binding:

1) **Commissioner** [Section 2 (1) (b)]: Commissioner means a Commissioner for Workmen's Compensation appointed under Section 20.

2) **Compensation** [Section 2(1) (c)]: Compensation means compensation as provided for by this Act.

3) **Dependent** [Section 2(1) (d)]: Dependent means any of the following relatives of a deceased workman, namely:

- i) A widow, a minor, legitimate or adopted son, an unmarried legitimate or adopted daughter or a widowed mother; and
- ii) If wholly dependant 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;
- iii) If 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, illegitimate son, an unmarried illegitimate daughter, or a daughter legitimate or illegitimate or adopted if married and a minor or if widowed and minor,
 - d) A minor brother or an unmarried sister or a widowed sister if a minor,
 - e) A widowed daughter-in-law,
 - f) A minor child of a pre-deceased son,
 - g) A minor child of a pre-deceased daughter where no parent of the child is alive, or
 - h) A paternal grandparent if no parent of the workman is alive.

4) **Employer** [Section 2(1) (e)]: Employer includes any body or persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer and when the

services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship means such other person while the workman is working for him;

5) **Managing Agent** [Section 2(1) (f)]: Managing agent means any person appointed or acting as the representative of another person for the purpose of carrying on such other person's trade or business but does not include an individual manager subordinate to an employer;

6) **Minor** [Section 2(1) (ff)]: Minor means a person who has not attained the age of 18 years;

7) **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 his disablement. Disablement may be partial, or total. Further Partial disablement may be permanent, or temporary.

i) **Partial Disablement** [Section 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.

a) 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.

b) Permanent partial disablement is one which reduces the earning capacity of a workman in every employment which he was capable of undertaking at the time of injury.

ii) **Total Disablement** [Section 2 (1) (l)]: 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 the accident resulting in such disablement. It refers to that condition where a workman becomes unfit for every type of work and is not able to get job anywhere due to that disablement. Total disablement is deemed to result from every injury specified in Part I of Schedule I or from any combination of injuries specified in Part II thereof where the aggregate

percentage of the loss of earning capacity, as specified in Part II against those injuries, amounts to 100 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 workman is entitled to claim compensation only on the basis of partial disablement and not total disablement.

8) **Qualified Medical Practitioner** [Section (2) (i)]: Qualified medical practitioner means any person registered under any Central Act or an Act of the Legislature of a State providing for the maintenance of a register of medical practitioners or in any area where no such last-mentioned Act is in force, any person declared by the State Government by notification in the Official Gazette to be a qualified medical practitioner for the purpose of this Act;

9) **Wages** [Section 2(1) (m)]: Wages includes any privilege or benefit which is capable of being estimated in money other than a traveling allowance or the value of any traveling 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 expenses entailed on him by the nature of his employment.

10) **Workman** [Section 2(1) (n)]: Workman means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is: i) A railway servant as defined in section 3 of the Indian Railways Act 1890 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

a) A master seaman or other member of the crew of a ship.

b) A captain or other member of the crew of an aircraft.

c) A person recruited as driver, helper, mechanic, cleaner, or in any other capacity in connection with a motor vehicle.

d) A person recruited for work abroad by a company and who is employed outside India in any such capacity as is specified in Schedule II and the ship aircraft or motor vehicle or company as the case may be is registered in India or;

ii) Employed in any such capacity as is specified in Schedule II. whether the contract of employment was made before or after the passing of this Act and whether the contract is expressed or implied oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to a workman who has been injured shall where the workman is dead includes a reference to his dependants or any of them.

1.8 AMOUNT & DISTRIBUTION OF COMPENSATION UNDER THE WORKMEN'S COMPENSATION ACT, 1923

The Act classifies different categories of compensation resulting out of temporary and permanent disablement of workers under Section 2 (g) and (1) and (4).

List of Injuries Deemed to Result in Permanent Total Disablement

Serial

No.

Description of Injury

Percentage

of

loss of

earning

capacity

1. Loss of both hands or amputation at higher sites 100

2. Loss of a hand and a foot 100

3.

Double amputation through leg or thigh, or amputation through leg or thigh on one side and loss of other foot

100

4.

Loss of sight to such an extent as to render the claimant unable to perform any work for which eye-sight is essential .

100

Very severe facial disfigurement 100

6. Absolute deafness 100

PART II: List of Injuries Deemed to Result in Permanent Partial Disablement

Serial

No.

Description of Injury

Percentage of

loss of earning

capacity

Amputation cases—upper limbs (either arm)

1. Amputation through shoulder joint 90

2.

Amputation below shoulder with stump less than 3[20.32 Cms.] from tip of acromion

80

3.

Amputation from [20.32 Cms.] from tip of acromion to less than [11.43 Cms.] below tip of olecranon

70

4.

Loss of a hand or of the thumb and four fingers of one hand or amputation from [11.43 Cms.] below tip of olecranon

60

5. Loss of thumb 30

6. Loss of thumb and its metacarpal bone 40

7. Loss of four fingers of one hand 50

8. Loss of Three fingers of one hand 30
9. Loss of two fingers of one hand 20
10. Loss of terminal phalanx of thumb 20
- 10A. Guillotine amputation of tip of thumb without loss of bone 10

Amputation cases—lower limbs

11. Amputation of both feet resulting in end bearing stumps . 90
12.
Amputation through both feet proximal to the metatarsophalangeal joint
80
13. Loss of all toes of both feet through the metatarso-phalangeal joint 40
14.
Loss of all toes of both feet proximal to the proximal interphalangeal joint
30
15.
Loss of all toes of both feet distal to the proximal inter-phalangeal joint
20
16. Amputation at hip 90
17.
Amputation below hip with stump not exceeding [12.70 Cms.] in length measured from tip of great trochanter
80
18.
Amputation below hip with stump exceeding [12.70 Cms.] in length measured from tip of great trochanter but not beyond middle thigh
70
19. Amputation below middle thigh to [8.89 Cms.] below knee 60
20.
Amputation below knee with stump exceeding [8.89 Cms.] but not exceeding [12.70 Cms.]
50
21. Amputation below knee with stump exceeding [12.70 Cms] 50
22. Amputation of one foot resulting in end bearing 50
23.
Amputation through one foot proximal to the metatarsophalangeal joint
50
24. Loss of all toes of one foot through the metatarso-phalangeal joint 20
- Other injuries
25. Loss of one eye, without complications, the other being normal 40
26.
Loss of vision of one eye, without complications or disfigurement of eye-ball, the other being normal
30
- 26A. Loss of partial vision of one eye 10

A—Fingers of right or left hand Index finger

27. Whole 14
28. Two phalanges 11
29. One phalanx 09
30. Guillotine amputation of tip without loss of bone. 05

Middle finger

31. Amputation of both feet resulting in end bearing stumps . 12
- 32.

Amputation through both feet proximal to the metatarsophalangeal joint

09

33. Loss of all toes of both feet through the metatarso-phalangeal joint 07

34.

Loss of all toes of both feet proximal to the proximal interphalangeal joint

04

Ring or little finger

35.

Loss of all toes of both feet distal to the proximal inter-phalangeal joint

07

36. Amputation at hip 06

37.

Amputation below hip with stump not exceeding 2[12.70 Cms.] in length measured from tip of great trochanter

05

38.

Amputation below hip with stump exceeding 2[12.70 Cms.] in length measured from tip of great trochanter but not beyond middle thigh

02

B—Toes of right or left foot Great toe

39. Amputation below middle thigh to 3[8.89 Cms.] below knee 14

40.

Amputation below knee with stump exceeding 3[8.89 Cms.] but not exceeding 2[12.70 Cms.]

03

Any other toe

41. Amputation below knee with stump exceeding 2[12.70 Cms] 03

42. Amputation of one foot resulting in end bearing 01

Two toes of one foot, excluding great toe

43. Amputation through one foot proximal to the metatarsophalangeal joint 05

44. Loss of all toes of one foot through the metatarso-phalangeal joint 02

Three toes of one foot, excluding great toe

45. Loss of one eye, without complications, the other being normal 06

46.

Loss of vision of one eye, without complications or disfigurement of eye-ball, the other being normal

03

Four toes of one foot, excluding great toe

47. Loss of partial vision of one eye 09

48. Whole 03

Amount of compensation:

(1) Subject to the provisions of this Act, the amount of compensation shall be as follows –

(a) Where death results from the injury an amount equal to fifty per cent of the monthly wages of the deceased workman multiplied by the relevant factor; or an amount of eighty thousand rupees, whichever is more;

(b) Where permanent total disablement results from the injury an amount equal to sixty per cent of the monthly wages of the injured workman multiplied by the relevant factor; or an amount of ninety thousand rupees, whichever is more;

(c) Where permanent partial disablement result from the injury -

☐ in the case of an injury specified in Part II of Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning

capacity caused by that injury; and

□ □ in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury;

(d) Where temporary disablement whether total or partial results from the injury a half monthly payment of the sum equivalent to twenty-five per cent of mostly wages of the workman, to be paid in accordance with the provisions of sub-section (2).

(2) The half-monthly payment referred to in clause (d) of sub-section (1) shall be payable on the sixteenth day —

(i) from the date of disablement where such disablement lasts for a period of twenty-eight days or more, or

(ii) after the expiry of a waiting period of three days from the date of disablement where such disablement lasts for a period of less than twenty-eight days; and thereafter half-monthly during the disablement or during a period of five years, whichever period is shorter.

(3) On the ceasing of the disablement before the date on which any half-monthly payment falls due there shall be payable in respect of that half-month a sum proportionate to the duration of the disablement in that half-month.

(4) If the injury of the workman results in his death, the employer shall, in addition to the compensation under sub-section (1), deposit with the Commissioner a sum of two thousand and five hundred rupees for payment of the same to the eldest surviving dependant of the workman towards the expenditure of the funeral of such workman or where the workman did not have a dependant or was not living with his dependant at the time of his death to the person who actually incurred such expenditure.

Distribution of compensation:

(1) No payment of compensation in respect of a workman whose injury has resulted in death, and no payment of a lump sum as compensation to a woman or a person under a legal disability, shall be made otherwise than by deposit with the Commissioner, and no such payment made directly by an employer shall be deemed to be a payment of compensation.

(2) Any other sum amounting to not less than ten rupees which is payable as compensation may be deposited with the Commissioner on behalf of the person entitled thereto.

(3) The receipt of the Commissioner shall be a sufficient discharge in respect of any compensation deposited with him.

(4) On the deposit of any money under sub-section (1), the Commissioner shall, if he thinks necessary, cause notice to be published or to be served on each dependant in such manner as he thinks fit, calling upon the dependants to appear before him on such date as he may fix for determining the distribution of the compensation. If the Commissioner is satisfied after any inquiry which he may deem necessary, that no dependant exists, he shall repay the balance of the money to the employer by whom it was paid. The Commissioner shall, on application by the employer, furnish a statement showing in detail all disbursements made.

(5) Compensation deposited in respect of a deceased workman shall, subject to any deduction made under sub-section (4), be apportioned among the dependant of the deceased workman or any of them in such proportion as the Commissioner thinks fit, or may, in the discretion of the Commissioner, be allotted to any one dependant.

(6) Where any compensation deposited with the Commissioner is payable to any person, the Commissioner shall, if the person to whom the compensation is payable is not a woman or a person under a legal disability, and may, in other cases, pay the money to the person entitled thereto.

(7) Where any lump sum deposited with the Commissioner is 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; and where a half-monthly payment is payable to any person under a legal disability, the Commissioner may, of his own motion or on an application made to him in this behalf, order that the payment be made during the disability 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.

(8) Where an application made to him in this behalf or otherwise, the Commissioner is satisfied that, on account of neglect of children on the part of a parent or on account of the variation of the circumstances of any dependant or for any other sufficient cause, an order of the Commissioner as to the distribution of any sum paid as compensation to as to the manner in which any sum payable to any such dependant is to be invested, applied or otherwise dealt with, ought to be varied, the Commissioner may make such orders for the variation of the former order as he thinks just in the circumstances of the case.

(9) Where the Commissioner varies any order under sub-section (8) 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 to or on behalf of such person may be recovered in the manner hereinafter provided in section 31.

1.9 LET US SUM UP

The discussed Act provides for payment of compensation to workmen and their dependants in case of injury and accident (including certain occupational disease) arising out of and in the course of employment and resulting in disablement or death. The amount of compensation to be paid depends on the nature of the injury and the average monthly wages and age of workmen.

1.10 PRACTICE QUESTIONS

1. How is an employer liable for compensation to a workman injured by an accident arising out of and in course of his employment?
2. State the rules regarding the notice of accident and its proper manner.
3. Describe the circumstances under which the order of the Commissioner is appealable?
4. Discuss the scope and applicability of the Workmen's Compensation Act, 1923.
5. What are the defenses available to the employer to deny compensation to an employee?
6. What do you mean by an 'occupational disease'? State the law, as provided by the Act, for the compensation relating to such diseases.
7. What are the remedies open to an employee for the injury to him from accident arising out of and in the course of his employment?
8. Write notes on:
 - (a) Contracting out.
 - (b) Statement of fatal accidents.
 - (c) Employees liability to report fatal accidents.
 - (d) Compensation returns.

1.11 FURTHER READINGS

1. Tulsian P.C., Business Law, Tata McGraw Hill Publishing Co. New Delhi
2. Kapoor N.D., Handbook of Industrial Law, Sultan Chand & Sons, New Delhi.
3. The Bare Act at <http://www.vakilno1.com/bareacts/wrkmnscompensation/s8.htm>
- 1 Fizabai v. Nemi Chand, AIR 1993, MP 79 (<http://www.aptransport.org/html/actsrules>)
- 2 The word "person" shall apply to bodies politic and corporate; and the word "parent" shall include father and mother (omitting step-father and step mother), grand-father and grand-mother; and the word "child" shall include son and daughter, and grand-son and grand-daughter and step-son and stepdaughter.
- 3 The words "except the State of Jammu and Kashmir" omitted by Act 51 of 1970, sec. 2 and Sch. (w.e.f. 1-9-1971).
- 4 Persons employed in certain occupations are liable to be affected by certain diseases. Such diseases are known as Occupational Diseases. Schedule III to the Workmen's Compensation Act contains a list of occupational diseases divided into three parts, part A, Part B and Part C. Part A includes Anthrax, Compressed Air Sickness, Poisoning by

lead tetra-ethyl and nitrous fumes. Part B includes poisoning by lead compounds, phosphorus, mercury etc., cancer of the skin, telegraphist's cramp etc. Part C includes Silicosis, Asbestosis etc.

DHR 202 LABOUR LAWS

UNIT 2: THE PAYMENT OF WAGES ACT, 1936

UNIT STRUCTURE

2.1 LEARNING OBJECTIVES

2.2 INTRODUCTION

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- 2.8 PENALTIES
- 2.9 LET US SUM UP
- 2.10 POSSIBLE QUESTIONS.
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2.1. LEARNING OBJECTIVES

- (i) To know the general provisions of the Payment of Wages Act, 1936.
- (ii) To be acquainted with different wage related issues, maintenance of registers
- (iii) To know the duties and responsibilities of inspectors.
- (iv) To understand penalties in cases of non-fulfillment of judicial provisions laid down for the payment of wage to the workers.

2.2. INTRODUCTION

The Payment of Wages Act, 1936 is a central legislation which has been enacted to regulate the payment of wages to workers employed in certain specified industries and to ensure a speedy and effective remedy to them against illegal deductions and/or unjustified delay caused in paying wages to them.

Hence, the main object of the Act is to eliminate all malpractices by laying down the time and mode of payment of wages as well as securing that the workers are paid their wages at regular intervals, without any unauthorised deductions. The Act was amended by the Payment of Wages (Amendment) Act, 2005 in order to enlarge its scope and provide for more effective enforcement.

2.3. SCOPE AND OBJECTIVES OF THE PAYMENT OF WAGES ACT

As declared in the Payment of Wages Act 1936, the act is enacted to regulate the payment of wages to certain class of employed persons. The Act applies to whole of India. The employed persons may represent any factory (a saw mill, ginning factory, godowns, yards , etc as defined in the Factories Act of 1948) any railway establishment and any industrial or other establishment like tramway service, motor transport service, air transport service, dock, wharf, jetty, inland vessel, mine, quarry, oilfield, plantation, workshop or other establishment producing, adapting or manufacturing any article, establishments engaged in construction, development and maintenance of buildings, roads, bridges or canals, navigation, irrigation or supply of water, generation, transmission and distribution of electricity/power and any other establishment notified by the Central or a State Government. The Central Government is responsible for enforcement of the Act in railways, mines, oilfields and air transport services, while the State Governments are responsible for it in factories and other industrial establishments. The Act is applicable to the employees receiving wages below ` 1,600/-per month. Persons employed in a railway establishment; either directly or through a contractor are also covered under the Act. The amendment of the Act in 2005 enhanced the wage ceiling from `1600/-per month to `6500/-per month.

The major provisions under the Act are:

1. It regulates the payment of wages in time i.e., not later than 7th day from the last day of the wage period for factories employing less than 1000 employees and 10th day for factories exceeding 1000 employees.
2. Wages shall be paid in cash in current currency with in the working hours.
3. Only authorised deductions can be caused from the earned wages;
4. Workers shall be issued wage slips giving all the details of their earned wages along with the wages paid;
5. Fines can be imposed as per the rules specified;

The Act of 1936 was introduced with the following objectives:

- (a) Regulating payment of wages, imposition of fines and deductions from wages, and;
- (b) Eliminating all malpractices by laying down wage periods and time and mode of payment of wages.

The Act, therefore, ensures payment of wages in a particular form at regular intervals without unauthorized deductions.

2.4. IMPORTANT DEFINITIONS

The terminology to be used in case of the Payment of Wages Act 1936 are included Section 2 of the Act. The major definitions under the Act are mentioned below:

1. **Employed person:** any person employed by or through any agency(including a contractor) with or without the knowledge of the principal employer, for remuneration in any factory or establishment to do any work connected with its affairs, whose average wages do not exceed

`6500 per month or such amount as may be specified by the Central government from time to time, on the basis of rise in the consumer price index number, by notification in the Official Gazette According to Section 2

(i) of the act the term 'Employed person' also includes the legal representative of a deceased employed person.

3. **Employer:** The concept of 'employer' is interpreted in three ways:

(i) in relation to an establishment which is a factory under the Factories Act, 1948 the person who has been named as a manager under Section 7 of that Act;

(ii) In relation to any other establishment, the person who has ultimate control over the affairs of the establishment and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent.

(iii) The legal representative of a deceased employer [Section 2 (ia) Payment of Wages Act].

4. **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 [Section 2 (ib)].

5. **Industrial or other establishment:** Tramway service or motor transport service engaged in carrying passengers or goods or both by road for hire or reward [Section 2 (iia)]; 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 [Section 2 (iiaa)]; (b) dock wharf or jetty [Section 2 (iib)]; inland vessel mechanically propelled [Section 2 (iic)]; mine quarry or oil-field[Section 2 (iid)]; plantation[Section 2 (iie)]; workshop or other establishment in which articles are produced adapted or manufactured with a view to their use

transport or sale[Section 2 (iif)]; 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 to the supply of water or relating to the generation transmission and distribution of electricity or any other form of power is being carried on [Section 2 (iig)];and 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 [Section 2 (iih)]; 'mine' as defined in clause (j) of sub-section (1) of section

2 of the Mines Act 1952 (35 of 1952); 'plantation' as defined in clause (f) of section 2 of the Plantations Labour Act 1951 (69 of 1951); 'railway administration' as defined in clause (6) of section 3 of the Indian Railways Act 1890 (9 of 1890).

6. **Wages:** All remuneration (whether by way of salary allowances or otherwise) expressed in terms of money or capable of being so expressed which would if the terms of employment express or implied were fulfilled by payable to a person employed in respect of his employment or of work done in such employment [Section 2 (vi)]. Wages include –

(i) any remuneration payable under any award or settlement between the parties or order of a court;

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

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

- (iv) 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;
- (v) 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 –
- (vi) 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;
- (vii) 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;
- (viii) any contribution paid by the employer to any pension or provident fund and the interest which may have accrued thereon;
- (ix) any travelling allowance or the value of any travelling concession;
- (x) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or
- (xi) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d).

2.5. WAGE RELATED ISSUES

Wage Period and its Determination:

The Act does not define the term wage period, It only says that every person, responsible for the payment of wages under section 3 shall fix wage period in respect of which such wages shall be payable. It again says that no wage period shall exceed one month. Normally the wage period shall mean the period or span of time for which wages shall be payable to an employee. The period is to be fixed by the person responsible for the payment of wages. Such wage period shall not in any case exceed one month.

Responsibility of Payment of Wages:

Section 3 of the Act provides that every employer shall be responsible for the payment to the persons employed by him of all wages required to be paid under this act. In the factories the person named as manager of the factory under clause (f) of sub section (1) of Section 7 of the Factories Act 1948 shall be held responsible for the payment of wages so long as he is in office.

2.6 MAINTENANCE OF REGISTERS

Under Section 13A of the Payment of Wages Act 1936, norms for the maintenance of registers and records are listed. The listed provisions are –

- (1) Every employer shall maintain such registers and records giving such particulars of persons employed by him the work performed by them the wages paid to them the deductions made from their wages the receipts given by them and such other particulars and in such form as may be prescribed.
- (2) Every register and record required to be maintained under this section shall for the purposes of this Act be preserved for a period of three years after the date of the last entry made therein.

2.7 INSPECTORS & THEIR DUTIES

- (1) An Inspector of Factories appointed under sub-section (1) of section 8 of the Factories Act 1948 (63 of 1948) shall be an Inspector for the purposes of this Act in respect of all factories within the local limits assigned to him.
- (2) The State Government may appoint Inspectors for the purposes of this Act in respect of all persons employed upon a railway (otherwise than in a factory) to whom this Act applies.
- (3) The State Government may by notification in the Official Gazette appoint such other persons as it thinks fit to be Inspectors for the purposes of this Act and may define the local limits within which and the class of factories and industrial or other establishments in respect of which they shall exercise their functions.
- (4) An Inspector may,
 - (a) make such examination and inquiry as he thinks fit in order to ascertain whether the provisions of this Act or rules made there under are being observed;

(b) with such assistance if any as he thinks fit enter inspect and search any premises of any railway factory or industrial or other establishment at any reasonable time for the purpose of carrying out the objects of this Act;

(c) supervise the payment of wages to persons employed upon any railway or in any factory or industrial or other establishment;

(d) require by a written order the production at such place as may be prescribed of any register maintained in pursuance of this Act and taken on the spot or otherwise statements of any persons which he may consider necessary for carrying out the purposes of this Act;

(e) seize or take copies of such registers or documents or portions thereof as he may consider relevant in respect of an offence under this Act which he has reason to believe has been committed by an employer;

(f) exercise such other powers as may be prescribed : Provided that no person shall be compelled under this sub-section to answer any question or make any statement tending to incriminate himself.

(4A) The provisions of the Code of Criminal Procedure 1973 (2 of 1974) shall so far as may be apply to any search or seizure under this sub-section as they apply to any search or seizure made under the authority of a warrant issued under section 94 of the said Code.

(5) Every Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860).

14A. Facilities to be afforded to Inspectors

Every employer shall afford an Inspector all reasonable facilities for making any entry inspection supervision examination or inquiry under this Act.

2.8. PENALTIES

Section 20 deals with the penalties for contravention of the provisions of this Act. According to sub section (1) of section 20 the penalty which may be imposed upon the person responsible for the payment of wages and he contravenes any of the provisions of section 5 (except sub section (4) thereof), section 7, section 8 (except sub section (8) thereof), section 9, section 10 section 5 (except sub section (2) thereof), and sections 11 and 13 shall be punishable with fine which shall not be less than Rs. 200 but which may extend to Rs. 1000. Under sub section (2) of section 20 any person whoever contravenes the provisions of section 4, 5 (4), 6, 8 (8), 10 (2) or section 25, shall be punishable with fine which may extend to Rs.500. According to section 20 (3), if a person is required to maintain any records or registers or to furnish any information or return, shall be punishable for each of the following offences with a fine which may extend to Rs.500, if he:

(b) fails to maintain such register or record; or

(c) wilfully refuses or without lawful excuse neglects to furnish such information or return; or

(d) wilfully furnishes or cause to be furnished any information or return which he knows to be false; or

(e) refuses to answer or wilfully gives a false answer to any question necessary for obtaining any information required to be furnished under the act shall for each offence be punishable with fine which shall not be less than Rs.200, but which may extend to Rs.1000.

The following offences shall be punishable with fine which may extend to Rs.500 under section 20(4) of the act:

(a) If any person wilfully obstructs an inspector in the discharge of his duty under this act;

(b) If any person refuses, or wilfully neglects to afford an inspector any reasonable facility for making any entry, inspection, examination, supervision, or inquiry authorised by or under this act in relation to any railway, factory or industrial or other establishments;

(c) If any person wilfully refuses to produce on the demand, of an inspector any register or other document kept in pursuance of this act; or

(d) If any person prevents or attempts to prevent or does anything which he has any reason to believe is likely to prevent any person from appearing before or being examined by an inspector acting in pursuance of his duties under this act.

Sub section (5) of Section 20 lays down that if any person who has been convicted of any offence punishable under this act is again guilty of an offence involving contravention of the same provision, he shall be punishable on a subsequent conviction in the imprisonment for a term which shall not be less than one month but which may extend to six months or with fine which shall not be less than Rs.500 but which may extend to Rs.3000 or both. But, according to the provision, for the purpose of this sub section, no cognizance shall be taken of any conviction made more than two years before the day on which the commission of the offence which is being punished comes to the knowledge of the inspector.

According to sub section (6) of section 20, if any person fails or wilfully neglects to pay the wages of any employed person by the date fixed by the authority on his behalf, he shall be punishable with an additional fine which may extend to Rs. 100 for each day for which such failure or neglect continues.

2.9. LET US SUM UP

The discussed Act has been a revolutionary development regarding labour legislation in India. In a way, it provided scope for social and job related security to the workers. It provisioned payment of wages to the workers at regular intervals without unauthorised and unwanted deductions.

2.10. POSSIBLE QUESTIONS

1. Trace the theory of the law relating to the payment of wages in India.
2. Discuss the coverage of the Payment of Wages Act, 1936.
3. Define 'wage and wage period' as per Indian Law. Discuss how the wage period is determined.
4. Enumerate the deductions that can be made from wages under the Payment of Wages Act, 1936.
5. What do you mean by 'fines'? Explain the limitations under the Payment of Wages Act, 1936 regarding imposition of fines upon employees.
6. Classify the offences under the Payment of Wages Act, 1936. Describe the penalties for offences under the Act.
7. Who is an 'Inspector of Factories'? Discuss the role and responsibilities of an inspector.

2.11. FURTHER READINGS

1. Tulsian P.C., Business Law, Tata McGraw Hill Publishing Co. New Delhi
2. Kapoor N.D., Handbook of Industrial Law, Sultan Chand & Sons, New Delhi.
3. The Bare Act at www.vakilno1.com

DHR 202 LABOUR LAWS

UNIT 3: FACTORIES ACT, 1948

UNIT STRUCTURE

3.1 LEARNING OBJECTIVES

3.2 INTRODUCTION

3.3 OBJECTIVES OF THE ACT

3.4 IMPORTANT DEFINITIONS

3.5 REGISTRATION PROCEDURE UNDER THE ACT

3.6 WELFARE, HEALTH, SAFETY AND WELFARE UNDER THE ACT

3.7 EMPLOYMENT OF PERSONS & WORKING HOURS UNDER THE ACT

3.8 TO SUM UP

3.9 PRACTICE QUESTIONS.

3.10 FURTHER READINGS

3.1 LEARNING OBJECTIVES

(i) To have an overview of the Factories Act, 1948

(ii) To discuss the procedure of registration of a factory in India; maintenance of workers' health, safety, and welfare measures; and procedure of workers' employment at the workplace and related matters.

(iii) To understand the legal aspects of managing workers at the workplace.

3.2 INTRODUCTION

The origin of Factories Act in India dates back to 1881 when the first Factories Act of India was passed. The Act of 1881 created legal provisions relating to protection of children and health and safety of the workers. This was followed by new Acts in 1891, 1911, 1922 and 1934. In 1948, the comprehensive Factories Act of India was declared and the Act came into force from 1st April 1949. The new Act created provisions regarding health, safety and welfare of workers, working hours of adults, employment of young persons which include children adolescents, annual leave with wages etc. As mentioned in the comments in the Section 1 of the Act, the "Factories Act is meant to provide protection to the workers from being exploited by the greedy business establishments and it also provides for the improvement of working conditions within the factory premises. Hence, a beneficial construction should be given and the provisions of the Act should be so construed/interpreted so as to achieve its object, i.e., the welfare of the workers and their protection from exploitation and unhygienic working conditions in the factory premises."

3.3 SCOPE AND OBJECTIVES OF THE FACTORIES ACT, 1948

The Act extends to the whole of India including the State of Jammu and Kashmir.

The main objective is to regulate the conditions of workers in manufacturing units which come within the definition of 'factory' as used in the Act. As appears in the Section 116, the Act also applies to the factories under the State Governments unless otherwise stated.

The objectives of the Act are related primarily to social welfare legislation by determining and governing working and working conditions of workmen in factories. As such, the Act mainly deals with the following components -

1. It aims at protecting health, welfare and safety of workmen in factories against industrial and occupational, hazards and to ensure healthy conditions of life and work.
2. It determines the working hour of adult workmen, provisions of leave in different categories, rest and recreation.
3. It determines the modalities and procedures of employment of women and young workers particularly stressing on the length of working hours.

3.4 IMPORTANT DEFINITIONS

The terminology to be used in case of the Factories Act, 1948 are included Section 2 of the Act. The major definitions under the Act are mentioned below:

1. **Adult** [Section 2(a)]: Any person who has completed his eighteenth year of age.
2. **Adolescent** [Section 2(b)]: A person who has completed his fifteenth year of age but has not completed his eighteenth year.
3. **Calendar year** [Section 2(bb)]: The period of twelve months beginning with the first day of January in any year.
4. **Child** [Section 2(c)]: A person who has not completed his fifteenth year of age.
5. **Competent person** [Section 2(ca)]: In relation to any provision of this Act, a competent person means a person or an institution recognised as such by the Chief Inspector for the purposes of carrying out tests, examinations and inspections required to be done in a factory under the provisions of this Act having regard to
 - (i) the qualifications and experience of the person and facilities available at his disposal; or
 - (ii) the qualifications and experience of the persons employed in such institution and facilities available therein, with regard to the conduct of such tests, examinations and inspections, and more than one person or institution can be recognised as a competent person in relation to a factory;
6. **Hazardous process** [Section 2(cb)]: Any process or activity in relation to an industry specified in the First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, byproducts, wastes or effluents thereof would —
 - (i) cause material impairment to the health of the persons engaged in or connected therewith, or
 - (ii) result in the pollution of the general environment.
7. **Young person** [Section 2(d)]: A person who is either a child or an adolescent.
8. **Day** [Section 2(e)]: A period of twenty-four hours beginning at midnight.
9. **Week** [Section 2(f)]: A period of seven days beginning at midnight on Saturday night or such other night as may be approved in writing for a particular area by the Chief Inspector of Factories.
10. **Power** [Section 2(g)]: Electric energy or any other form of energy which is mechanically transmitted and is not generated by human or animal agency.
11. **Prime mover** [Section 2(h)]: Any engine, motor or other appliance which generates or otherwise provides power.
12. **Transmission machinery** [Section 2(i)]: Any shaft, wheel, drum, pulley, system of pulleys, coupling, clutch, driving belt or other appliance or device by which the motion of a prime mover is transmitted to or received by any machinery or appliance.

13. **Machinery** [Section 2(j)]: Machinery includes prime movers, transmission machinery and all other appliances whereby power is generated, transformed, transmitted or applied.

14. **Manufacturing process** [Section 2(k)]: Manufacturing process means any process for—

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

15. **worker** [Section 2(l)]: Worker means a person employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process but does not include any member of the armed forces of the Union. It should be noted that for computing the number of workers for the purposes of this clause all the workers in 10[different groups and relays] in a day shall be taken into account.

16. **Factory** [Section 2(m)]: A factory is any premises including the precincts thereof—

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on.

However, the connotation of the term ‘factory’ does not include

- (i) a mine subject to the operation of [the Mines Act, 1952 (35 of 1952)], or
- (ii) a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place.

17. **Occupier** [Section 2(n)]: The person who has ultimate control over the affairs of the factory. However, the following conditions apply in this regard.

- (i) In the case of a firm or other association of individuals, any one of the individual partners or members thereof shall be deemed to be the occupier.
- (ii) In the case of a company, any one of the directors shall be deemed to be the occupier.
- (iii) In the case of a factory owned or controlled by the Central Government or any State Government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority, as the case may be, shall be deemed to be the occupier.

Provided further that in the case of a ship which is being repaired, or on which maintenance work is being carried out, in a dry dock which is available for hire,—

(1) the owner of the dock shall be deemed to be the occupier for the purposes of any matter provided for by or under:

(a) Section 6, Section 7, Section 7A, Section 7B, Section 11 or Section 12;

(b) Section 17, in so far as it relates to the providing and maintenance of sufficient and suitable lighting in or around the dock;

(c) Section 18, Section 19, Section 42, Section 46, Section 47 or Section 49, in relation to the workers employed on such repair or maintenance;

(2) the owner of the ship or his agent or master or other officer-in-charge of the ship or any person who contracts with such owner, agent or master or other officer-in-charge to carry out the repair or maintenance work shall be deemed to be the occupier for the purposes of any matter provided for by or under section 13, section 14, section 16 or section 17 (save as otherwise provided in this proviso) or Chapter IV (except section 27) or section 43, section 44 or section 45, Chapter VI, Chapter VII, Chapter VIII or Chapter IX or section 108, section 109 or section 110, in relation to—

(a) the workers employed directly by him, or by or through any agency; and

(b) the machinery, plant or premises in use for the purpose of carrying out such repair or maintenance work by such owner, agent, master or other officer-in-charge or person.

3.5 REGISTRATION PROCEDURE UNDER THE FACTORIES ACT

The Section 6 of the Factories Act, 1958, the State Government is empowered to create rules for the submission of plans, approval of the plans, and licensing and registration of factories. Under Section 6 (1) the State Government may make rules relating to the following –

1. Requiring, for the purposes of this Act, the submission of plans of any class or description of factories to the Chief Inspector or the State Government [Section 6 (1) a];

2. Requiring, the previous permission in writing of the State Government or the Chief Inspector to be obtained for the site on which the factory is to be situated and for the construction or extension of any factory or class or description of factories [Section 6 (1) aa];

3. Requiring for the purpose of considering applications for such permission the submission of plans and specifications[Section 6 (1) b];

4. Prescribing the nature of such plans and specifications and by whom they shall be certified[Section 6 (1) c];

5. Requiring the registration and licensing of factories or any class or description of factories, and prescribing the fees payable for such registration and licensing and for the renewal of licences [Section 6 (1) d];

6. Requiring that no licence shall be granted or renewed unless the notice specified in section 7 has been given [Section 6 (1) e].

Presumption of permission:

According to the Section 6 (2) of the Act of 1948, if on an application for permission referred to in clause (aa) of sub-Section (1) accompanied by the plans and specifications required by the rules made under clause (b) of that sub-section, sent to the State Government or Chief inspector by registered post, no order is communicated to the applicant within three months from the date on which it is so sent, the permission applied for in the said application shall be deemed to have been granted.

Appeal in case of refusal of presumption of permission:

According to the Section 6 (3) of the Act of 1948, where a State Government or a Chief Inspector refuses to grant permission to the site, construction or extension of a factory or to the registration and licensing of a factory, the applicant may within thirty days of the date of such refusal appeal to the Central Government if the decision appealed from was of the State Government and to the State Government in

any other case.

It is to note that the explanation to Sec. 6 specifically mentions that a factory shall not be deemed to be extended within the meaning of this section by reason only of the replacement of any plant or machinery, or within such limits as may be prescribed, of the addition of any plant or machinery if such replacement or addition does not reduce the minimum clear space required for safe working around the plant or machinery or adversely affect the environmental conditions from the evolution or emission of steam, heat or dust or fumes injurious to health.

Notice by occupier:

Under Section 7 of the Act the provisions for occupier's notice are enlisted.

Accordingly, the occupier shall, at least fifteen days before he begins to occupy or use any premises as a factory, send to the Chief Inspector a written notice containing:

- (a) the name and situation of the factory;
- (b) the name and address of the occupier [the name and address of the owner of the premises or building (including the precincts thereof) referred to in section 93] ;
- (c) the address to which communication relating to the factory may be sent;
- (d) the nature of the manufacturing process -
 - (i) carried on in the factory during the last twelve months in the case of factories in existence on the date of the commencement of this Act, and
 - (ii) to be carried on in the factory during the next twelve months in the case of all factories;
- (e) the total rated horse power installed or to be installed in the factory, which shall not include the rated horse power of any separate stand-by plant;
- (f) the name of the manager of the factory for the purposes of this Act;
- (g) the number of workers likely to be employed in the factory;
- (h) the average number of workers per day employed during the last twelve months in the case of a factory in existence on the date of the commencement of this Act;
- (i) Such other particulars as may be prescribed.

Formalities for new establishments:

As mentioned in the Section 7 (2) of the Act, in respect of all establishments which come within the scope of the Act for the first time, the occupier shall send a written notice to the Chief Inspector containing the particulars specified in sub-section (1) within thirty days, from the date of the commencement of this Act.

Minimum working days in a factory:

As mentioned in the Section 7 (3) of the Act, before a factory engaged in a manufacturing process which is ordinarily carried on for less than one hundred and eighty working days in the year resumes working, the occupier shall send a written notice to the Chief Inspector containing the particulars specified in sub-section (1)3 at least thirty days before the date of the commencement of work.

Intimation of the appointment of a new manager:

As mentioned in the Section 7 (4) of the Act, whenever a new manager is appointed, the occupier shall send to the Inspector a written notice and to the Chief Inspector a copy thereof within seven days from the date on which such person takes over charge.

Responsibility in absence of a manager:

As mentioned in the Section 7 (5) of the Act, during any period for which no person has been designated as manager of a factory or during which the person designated does not manage the factory, any person found acting as manager, or if no such person is found, the occupier himself, shall be deemed to be the manager of the factory for the purposes of this Act.

3.6 WELFARE, HEALTH & SAFETY UNDER THE FACTORIES ACT

The Factories Act, 1948 is a comprehensive document on the legal provisions of maintaining workers rights and responsibilities of the concerned authorities to maintain desired standard of working environment at the work place. Section 7(A) introduced in the amendment of the Act in 1987 prescribes the general duties of the occupier in regard to the health, safety and welfare of the workers in his factory. Similarly, Section 7(B) introduced in the amendment of the Act in 1987 prescribes the general rules for manufacturers, etc. as regards articles and substances for use in factories. The purpose of this Section is also to ensure health and safety of the workers working in factories wherein these articles and substances are used. Under Section 8 of the Factories Act 1948, provisions have been created for the appointment of Inspectors for ascertaining the implementation of standard procedures of workers health, safety, and welfare.

Besides, the Act creates detailed provisions for the issues relating to the health, safety and welfare of the workers in the Chapters 3, 4 & 5 under Sections 11 to 50.

Workers' Health related provisions:

Cleanliness (Section 11):

(1) Every factory shall be kept clean and free from effluvia arising from any drain, privy or other, nuisance, and in particular –

(a) accumulations of dirt and refuse shall be removed daily by sweeping or by any other effective method from the floors and benches of workrooms and from staircases and passages, and disposed of in a suitable manner;

(b) the floor of every workroom shall be cleaned at least once in every week by washing, using disinfectant, where necessary, or by some other effective method;

(c) where a floor is liable to become wet in the course of any manufacturing process to such extent as is capable of being drained, effective means of drainage shall be provided and maintained;

(d) all inside walls and partitions, all ceilings or tops of rooms and all walls, sides and tops of passages and staircases shall—

(i) where they are 1[painted otherwise than with washable water-paint] or varnished, be re-painted or re-varnished at least once in every period of five years;

(ia) where they are painted with washable water-paint, be re-painted with at least one coat of such paint at least once in every period of three years and washed at least once in every period of six months;

(ii) where they are painted or varnished or where they have smooth impervious surfaces be cleaned at least once in every period of fourteen months by such method as may be prescribed;

(iii) in any other case, be kept white washed or colourwashed, and the white-washing or colourwashing shall be carried out at least once in every period of fourteen months;

(dd) all doors and window frames and other wooden or metallic framework and shutters shall be kept painted or varnished and the painting or varnishing shall be carried out at least once in every period of five years;

(e) the dates on which the processes required by clause (d) are carried out shall be entered in the prescribed register.

(2) If, in view of the nature of the operations carried on [in a factory or class or description of factories or any part of a factory or class or description of factories], it is not possible for the occupier to comply with all or any of the provisions of sub-section (1), the State Government may by order exempt such factory or class or description of factories from any of the provisions of that subsection and specify alternative methods for keeping the factory in a clean state.

Disposal of wastes and effluents (Section 12):

(1) Effective arrangements shall be made in every factory for the treatment of wastes and effluents due to the manufacturing process carried on therein, so as to render them innocuous, and for their disposal.

(2) The State Government may make rules prescribing the arrangements to be made under sub-section (1) or requiring that the arrangements made in accordance with sub-section (1) shall be approved by such authority as may be prescribed

Ventilation and temperature (Section 13):

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

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

(b) such a temperature as will secure to workers therein reasonable conditions of comfort and prevent injury to health; and in particular, -

i. walls and roofs shall be of such material and so designed that such temperature shall not be exceeded but kept as low as practicable;

ii. where the nature of the work carried on in the factory involves, or is likely to involve, the production of excessively high temperatures such adequate measures as are practicable shall be taken to protect the workers therefrom, by separating the process which produces such temperatures from the workroom, by insulating the hot parts or by other effective means.

(2) The State Government may prescribe a standard of adequate ventilation and reasonable temperature for any factory or class or description of factories or parts thereof and direct that proper measuring instruments, at such places and in such position as may be specified, shall be provided and such records, as may be prescribed, shall be maintained..

(3) If it appears to the Chief Inspector that excessively high temperatures in any factory can be reduced by the adoption of suitable measures, he may, without prejudice to the rules made under sub-section 2, serve on the occupier, an order in writing specifying the measures which, in his opinion, should be adopted, and requiring them to be carried out before a specified date.

Dust and fume (Section 14):

(1) In every factory in which, by reason of the manufacturing process carried on, there is given off any dust or fume or other impurity of such a nature and to such an extent as is likely to be injurious or offensive to the workers employed therein, or any dust in substantial quantities, effective measures shall be taken to prevent its inhalation and accumulation in any workroom, and if any exhaust appliance is necessary for this purpose, it shall be applied as near as possible to the point of origin of the dust, fume or other impurity, and such point shall be enclosed so far as possible.

(2) In any factory no stationary internal combustion engine shall be operated unless the exhaust is conducted into the open air, and no other internal combustion engine shall be operated in any room unless effective measures have been taken to prevent such accumulation of fumes therefrom as are likely to be injurious to workers employed in the room.

Artificial humidification (Section 15):

(1) In respect of all factories in which the humidity of the air is artificially increased, the State Government may make rules, -

(a) prescribing standards of humidification;

(b) regulating the methods used for artificially increasing the humidity of the air,

(c) directing prescribed tests for determining the humidity of the air to be correctly carried out and recorded;

(d) prescribing methods to be adopted for securing adequate ventilation and cooling of the air in the workrooms.

(2) In any factory in which the humidity of the air is artificially increased, the water used for the purpose shall be taken from a public supply, or other source of

drinking water, or shall be effectively purified before it is so used.

(3) If it appears to an Inspector that the water used in a factory for increasing humidity which is required to be effectively purified under sub-section (2) is not effectively purified he may serve on the manager of the factory an order in writing, specifying the measures which in his opinion should be adopted, and requiring them to be carried out before specified date.

Overcrowding (Section 16):

(1) No room in any factory shall be overcrowded to an extent injurious to the health of the workers employed therein.

(2) Without prejudice to the generality of sub-section (1) there shall be in every workroom of a factory in existence on the date of the commencement of this Act at least 1[9.9 cubic metres] and of a factory built after the commencement of this Act at least 2[14.2 cubic metres] of space for every worker employed therein, and for the purposes of this sub-section no account shall be taken of any space which is more than 3[4.2 metres] above the level of the floor of the room.

(3) If the Chief Inspector by order in writing so requires, there shall be posted in each workroom of a factory a notice specifying the maximum number of workers who may, in compliance with the provisions of this section, be employed in the room.

(4) The Chief Inspector may by order in writing exempt, subject to such conditions, if any, as he may think fit to impose, any workroom from the provisions of this section, if he is satisfied that compliance therewith in respect of the room is unnecessary in the interest of the health of the workers employed therein.

Lighting (Section 17):

(1) In every part of a factory where workers are working or passing there shall be provided and maintained sufficient and suitable lighting, natural or artificial, or both.

(2) In every factory all glazed windows and skylights used for the lighting of the workroom shall be kept clean on both the inner and outer surfaces and, so far as compliance with the provisions of any rules made, under sub-section (3) of section 13 will allow, free from obstruction.

(3) In every factory effective provision shall, so far as is practicable, be made for the prevention of –

(a) glare, either directly from a source of light or by reflection from a smooth or polished surface;

(b) the formation of shadows to such an extent as to cause eye-strain or the risk of accident to any worker.

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

Drinking water (Section 18):

(1) In every factory effective arrangements shall be made to provide and maintain at suitable points conveniently situated for all workers employed therein a sufficient supply of wholesome drinking water.

(2) All such points shall be legibly marked "drinking water" in a language understood by a majority of the workers employed in the factory, and no such point shall be situated within 1six metres of any washing place, urinal, latrine, spittoon, open drain carrying sullage or effluent or any other source of contamination unless a shorter distance is approved in writing by the Chief Inspector.

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

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

Latrines and urinals (Section 19):

(1) In every factory – (a) sufficient latrine and urinal accommodation of prescribed types shall be provided conveniently situated and accessible to workers at all times while they are at the factory; (b) separate enclosed accommodation shall be provided for male and female workers; (c) such accommodation shall be adequately lighted and ventilated, and no latrine or urinal shall, unless specially exempted in writing by the Chief Inspector, communicate with any workroom except through an intervening open space or ventilated passage; (d) all such accommodation shall be maintained in a clean and sanitary condition at all times; (e) sweepers shall be employed whose primary duty it would be to keep clean latrines, urinals and washing places.

(2) In every factory wherein more than two hundred and fifty workers are ordinarily employed - (a) all latrine and urinal accommodation shall be of prescribed sanitary types; (b) the floors and internal walls, up to a height of 1ninety centimeters, of the latrines and urinals and the sanitary blocks shall be laid in glazed tiles or otherwise finished to provide a smooth polished impervious surface; (c) without prejudice to the provisions of clauses (d) and (e) of subsection (1), the floors, portions of the walls and blocks so laid or finished and the sanitary pans of latrines and urinals shall be thoroughly washed and cleaned at least once in every seven days with suitable detergents or disinfectants or with both.

(3) The State Government may prescribe the number of latrines and urinals to be provided in any factory in proportion to the numbers of male and female workers ordinarily employed therein, and provide for such further matters in respect of sanitation in factories, including the obligation of workers in this regard, as it considers necessary in the interest of the health of the workers employed therein.

Spittoons (Section 20):

(1) In every factory there shall be provided a sufficient number of spittoons in convenient places and they shall be maintained in a clean and hygienic condition.

(2) The State Government may make rules prescribing the type and the number of spittoons to be provided and their location in any factory and provide for such further matters relating to their maintenance in a clean and hygienic condition.

(3) No person shall spit within the premises of a factory except in the spittoons provided for the purpose and a notice containing this provision and the penalty for its violation shall be prominently displayed at suitable places in the premises.

(4) Whoever spits in contravention of sub-section (3) shall be punishable with fine not exceeding five rupees.

Workers' Safety related provisions:**Fencing of machinery (Section 21):**

(1) In every factory the following, namely, -(i) every moving part of a prime mover and every flywheel connected to a prime mover, whether the prime mover or flywheel is in the engine house or not; (ii) the headrace and tailrace of every water-wheel and water turbine; (iii) any part of a stock-bar which projects beyond the head stock of a lathe; and (iv) unless they are in such position or of such construction as to be safe to every person employed in the factory as they would be if they were securely fenced, the following, namely -(a) every part of an electric generator, a motor or rotary converter; (b) every part of transmission machinery; and (c) every dangerous part of any other machinery, shall be securely fenced by safeguards of substantial construction which shall be constantly maintained and kept in position while the parts of machinery they are fencing are in motion or in use.

(2) The State Government may by rules prescribe such further precautions as it may consider necessary in respect of any particular machinery or part thereof, or exempt, subject to such condition as may be prescribed, for securing the safety of the workers, any particular machinery or part thereof from the provisions of this

section.

Work on or near machinery in motion (Section 22):

(1) Where in any factory it becomes necessary to examine any part of machinery referred to in section 21, while the machinery is in motion, or, as a result of such examination, to carry out - (a) in a case referred to in clause (i) of the proviso to sub-section (1) of section 21, lubrication or other adjusting operation; or (b) in a case referred to in clause (ii) of the proviso aforesaid, any mounting or shipping of belts or lubrication or other adjusting operation, while the machinery is in motion such examination or operation shall be made or carried out only by a specially trained adult male worker wearing tight fitting clothing (which shall be supplied by the occupier) whose name has been recorded in the register prescribed in this behalf and who has been furnished with a certificate of his appointment, and while he is so engaged, - (a) such worker shall not handle a belt at a moving pulley unless - (i) the belt is not more than fifteen centimeters in width; (ii) the pulley is normally for the purpose of drive and not merely a fly-wheel or balance wheel (in which case a belt is not permissible); (iii) the belt joint is either laced or flush with the belt; (iv) the belt, including the joint and the pulley rim, are in good repair; (v) there is reasonable clearance between the pulley and any fixed plant or structure; (vi) secure foothold and, where necessary, secure handhold, are provided for the operator; and (vii) any ladder in use for carrying out any examination or operation aforesaid is securely fixed or lashed or is firmly held by a second person. (b) without prejudice to any other provision of this Act relating to the fencing of machinery, every set screw, bolt and key on any revolving shaft, spindle, wheel or pinion, and all spur, worm and other toothed or friction gearing in motion with which such worker would otherwise be liable to come into contact, shall be securely fenced to prevent such contact.

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

(3) The State Government may, by notification in the official Gazette, prohibit, in any specified factory or class or description of factories, the cleaning, lubricating or adjusting by any person of specified parts of machinery when those parts are in motion.

Employment of young persons on dangerous machines (Section 23):

(1) No young person shall be required or allowed to work at any machine to which this section applies, unless he has been fully instructed as to the dangers arising in connection with the machine and the precautions to be observed and - (a) has received sufficient training in work at the machine, or (b) is under adequate supervision by a person who has a thorough knowledge and experience of the machine. (2) Sub-section (1) shall apply to such machines as may be prescribed by the State Government, being machines which in its opinion are of such a dangerous character that young persons ought not to work at them unless the foregoing requirements are complied with.

Striking gear and devices for cutting off power (Section 24):

(1) In every factory - (a) suitable striking gear or other efficient mechanical appliance shall be provided and maintained and used to move driving belts to and from fast and loose pulleys which form part of the transmission machinery, such gear or appliances shall be so constructed, placed and maintained as to prevent the belt from creeping back on to the fast pulley; (b) driving belts when not in use shall not be allowed to rest or ride upon shafting in motion.

(2) In every factory suitable devices for cutting off power in emergencies from running machinery shall be provided and maintained in every work-room.

(3) When a device, which can inadvertently shift from “off” to “on” position, is provided in a factory to cut off power, arrangements shall be provided for locking the device in safe position to prevent accidental starting of the transmission machinery or other machines to which the device is fitted.

Self-acting machines(Section 25):

No traversing part of a self-acting machine in any factory and no material carried thereon shall, if the space over which it runs is a space over which any person is liable to pass, whether in the course of his employment or otherwise, be allowed to run on its outward or inward traverse within a distance of 1forty-five centimeters from any fixed structure which is not part of the machine :

Casing of new machinery (Section 26):

(1) In all machinery driven by power and installed in any factory after the commencement of this Act, -(a) every set screw, bolt or key on any revolving shaft, spindle, wheel pinion shall be so sunk, encased or otherwise effectively guarded as to prevent danger; (b) all spur, worm and other toothed or friction gearing which does not require frequent adjustment while in motion shall be completely encased, unless it is so situated as to be as safe as it would be if it were completely encased.

(2) Whoever sells or lets on hire or, as agent of a seller or hirer, causes or procures to be sold on let or hire, for use in a factory any machinery driven by power which does not comply with the provisions of 1Sub-section (1) or any rules made under sub-section (3), shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

(3) The State Government may make rules specifying further safeguards to be provided in respect of any other dangerous part of any particular machine or class or description of machines.

Prohibition of employment of women and children near cotton-openers (Section 27):

No woman or child shall be employed in any part of a factory for pressing cotton in which a cotton-opener is at work.

Hoists and lifts (Section 28):

(1) In every factory -(a) every hoist and lift shall be -(i) of good mechanical construction, sound material and adequate strength; (ii) properly maintained, and shall be thoroughly examined by a competent person at least once in every period of six months, and a register shall be kept containing the prescribed particulars of every such examination; (b) every hoistway and liftway shall be sufficiently protected by an enclosure fitted with gates, and the hoist or lift and every such enclosure shall be so constructed as to prevent any person or thing from being trapped between any part of the hoist or lift and any fixed structure or moving part; (c) the maximum safe working load shall be plainly marked on every hoist or lift, and no load greater than such load shall be carried thereon; (d) the cage of every hoist or lift used for carrying persons shall be fitted with a gate on each side from which access is afforded to a landing; (e) every gate referred to in clause (b) or clause (a) shall be fitted with interlocking or other efficient device to secure that the gate cannot be opened except when the cage is at the landing and that the cage cannot be moved unless the gate is closed.

(2) The following additional requirements shall apply to hoists and lifts used for carrying persons and installed or reconstructed in a factory after the commencement of this Act, namely : (a) where the cage is supported by rope or chain, there shall be at least two ropes or chains separately connected with the cage and balance weight, and each rope or chain with its attachments shall be capable of carrying the whole weight of the cage together with its maximum load; (b) efficient devices shall be provided and maintained capable of supporting the cage together with its maximum load in the event of breakage of the ropes, chains

or attachments; (c) an efficient automatic device shall be provided and maintained to prevent the cage from over-running.

(3) The Chief Inspector may permit the continued use of a hoist or lift installed in a factory before the commencement of this Act which does not fully comply with the provisions of sub-section (1) upon such conditions for ensuring safety as he may think fit to impose.

(4) The State Government may, if in respect of any class or description of hoist or lift, it is of opinion that it would be unreasonable to enforce any requirement of sub-sections. (1) and (2), by order direct that such requirement shall not apply to such class or description of hoist or lift.

Lifting machines, chains, ropes and lifting tackles (Section 29):

(1) In any factory the following provisions shall be complied with in respect of every lifting machine (other than a hoist and lift) and every chain, rope and lifting tackle for the purpose of raising or lowering persons, goods or materials :- (a) all parts, including the working gear, whether fixed or movable, of every lifting machine and every chain, rope or lifting tackle shall be - (i) of good construction, sound material and adequate strength and free from defects; (ii) properly maintained; and (iii) thoroughly examined by a competent person at least once in every period of twelve months, or at such intervals as the Chief Inspector may specify in writing, and a register shall be kept containing the prescribed particulars of every such examination; (b) no lifting machine and no chain, rope or lifting tackle shall, except for the purpose of test, be loaded beyond the safe working load which shall be plainly marked thereon together with an identification mark and duly entered in the prescribed register, and where this is not practicable, a table showing the safe working loads of every kind and size of lifting machine or, chain, rope or lifting tackle in use shall be displayed in prominent positions on the premises; (c) while any person is employed or working on or near the wheel track of a travelling crane in any place where he would be liable to be struck by the crane, effective measures shall be taken to ensure that the crane does not approach within six metres of that place.

(2) The State Government may make rules in respect of any lifting machine or any chain, rope or lifting tackle used in factories - (a) prescribing further requirements to be complied with in addition to those set out in this section; (b) providing for exemption from compliance with all or any of the requirements of this section, where in its opinion, such compliance is unnecessary or impracticable.

(3) For the purposes of this section a lifting machine or a chain, rope or lifting tackle shall be deemed to have been thoroughly examined if a visual examination supplemented, if necessary, by other means and by the dismantling of parts of the gear, has been carried out as carefully as the conditions permit in order to arrive at a reliable conclusion as to the safety of the parts examined. Explanation : In this section, - (a) "lifting machine" means a crane, crab, winch, teagle, pulley block, gin wheel, transporter or runway; (b) "lifting tackle" means any chain, sling, rope sling, hook, shackle, swivel, coupling, socket, clamp, tray or similar appliance, whether fixed or movable, used in connection with the raising or lowering of persons, or loads by use of lifting machines.

Revolving machinery (Section 30):

(1) In every factory in which the process of grinding is carried on there shall be permanently affixed to or placed near each machine in use a notice indicating the maximum safe working peripheral speed of every grindstone or abrasive wheel, the speed of the shaft or spindle upon which the wheel is mounted, and the diameter of the pulley upon such shaft or spindle necessary to secure such safe working peripheral speed.

(2) The speeds indicated in notices under sub-section (1) shall not be exceeded.

(3) Effective measures shall be taken in every factory to ensure that the safe working peripheral speed of every revolving vessel, cage, basket, flywheel, pulley, disc or

similar appliance driven by power is not exceeded.

Pressure plant (Section 31):

- (1) If in any factory, any plant or machinery or any part thereof is operated at a pressure above atmospheric pressure, effective measures shall be taken to ensure that the safe working pressure of such plant or machinery or part is not exceeded.
- (2) The State Government may make rules providing for the examination and testing of any plant or machinery such as is referred to in sub-section (1) and prescribing such other safety measures in relation thereto as may in its opinion be necessary in any factory or class or description of factories.
- (3) The State Government may, by rules, exempt, subject to such conditions as may be specified therein, any part of any plant or machinery referred to in sub-section (1) from the provisions of this section.

Floors, stairs and means of access (Section 32):

In every factory - (a) all floors, steps, stairs, passages and gangways shall be of sound construction and properly maintained and shall be kept free from obstructions and substances likely to cause persons to slip, and where it is necessary to ensure safety, steps, stairs, passages and gangways shall be provided with substantial handrails; (b) there shall, so far as is reasonably practicable, be provided and maintained safe means of access to every place at which any person is at any time required to work (c) when any person has to work at a height from where he is likely to fall, provision shall be made, so far as is reasonably practicable, by fencing or otherwise, to ensure the safety of the person so working.

Pits, sumps, openings in floors, etc (Section 33):

- (1) In every factory fixed vessel, sump, tank, pit or opening in the ground or in a floor which, by reasons of its depth, situation, construction or contents, is or may be a source of danger, shall be either securely covered or securely fenced.
- (2) The State Government may, by order in writing, exempt, subject to such conditions as may be prescribed, any factory or class or description of factories in respect of any vessel, sump, tank, pit or opening from compliance with the provisions of this section.

Excessive weights (Section 34):

- (1) No person shall be employed in any factory to lift, carry or move any load so heavy as to be likely to cause him injury.
- (2) The State Government may make rules prescribing the maximum weights which may be lifted, carried or moved by adult men, adult women, adolescents and children employed in factories or in any class or description of factories or in carrying on any specified process.

Protection of eyes (Section 35):

In respect of any such manufacturing process carried on in any factory as may be prescribed, being a process which involves - (a) risk of injury to the eyes from particles or fragments thrown off in the course of the process, or (b) risk to the eyes by reason of exposure to excessive light, the State Government may by rules require that effective screens or suitable goggles shall be provided for the protection of persons employed on, or in the immediate vicinity of, the process.

Precautions against dangerous fumes, gases, etc (Section 36):

- (1) No person shall be required or allowed to enter any chamber, tank, vat, pit, pipe, flue or other confined space in any factory in which any gas, fume, vapour or dust is likely to be present to such an extent as to involve risk to persons being overcome thereby, unless it is provided with a manhole of adequate size or other effective means of egress.
- (2) No person shall be required or allowed to enter any confined space as is referred to in sub-section (1), until all practicable measures have been taken to remove any gas, fume, vapour or dust, which may be present so as to bring its level within the permissible limits and to prevent any ingress of such gas, fume, vapour or dust and unless - (a) a certificate in writing has been given by a competent person,

based on a test carried out by himself that the space is reasonably free from dangerous gas, fume, vapour or dust; or (b) such person is wearing suitable breathing apparatus and a belt securely attached to a rope the free end of which is held by a person outside the confined space.

Precautions regarding the use of portable electric light (Section 36A):

In any factory— (a) no portable electric light or any other electric appliance of voltage exceeding twenty-four volts shall be permitted for use inside any chamber, tank, vat, pit, pipe, flue or other confined space unless adequate safety devices are provided; and (b) if any inflammable gas, fume or dust is likely to be present in such chamber, tank, vat, pit, pipe, flue or other confined space, no lamp or light other than that of flameproof construction shall be permitted to be used therein.

Explosive or inflammable dust, gas, etc. (Section 37):

- (1) Where in any factory any manufacturing process produces dust, gas, fume or vapour of such character and to such extent as to be likely to explode to ignition, all practicable measures shall be taken to prevent any such explosion by - (a) effective enclosure of the plant or machinery used in the process; (b) removal or prevention of the accumulation of such dust, gas, fume or vapour; (c) exclusion or effective enclosure of all possible sources of ignition.
- (2) Where in any factory the plant or machinery used in a process such as is referred to in sub-section (1) is not so constructed as to withstand the probable pressure which such an explosion as aforesaid would produce, all practicable measures shall be taken to restrict the spread and effects of the explosion by the provisions in the plant or machinery of chokes, baffles, vents or other effective appliances.
- (3) Where any part of the plant or machinery in a factory contains any explosive or inflammable gas or vapour under pressure greater than atmospheric pressure, that part shall not be opened except in accordance with the following provisions, namely :- (a) before the fastening of any joint of any pipe connected with the part of the fastening of the cover of any opening into the part is loosened, any flow of the gas or vapour into the part of any such pipe shall be effectively stopped by a stop valve or other means; (b) before any such fastening as aforesaid is removed, all practicable measures shall be taken to reduce the pressure of the gas or vapour in the part or pipe to atmospheric pressure; (c) where any such fastening as aforesaid has been loosened or removed effective measures shall be taken to prevent any explosive or inflammable gas or vapour from entering the part of pipe until the fastening has been secured, or, as the case may be, securely replaced :
Provided that the provisions of this sub-section shall not apply in the case of plant or machinery installed in the open air.
- (4) No plant, tank or vessel which contains or has contained any explosive or inflammable substance shall be subjected in any factory to any welding, brazing, soldering or cutting operation which involves the application of heat unless adequate measures have first been taken to remove such substance and any fumes arising therefrom or to render such substance and fumes non-explosive or noninflammable, and no such substance shall be allowed to enter such plant, tank or vessel after any such operation until the metal has cooled sufficiently to prevent any risk of igniting the substance.
- (5) The State Government may by rules exempt, subject to such conditions as may be prescribed, any factory or class or description of factories from compliance with all or any of the provisions of this section.

Precautions in case of fire (Section 38):

- (1) In every factory, all practicable measures shall be taken to prevent outbreak of fire and its spread, both internally and externally, and to provide and maintain - (a) safe means of escape for all persons in the event of a fire, and (b) the necessary equipment and facilities for extinguishing fire.
- (2) Effective measures shall be taken to ensure that in every factory all the workers are familiar with the means of escape in case of fire and have been adequately

trained in the routine to be followed in such cases.

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

(4) Notwithstanding anything contained in clause (a) of sub-section (1) or sub-section (2), if the Chief Inspector, having regard to the nature of the work carried on in any factory, the construction of such factory, special risk to life or safety, or any other circumstances, is of the opinion that the measures provided in the factory, whether as prescribed or not, for the purposes of clause (a) of sub-section (1) or sub-section (2), are inadequate, he may, by, order in writing, require that such additional measures as he may consider reasonable and necessary, be provided in the factory before such date as is specified in the order.

Power to require specifications of defective parts or tests of stability (Section 39):

If it appears to the Inspector that any building or part of a building or any part of the ways, machinery or plant in a factory is in such a condition that it may be dangerous to human life or safety, he may serve on the occupier or manager or both of the factory an order in writing requiring him before a specified date -

(a) to furnish such drawings, specifications and other particulars as may be necessary to determine whether such building, ways, machinery or plant can be used with safety, or

(b) to carry out such test in such manner as may be specified in the order, and to inform the Inspector of the results thereof.

Safety of buildings and machinery (Section 40):

(1) If it appears to the Inspector that any building or part of a building or any part of the ways, machinery or plant in a factory is in such a condition that it is dangerous to human life or safety, he may serve on the occupier or manager or both of the factory an order in writing specifying the measures which in his opinion should be adopted, and requiring them to be carried out before a specified date.

(2) If it appears to the Inspector that the use of any building or part of a building or any part of the ways, machinery or plant in a factory involves imminent danger to human life or safety, he may serve on [the occupier or manager or both] of the factory an order in writing prohibiting its use until it has been properly repaired or altered.

Maintenance of buildings (Section 40A):

If it appears to the Inspector that any building or part of a building in a factory is in such a state of disrepair as is likely to lead to conditions detrimental to the health and welfare of the workers, he may serve on the occupier or manager or both of the factory an order in writing specifying the measures which in his opinion should be taken and requiring the same to be carried out before such date as is specified in the order.

Safety officers (Section 40B):

(1) In every factory, - (i) wherein one thousand or more workers are ordinarily employed, or (ii) wherein, in the opinion of the State Government, any manufacturing process or operation is carried on, which process or operation involves any risk of bodily injury, poisoning or disease, or any other hazard to health, to the persons employed in the factory, the occupier shall, if so required by the State Government by notification in the Official Gazette, employ such number of Safety Officers as may be specified in that notification.

(2) The duties, qualifications and conditions of service of Safety Officers shall be such as may be prescribed by the State Government.

Provisions relating to hazardous processes

Under the Act provisions are made for the Site Approval Committees (Section 41A), compulsory disclosure of information by the occupier (Section 41B), specific responsibility of the occupier in relation to hazardous processes (Section 41C), Power of the Central Government to appoint enquiry committee (Section 41D), emergency standard prescription (Section 41E), permissible limits of exposure of chemical and

toxic substances (Section 41F), workers' participation in safety management (Section 41G), right of workers to warn about imminent danger (Section 41H), and penalty for contravention of the provisions of the Sections 41B, 41C, and 41H are enlisted. These Sections under the Act mainly confers regulatory mechanism of the safety standards in factory.

Workers' Welfare related provisions:

Washing facilities (Section 42):

(1) In every factory - (a) adequate and suitable facilities for washing shall be provided and maintained for the use of the workers therein; (b) separate and adequately screened facilities shall be provided for the use of male and female workers; (c) such facilities shall be conveniently accessible and shall be kept clean.

(2) The State Government may, in respect of any factory or class or description of factories or of any manufacturing process, prescribe standards of adequate and suitable facilities for washing.

Facilities for storing and drying clothing (Section 43):

The State Government may, in respect of any factory or class or description of factories, make rules requiring the provision therein of suitable places for keeping clothing not worn during working hours and for the drying of wet clothing.

Facilities for sitting (Section 44):

(1) In every factory suitable arrangements for sitting shall be provided and maintained for all workers obliged to work in a standing position, in order that they may take advantage of any opportunities for rest which may occur in the course of their work.

(2) If, in the opinion of the Chief Inspector, the workers in any factory engaged in a particular manufacturing process or working in a particular room are able to do their work efficiently in a sitting position, he may, by order in writing, require the occupier of the factory to provide before a specified date such seating arrangements as may be practicable for all workers so engaged or working.

(3) The State Government may, by notification in the Official Gazette, declare that the provisions of sub-section (1) shall not apply to any specified factory or class or description of factories or to any specified manufacturing process.

First aid appliances (Section 45):

(1) There shall in every factory be provided and maintained so as to be readily accessible during all working hours first-aid boxes or cupboards equipped with the prescribed contents, and the number of such boxes or cupboards to be provided and maintained shall not be less than one for every one hundred and fifty workers ordinarily employed at any one time in the factory.

(2) Nothing except the prescribed contents shall be kept in a first-aid box or cupboard.

(3) Each first-aid box or cupboard shall be kept in the charge of a separate responsible person who holds a certificate in first-aid treatment recognised by the State Government and who shall always be readily available during the working hours of the factory.

(4) In every factory wherein more than five hundred workers are ordinarily employed there shall be provided and maintained an ambulance room of the prescribed size, containing the prescribed equipment and in the charge of such medical and nursing staff as may be prescribed and those facilities shall always be made readily available during the working hours of the factory.

Canteens (Section 46):

(1) The State Government may make rules requiring that in any specified factory wherein more than two hundred and, fifty workers are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers.

(2) Without prejudice to the generality of the foregoing power, such rules may

provide for - (a) the date by which such canteen shall be provided; (b) the standards in respect of construction, accommodation, furniture and other equipment of the canteen; (c) the foodstuffs to be served therein and the charges which may be made therefor; (d) the constitution of a managing committee for the canteen and representation of the workers in the management of the canteen; (dd) the items of expenditure in the running of the canteen which are not to be taken into account in fixing the cost of foodstuffs and which shall be borne by the employer; (e) the delegation to the Chief Inspector, subject to such conditions as may be prescribed, of the power to make rules under clause (c).

Shelters, rest rooms and lunch rooms (Section 47):

(1) In every factory wherein more than one hundred and fifty workers are ordinarily employed, adequate and suitable shelters or rest rooms and a suitable lunch room, with provision for drinking water, where workers can eat meals brought by them, shall be provided and maintained for the use of the workers : Provided that any canteen maintained in accordance with the provisions of section 46 shall be regarded as part of the requirements of this sub-section. Provided further that where a lunch room exists no workers shall eat any food in the work room.

(2) The shelters or rest rooms or lunch rooms to be provided under sub-section (1) shall be sufficiently lighted and ventilated and shall be maintained in a cool and clean condition.

(3) The State Government may - (a) prescribe the standards in respect of construction, accommodation, furniture and other equipment of shelters, rest rooms and lunch rooms to be provided under this section; (b) by notification in the Official Gazette, exempt any factory or class or description of factories from the requirements of this section.

Creches (Section 48):

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

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

(3) The State Government may make rules - (a) prescribing the location and the standards in respect of construction, accommodation, furniture and other equipment of rooms to be provided, under this section; (b) requiring the provision in factories to which this section applies of additional facilities for the care of children belonging to women workers, including suitable provision of facilities for washing and changing their clothing; (c) requiring the provision in any factory of free milk or refreshment or both for such children; (d) requiring that facilities shall be given in any factory for the mothers of such children to feed them at the necessary intervals.

Welfare officers (Section 49):

(1) In every factory wherein five hundred or more workers are ordinarily employed the occupier shall employ in the factory such number of Welfare officers as may be prescribed.

(2) The State Government may prescribe the duties, qualifications and Conditions of service of officers employed under sub-section (1)

Power to make rules by the State Government (Section 50):

The State Government may make rules - (a) exempting, subject to compliance with such alternative arrangements for the welfare of workers as may be prescribed, any factory or class or description of factories from compliance with any of the provisions of this Chapter; (b) requiring in any factory or class or description of factories that representatives of the workers employed in the factory shall be associated with the management of the welfare arrangements of the workers.

3.7 EMPLOYMENT OF PERSONS & WORKING HOURS

The rules of the regulation of working hours of workers in a factory under the Act of 1948 are as follows:

Working hours:

1. **Weekly hours:** No adult workers shall be required or allowed to work in a factory for more than forty-eight hours in any week (Section 51).

This section does not prohibit the alteration of hours of work after a departmental transfer. Working hours from 42 may be increased to 48 hours and thus the employee cannot claim overtime wages for those additional hours. In this case hours of work was increased from 42 to 48 hours.

2. **Daily hours:** Subject to the provisions of Section 51, no adult worker, shall be required or allowed to work in a factory for more than nine hours in any day (Section 54). However, with the previous approval of the Chief Inspector the daily maximum hours specified in Section 51 may be exceeded in order to facilitate the change of shifts.

3. **Intervals for rest:** The period of work of adult workers, in a factory each day shall be so fixed that no period shall exceed 5 hours and that no worker shall work for more than 5 hours before he had an interval for rest of at least half an hour. But the State Government or subject to the control of the State Government, the Chief Inspector, may by written order, and for reasons, specified in that order, exempt any factory from this rule so however that the total number of hours worked by a worker without any interval does not exceed six. [Section 55]

4. **Spreadover:** The period of work of an adult worker in a factory shall be so arranged that inclusive of his intervals for rest, they shall not spreadover more than ten and half hours in any day. But the Chief Inspector may for reasons to be specified in writing, increase the spreadover to 12 hours. [Section 56]

5. **Night shift:** Where a worker in a factory works on a shift which extends beyond midnight (Section 57): (a) for the purposes of Sections 52 and 53, a holiday for a whole day shall mean in his case a period of 24 consecutive hours beginning when his shift ends; (b) the following day for him shall be deemed to be the period of 24 hours beginning when such shift ends, and the hours he has worked after midnight shall be counted in the previous day.

6. **Prohibition of overlapping shifts:** Work shall not be carried on in any factory by means of a system of shifts so arranged that more than one relay of workers is engaged in work of the same kind at the same time. [Section 58]

7. **Extra wages for overtime:** Where a worker works in a factory for more than nine hours in any day or for more than 48 hours in any week, he will be in respect of overtime work entitled to wages at the rate twice his ordinary rate of wages. [Section 59]

8. **Double employment:** No adult worker shall be required ,or allowed to work in any factory on any day on which he has already been working in 'another factory, save in the prescribed circumstances. [Section 60]. No adult worker shall be required or allowed to work in any factory otherwise than in accordance with the notice of periods of work for adults displayed in the factory according to provisions of Section 61 of the Act.

Further restrictions on the employment of women - The above provision shall in their application to women in factories, be supplemented by the following further restrictions, namely: (a) no exception from the provisions of Section 54, (maximum hours of work in a day to be 9) may be granted in respect of any woman. (b) no woman shall be required or allowed to work in any factory except between the hours of 6 a. m. and 7 p. m.

Register of adult workers:

The manager of every factory shall maintain a register of adult workers, to be available to the Inspector at all times during working hours, or when any work is being

carried on in the factory, showing - (a) the name of each adult worker in the factory; (b) the nature of his work; (c) the group, if any, in which he is included; (d) where his group works on shifts, the relay to which he is allotted; and (e) such other particulars as may be prescribed. (Section 62)

Further, no adult worker shall be required or allowed to work in any factory otherwise than in accordance with the notice of periods of work for adults displayed in the factory and the entries made beforehand against his name in the register of adult workers of the factory. (Section 63).

Power of exemption of rules and orders

Section 64 and Section 65 of the Act determine the provisions for exemption to the applications underlined from Section 51 to 66 (excepting provisions relating to restrictions of employment of women between the hours of 7 p.m. - 6 a.m.)

Holidays

Weekly holidays:

According to Section 52 -

1) No adult worker shall be required or allowed to work in a factory on the first day of the week, unless - (a) he has or will have a holiday for a whole day on one of the three days immediately before or after the said day, and (b) the manager of the factory has, before the said day or the substituted day under clause (a), whichever is earlier, (i) delivered a notice at the office of the Inspector of his intention to require the worker to work on the said day and of the day which is to be substituted, and (ii) displayed a notice to that effect in the factory : Provided that no substitution shall be made which will result in any worker working for more than ten days consecutively without a holiday for a whole day.

2) Notices given under sub-section (1) may be cancelled by a notice delivered at the office of the Inspector and a notice displayed in the factory not later than the day before the said day or the holiday to be cancelled, whichever is earlier.

3) Where, in accordance with the provisions of sub-section (1), any worker works on the said day and has had a holiday on one of the three days immediately before it that said day shall, for the purpose of calculating his weekly hours of work, be included in the preceding week.

Compensatory holidays (Section 53):

(1) Where, as a result of the passing of an order or the making of a rule under the provisions of this Act exempting a factory or the workers therein from the provisions of section 52, a worker is deprived of any of the weekly holidays for which provision is made in sub-section (1) of that section, he shall be allowed, within the month in which the holidays were due to him or within the two months immediately following that month, compensatory holidays of equal number to the holidays so lost.

(2) The State Government may prescribe the manner in which the holidays for which provision is made in sub-section (1) shall be allowed.

Annual holidays with pay:

Every worker who has worked for a period of 240 days or more in a factory during a calendar year shall be allowed during the subsequent calendar year, leave with wages for a number of days calculated on the basis of provisions as included in the Section 79 of the Act.

Employment of young person:

There is total prohibition for employing a person below the age of fourteen years (Section 67). If the child has completed 14 years then he can be employed but there are certain restrictions on his employment. They are as follows (Section 68):

(a) a certificate of fitness granted with reference to him under section 69 is in the custody of the manager of the factory; and

(b) such child or adolescent carries while he is at work a token giving a reference to such certificate.

Certificate of fitness (Section 69):

It is a certificate of physical fitness to a young person for working in a factory, subject to Section 67 of the Act. For the employment of a young person it shall be necessary that he should have a certificate of fitness from the certifying surgeon. The certifying surgeon is bound to examine the young person on an application made to him for this purpose. This section prohibits the employer to cut and adjust the fees paid by him for physical, examination of the young person employed by him.

Application for the certificate of fitness may be applied by any one of the individuals including (a) a young person himself; or (b) his parents; or (c) guardian; or (d) the manager of the factory.

Working hours for children (Section 71):

As provisioned under Section 71 of the Act –

(1) No child shall be employed or permitted to work, in any factory - a) for more than four and a half hours in any day; and (b) during the night. “Night” means a period of at least twelve consecutive hours which shall include the interval between 10 P.M. and 6 A.M.

(2) The period of work of all children employed in a factory shall be limited to two shifts which shall not overlap or spread over more than five hours each.

(3) The provisions of section 52 shall apply also to child workers and no exemption from the provisions of that section may be granted in respect of any child.

(4) No child shall be required or allowed to work in any factory on any day on which he has already been working in another factory.

(5) No female child shall be required or allowed to work in any factory except between 8 A.M. and 7 P.M.

Register of child workers (Section 73):

(1) The manager of every factory in which children are employed shall maintain a register of child workers, to be available to the Inspector at all times during working hours or when any work is being carried on in a factory, showing - (a) the name of each child worker in the factory, (b) the nature of his work, (c) the group, if any, in which he is included, (d) where his group works in shifts, the relay to which he is allotted, and (e) the number of his certificate of fitness granted under section 69. No child worker shall be required or allowed to work in any factory unless his name and other particulars have been entered in the register of child workers.

(2) The State Government may prescribe the form of the register of child workers, the manner in which it shall be maintained and the period for which it shall be preserved.

Employment of women workers:

Employment and work rules for adult female workers are the same as the adult male workers as per the provisions of the Factories Act. However, the following provisions are special to the female workers:

(1) Prohibition of work on or near machinery in motion (Sec. 22).

(2) Prohibition of employment near cotton-openers (Sec; 27).

(3) Provisions for Creches for the women workers with minor child (Sec. 48).

(4) A woman shall not be required or allowed to work in a factory for more than 48 hours in any week or 9 hours in any day. (Sections 51 and 54).

(5) A woman shall be required or allowed to work in factory only between the hours of 6 A.M. and 7 P.M. The State Government may, by notification in the Official Gazette in respect of any factory or group or class or description of factories, vary these limits. But no such variation shall authorise the employment of any woman between the hours of 10 P.M. and 5 A.M. The State Government may make rules providing for the exemption from these restrictions in case of women working in fish-curing or fish-canning factories, where the employment of women beyond the specified hours is necessary to prevent damage to or deterioration in, any raw material. The rules so made

shall remain in force for not more than 3 years at a time.

3.8 TO SUM UP

The Factories Act, 1948 is a comprehensive document of ascertaining workers rights and welfare in Indian industries spread in 141 Sections and numerous Sub-Sections. In this unit we have discussed mainly the issues related with the registration procedure of factories in India, workers' health, security, and welfare at the workplace and related provisions for monetary and non-monetary rewards. Interested learners may consult the 'bare-act' for further references.

3.9 PRACTICE QUESTIONS

1. Discuss the procedure of the registration of factories under the Factories Act, 1948.
2. Who is an 'Occupier'? Mention the requisites of becoming an occupier. What responsibilities does an occupier bear to ascertain workers' safety at workplace?
3. What is 'working hour'? Discuss the differences of 'working hour' of the following groups of workers –
 - (a) Adult male and adult women.
 - (b) Adolescence male and adolescence female.
4. What is a 'fitness certificate'? Who are eligible to apply for such a certificate? Can a factory manager employ a young person at the factory work without a 'fitness certificate'?
5. What is compensatory leave? Distinguish between annual leave and compensatory leave. Under what circumstances the workers' right to annual holiday may be dishonoured by the employer?
6. Mention the special provisions made under the Act for women workers? Can a women worker be employed in the night shift of factory work?
7. Distinguish between the register of adult workers and the register for adolescent workers. Mention the importance of workers' register.
8. Write short note on the following:
 - (a) Extent of the Factories Act, 1948
 - (b) Minimum working days in a factory
 - (c) Transmission machinery
 - (d) Presumption of permission
 - (e) Minimum working days in a factory
 - (f) Employment of young persons on dangerous machines
 - (g) Casing of new machinery
 - (h) Welfare officers
 - (i) Power to make rules by the State Government
 - (j) Spreadover
 - (k) Double employment

3.10 FURTHER READINGS

1. Tulsian P.C., Business Law, Tata McGraw Hill Publishing Co. New Delhi
2. Kapoor N.D., Handbook of Industrial Law, Sultan Chand & Sons, New Delhi.
3. The Bare Act at www.vakilno1.com

DHR 202 LABOUR LAWS

UNIT 4: INDUSTRIAL DISPUTES ACT, 1947

UNIT STRUCTURE

- 4.1 LEARNING OBJECTIVES
- 4.2 INTRODUCTION
- 4.3 OBJECTIVES OF THE INDUSTRIAL DISPUTES ACT, 1947
- 4.4 IMPORTANT DEFINITIONS UNDER THE INDUSTRIAL DISPUTES ACT, 1947
- 4.5 AUTHORITIES UNDER THE ACT
- 4.6 STRIKES & LOCK OUTS
- 4.7 LAYOFF & RETRENCHMENT
- 4.8 LET US SUM UP
- 4.9 PRACTICE QUESTIONS

4.1 Learning Objectives

- (i) To know the general provisions of the Industrial Disputes Act, 1947.
- (ii) To be acquainted with the legal dealings related to strikes, lockouts, lay off and retrenchment of workmen.
- (iii) Penalties for not conforming to the legal provisions of the Act in labour management.

4.2 Introduction

The Industrial Disputes Act, 1947 has been the permanent legislation in India in the post war industrial readjustment. It is related with the regulations of employee and employer relationships, disputes relating to industries. It has altogether 80 Sections along with several sub sections and other clauses. Before 1947, the Employers and Workmen's Act of 1860 took care of disputes between the employers and the workmen. However, this was not sufficient to address the issues of disputes in industries in India. Trade Disputes Act was a step forward in this regard. Declared in 1929, the Trade Disputes Act was enacted for a period of five years only. In 1934, the Act was amended, but the long standing problem of industrial disputes could not be solved.

The Industrial Disputes Act, 1947 embodies the essential features of the Rule 81-A of the Defence of India Rules and the majority of the provisions under the Trade Disputes Act, 1929. The Act introduced two new institutions, viz.

(i) The Works Committee composed of the representatives of employees and workmen.

(ii) The Industrial Tribunals consisting of one or more members possessing qualifications ordinarily required for appointment as judges of High Courts.

Since independence, several amendments have been made to the Industrial Disputes Act. The latest amendment was made in 2010 by amending Section 2(a), Section 2(s), Section 7, Section 11, and Section 38(2) (c) of the Act.

The term 'industrial disputes' is defined for the first time as any dispute or difference between employer and employers, or between employer and workmen, or between workmen and workmen. The dispute may arise because of reasons associated to the employment or non-employment or the terms of employment or with the conditions of labour of any person. Such disputes may be of two types –

1. Disputes of difference of interest arising out of differing views as to what constitute desirable terms and conditions of employment.
2. Disputes of difference of right arising out of the interpretation or application of the substantive terms of an agreed bargain or of working practices.

4.3 Scope and Objectives of the Industrial Disputes Act, 1947

The Industrial Disputes Act, 1947 extends to the whole of India [Section 1(2)] It applies to all private as well as public sector industries.

The objectives of the Industrial Disputes Act are mainly two-fold:

First, like other labour legislations of the country, the Act also aims at ensuring fair terms to the workmen.

Secondly, the Act ensures prevention of disputes between employers and employees so that production might not be adversely affected and the larger interest of the public might not suffer.

Besides, the Act also lays down the following -

1. The provision for payment of compensation to the workman on account of closure or lay off or retrenchment.
2. The procedure for prior permission of appropriate Government for laying off or retrenching the workers or closing down industrial establishments
3. Unfair labour practices on part of an employer or a trade union or workers.

4. Important definitions under the Industrial Disputes Act, 1947

a) 'Appropriate Government'[Section 2A]: 'Appropriate Government' means the Central Government in relation to any industrial dispute concerning-
(1) any industry carried on (i) by or under the authority of the Central Government, or (ii) by a railway company, or (iii) concerning any such controlled industry as may be specified in this behalf by the Central Government.

(2)

(a) a Dock Labour Board established under the Dock Workers (Regulation of Employment) Act, 1948, or

(b) the Industrial Finance Corporation of India, or

(c) the Employees' State Insurance Corporation, or

(d) the Board of Trustees constituted under the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948, or

(e) the Central Board of Trustees and State Boards of Trustees constituted under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, or

(f) the Life Insurance Corporation of India, or

(g) the 'Indian Airlines' and 'Air India' Corporations, or

(h) the Oil and Natural Gas Commission, or

(i) the Deposit Insurance and Credit Guarantee Corporation, or

(j) the Central Warehousing Corporation, or

(k) the Unit Trust of India, or
 (l) the Food Corporation of India, or a Board of Management established for 2 or more contiguous States under the Food Corporation Act, 1964, or
 (m) the International Airports Authority of India, or
 (n) a Regional Rural Bank, or
 (o) the Export Credit and Guarantee Corporation Limited, or
 (p) the Industrial Reconstruction Bank 'Of India, or
 (q) the Banking Service Commission, or
 (r) a banking or an insurance company, or
 (s) a mine, an oil-field, r Cantonment Board, or a major port.

In relation to any other industrial dispute, the 'appropriate Government' means the State Government. In case of a Union Territories, there is no difference between the State and the Central Governments.

b) Arbitrator [Section 2 (aa)]: 'Arbitrator' includes an umpire. It means any person who is appointed to determine differences and disputes between two parties.

c) Average pay [Section 2(aaa)]. It means the average of the wages payable to a workman -
 (i) in the case of a monthly paid workman, in the 3 complete calendar months,
 (ii) in the Case of a weekly paid workman, in the 4 complete week , and
 (iii) in the case of a daily paid workman, in the 12 full working days.

This period of 3 months, 4 weeks and 12 working days must precede the date on which the average pay becomes payable to the workman, provided he had worked during this period as the case may be. Where such calculation cannot be made, the average pay shall be calculated as the average of the wages payable to the workman during the period he actually worked.

d) Award [Section 2 (b)]: Award means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Tribunal. It also includes an arbitration award made under Sec. 10(A). Award may be an interim or final determination of an industrial dispute.

e) Banking Company [Section 2 (bb)]: Banking company means a banking company as defined in Sec. 5. of the Banking Companies Act, 1949, having branches or other establishments in more than one State.

f) Board [Section 2 (c)]: 'Board' means a Board of Conciliation constituted under the Act.

g) Closure [Section 2 (cc)]: It means the permanent closing down of a place of employment or part thereof.

h) Conciliation officer [Section 2 (d)]: 'Conciliation officer' means a conciliation officer appointed under the Act.

i) Conciliation proceeding [Section 2 (e)]: Conciliation proceeding means any proceeding held by a conciliation officer or Board of Conciliation under the Act.

j) Controlled industry [Section 2 (ee)]: It means any industry the control of which by the Union has been declared by any Central Act to be expedient in the public interest. An industry would become a 'controlled industry' if both the conditions laid down in Section 2 (ee) are satisfied. These conditions are :
 (1) A declaration must be made by a Central Act to this effect, and
 (2) The control of the industry by the Central Government must be expedient in the public interest.

k) Court [Section 2 (f)]: It means a Court of Inquiry constituted under the Act.

l) Employer [Section. 2 (g)]: Employer in relation to an industry carried on by or under the authority of any department of the Central Government or a State Government means the authority prescribed in this behalf. Where no authority is prescribed, the 'employer' means the head of the department carrying on the industry. But in relation to an industry carried on by or on behalf of a local authority, 'employer' means the chief executive officer of that authority.

This definition of 'employer' is neither exhaustive nor inclusive. It extends to all industrial undertakings and not merely to those run by Governments or local authorities

m) Executive and office bearer in relation to a trade union [Section 2 (gg) and 2 (III)]: 'Executive', in relation to a trade union, means the body, by whatever named called, to which the management of the affairs of the trade union is entrusted [Section 2 (gg)].

n) Independent person [Section 2 (l)]: A person shall be deemed to be 'independent' for the purpose of his appointment as the chairman or other member of a Board of Conciliation, Court of Inquiry or Industrial Tribunal, if he is unconnected with the industrial dispute referred to such Board of Conciliation, Court of Inquiry or Industrial Tribunal or with any industry directly affected by such dispute.

o) Industrial establishment or undertaking [Section 2 (ka)]: It means an establishment or undertaking in which industry is carried on. Sometimes several activities may be-carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries.

(i) If any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking.

(ii) If the predominant activity carried on in such establishment or undertaking or any unit thereof is an industry and the other activities carried on in such establishment or undertaking or unit thereof are not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity, the entire establishment or undertaking or unit thereof shall be deemed to be an industrial establishment or undertaking.

p) Insurance company [Section 2(kk)]: It means an insurance company as defined in the Insurance Act, 1938, having branches or other establishments in more than one State.

q) Khadi [Section 2 (kka)]. It has the meaning assigned to it in the Khadi and Village Industries Commission Act, 1956.

r) Labour Court [Section 2 (kkb)]. It means a Labour Court constituted under Section 7.

s) Public utility service [Section 2 (n)]: It means-

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

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

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

(iv) any postal, telegraph, or telephone service ;

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

(vi) any system of public conservancy or sanitation;

(vii) any industry specified in the First Schedule.

The appropriate Government may, if satisfied that public emergency or interest so requires, by notification in the Official Gazette, declare any industry specified in the First Schedule to be a public utility service for the purpose of the Industrial Disputes Act for such period as may be specified in the notification. Initially the period of notification is 6 months which may be extended considering public emergency.

5. Authorities under the Act

1. Works Committee: Under Section 3 of the Act provisions for the Works Committee is created. According to Section 3(1), a Works Committee consists of representatives of employers and workmen engaged in the establishment. The number of representatives of workmen on the Committee shall not be less than the

number of representatives of the employer. The representatives of the workmen shall be chosen in the prescribed manner from among the workmen engaged in the establishment and in consultation with their trade union, if any, registered under the Indian Trade Unions Act, 1926 (16 of 1926).

Section 3(2) enlists the duties and responsibilities of a Works Committee. It is mentioned that the duty of the Works Committee to promote measures for securing and preserving amity and good relations between the employer and workmen and, to that end, to comment upon matters of their common interest or concern and endeavour to compose any material difference of opinion in respect of such matters.

The findings of Works Committee are advisory or recommendatory. The final power to decide whether they are to be implemented rests with the employer.

The general difficulties experienced in successful functioning are –

- (i) Lack of appreciation on the part of both the parties.
- (ii) Illiteracy of the workers.
- (iii) Lack of interest of participation of workers in the committee.
- (iv) Over expectation of the workers from the Works Committee.

2. Conciliation officers: Section 4 of the Act creates provisions for the Conciliation officers.

According to Section 4 (1) The appropriate Government may, by notification in the Official Gazette, appoint such number of persons as it think-- fit, to be conciliation officers, charged with the duty of mediating in and promoting the settlement of industrial disputes.

Section 4 (2) provides rules for the appointment of a conciliation officer. Such an officer may be appointed for a specified area or for specified industries in a specified area or for one or more specified industries and either permanently or for a limited period.

The conciliation officer is deemed to be a public servant within the meaning of Section 21, Indian Penal Code.

National Labour Commission recommends the following for the better functioning of works of the conciliation officer –

- (i) Appropriation and just selection.
- (ii) Provisions for training during service period.

Duties of conciliation officers

The Section 12 of the Act determines the following duties of conciliation officers:

- (1) Where any industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice under Section 22 has been given, shall, hold conciliation proceedings in the prescribed manner.
- (2) The conciliation officer shall, for the purpose of bringing about a settlement of the dispute without delay investigate the dispute and all matters affecting the merits and right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.
- (3) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings the conciliation officer shall send a report thereof to the appropriate Government or an officer authorised in this behalf by the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute.
- (4) If no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and

circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at.

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

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

3. Board of Conciliation: Section 5 of the Act deals with the constitution of Board of Conciliation along with its powers and duties. According to Section 5 (1), the appropriate Government may constitute a Board of Conciliation for promoting the settlement of an industrial dispute as occasion arises by notification in the Official Gazette. It consists of a chairman and two or four other members, as the appropriate Government thinks fit [Section 5 (2)]. As listed in Section 5 (3), the chairman shall be an independent person and the other members shall be persons appointed in equal numbers to represent the parties to the dispute and any person appointed to represent a party shall be appointed on the recommendation of that party. If any party fails to make a recommendation within the prescribed time, the appropriate Government shall appoint such persons as it thinks fit to represent that party. Besides, a Board, having the prescribed quorum, may act notwithstanding the absence of the chairman or any of its members or any vacancy in its number [Section 5 (2)].

The above mentioned provisions are subject to the restriction that if the appropriate Government notifies the Board that the services of the Chairman or any other member have ceased to be available, the Board shall not act until a new Chairman, or member, as the case may be, has been appointed. Moreover, the conciliation proceeding is different from adjudication.

Duties of Boards: The Section 13 of the Act determines the following duties of Boards:

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

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

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

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

(5) The Board shall submit its report under this within two months of the date on which the dispute was referred to it or within such shorter period as may be fixed by the appropriate Government:

Provided that the appropriate Government may from time to time extend the time for the submission of the report by such further periods not exceeding two months in the aggregate:

Provided further that the time for the submission of the report may be extended by such period as may be agreed on in writing by all the parties to the dispute.

4. Courts of Inquiry: Under Section 6 of the Act, provisions have been made for the Courts of Enquiry. The appropriate Government may as occasion arises constitute a Court of Inquiry for inquiring into any matter appearing to be connected with or relevant to an industrial dispute. However, this should be notified in the Official Gazette [Section 6 (1)]. A Court of Enquiry may consist of one independent person or of such number of independent persons as the appropriate Government may think fit. In case of a Court consisting of two or more members, one of them shall be appointed as the chairman [Section 6 (2)]. According to Section 6 (2), a Court, having the prescribed quorum, may act notwithstanding the absence of the chairman or any of its members or any vacancy in its number. However, in case of the notification of the appropriate Government that the services of the chairman have ceased to be available, the Court shall not act until a new chairman has been appointed.

Duties of Courts: The Section 14 of the Act determines the following duties of Courts:

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

5. Labour Courts: Under Section 7 (1) of the Industrial Disputes Act, 1947, the appropriate Government may constitute one or more Labour Courts for the adjudication of industrial disputes relating to any matter specified in the Second Schedule and for performing such other functions as may be assigned to them. However, the formation should be by notification in the Official Gazette.

A Labour Court consists of one person only to be appointed by the appropriate Government as Presiding Officer [Section 7 (2)]. Section 7 (3) the qualifications of a Presiding Officer is enlisted. A person shall not be qualified for appointment as the presiding officer of a Labour Court, unless -

- (i) he is, or has been, a Judge of a High Court; or
- (ii) he has, for a period of not less than three years, been a District judge or an Additional District Judge; or
- (iii) he has held any judicial office in India for not less than seven years; or
- (iv) he has been the presiding officer of a Labour Court constituted under any provincial Act or State Act for not less than five years.

The proceedings of a Labour Court are accepted as the proceedings of a civil court as a board of possessors.

Duties of Labour Courts: The Section 15 of the Act determines the duties of Courts. Accordingly, where an industrial dispute has been referred to a Labour Court for adjudication, it shall hold its proceedings expeditiously and shall, within the period specified in the order referring such industrial dispute or the further period extended under the second proviso to sub- Section (2A) of 10, submit its award to the appropriate Government.

6. Tribunals: Section 7A of the Industrial Dispute Act determines the mode of appointment, scope quorum and functions of the tribunals. According to the sub 1, the appropriate Government may constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the Second Schedule or the Third Schedule and for performing such other functions as may be assigned to them under this Act.

A Tribunal shall consist of one person only to be appointed by the appropriate Government [Section 7A (2)].

Section 7A (3) enlists the required qualifications for a Presiding Officer of a

Tribunal. Accordingly a person shall not be qualified for appointment as the presiding officer of a Tribunal unless-

- (a) he is, or has been, a Judge of a High Court; or
- (b) he is or has been a Deputy Chief Labour Commissioner (Central) or Joint Commissioner of the State Labour Department, having a degree in law and at least seven years' experience in the labour department including three years of experience as Conciliation Officer; or
- (c) he is an officer of Indian Legal Service in Grade III with three years' experience in the grade

The appropriate Government may, if it so thinks fit, appoint two persons as assessors to advise the Tribunal in the proceeding before it. The Government is empowered under the Act to constitute a Tribunal for a limited time or for any particular case as the case may be.

Duties of Tribunals: The Section 15 of the Act determines the duties of Courts. Accordingly, where an industrial dispute has been referred to a Tribunal for adjudication, it shall hold its proceedings expeditiously and shall, within the period specified in the order referring such industrial dispute or the further period extended under the second proviso to Sub- Section (2A) of, submit its award to the appropriate Government.

7. National Tribunals: 7B of the Industrial Dispute Act determines the mode of appointment, scope quorum and functions of the national tribunals. According to the Section 7B (1), the Central Government may, by notification in the Official Gazette, constitute one or more National Industrial Tribunals for the adjudication of industrial disputes which, in the opinion of the Central Government, involve questions of national importance or are of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such disputes.

According to the Act, a National Tribunal shall consist of one person only to be appointed by the Central Government. To be qualified for appointment as the presiding officer of a National Tribunal, a person must be a Judge of a High Court.

The Central Government may, at its option, appoint two persons as assessors to advise the National Tribunal in the proceeding before it.

Section 15 of the Act lays down that where an industrial dispute has been referred by the Central Government to a National Tribunal for adjudication, it shall hold its proceedings expeditiously and shall submit the award to the appropriate Government, as soon as possible.

Duties of National Tribunals: The Section 15 of the Act determines the duties of Courts. Accordingly, where an industrial dispute has been referred to a National Tribunal for adjudication, it shall hold its proceedings expeditiously and shall, within the period specified in the order referring such industrial dispute or the further period extended under the second proviso to Sub- Section (2A) of Section 10, submit its award to the appropriate Government.

5. Strikes & lock outs

Strikes:

According to the Section 2 (q) 'Strike' means a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal, under a common understanding of any number of persons who are or have been so employed to continue to work or to accept employment.

Lock outs:

'Lock out' [under Section 2 (l)], means the temporary closing of a place of employment or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him. The essential features of lock-out are as follows:

- (a) There is a temporary closing of the place of employment, or suspension or

withholding of the work by the employer in some form.

(b) There is an element of demands for which the place of employment is locked-out or closed ; and

(c) There is an intention to re-employ the workers if they accept the demands.

Prohibition of strikes and lock-outs

Under Section 22 of the Industrial Disputes Act, 1947, conditions are notified for the prohibition of strikes and lockouts in industrial places. The salient conditions are mentioned below:

(1) No person employed in a public utility service shall go on strike, in breach of contract(

a) Without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking; or

(b) Within fourteen days of giving such notice; or

(c) Before the expiry of the date of strike specified in any such notice as aforesaid; or

(d) During the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

(2) No employer carrying on any public utility service shall lock-out any of his workman-

(a) Without giving them notice of lock-out as hereinafter provided, within six weeks before locking-out ; or

(b) Within fourteen days of giving such notice; or

(c) Before the expiry of the date of lock-out specified in any such notice as aforesaid ; or

(d) During the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

(3) The notice of lock-out or strike under this section shall not be necessary where there is already in existence a strike or, as the case may be, lock-out in the public utility service, but the employer shall send intimation of such lockout or strike on the day on which it is declared, to such authority as may be specified by the appropriate Government either generally or for a particular area or for a particular class of public utility services.

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

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

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

Penalty for giving financial aid to illegal strikes and lock-outs

The Industrial Dispute Act, 1947 also determines penalty for financial assistances for illegal strikes and lockouts under Section 28. Any person who knowingly expends or applies any money in direct furtherance or support of any illegal strike or lock-out shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

6. Layoff & retrenchment

Layoff:

According to the Section 2 (kkk), 'Lay-off' means the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery or natural calamity or for any other connected reason to give employment to a workman whose name is borne

on the muster rolls of his industrial establishment and who has not been retrenched.

Prohibition of lay-off

Under Section 25 (m), the Industrial Disputes Act, 1947 provides the grounds for prohibition

(7) No workman (other than a *badli* workman or a casual workman) whose name is borne on the muster rolls of an industrial establishment shall be laid-off by his employer except with the prior permission of the specified authority obtained on an application made in this behalf, unless such lay-off is due to shortage of power or to natural calamity, and in the case of a mine, such lay-off is due also to fire, flood, excess of inflammable gas or explosion.

(8) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended lay-off and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(9) Where the workmen (other than *badli* workmen or casual workmen) of an industrial establishment, being a mine, have been laid-off under subsection (1) for reasons of fire, flood or excess of inflammable gas or explosion, the employer, in relation to such establishment, shall, within a period of thirty days from the date of commencement of such lay-off, apply, in the prescribed manner, to the appropriate Government or the specified authority for permission to continue the lay-off.

(10) Where an application for permission under sub-section (1) or subsection (3) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such lay-off, may, having regard to the genuineness and adequacy of the reasons for such lay-off, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(11) Where an application for permission under sub-section (1) or subsection (3) has been made and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(12) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of subsection (7), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.

(13) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (4) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication:

Provided that where a reference has been made to a Tribunal under this subsection, it shall pass an award within a period of thirty days from the date of such reference.

(14) Where no application for permission under sub-section (1) is made, or where no application for permission under sub-section (3) is made within the period specified therein, or where the permission for any lay-off has been refused, such lay-off shall be deemed to be illegal from the date on which the workmen had been laid-off and the workmen shall be entitled to all the benefits under any law for the time being in force as if they had not been laid-off.

(15) Notwithstanding anything contained in the foregoing provisions of this

section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1), or, as the case may be, sub-section (3) shall not apply in relation to such establishment for such period as may be specified in the order.

Retrenchment:

‘Retrenchment’, according to Section 2(oo) of the Act means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include-

(d) Voluntary retirement of the workman; or

(e) Retirement of the workman on reaching the age of Superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

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

(f) Termination of the service of a workman on the ground of continued ill-health.

Termination of service for any reason whatsoever may be called retrenchment, unless it falls in excepted categories. Termination of service is the cessation of the relationship between the employer and the workman concerned. If such termination takes place without any genuine reasons of termination, retrenchment of the worker is obvious.

The connotation of the term ‘retrenchment’ has widening scope and extent under Legislature for all kinds of termination of service for any reason whatsoever. This is because of humanitarian consideration of the term

Retrenchment has meaning in a continuing industry. In order that termination of service may be retrenchment, it must be of surplus labour or staff and in an industry which is a continuing one and not closed or transferred.

Conditions precedent to retrenchment of workmen

Section 25 (f) provides the conditions precedent to retrenchment. According to this section the employer must satisfy the following conditions before retrenching an employee who has been in continuous service for not less than one year -

(a) the workman has been given one months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

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

(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Calculation of average pay is done by dividing the last drawn monthly salary by 25 and then multiplying the dividend by 15 for every completed year of continuous work.

Under Section 25 (n) of the Industrial Disputes Act also the conditions for workmen are enlisted. The main provisions are mentioned below:

2. The provisions are applicable to those workmen, who have been in continuous service for not less than one year under an employer shall be retrenched by that employer until –

(a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the

notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette has been obtained on an application made in this behalf.

3. An application for permission under sub- section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

4. Where an application for permission under sub- section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

5. Where an application for permission has been made under sub- section (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

6. An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub- section (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.

7. The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub- section (3) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication: Provided that where a reference has been made to a Tribunal under this sub- section, it shall pass an award within a period of thirty days from the date of such reference.

8. Where no application for permission under sub- section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.

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

10. Where permission for retrenchment has been granted under sub- section (3) or where permission for retrenchment is deemed to be granted under sub- section (4), every workman who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to receive, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.]

Procedure of retrenchment

Section 25(g) lays down the procedure of retrenchment. Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs

to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman. The employer is also required to maintain a seniority list of the workmen. The system of last in first out is to be followed in retrenching workmen.

Penalty for lay-off and retrenchment without previous permission

According to Section 25 (q), any employer who contravenes the provisions of section 25M or of section 25N shall be punishable with imprisonment for a term, which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

8. Let Us Sum Up

The Industrial Disputes Act, 1947 is one of the major set of labour legislation in India. The Act formalized the definition of industrial disputes and created provisions for a number of problems arising out of such disputes. It enriched the labour welfare and social security measures in India.

10. Further Readings




1. Tulsian P.C., Business Law, Tata McGraw Hill Publishing Co. New Delhi
2. Kapoor N.D., Handbook of Industrial Law, Sultan Chand & Sons, New Delhi.
3. The Bare Act at www.vakilno1.com

9. Practice questions

1. Write notes on –
(a) Lay off, (b) Retrenchment, (c) Strike, (d) Average pay (e) Public utility (f) Grievance settlement authority, (g)
2. What do you mean by ‘industrial dispute’? When an individual dispute does become industrial dispute? Briefly discuss the essentials of industrial disputes.
3. What are the different authorities constituted under the Industrial Dispute Act, 1947? Discuss their legal roles in mitigating the problems of industrial disputes.
4. Discuss the various methods of settlement of industrial disputes under the Industrial Dispute Act.
5. Who is a ‘Conciliation officer’? Discuss the role and functions of a conciliation officer.
6. Distinguish between Boards of Conciliation and Labour Courts. In what ways, they are different? Analyze.
7. Define ‘award’ and ‘settlement’. Explain the circumstances under which award may be made under the Act.
8. Distinguish between strike and lockout. Under what circumstances a strike may be declared illegal.
9. Discuss the circumstances under which compensation may not be paid to a laid off worker?
10. What is a tribunal? Discuss the responsibilities of Industrial Tribunal and National Tribunal.

UNIT-5: THE TRADE UNIONS ACT, 1926**UNIT STRUCTURE****5.1 OBJECTIVES****5.2 INTRODUCTION****5.3 OBJECTIVES AND DEFINITIONS****5.3.1 OBJECTIVES OF THE ACT****5.3.2 IMPORTANT DEFINITIONS****5.4 REGISTRATION AND CANCELLATION OF REGISTRATION OF TRADE UNIONS****5.4.1 REGISTRATION OF TRADE UNIONS****5.4.2 CANCELLATION OF REGISTRATION AND APPEAL****5.5 RIGHTS AND LIABILITIES OF A REGISTERED TRADE UNION****5.5.1 RIGHTS AND PRIVILEGES OF A REGISTERED TRADE UNION****5.5.2 DUTIES AND LIABILITIES OF A REGISTERED TRADE UNION****5.6 MISCELLANEOUS****5.6.1 AMALGAMATION OF TRADE UNIONS****5.6.2 DISSOLUTION OF TRADE UNIONS****5.6.3 REGULATIONS****5.7 PENALTIES AND PROCEDURE****5.8 SUMMING UP****5.9 SUGGESTED READINGS****5.10 PROBABLE QUESTIONS****5.1 OBJECTIVES**

After going through this unit you will be able to:

-  explain the process of registration of trade unions
-  discuss the rights and liabilities of a registered trade union
-  explain the penalties for the offences done under this act

5.2 INTRODUCTION

In this unit we are going to discuss about the Trade Union Act, 1926. A trade union is an association of workers in a particular craft or industry. Legally, it means an association formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen or between employers and employers. It is the union which protects the rights of the worker. It may be registered under the Registrar of Trade Union and thus the registered trade union can avail different rights and privileges. In this unit we will learn how to register a trade union. Moreover, we will also know about different rights and liabilities of registered Trade Union along with the different penalty provisions under the Trade Unions Act, 1926.

5.3 OBJECTIVES AND DEFINITIONS OF THE ACT**5.3.1 OBJECTIVES OF THE ACT**

After World War I, there was an intense industrial unrest in various parts of India, due to high cost of living. The political agitation accelerated this unrest. Consequently, the workers resorted to strikes from time to time to solve grievances and various Action Committees came into existence which used to guide

the strikes. The first association that in some respect resembled a trade union was the Bombay Mill Hands Association, which was formed in 1890 and served as the clearing house for the grievances of the Bombay Mill workers. The success of these strikes, the world-wide uprising of labour consciousness and establishment of the International Labour Organisation helped the growth of the trade unionism in India.

There was no law in India for registration and protection of Trade Unions before 1926. In 1926, the Indian Trade Union Act was enacted on the pattern of the corresponding English law. The word 'Indian' was dropped by Amending Act 38 of 1964 from its title. Since then, it is called, 'The Trade Union Act, 1926'.

The primary function of a trade union is to promote and protect the interests and basic needs of its members. Important among these are:

- a. To secure fair wages for the workers;
- b. To safeguard security of tenure and improve conditions of service;
- c. To enlarge opportunities for promotion and training;
- d. To improve working and living conditions;
- e. To provide educational, cultural, and recreational facilities;
- f. To co-operate in and facilitate technological advance by broadening the understanding of workers on its underlying issues;
- g. To promote identity of interests of the workers and their industry;
- h. To offer responsive co-operation in improving levels of production and productivity, discipline and high standard of quality; and generally
- i. To promote individual and collective welfare.

The Trade Union Act, 1926 was passed to regulate –

- I. conditions governing the registration of trade unions;
- II. obligations imposed upon a registered trade union; and
- III. rights and liabilities of registered trade unions.

5.3.2 IMPORTANT DEFINITIONS

Under Section 2 different terms of the Trade Union Act are defined. They are:

- (1) Appropriate Government [Section 2]:** In relation to Trade Unions whose objects are not confined to one State, the 'appropriate Government' means the Central Government, and in relation to other Trade Unions, the 'appropriate Government' means the State Government.
- (2) Executive [Section 2(a)]:** 'Executive' means the body, whatever name called, to which the management of the affairs of a trade union is entrusted.
- (3) Office-bearer [Section 2(b)]:** 'Office-bearer', in the case of a trade union, includes any member of the executive thereof, but does not include an auditor.
- (4) Registered office [Section 2(d)]:** It means that office of a trade union which is registered under this Act as the head office thereof.
- (5) Registered trade union [Section 2(e)]:** It means a trade union registered under this act.
- (6) Registrar [Section 2(f)]:** 'Registrar' means –

- (i) a Registrar of Trade Union appointed by the appropriate Government under Section 3 and includes any Additional or Deputy Registrar of Trade Unions, and
- (ii) Rein relation to any trade union, the Registered appointed for the State in which the head or registered office, as the case may be, of the trade union is situated.

(7) Trade dispute [Section 2(g)]: It means any dispute

- a. between employers and workmen, or
- b. between workmen and workmen, or
- c. between employers and employers, which is connected with –
 - (i) the employment or non-employment, or
 - (ii) the terms of employment, or
 - (iii) the conditions of labour, of any person.

(8) Trade Union [Section 2(h)]: It means any combination, whether temporary or permanent, formed –

- (i) primarily for the purpose of regulating the relations
 - (a) between workmen and employers, or
 - (b) between workmen and workmen, or
 - (c) between employers and employers, or
- (ii) for imposing restrictive conditions on the conduct of any trade or business.

5.4 REGISTRATION & CANCELLATION OF REGISTRATION OF TRADE UNIONS

5.4.1 REGISTRATION OF TRADE UNIONS

Under Section 3 of the Act, a State Government appoints a person to be the Registrar of Trade Unions of the State. It may also appoint as many Additional and Deputy Registrars of Trade Unions as it thinks fit for the purpose of exercising and discharging the powers and functions of the Registrar. The State Government also defines the local limits within which the Registrars and Additional and Deputy Registrars should work. The process of Registration is discussed below.

Mode of Registration (Section 4):

- Any seven or more members of a Trade Union may, by subscribing their names to the rules of the Trade Union and by otherwise complying with the provisions of this Act with respect to registration, apply for registration of the Trade Union under this Act.
- An application made for the registration of a Trade Union shall not be deemed to have become invalid merely by reason of the fact that, at any time after the date of the application, but before the registration of the Trade Union, some of the applicants, but not exceeding half of the total number of persons who made the application, have ceased to be members of the Trade Union or have given notice in writing to the Registrar dissociating themselves from the application.

Application for Registration to Registrar (Section 5):

Every application for registration of a Trade Union is to be made to the Registrar of Trade Unions and must be accompanied by a copy of its rules and a statement of the following particulars, viz.,

- (a) the names, occupations and addresses of the members making the application;
- (b) the name of the Trade Union and the address of its head office; and
- (c) the titles, names, ages, addresses and occupations of the officers of the Trade Union.

If a Trade Union has been in existence for more than one year before making of an application for its registration, a general statement of its assets and liabilities prepared in the prescribed form has also to be submitted to the Registrar along with the application.

Rules of Trade Union (Section 6):

A trade union is entitled to registration only if its executive is constituted in accordance with the provisions of the Act and its rules provide for the following matters, namely:

- (a) the name of the Trade Union;
- (b) the whole of the objects for which the Trade Union has been established;
- (c) the whole of the purposes for which the general funds of the Trade Union shall be applicable, all of which purposes shall be purposes to which such funds are lawfully applicable under this Act;
- (d) the maintenance of a list of the members of the Trade Union and adequate facilities for the inspection thereof by the office-bearers and members of the Trade Union;
- (e) the admission of ordinary members who shall be persons actually engaged or employed in an industry with which the Trade Union is connected, and also the admission of the number of honorary or temporary members as office-bear required under section 22 to form the executive of the Trade Union;
- (f) the payment of a subscription by members of the Trade Union which shall be not less than twenty-five paise per month per member;
- (g) the conditions under which any member shall be entitled to any benefit assured by the rules and under which any fine or forfeiture may be imposed on the members;
- (h) the manner in which the rules shall be amended, varied or rescinded;
- (i) the manner in which the members of the executive and the executive and other office-bearers of the Trade Union shall be appointed and removed;
- (j) the safe custody of the funds of the Trade Union, and annual audit, in such manner as may be prescribed, of the accounts thereof, and adequate facilities for the inspection of the account books by the office-bearers and members of the Trade Union; and
- (k) the manner in which the Trade Union may be dissolved.

Power to call for further particulars and to require alteration of name (Section 7):

- (1) The Registrar may call for further information for the purpose of satisfying himself that any application complies with the provisions of Section 5, or that the Trade Union is entitled to registration under Section 6, and may refuse to register the Trade Union until such information is supplied.
- (2) If the name under which a Trade Union is proposed to be registered is identical with that by which any other existing Trade Union has been registered or, in the opinion of the Registrar, so nearly resembles such name as to be likely to deceive the public or the members of either Trade Union, the Registrar shall require the persons applying for registration to alter the name of the Trade Union stated in the application, and shall refuse to register the Union until such alteration has been made.

Registration (Section 8):

The Registrar, on being satisfied that the Trade Union has complied with all the requirements of this Act in regard to registration, shall register the Trade Union by entering in a register, to be maintained in such form as may be prescribed, the particulars relating to the Trade Union contained in the statement accompanying the application for registration.

Certificate of Registration (Section 9):

The Registrar, on registering a Trade Union under section 8, shall issue a certificate of registration in the prescribed form which shall be conclusive evidence that the Trade Union has been duly registered under this Act.

The Registrar can refuse registration under Section 7 –

- (1) If an association or combination to be registered as a trade union does not comply with the necessary statutory formalities, or
- (2) When it refuses to supply the required information, or
- (3) When it refuses to alter its name which is identical with, or resembles, the name of an existing trade union.

Registered Office (Section 12):

All communications and notices to a registered Trade Union may be addressed to its registered office. Notice of any change in the address of the head office shall be given within fourteen days of such change to the Registrar in writing, and the changed address shall be recorded in the register maintained by the Registrar under Section 8.

Characteristics of Registered Trade Union on Incorporation (Section 13):

A Trade Union after registration acquires the following characteristics:

- (1) It becomes body corporate by the name under which it is registered, and becomes a legal entity distinct from the members of which it is composed.
- (2) It has perpetual succession and a common seal.
- (3) It has power to acquire and hold both movable and immovable properties.

(4) It has the power to contract.

(5) It can by the name under which it is registered sue and be sued.

Certain Acts not to apply to registered Trade Unions (Section 14):

The following acts do not apply to registered Trade Unions:

(a) The Societies Registration Act, 1860;

(b) The Co-operative Societies Act, 1912;

(c) The Companies Act, 1956.

The registration of any Trade Union under these acts is void.

Change of name (Sections 23, 25 and 26):

Any registered Trade Union may, with the consent of not less than 2/3 rds of the total number of its members, change its name (Section 23).

A Notice in writing of the change of name signed by the secretary and by seven members of the Trade Union shall be sent the Registrar. If the proposed name is not identical with that of any existing Trade Union, the Registrar shall register the change of name in the register referred to in Section 8. The change of name shall have effect from the date of such registration (Section 25).

According to Section 26, the change in the name does not affect any rights or obligations of the Trade Union. Any legal proceeding by or against the Trade Union shall be continued or commenced by or against it by its new name.

Who can become members of a Trade Union? (Section 21):

Any person who has attained the age of 15 years may be a member of a registered Trade Union. But he can only be an office-bearer of the Trade Union only if he attains the age of 18 years.

Ordinarily the members of a Trade Union must be persons who are actually engaged in the trade or industry with which the Trade Union is concerned. But there is nothing in the act that debars a Trade Union from admitting outsiders as a member of the Trade Union.

A Trade Union can be formed only by persons engaged in a trade or business. As such Government servants are not entitled to the registration of a Trade Union.

5.4.2 CANCELLATION OF REGISTRATION AND APPEAL

Cancellation of Registration (Section 10):

A certificate of registration of a Trade Union may be withdrawn or cancelled by the Registrar-

(a) on the application of the Trade Union to be verified in the prescribed manner; or

(b) if the Registrar is satisfied that the certificate has been obtained by fraud or mistake; or

(c) if the Registrar is satisfied that the Trade Union has

(i) ceased to exist, or

(ii) willfully contravened any provisions of the act, or

(iii) allowed any rule to continue in force, which is inconsistent with any such provision, or

(iv) rescinded any rule which ought to be there.

In cases (b) and (c), the Registrar has to give to the Trade Union not less than 2 months previous notice in writing specifying the ground on which it is proposed to withdraw or cancel the certificate of registration. Cancellation or withdrawal of registration is illegal and without jurisdiction, in absence of such prior notice.

A registered Trade Union can apply for cancellation of registration, provided the withdrawal or cancellation of registration is approved by majority of its members in a general meeting of the Trade Union. On receiving an application for the cancellation of registration, the Registrar may call for any such particulars or examine any officer of the union. After cancellation of certificate of registration, the Registrar cannot withdraw his cancellation order on subsequent notification.

Appeal (Section 11):

- (1) Any person aggrieved by any refusal of the Registrar to register a Trade Union or by the withdrawal or cancellation of a certificate of registration may, within such period as may be prescribed, appeal,-
 - (a) where the head office of the Trade Union is situated within the limits of a Presidency town, the appeal lies to the High Court, or
 - (b) where the head office is situated in any other area, the appeal lies to such Court, not inferior to the Court of an additional or assistant Judge or a principal Civil Court of original jurisdiction, as the appropriate Government may appoint in this behalf for that area.
- (2) The appellate Court may dismiss the appeal, or pass an order directing the Registrar to register the Union and to issue a certificate of registration under the provisions of Section 9 or set aside the order for withdrawal or cancellation of the certificate, as the case may be, and the Registrar shall comply with such order of the Court.
- (3) For the purpose of an appeal under Section 11, an appellate Court shall, so far as may be, follow the same procedure and have the same powers as it follows and has when trying a suit under the Code of Civil Procedure, 1908. It may direct by whom the whole or any part of the costs of the appeal shall be paid, and such costs shall be recovered as if they had been awarded in a suit under the said Code.
- (4) In the event of the dismissal of an appeal by any Court appointed under clause (b) of Section 11 subsection (1), the person aggrieved shall have a right of appeal to the High Court, and the High Court shall, for the purpose of such appeal, have all the powers of an appellate Court under sub-sections (2) and (3), and the provisions of those sub-sections shall apply accordingly.

5.5 RIGHTS AND LIABILITIES OF A REGISTERED TRADE UNION

5.5.1 RIGHTS AND PRIVILEGES OF A REGISTERED TRADE UNION

The rights and privileges of a registered Trade Union are as follows.

1. *Body Corporate (Section 13):* Every registered Trade Union is a body corporate by the name under which it is registered and has perpetual succession and a common seal with power to acquire and hold both movable and immovable property and to contract, and can by the said name sue and be sued.

2. *Separate fund for political purposes (Section 16)*: A registered Trade Union may constitute a separate fund, from contributions separately levied for or made to that fund, from which payments may be made for the promotion of the civic and political interests of its members in furtherance of its objects.
3. *Immunity from punishment from criminal conspiracy (Section 17)*: An office-bearer or member of a registered Trade Union shall not be liable to punishment under Section 120B(2) of the Indian Penal Code, 1860 in respect of any agreement made between the members for the purpose of furthering any such object of the Trade Union on which general funds may be spent. But if the agreement is an agreement to commit an offence, no immunity can be claimed.
- The protection accorded to office-bearers or members of a registered Trade Union is only in respect of agreements made among the members for the purpose of furthering any legitimate object of the Trade Union. One of such objects may be the conduct of trade disputes on behalf of the Trade Union or any member thereof.
- Collective action*: Workmen quite often resort to collective action against the employers to enforce their demands. This collective action may take the form of strike or picketing to prevent his customers from dealing with him or preventing some unemployed persons from taking the place of those who have joined in the collective action. Such collective action interferes with the trade or business of the employer or with the employment of other workers. It amounts to a conspiracy at Common Law. If a registered Trade Union resorts to such an action in furtherance of a trade dispute, its office-bearers and members are given protection against assault on any of the officers or workers in the employment of the employer, or holding out of the threats or indulging in violence or defamation, would not be saved even though it may be in furtherance of a trade dispute.
4. *Immunity from civil suit in certain cases (Section 18)*:
- (1) No suit or other legal proceeding shall be maintainable in any Civil Court against any registered Trade Union or any office-bearer; or member thereof in respect of any act done in contemplation or furtherance of a trade dispute to which a member of the Trade Union is a party on the ground only that such act induces some other person to break a contract of employment, or that it is in interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or of his labour as he wills.
- (2) A registered Trade Union shall not be liable in any suit or other legal proceeding in any Civil Court in respect of any tortuous act done in contemplation or furtherance of a trade dispute by an agent of the Trade Union if it is proved that such person acted without the knowledge of, or contrary to express instructions given by, the executive of the Trade Union.
5. *Enforceability of agreements. (Section 19)*: Notwithstanding anything contained in any other law for the time being in force, an agreement between the members of a registered Trade Union shall not be void or voidable merely by reason of the fact that any of the objects of the agreement are in restraint of trade:

Provided that nothing in this section shall enable any Civil Court to entertain any legal proceeding instituted for the express purpose of enforcing or recovering damages for the breach of any agreement concerning the conditions on which any members of a Trade Union shall or shall not sell their goods, transact business, work, employ or be employed.

6. *Right to inspect books of Trade Union (Section 20)*: The account books of a registered Trade Union and the list of members thereof shall be open to inspection by an office-bearer or member of the Trade Union at such times as may be provided for in the rules of the Trade Union.

7. *Rights of minors to be members of Trade Unions (Section 21)*: Any person who has attained the age of fifteen years may be a member of a registered Trade Union subject to any rules of the Trade Union to the contrary, and may, subject as aforesaid, enjoy all the rights of a member and execute all instruments and give all acquaintances necessary to be executed or given under the rules.

5.5.2 DUTIES AND LIABILITIES OF A REGISTERED TRADE UNION

1. *Change of registered office (Section 12)*: If any change in the address of the head office of a registered Trade Union takes place, notice of change must be given to the Registrar in writing.

2. *Objects on which general funds may be spent (Section 15)*: The general funds of a registered Trade Union shall not be spent on any other objects than the following.

- (a) the payment of salaries, allowances and expenses to the office-bearers of the Trade Union;
- (b) the payment of expenses for the administration of the Trade Union, including audit of the accounts of the general funds of the Trade Union;
- (c) the prosecution or defence of any legal proceeding to which the Trade Union or any member thereof is a party, when such prosecution or defence is undertaken for the purpose of securing or protecting any rights of the Trade Union as such or any rights arising out of the relations of any member with his employer or with a person whom the member employs;
- (d) the conduct of trade disputes on behalf of the Trade Union or any member thereof;
- (e) the compensation of members for loss arising out of trade disputes;
- (f) allowances to members or their dependants on account of death, old age, sickness, accidents or unemployment of such members;
- (g) the issue of, or the undertaking of liability under, policies of assurance on the lives of members, or under policies insuring members against sickness, accident or unemployment;
- (h) the provision of educational, social or religious benefits for members (including the payment of the expenses of funeral or religious ceremonies for deceased members) or for the dependants of members;
- (i) the upkeep of a periodical published mainly for the purpose of discussing questions affecting employers or workmen as such;
- (j) the payment, in furtherance of any of the objects on which the general funds of the Trade Union may be spent, of contributions to any cause intended to benefit workmen in general, provided that the expenditure in respect of such contributions in any financial year shall not at any time during that

year be in excess of one-fourth of the combined total of the gross income which has up to that time accrued to the general funds of the Trade Union during that year and of the balance at the credit of those funds at the commencement of that year; and

- (k) subject to any conditions contained in the notification, any other object notified by the appropriate Government in the official Gazette.

3. Constitution of a separate fund for political purposes (Section 16):

- (1) A registered Trade Union may constitute a separate fund, from contributions separately levied for or made to that fund, from which payments may be made for the promotion of the civic and political interests of its members in furtherance of any of the objects specified in sub-section (2).
- (2) The objects referred to in sub-section (1) are:
- (a) the payment of any expenses incurred, either directly or indirectly, by a candidate or prospective candidate for election as a member of any legislative body constituted under the Constitution or of any local authority, before, during, or after the election in connection with his candidature or election; or
 - (b) the holding of any meeting or the distribution of any literature or documents in support of any such candidate or prospective candidate; or
 - (c) the maintenance of any person who is a member of any legislative body constituted under the Constitution or of any local authority; or
 - (d) the registration of electors or the election of a candidate for any legislative body constituted under the Constitution or for any local authority; or
 - (e) the holding of political meetings of any kind, or the distribution of political literature or political documents of any kind.
- (3) Expenditure for political purposes is in no case permitted out of the general funds and also from interest on investments of general fund.

The conditions for the creation of a political fund are as follows:

- (a) Such fund can be created only from contributions separately levied or made to that fund.
 - (b) Members must not be compelled to contribute to the fund.
 - (c) A member who does not contribute to the fund must not be excluded from any benefits of the Trade Union, or placed in any respect either directly or indirectly under any disability or at any disadvantage as compared with other members of the Trade Union (except in relation to the control or management of the said fund) by reason of his not contributing to the said fund.
 - (d) Contribution to the political fund must not be made a condition for admission to the Trade Union.
- 4. Proportion of office-bearers to be connected with the industry (Section 22):* Not less than one-half of the total number of the office-bearers of every registered Trade Union shall be persons actually engaged or employed in an industry with which the Trade Union is connected. The other half of the office-bearers may be social or political workers. The idea behind this rule is that persons actually

engaged or employed in the industry may not have enough courage to form a Trade Union for fear of reprisal from the employers.

The appropriate Government may, however, by special or general order, exempt a Trade Union from the application of this provision.

5. *Returns (Section 28)*: Every registered Trade Union shall send annually to the Registrar a general statement, audited in the prescribed manner, of all receipts and expenditure during the year ending on the 31st day of December. It shall also send a statement of assets and liabilities on that date. Together with the general statement it shall send a statement showing all changes of office-bearers made by the Trade Union during the year, and a copy of the rules of the Trade Union corrected up to the date of the dispatch to the Registrar.

For the purpose of examining the documents, the Registrar, or any officer authorized by him, by general or special order, may at all reasonable times inspect the certificate of registration, account books, registers, and other documents, relating to a Trade Union, at its registered office or may require their production at such place as he may specify in this behalf, but no such place shall be at a distance of more than ten miles from the registered office of a Trade Union.

6. Disqualifications of office-bearers of Trade Unions (Section 21-A): A person shall be disqualified for being chosen as, and for being, a member of the executive or any other office-bearer of a registered Trade Union if -

- (i) he has not attained the age of eighteen years,
- (ii) he has been convicted by a Court in India of any offence involving moral turpitude and sentenced to imprisonment, unless a period of five years has elapsed since his release.

An office-bearer of a Trade Union can be removed from his office only if the rules of the union confer this power specifically. A power to suspend or remove an office-bearer is of a quasi-judicial character. It must be exercised in accordance with the principles of natural justice. The office-bearer, before he is removed, must be given an opportunity of being heard.

5.6 MISCELLANEOUS

5.6.1 AMALGAMATION OF TRADE UNIONS (SECTION 24 TO 26)

Amalgamation (Section 24): Any two or more registered Trade Unions may become amalgamated together as one Trade Union with or without dissolution or division of the funds of such Trade Unions. The amalgamation shall take place only when votes of at least one-half of the members of each Trade Union entitled to vote are recorded, and at least sixty percent of the votes recorded are in favour of the proposal of amalgamation.

Notice of Amalgamation (Section 25): Notice in writing of every amalgamation, signed by the secretary and by seven members of each and every Trade Union which is a party thereto, shall be sent to the Registrar. If the head office of the amalgamated Trade Union is situated in a different State such notice shall be sent to the Registrar of such State also.

If the Registrar of the State in which the registered head office of the amalgamated Trade Union is situated is satisfied that all necessary formalities have been complied with, he may register the Trade Union and the amalgamation shall have effect from the date of such registration.

Effect of Amalgamation (Section 26): An amalgamation of two or more registered Trade Unions shall not prejudice any right of any such Trade Union or any right of a creditor of any of them. Registration of amalgamation by itself is not the conclusive proof of the validity of the amalgamation. The amalgamation may be declared invalid on the ground that the votes of fifty percent of the members had not been recorded.

5.6.2 DISSOLUTION OF TRADE UNIONS (SECTION 27)

When a registered Trade Union is dissolved, notice of the dissolution signed by seven members and by the Secretary of the Trade Union shall, within fourteen days of the dissolution, be sent to the Registrar, and shall be registered by him if he is satisfied that the dissolution has been effected in accordance with the rules of the Trade Union, and the dissolution shall have effect from the date of such registration.

Where the dissolution of a registered Trade Union has been registered and the rules of the Trade Union do not provide for the distribution of funds of the Trade Union on dissolution, the Registrar shall divide the funds amongst the members in such manner as may be prescribed. This applies both to movable as well as immovable properties especially when they were purchased from and out of the funds collected from members of such Trade Union. On the dissolution of a Trade Union the members thereof can form another society registered under the Societies Registration Act, 1860, for the purpose of recovering the said properties.

5.6.3 REGULATIONS (SECTIONS 29 AND 30)

Power to make regulations (Section 29):

The appropriate Government may make regulations for the purpose of carrying into effect the provisions of this Act.

In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely -

- (a) the manner in which Trade Unions and the rules of Trade Unions shall be registered and the fees payable on registration;
- (b) the transfer of registration in the case of any registered Trade Union which has changed its head office from one State to another;
- (c) the manner in which, and the qualifications of persons by whom, the accounts of registered Trade Unions or of any class of such Unions shall be audited;
- (d) the conditions subject to which inspection of documents kept by Registrars shall be allowed and the fees which shall be chargeable in respect of such inspections; and
- (e) any matter which is to be or may be prescribed.

Publication of regulations (Section 30):

The power to make regulations conferred by section 29 is subject to the condition of the regulations being made after previous publication.

The date to be specified in accordance with clause (3) of Section 23 of the General Clauses Act, 1897 (10 of 1897), as that after which a draft of regulations proposed to be made will be taken into consideration shall not be less than three months from the date on which the draft of the proposed regulations was published for general information.

Regulations so made shall be published in the Official Gazette, and on such publication shall have effect as if enacted in this Act.

5.7 PENALTIES AND PROCEDURE

Failure to submit returns (Section 31):

If default is made on the part of any registered Trade Union in giving any notice or sending any statement or other document as required by or under any provision of this Act, every office-bearer or other person bound by the rules of the Trade Union to give or send the same, or, if there is no such office-bearer or person every member of the executive of the Trade Union, shall be punishable, with fine which may extend to five rupees and, in the case of a continuing default, with an additional fine which may extend to five rupees for each week after the first during which the default continues.

The information or statements required to be submitted by a registered Trade Union shall include:

- (a) Notice of change in the address of the head office of the Trade Union (Section 12);
- (b) Notice of change of name of amalgamation (Section 25);
- (c) Notice of dissolution (Section 27);
- (d) Returns (Section 28).

Further any person who wilfully makes, or causes to be made, any false entry in, or any omission from, the general statement required by section 28, or in or from any copy of rules or of alterations of rules sent to the Registrar under that section, shall be punishable with fine which may extend to five hundred rupees.

Supplying false information regarding Trade Unions (Section 32):

Sometimes a person, with intent to deceive, gives to any member of a registered Trade Union or to any person intending or applying to become a member of such Trade Union or to any person intending or applying to become a member of such Trade Union, any document purporting to be a copy -

- (a) of the rules of the Trade Union or
- (b) of any alterations to the same,

which he knows, or has reason to believe, is not a correct copy of such rules or alterations as are for the time being in force.

Such person shall be punishable with fine which may extend to two hundred rupees. Likewise, any person who, with intent to deceive, gives a copy of any rules of an unregistered Trade Union to any person on the pretence that such rules are the rules of a registered Trade Union, shall be punishable with fine which may extend to two hundred rupees.

Cognizance of offences (Section 33):

No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act.

Further no Court shall take cognizance of any offence under the Act, unless complaint thereof has been made by, or with the previous sanction of, the Registrar. In the case of an offence of supplying false information regarding the Trade Union the complaint may be made by the aggrieved person within six months of the date on which the offence is alleged to have been committed.

5.8 SUMMING UP

Trade Dispute means any dispute between employers and workmen, or between workmen and workmen, or between employers and employers, which is connected with the employment or non-employment, or the terms of employment, or the conditions of labour, of any person. A Trade Union is formed in order to settle such trade dispute.

Any seven or more members of a Trade Union may, by subscribing their names to the rules of the Trade Union and by otherwise complying with the provisions of this Act with respect to registration, apply for registration of the Trade Union under this Act.

An office-bearer or member of a registered Trade Union shall not be liable to punishment under Section 120B(2) of the Indian Penal Code, 1860 in respect of any agreement made between the members for the purpose of furthering any such object of the Trade Union on which general funds may be spent. But if the agreement is an agreement to commit an offence, no immunity can be claimed.

5.9 SUGGESTED READINGS

1. N D Kapoor. *Industrial Law* (Sultan Chand & Sons, New Delhi, 2004).
2. R S N Pillai & V Bhagwati *Business Law* (S Chand & Company, New Delhi, 2005).
3. S K Tuteja *Business Law for Managers* (Sultan Chand & Sons, New Delhi, 2004).

5.10 PROBABLE QUESTIONS

1. Describe the history of the formation of The Trade Union Act, 1926.
2. Discuss the primary objectives of a Trade Union.
3. Define the following terms as used in the Trade Union Act, 1926:
(a) Trade Dispute (b) Registrar (c) Trade Union
4. Describe the procedure of registration of a Trade Union under Trade Union Act, 1926.
How can a Trade Union obtain a certificate of registration? Can a minor be admitted as a member of a Trade Union?
5. How can the name of a Trade Union be changed?
6. When can the registration of a Trade Union be cancelled or withdrawn?
7. Can two or more Trade Unions be amalgamated? If so how? What are the effects of amalgamation of Trade Union?
8. What are the rights and privileges of a registered Trade Union?
9. When and for what purposes may a Trade Union create a political fund?
10. What are the objects on which general funds of a Trade Union may be spent?
11. What are the duties and liabilities of a registered Trade Union?
12. Explain the provisions relating to dissolution of a Trade Union under Trade Union

Act, 1926.




13. Is the registration of Trade Union obligatory? State the effect of the registration of a Trade Union.
14. State the law on the extent of immunity enjoyed by Trade Unions or officers or members thereof in the matter of civil and criminal liability.
15. When does an appeal lie from the orders of the Registrar of Trade Unions? What are the powers of the Appellate Court?

UNIT STRUCTURE

- 6.1 OBJECTIVES
- 6.2 INTRODUCTION
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 - 6.3.1 OBJECTIVES OF THE ACT
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- 6.4 FIXATION AND REVISION OF WAGES
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- 6.6 OFFENCES AND PENALTIES
 - 6.6.1 PENALTIES FOR OFFENCES (SECTION 22)
- 6.7 THE SCHEDULE
 - 6.7.1 PART I [SECTION 2(G) AND 27]
 - 6.7.2 PART II
- 6.8 SUMMING UP
- 6.9 SUGGESTED READINGS
- 6.10 PROBABLE QUESTIONS

6.1 OBJECTIVES

After going through this unit you will be able to:

-  Calculate the minimum wages of workers
-  Discuss the powers of Inspectors
-  Explain the Penalties for the Offences done under this act

6.2 INTRODUCTION

In this unit we are going to discuss about Minimum Wages Act, 1948. Wages means all remuneration, capable of being expressed in terms of money, which would be payable to a person employed in respect of his employment or work done in such employment. This act secures the welfare of the workers in a competitive market by fixing the minimum rates of wages payable to employees in a selected number of sweated industries. In this unit we will learn to calculate the minimum wages of workers and will also discuss about the powers of the Inspectors appointed to check the enforcement of the act. Moreover, the penalties for violating this act, is also discussed in this unit.

6.3 OBJECTIVES AND DEFINITIONS OF THE ACT**6.3.1 OBJECTIVES OF THE ACT**

The history of labour struggle is nothing but a continuous demand for a fair return to labour in terms of

- (a) increase in wages,

- (b) resistance to decrease in wages, and
- (c) grant of benefits, and allowances, etc.

The Minimum Wage Fixing Machinery Convention held at Geneva in the year 1928 was first step towards relieving this labour struggle. The resolutions of the convention are embodied in Articles 223 to 228 of the International Labour Code. In the year 1948, Minimum Wages Act was enacted by Government of India, in order to secure the welfare of the workers in a competitive market by fixing the minimum rates of wages payable to employees in a selected numbers of *sweated* industries.

The main objectives of this Act are:

- (a) To ensure that the minimum wages rates not only keep a worker above starvation level but it must also ensure subsistence for him and his family and preserve his efficiency as a workman.
- (b) The wages must correspond to the amount of work done and there should be no exploitation.
- (c) To see that the unorganized labourer does not suffer from unfair bargaining and their rights are protected.
- (d) To see that the strikes and lock-outs are rooted out by satisfying the labourer through fair payments.

6.3.2 IMPORTANT DEFINITIONS

Under Section 2 different terms of the Minimum Wages Act are defined. They are:

- (1) **Adolescent [Section 2(a)]**: "Adolescent" means a person who has completed his 14th year of age but has not completed his 18th year.
- (2) **Adult [Section 2(aa)]**: "Adult" means a person who has completed his 18th year of age.
- (3) **Appropriate Government [Section 2(b)]**: "Appropriate Government" means -
 - (i) in relation to any scheduled employment carried on by or under the authority of the [3] [Central Government, or a railway administration], or in relation to a mine, oilfield or major port, or any corporation established by [4] [a Central Act], the Central Government, and
 - (ii) in relation to any other scheduled employment, the State Government;
- (4) **Child [Section 2(bb)]**: "Child" means a person who has not completed 14th year of age.
- (5) **Competent Authority [Section 2(c)]**: "Competent authority" means the authority appointed by the appropriate Government by notification in its Official Gazette to ascertain from time to time the cost of living index number applicable to the employees employed in the scheduled employments specified in such notification.
- (6) **Cost of living index number [Section 2(d)]**: "Cost of living index number", in relation to employees in any scheduled employment in respect of which minimum rates of wages have been fixed, means the index number ascertained and declared by the competent authority by notification in the Official Gazette to be the cost of living index number applicable to employees in such employment.

The term "cost of living index number" has been renamed by most of the State Government as "consumer price index number" for working class. This change has been made in accordance with international recommendation and growing practice in other countries.

(7) **Employer [Section 2(e)]:** "Employer" means any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under the Act. It includes:

(i) in a factory where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under the Act, any person named as manager of the factory under the Factories Act, 1948;

(ii) in any scheduled employment under the control of any Government in India in respect of which minimum rates of wages have been fixed under this Act, the person or authority appointed by such Government for the supervision and control of employees or where no person or authority is so appointed, the head of the department;

(iii) in any scheduled employment under any local authority in respect of which minimum rates of wages have been fixed under this Act, the person appointed by such authority for the supervision and control of employees or where no person is so appointed, the chief executive officer of the local authority;

(iv) in any other case where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person responsible to the owner for the supervision and control of the employees or for the payment of wages;

(8) **Prescribed [Section 2(f)]:** It means prescribed by rules under this Act.

(9) **Scheduled Employment [Section 2(g)]:** It means an employment specified in the Schedule (*refer to Section 6.7.1 and 6.7.2*), or any process or branch of work forming part of such employment;

(10) **Wages [Section 2(h)]:** "Wages" means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract 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 house rent allowance, but does not include--

(i) the value of--

(a) any house-accommodation, supply of light, water, medical attendance, or

(b) any other amenity or any service excluded by general or special order of the

Appropriate Government;

(ii) any contribution paid by the employer to any Pension Fund or Provident Fund or under any scheme of social insurance;

(iii) any travelling allowance or the value of any travelling concession;

(iv) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

(v) any gratuity payable on discharge;

(11) **Employee [Section 2(i)] :** "Employee" means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed; and includes an out-worker to whom any articles or

materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of that other person where the process is to be carried out either in the home of the out-worker or in some other premises not being premises under the control and management of that other person; and also includes an employee declared to be an employee by the appropriate Government; but does not include any member of the Armed Forces.

6.4 FIXATION AND REVISION OF WAGES

6.4.1 FIXING OF MINIMUM RATES OF WAGES

The responsibility for fixing the minimum rates of wages lies in the appropriate Government. According to Section 3 of the Act, the appropriate Government –

- (a) shall fix the minimum rate of wages payable to employees employed in –
 - (i) an employment specified in Part I of the Schedule;
 - (ii) an employment specified in Part II of the Schedule; and
 - (iii) an employment added to Part I or Part II of the Schedule by notification under Section 27;
- (b) may, in respect of employees employed in an employment specified in Part II of the Schedule, instead of fixing minimum rate of wages for the whole State, fix such rates for a part of the State or for any specified class or classes of such employment in the whole State or part thereof;
- (c) shall review at such intervals as it may think fit, such intervals not exceeding 5 years, the minimum rates of wages so fixed and revise the minimum rates, if necessary.

If the appropriate Government has not reviewed the minimum rates of wages fixed by it in respect of any scheduled employment within any interval of 5 years, it is not debarred from reviewing the minimum rates after the expiry of the said period of 5 years and revising them if necessary. Until the minimum rates of wages are so revised the minimum rates in force immediately before the expiry of the said period of 5 years shall continue in force.

Moreover, if in the whole State the number of employees employed in a scheduled employment is less than 1000, than the appropriate Government may refrain from fixing the minimum rate of wages.

Minimum rates of wages may be fixed for –

- (a) time work (referred to as '*a minimum time rate*')
- (b) piece work (referred to as '*a minimum piece rate*')
- (c) employees employed on a piece work for the purpose of securing to such employees a minimum rate of wages on a time work basis (referred to as '*a guaranteed time rate*')
- (d) overtime work done by employees (referred to as '*overtime rate*')

Minimum fixed rates of wages inapplicable –

According to sub-section (2-A) of Section 3, the fixed minimum rates of wages shall not apply to any of the employees in a scheduled employment where –

- (1) in respect of an industrial dispute relating to the rates of wages payable to any of the employees –
 - (a) any proceeding is pending before
 - (i) an Industrial Tribunal or National Tribunal under the Industrial Disputes Act, 1947, or
 - (ii) any like authority under any other law for the time being in force; or
 - (b) an award made by any Industrial Tribunal, National Tribunal or such authority is in operation, and
- (2) a notification fixing or revising the minimum rate of wages in respect of the scheduled employment is issued, during the pendency of such proceeding or the operation of the award.

Facts to be kept in mind while fixing or revising minimum rates of wages –

In fixing or revising minimum rates of wages different minimum rates of wages may be fixed for –

- (i) different scheduled employments;
- (ii) different classes of work in the same scheduled employment;
- (iii) adults, apprentices, children and adolescent;
- (iv) different localities

Different rates of wages for different duration of work –

Minimum rate of wages may be fixed by any one or more of the following wage period, namely –

- (i) by the hours;
- (ii) by the day;
- (iii) by the month; or
- (iv) by such other larger wage period as may be prescribed.

6.4.2 MINIMUM RATES OF WAGES

According to Section 4 of the Act, any minimum rate of wages fixed or revised by the appropriate Government in respect of scheduled employments under Section 3 may consist of –

- (i) a basic rate of wages and special allowances to accord as nearly as practicable with the variation in the cost by living index number applicable to such workers, i.e. the cost of living allowances; or
- (ii) a basic rate of wages with or without the cost of living allowance and the cash value of the concession in respect of supplies of essential commodities at concessional rates, where so authorized; or
- (iii) an all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concession, if any.

The cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concessional rates shall be computed by the competent authority. The computation shall be done by the competent authority at such intervals and in accordance with such directions as may be specified or given by the appropriate Government..

The Act does not cast any statutory obligation upon the State Governments to fix or revise the rates of minimum wages strictly according to the cost of living index

6.4.3 PROCEDURE FOR FIXING AND REVISING MINIMUM WAGES

Section 5 provides two separate modes of procedure for fixing minimum wages for the first time and revising minimum wages and the primary objective of both the procedures is to enable the Government to reach a balanced conclusion with regard to fixation of a minimum wage. The two modes are –

- (a) *Mode one – Appointment of Committee.* The appropriate Government shall appoint as many committees and sub-committees as it considers necessary to hold inquiries and advise it in respect of fixation or revision of minimum rates of wages, as the case may be; or
- (b) *Mode two – Publication of proposals in the Official Gazette.* The appropriate Government shall by notification in the Official Gazette, publish its proposals for the information of persons likely to be affected by the fixation or revision of minimum rates of wages. It shall also specify a date on which the proposals will be taken into consideration. The date so specified shall not be less than 2 months from the date of the notification.

The appropriate Government shall fix or revise the minimum rates of wages in following manner –

- (i) It shall consider the advice of the committee;
- (ii) It shall also consider all representations received by or before the specified date;
- (iii) Such fixation of wages or revision of wages is to be notified in Official Gazette;
- (iv) Such fixation or revision of wages shall come into force ordinarily after the expiry of 3 months from the date of notification in Official Gazette unless otherwise provided in the notification.

The appropriate Government has to consult the Advisory Board constituted under Section 7, if it proposes to revise the minimum rates of wages by *Mode two*.

The committee appointed under *Mode one* is only a advisory body and the Government is not bound to accept its recommendation in every case. If no advice is given by the committee or if inadequate advice is given, Section 5 does not deprive the appropriate Government of its power and duty to fix or revise the minimum rates of wages.

Correction of errors (Section 10) –

The appropriate Government may at any time by notification in the Official Gazette, correct clerical or arithmetical mistakes in any order fixing or revising minimum rates of wages under the Act, or errors arising therein from any accidental slip or omission. Every such notification shall, as soon as may be after it is issued, be placed before the Advisory Board for information.

Advisory Board (Section 7) –

Section 7 of the Act makes it incumbent upon the appropriate Government to appoint an Advisory Board for the following purposes –

- (a) to co-ordinate the work of the committees and sub-committees, when they are appointed under Section 5 of the Act; and
- (b) to advise the appropriate Government generally in the matter of fixing and revising the minimum rates of wages.

No procedure is prescribed in the Act for the Advisory Board to function. It can devise its own procedure.

Composition of committees and Advisory Board (Section 9) –

Each of the committees, sub-committees and the Advisory Board shall consist of persons to be nominated by the appropriate Government representing employer and employees in the scheduled employments, who shall be equal in number, and independent persons not exceeding 1/3 rd of its total number of members. One of the independent persons shall be appointed the Chairman by the appropriate Government.

Independent persons are persons who belong neither to the category of the employers nor to that of the employees.

Central Advisory Board (Section 8) –

The Central Government shall appoint a Central Advisory Board –

- (a) for the purpose of advising the Central and State Governments in the matters of the fixation and revision of minimum rates of wages and other matters under the Act, and
- (b) for co-ordinating the work of the Advisory Boards.

Composition of the Central Advisory Board –

The Central Advisory Board consist of persons nominated by the Central Government representing employers and employees in the scheduled employments, who shall be equal in number and independent persons not exceeding 1/3 rd of its total number of members. One of the independent persons shall be appointed the Chairman of this Board by the Central Government.

6.4.4 SAFEGUARDS IN PAYMENT OF MINIMUM WAGES

Wages in kind (Section 11) –

Minimum wages payable under this Act shall be paid in cash. But, where it has been the custom to pay wages wholly or partly in kind, the appropriate Government being of the opinion that it is necessary in the circumstances of the case may, by notification in the Official Gazette, authorize the payment of minimum wages either wholly or partly in kind.

If the appropriate Government is of the opinion that provision should be made for the supply of essential commodities at concession rates, the appropriate Government may, by notification in the Official Gazette, authorize the provision of such supplies at concession rates.

The cash value of wages in kind and of concessions in respect of supplies of essential commodities at concession rates shall be estimated in the prescribed manner.

Payment of minimum rates of wages (Section 12) –

Where in respect of any scheduled employment minimum wages have been fixed, the employer shall pay to every employee engaged in a scheduled employment under him wages at a rate not less than the minimum rate of wages fixed by such notification for that class of employees in that employment without any deductions except as may be authorized within such time and subject to such conditions as may be prescribed.

Nothing contained in this section shall affect the provisions of the Payment of Wages Act, 1936 (4 of 1936).

Payment of Wages less than the minimum wages on the ground of less performance or output is illegal.

Fixing hours for a normal working day, etc. (Section 13) –

In regard to any scheduled employment minimum rates of wages in respect of which have been fixed under this Act, the appropriate Government may –

- (a) fix the number of hours of work which shall constitute a normal working day, inclusive of one or more specified intervals;
- (b) provide for a day of rest in every period of seven days and for the payment of remuneration in respect of such days of rest;
- (c) provide for payment for work on a day of rest at a rate not less than the overtime rate.

In relation to the following classes of employees the above provision of Section 13 shall apply only to such extent and subject to such conditions as may be prescribed -

- (a) employees engaged on urgent work, or in any emergency which could not have been foreseen or prevented;
- (b) employees engaged in work in the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working in the employment concerned;
- (c) employees whose employment is essentially intermittent;
- (d) employees engaged in any work which for technical reasons has to be completed before the duty is over;
- (e) employees engaged in a work which could not be carried on except at times dependent on the irregular action of natural forces.

Intermittent employment: The employment of an employee is essentially intermittent when it is declared to be so by the appropriate Government on the ground that the daily hours of duty of the employee, or if there be no daily hours of duty as such for the employee, the hours of duty, normally include periods of inaction during which the employee may be on duty but is not called upon to display either physical activity or sustained attention.

Rates of overtime (Section 14) –

Where an employee, whose minimum rate of wages is fixed under this Act by the hour, by the day or by such a longer wage-period as may be prescribed, works on any day in excess of the number of hours

constituting a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess at the overtime rate fixed under this Act or under any law of the appropriate Government for the time being in force, whichever is higher.

Wages of worker who works for less than normal working day (Section 15) –

If an employee whose minimum rate of wages has been fixed under this Act by the day works on any day on which he was employed for a period less than the requisite number of hours constituting a normal working day, he is entitled to receive wages in respect of work done by him on that day as if he had worked for a full normal working day except –

- (i) where his failure to work is caused by his unwillingness to work and not by the omission of the employer to provide him with work, and
- (ii) in such other cases and circumstances as may be prescribed.

Wages for two or more classes of work (Section 16) –

Where an employee does two or more classes of work to each of which a different minimum rate of wages is applicable, the employer shall pay to such employee in respect of the time respectively occupied in each such class of work, wages at not less than the minimum rate in force in respect of each such class.

Minimum time rate wages for piece work (Section 17) –

Where an employee is employed on piece work for which minimum time rate and not a minimum piece rate has been fixed under this Act, the employer shall pay to such employee wages at not less than the minimum time rate.

Maintenance of registers and records (Section 18) –

Every employer shall maintain such registers and records giving such particulars of employees employed by him, the work performed by them, the wages paid to them, the receipts given by them and such other particulars and in such form as may be prescribed.

Every employer shall keep exhibited, in such manner as may be prescribed, in the factory, workshop or place where the employees in the scheduled employment may be employed, or in the case of outworkers, in such factory, workshop or place as may be used for giving out-work to them, notices in the prescribed form containing prescribed particulars.

The appropriate Government may, by rules made under this Act, provide for the issue of wage books or wage slips to employees employed in any scheduled employment in respect of which minimum rates of wages have been fixed and prescribe the manner in which entries shall be made and authenticated in such wage books or wage slips by the employer or his agent.

6.5 INSPECTORS AND THEIR POWERS

6.5.1 INSPECTORS

The appropriate Government may, by notification in the Official Gazette, appoint such persons as it thinks fit to be Inspectors for the purposes of this Act, and define the local limits within which they shall exercise their functions.

6.5.2 POWER OF INSPECTORS

An Inspector may –

- (a) enter, at all reasonable hours, with such assistants (if any), being persons in the service of the Government or any local or other public authority, as he thinks fit, any premises or place where employees are employed or work is given out to out-workers in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, for the purpose of examining any register, record of wages or notices required to be kept or exhibited by or under this Act or rules made thereunder, and require the production thereof for inspection;
- (b) examine any person whom he finds in any such premises or place and who, he has reasonable cause to believe, is an employee employed therein or an employee to whom work is given out therein;
- (c) require any person giving out-work and any out-workers, to give any information, which is in his power to give, with respect to the names and addresses of the persons to, for and from whom the work is given out or received, and with respect to the payments to be made for the work;
- (d) seize or take copies of such register, record of wages or notices or portions thereof as he may consider relevant in respect of an offence under this Act which he has reason to believe has been committed by an employer; and
- (e) exercise such other powers as may be prescribed.

6.6 OFFENCES AND PENALTIES

6.6.1 PENALTIES FOR OFFENCES (SECTION 22)

Any employer who –

- (a) pays to any employee less than the minimum rates of wages fixed for that employee's class of work, or less than the amount due to him under the provisions of the Act, or
 - (b) contravenes any rule or order made under Section 13,
- shall be punishable with imprisonment for a term which may extend to 6 months, or with fine which may extend to Rs. 500, or with both.

General Provision for punishment of other offences (Section 22 -A)

Any employer who contravenes any provision of the Act or of an rule or order made thereunder, shall, if no other penalty is provided under such contravention by the Act, be punishable with fine which may extend to Rs. 500.

Cognizance of Offences (Section 22 B)

No Court shall take cognizance of a complaint against any person for an offence –

- (a) involving payment less than the minimum wages unless an application in respect of the facts constituting such offence has been duly presented under Section 20 and granted and the

appropriate Government or an officer authorized by it in this behalf has sanctioned the making of the complaint;

- (b) involving contravention of any rule or order made under Section 13 or Section 22 –A except on a complaint made by, or with the sanction of an Inspector.

Further, no Court shall take cognizance of an offence –

- (a) under Section 22, unless complaint thereof is made within 1 month of the grant of sanction under Section 22 – B;
- (b) under Section 22 – A, unless complaint thereof is made within 6 months of the date on which the offence is alleged to have been committed.

Offences by Companies (Section 22- C)

If the person committing any offence under this Act is a company, every person who at the time the offence was committed, was incharge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Such person shall not be liable to any punishment provided in the Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

Further, where an offence under the Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

For the purposes of Section 22 – C –

- (a) "company" means any body corporate and includes a firm or other association of individuals, and
- (b) "director" in relation to a firm means a partner in the firm.

6.7 THE SCHEDULE

6.7.1 PART I [SECTION 2(G) AND 27]

Minimum Wages Act, 1948 is applicable to employees in the employment in –

1. Woolen carpet making or shawl weaving establishment.
2. Rice or Flour or Dal mill.
3. Tobacco (including *bidi* making) manufactory.
4. Plantation growing cinchona, rubber, tea or coffee.
5. Oil Mill.
6. Under any local authority.
7. Construction or Maintenance of roads or in building operations.
8. Stone-breaking and Stone-crushing.
9. Lac manufactory.
10. Any mica works.
11. Public Motor Transport.
12. Tanneries and Leather manufactory.
13. Gypsum mines.
14. Barytes mines.
15. Bauxite mines.
16. Manganese mines.

17. Maintenance of buildings and construction and maintenance of runways.
18. China clay mines.
19. Kyanite mines.
20. Copper mines
21. Clay mines covered under Mines Act, 1952.
22. Magnesite mines covered under Mines Act, 1952.
23. White clay mines.
24. Stone mines.
25. Steatite.
26. Ochre mines.
27. Asbestos mines.
28. Fire clay mines.
29. Chromite mines
30. Quartzite mines.
31. Quartz mines.
32. Silica mines.
33. Graphite mines
34. Feldspar mines
35. Laterite mines.
36. Dolomite mines.
37. Redoxide mines.
38. Wolfram mines.
39. Iron ore mining.
40. Granite mines.
41. Rock phosphate mines.
42. Hematite mines.
43. Loading and unloading in –
 - a. Railways, goods sheds,
 - b. Docks and ports.
44. Marble and Calcite mines.

6.7.2 PART II

Minimum Wages Act, 1948 is also applicable to those who are employed in agriculture which includes farming, cultivation and tillage of soil, dairy farming, cultivation, growing and harvesting of any agricultural or horticultural commodity, raising of live-stock, bees or poultry , forestry or timbering operations, and the preparations for market and delivery to storage or to market or to carriage for transportation to market of farm produce.

6.8 SUMMING UP

Minimum rate of wages fixed or revised by the appropriate Government in respect of scheduled employments under Section 3 may consist of –

- a basic rate of wages and special allowances to accord as nearly as practicable with the variation in the cost by living index number applicable to such workers, i.e. the cost of living allowances; or
- a basic rate of wages with or without the cost of living allowance and the cash value of the concession in respect of supplies of essential commodities at concessional rates, where so authorized; or
- an all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concession, if any.

For fixing or revising of minimum rates of wages, the appropriate Government will act in the following manner

- It shall consider the advice of the committee;
- It shall also consider all representations received by or before the specified date;
- Such fixation of wages or revision of wages is to be notified in Official Gazette;
- Such fixation or revision of wages shall come into force ordinarily after the expiry of 3 months from the date of notification in Official Gazette unless otherwise provided in the notification.

Any employer who pays to any employee less than the minimum rates of wages fixed for that employee's class of work, or less than the amount due to him under the provisions of the Act, or contravenes any rule or order made under Section 13, shall be punishable with imprisonment for a term which may extend to 6 months, or with fine which may extend to Rs. 500, or with both.

6.9 SUGGESTED READINGS

4. N D Kapoor. *Industrial Law* (Sultan Chand & Sons, New Delhi, 2004).
5. R S N Pillai & V Bhagwati *Business Law* (S Chand & Company, New Delhi, 2005).
6. S K Tuteja *Business Law for Managers* (Sultan Chand & Sons, New Delhi, 2004).

6.10 PROBABLE QUESTIONS

1. State the objectives of the Minimum Wages Act, 1948.
2. Define the following terms as understood under the Minimum Wages Act, 1948.
(a) Competent Authority (b) Cost of Living Index Number (c) Employer
(d) Scheduled Employment (e) Wages.
3. Discuss briefly the procedure for fixing and revising minimum wages. What is the composition of such minimum rates of wages?
4. What is meant by 'Schedule Employment' under the Minimum Wages Act, 1948? Define some of the schedule employments.
5. What are the functions of Advisory Board and Central Advisory Board constituted under the Minimum Wages Act, 1948? Describe their composition also.
6. What remedy is available to a worker who has been paid less than the minimum rates of wages?
7. Discuss and explain the rule regarding the following:
 - a. Worker who works less than the normal working day; and
 - b. Wages to an employee who does two or more classes of work.
8. What registers and records are required to be maintained under the Minimum Wages Act, 1948?
9. State how the Inspectors are appointed for the purposes of the Minimum Wages Act, 1948. What are their powers?

UNIT STRUCTURE**7.1 OBJECTIVES OF THIS MODULE****7.2 INTRODUCTION****7.3 DEFINITIONS****7.4 ELIGIBILITY AND DISQUALIFICATION FOR BONUS**

7.4.1 ELIGIBILITY FOR BONUS [SEC 8] (2007 AMENDMENT)

7.4.2 DISQUALIFICATION FOR BONUS [SEC 9]

7.5 PROCESS OF DETERMINING BONUS

7.5.1 CALCULATION OF GROSS PROFIT [SEC. 4]

7.5.2 COMPUTATION OF AVAILABLE SURPLUS [SEC. 5]

7.5.3 ALLOCABLE SURPLUS [SEC 2 (4)]

7.5.4 SET-ON AND SET-OFF OF ALLOCABLE SURPLUS [SEC 15]

7.5.5 PAYMENT OF MINIMUM BONUS [SEC 10]

7.5.6 PAYMENT OF MAXIMUM BONUS [SEC 11]

7.5.7 PROPORTIONATE, REDUCTION IN BONUS IN CERTAIN CASES [SEC 13]

7.5.8 COMPUTATION OF NUMBER OF WORKING DAYS [SEC 14]

7.5.9 TIME-LIMIT FOR PAYMENT OF BONUS [SEC. 19]

7.5.10 ILLUSTRATION:

7.6 INSPECTORS AND DUTIES

7.6.1 INSPECTORS [SEC. 27]

7.6.2 OFFENCES AND PENALTIES [SEC 28 & 29]

7.6.3 COGNIZANCE OF OFFENCES [SEC.30]

7.6.4 PROTECTION OF ACTION TAKEN UNDER THE ACT [SEC 31]

7.7 SUMMING UP**7.8 RECOMMENDED READING****7.9 QUESTIONS**

7.9.1 SHORT ANSWER TYPE QUESTIONS

7.9.2 LONG ANSWER TYPE QUESTIONS

7.1 OBJECTIVES OF THIS MODULE

- i. This module may help students to understand the basic objective of The Payment of Bonus Act, 1965.
- ii. Students can be aware of the basic terminologies relating to this Act.
- iii. Students can be able to understand the process of computation of bonus.
- iv. Students can get some primary idea about the inspector and his duties as per the provisions stated in this Act.

7.2 INTRODUCTION

The Payment of Bonus Act, 1965 provides for payment of bonus to persons employed in certain establishments on the basis of profits or on the basis of production or productivity and for matters connected therewith. It extends to the whole of India and is applicable to every factory and to every other establishment where 20 or more workmen are employed on any day during an accounting year. It came into force from September 25, 1965. It extends to the whole of India.

The Act applies to:-

- (a) Every factory as defined under the Factories Act, 1948;
- (b) Every other establishment in which twenty or more persons are employed on any day during an accounting year provided that the appropriate Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act with effect from such accounting year as may be specified in the notification, to any establishment or class of establishments [including an establishment being a factory within the meaning of sub-clause (ii) of clause (m) of section 2 of the Factories Act, 1948 (63 of 1948)] employing such number of persons less than twenty as may be specified in the notification; so, however, that the number of persons so specified shall in no case be less than ten.
- (c) The provisions of this Act shall, in relation to a factory or other establishment to which this Act applies, have effect in respect of the accounting year commencing on any day in the year 1964 and in respect of every subsequent accounting year provided that when the provisions of this Act have been made applicable to any establishment or class of establishments by the issue of a notification under the proviso to sub-section (3), the reference to the accounting year commencing on any day in the year 1964 and every subsequent accounting year or, as the case may be, the reference to the accounting year commencing on any day in the year 1968 and every subsequent accounting year, shall, in relation to such establishment or class of establishments, be construed as a reference to the accounting year specified in such notification and every subsequent accounting year.
- (d) An establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein falls below twenty or, as the case may be, the number specified in the notification issued under the proviso to sub-section (3).

The Act is enforced through the Central Industrial Relations Machinery (CIRM). CIRM is an attached office of the Ministry of Labour and is also known as the Chief Labour Commissioner (Central) [CLC(C)] Organisation. It is headed by the Chief Labour Commissioner (Central).

7.3 DEFINITIONS

As per the given provisions of the Payment of Bonus Act, 1965

A. "Accounting Year" means:

- i. in relation to a corporation, the year ending on the day on which the books and accounts of the corporation are to be closed and balanced;

- ii. in relation to a company, the period in respect of which any profit and loss account of the company laid before it in annual general meeting is made up, whether that period is a year or not;
- iii. In any other case:
 - (a) the year commencing on the 1st day of April; or
 - (b) if the accounts of an establishment maintained by the employer thereof are closed and balanced on any day other than the 31st day of March, then, at the option of the employer, the year ending on the day on which its accounts are so closed and balanced: Provided that an option once exercised by the employer under paragraph (b) of this sub-clause shall not again be exercised except with the previous permission in writing of the prescribed authority and upon such conditions as that authority may think fit;
- B. "Agricultural Income" shall have the same meaning as in the Income-tax Act;
- C. "Agricultural Income-tax law" means any law for the time being in force relating to the levy of tax on agricultural income;
- D. "Allocable Surplus" means:
 - i. in relation to an employer, being a company (other than a banking company)] which has not made the arrangements prescribed under the Income-tax Act for the declaration and payment within India of the dividends payable out of its profits in accordance with the provisions of section 194 of that Act, sixty-seven per cent of the available surplus in an accounting year;
 - ii. in any other case, sixty per cent of such available surplus;
- E. "Appropriate Government" means:
 - i. in relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947 (14 of 1947), is the Central Government, the Central Government;
 - ii. in relation to any other establishment, the Government of the State in which that other establishment is situate;
- F. "Available Surplus" means the available surplus computed under section 5. 'Available Surplus' is the residue after all prior charges are deducted from gross profits. The prior charges include depreciation, income tax and other taxes, return on reserve and surplus, return at the actual rate payable on the preference share capital etc. Bonus is payable from Available Surplus.
- G. "Award" means an interim or a final determination of any Industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Tribunal constituted under the Industrial Disputes Act, 1947 (14 of 1947), or by any other authority constituted under any corresponding law relating to investigation and settlement of industrial disputes in force in a State and includes an arbitration award made under section 10A of that Act or under that law;

- H. "Banking Company" means a banking company as defined in section 5 of the Banking Companies Act, 1949 (10 of 1949), and includes the State Bank of India, any subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), any corresponding new bank specified in the First Schedule to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), any corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980),] any co-operative bank as defined in clause (bit) of section 2 of the Reserve Bank of India Act, 1934 (2 of 1934), and any other banking institution which may be notified in this behalf by the Central Government;
- I. "Company" means any company as defined in section 3 of the Companies Act, 1956 (1 of 1956), and includes a foreign company within the meaning of section 591 of that Act;
- J. "co-operative society means a society registered or deemed to be registered under the Co-operative Societies Act, 1912 (2 of 1912), or any other law for the time being in force in any State relating to co-operating societies;
- K. "Corporation" means any body corporate established by or under any Central, Provincial or State Act but does not include a company or a co-operative society;
- L. "Direct Tax" means:
- i. any tax chargeable under:
 - (a) the Income-tax Act;
 - (b) the Super Profits Tax Act, 1963 (14 of 1963);
 - (c) the Companies (Profits) Surtax Act, 1964 (7 of 1964);
 - (d) the agricultural income-tax law; and
 - ii. any other tax which, having regard to its nature or incidence, may be declared by the Central Government, by notification in the Official Gazette, to be a direct tax for the purposes of this Act;
- M. "Employee" means any person (other than an apprentice) employed on a salary or wage not exceeding three thousand and five hundred rupees] per mensem in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied;
- N. "Employer" includes:
- i. in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and where a person has been named as a manager of the factory under clause (f) of sub-section (1) of section 7 of the Factories Act, 1948 (63 of 1948), the person so named; and
 - ii. in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment and where the said affairs are

entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent;

O. "Establishment in Private Sector" means any establishment other than an establishment in Public Sector;

P. "Establishment in public sector" means an establishment owned, controlled or managed by:

- i. a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);
- ii. a corporation in which not less than forty per cent of its capital is held (whether singly or taken together) by
 - a. the Government; or
 - b. the Reserve Bank of India; or
 - c. a corporation owned by the Government or the Reserve Bank of India;

Q. "Factory" shall have the same meaning as in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);

R. "Gross Profits" means the gross profits calculated under section 4;

S. "Income-tax Act" means the Income-tax Act, 1961 (43 of 1961);

T. "Prescribed" means prescribed by rules made under this Act;

U. "Salary or Wage" means all remuneration (other than remuneration in respect of over-time work) capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment or of work done in such employment and includes dearness allowance (that is to say, all cash payments, by whatever name called, paid to an employee on account of a rise in the cost of living), but does not include the followings:

- i. any other allowance which the employee is for the time being entitled to;
- ii. the value of any house accommodation or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food grains or other articles;

Example: Where an employee is given in lieu of the whole or part of the salary or wage payable to him, free food allowance or free food by his employer, such food allowance or the value of such food shall, for the purpose of this clause, be deemed to form part of the salary or wage of such employee.

- iii. any bonus (including incentive, production and attendance bonus);
- iv. any commission payable to the employee.
- v. any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex gratia payment made to him;

- vi. any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the employee under any law for the being in force;
- vii. any travelling concession;

The **Payment of Bonus Act, 1965** has been enacted to provide & regulate the payment of bonus to employees in certain specified establishments either on the basis of profits or on the basis of productivity of the establishment. The object of the Act is to maintain peace and harmony between labour and capital by allowing the employees to share the prosperity of the establishment reflected by the profits earned by the contributions made by capital, management and labour. The Payment of Bonus Act, 1965 is the principal act for the payment of bonus to the employees which was formed with an objective for rewarding employees for their good work for the organization. It is a step forward to share the prosperity of the establishment reflected by the profits earned by the contributions made by capital, management and labour with the employees. The objectives are as follows:

- i. To improve statutory liability to pay bonus [reward for good work] in case of profits or losses.
- ii. To prescribe formula for calculating bonus
- iii. To prescribe Minimum & Maximum percentage bonus
- iv. To provide of set off/set on mechanism
- v. To provide redressal mechanism

7.4 ELIGIBILITY AND DISQUALIFICATION FOR BONUS

There are certain provisions in the Payment of Bonus Act, 1965 regarding the eligibility and disqualification of the employees in the context of getting bonus from the employer or the organization. The payment of Bonus Act, 1965 aims at providing for the payment of bonus to the employees of certain establishments, on the basis of profits or production or productivity and for matters connected therewith.

7.4.1: ELIGIBILITY FOR BONUS [SEC 8] (2007 AMENDMENT)

Every employee (receiving salary or wages up to RS. 10,000 p.m) engaged in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work is entitled to bonus for every accounting year if he has worked for at least 30 working days in that year.

7.4.2: DISQUALIFICATION FOR BONUS [SEC 9]

Notwithstanding anything contained in this Act, an employee shall be disqualified from receiving bonus under this Act, if he is dismissed from service for:

- i. fraud; or
- ii. riotous or violent behavior while on the premises of the establishment; or
- iii. theft, misappropriation or sabotage of any property of the establishment.

7.5 PROCESS OF DETERMINING BONUS

7.5.1: CALCULATION OF GROSS PROFIT [SEC. 4]

The gross profits derived by an employer from an establishment in respect of the accounting year shall -

- i. in the case of a banking company, be calculated in the manner specified in the First Schedule;
- ii. in any other case, be calculated in the manner specified in the Second Schedule.

There are few differences in computation of gross profits in case of banking company and other than banking companies. For accurate computation of the gross profits in case of banking companies refer to First schedule and for other companies but not banking companies refer to Second schedule. But over view for computation of gross profits is mentioned below:

Net profit (as per P&L a/c) and then Add (+) following items

- Income tax
- provision for: Bonus to employees, Depreciation, Direct taxes,
- Bonus paid to employees in respect of previous accounting years
- The amount, if any, paid to, or provided for payment to, an approved gratuity fund
- The amount actually paid to employees on their retirement or on termination of their employment for any reason
- Donations
- annuity due
- Capital expenditure (other than capital expenditure on scientific research
- capital losses
- capital losses (other than losses on sale) of Capital assets on which depreciation has been allowed for income-tax or agricultural income-tax).
- Losses of, or expenditure relating to, any business situated outside India.

Then **Deduct** the following items from the above result

(a) Capital receipts and capital profits (other than profits on the sale of assets on which depreciation has been allowed for income-tax or agricultural income-tax).

(b) Profits of, and receipts relating to, any business situated outside India.

(c) Income of foreign concerns from investments outside India.

(d) Expenditure or losses (if any) debited directly to reserves, other than -

- i. Capital expenditure and capital losses (other than losses on sale of capital assets on which depreciation has not been allowed for income-tax or agricultural income-tax) ;
- ii. Losses of any business situated outside India.

(e) In the case of foreign concerns proportionate administrative (over head) expenses of Head Office allocable to Indian business.

(f) Refund of any direct tax paid for previous accounting years and excess provision, if any, of previous accounting years relating to bonus, depreciation, taxation or development rebate or development allowance, if written back.

7.5.2: COMPUTATION OF AVAILABLE SURPLUS [SEC. 5]

The available surplus in respect of any accounting year shall be the gross profits for that year after deducting there from the sums referred to in section 6: Provided that the available surplus in respect of the accounting year commencing on any day in. the year 1968 and in respect of every subsequent accounting year shall be the aggregate of

- (a) the gross profits for that accounting year after deducting therefrom the sums referred to in section 6; and
- (b) an amount equal to the difference between
 - i. the direct tax, calculated in accordance with the provisions of section 7, in respect of an amount equal to the gross profits of the employer for the immediately preceding accounting year; and
 - ii. the direct tax, calculated in accordance with the provisions of section 7, in respect of an amount equal to the gross profits of the employer for such preceding accounting year after deducting therefrom the amount of bonus which the employer has paid or is liable to pay to his employees in accordance with the provisions of this Act for that year.

7.5.3: ALLOCABLE SURPLUS [SEC 2 (4)]

Allocable surplus= 67% of the available surplus (other than banking companies) or 60% of the available surplus (banking companies and companies linked with abroad). Payment of bonus calculated on the allocable surplus which is derived by the above calculation.

7.5.4: SET-ON AND SET-OFF OF ALLOCABLE SURPLUS [SEC 15]

(1) Where for any accounting year, the allocable surplus exceeds the amount of maximum bonus payable to the employees in the establishment under section 11, then, the excess shall, subject to a limit of twenty

per cent. of the total salary or wage of the employees employed in the establishment in that accounting year, be carried forward for being set on in the succeeding accounting year and so on up to and inclusive of the fourth accounting year to be utilised for the purpose of payment of bonus in the manner illustrated in the Fourth Schedule.

(2) Where for any accounting year, there is no available surplus or the allocable surplus in respect of that year falls short of the amount of minimum bonus payable to the employees in the establishment under section 10, and there is no amount of sufficient amount carried forward and set on under sub-section (1) which could be utilised for the purpose of payment of the minimum bonus, then, such minimum amount or the deficiency, as the case may be, shall be carried forward for being set off in the succeeding accounting year and so on up to and inclusive of the fourth accounting year in the manner illustrated in the Fourth Schedule.

(3) The principle of set on and set off as illustrated in the Fourth Schedule shall apply to all other cases not covered by sub-section (1) or sub-section (2) for the purpose of payment of bonus under this Act.

(4) Where in any accounting year any amount has been carried forward and set on or set off under this section, then, in calculating bonus for the succeeding accounting year, the amount of set on or set off carried forward from the earliest accounting year shall first be taken into account.

7.5.5: PAYMENT OF MINIMUM BONUS [SEC 10]

Subject to the other provisions of this Act, every employer shall be bound to pay to every employee in respect of the accounting year commencing on any day in the year 1979 and in respect of every subsequent accounting year, a minimum bonus which shall be 8.33 percent of the salary or wage earned by the employee during the accounting year or one hundred rupees, whichever is higher, whether or not the employer has any allocable surplus in the accounting year **provided that** where an employee has not completed fifteen years of age at the beginning of the accounting year, the provisions of this section shall have effect in relation to such employee as if for the words "one hundred rupees", the words "sixty rupees" were substituted.

Section 36 - Power of exemption of bonus payment by government

In certain circumstances payment of minimum bonus can be exempted by the appropriate government by taking consideration into relevant circumstances of concern factory or establishment which is in losses. Payment of bonus exemption by the appropriate government may be given for a certain period only.

In **Phoenix Mills v State of Maharashtra**, it was held that where the mill applied for exemption under section 36 and the minister refused such exemption without taking into account relevant factors, such order is not a proper order.

Here are the relevant factors may be, the reasons for occurrence of losses to company, reasons and ingenuity in consecutive occurrence of losses, the reasons must be justifiable, there should not be intention to avoid payment of bonus by creating fake losses (mens rea).

7.5.6: PAYMENT OF MAXIMUM BONUS [SEC 11]

(1) Where in respect of any accounting year referred to in section 10, the allocable surplus exceeds the amount of minimum bonus payable to the employees under that section, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting year bonus which shall be an amount in proportion to the salary or wage earned by the employee during the accounting year subject to a maximum of twenty per cent. of such salary or wage.

(2) In computing the allocable surplus under this section, the amount set on or the amount set off under the provisions of section 15 shall be taken into account in accordance with the provisions of that section.

7.5.7: PROPORTIONATE, REDUCTION IN BONUS IN CERTAIN CASES [SEC 13]

Where an employee has not worked for all the working days in an accounting year, the minimum bonus of one hundred rupees or, as the case may be, of sixty rupees, if such bonus is higher than 8.33 per cent of his salary or wage for the days he has worked in that accounting year, shall be proportionately reduced.

7.5.8: COMPUTATION OF NUMBER OF WORKING DAYS [SEC 14]

For the purposes of section 14, an employee shall be deemed to have worked in an establishment in any accounting year also on the days on which-

- (a) he has been laid off under an agreement or as permitted by standing orders under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Industrial Disputes Act, 1947 (14 of 1947), or under any other law applicable to the establishment;
- (b) he has been on leave with salary or wage;
- (c) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (d) the employee has been on maternity leave with salary or wage, during the accounting year.

7.5.9: TIME-LIMIT FOR PAYMENT OF BONUS [SEC. 19]

All amounts payable to an employee by way of bonus under this Act shall be paid in cash by his employer-

(a) where there is a dispute regarding payment of bonus pending before any authority under section 22, within a month from the date on which the award becomes enforceable or the settlement comes into operation, in respect of such dispute;

(b) in any other case, within a period of eight months from the close of the accounting year **provided that** the appropriate Government or such authority as the appropriate Government may specify in this behalf may, upon an application made to it by the employer and for sufficient reasons, by order, extend the said period of eight months to such further period or periods as it thinks fit; so, however, that the total period so extended shall not in any case exceed two years.

7.5.10: ILLUSTRATION:

- In this Schedule, the total amount of bonus equal to 8.33 per cent of the annual salary or wage payable to all the employees is assumed to be Rs.1,04,167. Accordingly,
- Maximum bonus to which all the employees are entitled to be paid (20% of the annual salary or wage of all the employees) would be Rs. 2,50,000.

Year	Amount equal to sixty per cent. or sixty-seven per cent., as the case may be, of a available surplus allocable as bonus	Amount payable as bonus	Set on or set off the year carried forward	Total set on or set off Carried Forward	
	Rs.	Rs.	Rs.	Rs.	of (year)
1.	1.04.167	1.04.167**	Nil	Nil	
2.	6,35,000	2,50,000*	set on 2,50,000*	set on 2,50,000*	(2)
3.	2,20,000	2,50,000* (inclusive of 30,000 from year-2)	Nil	Set on 2,20,000	(2)
4.	3,75,000	2,50,000*	Set on 1,25,000	Set on 2,20,000 1,25,000	(2) (4)
5.	1,40,000	2,50,000* (inclusive of 1,10,000 from year-2)	Nil	Set on 1,10,000 1,25,000	(2) (4)
6.	3,10,000	2,50,000*	Nil	Set on Nil + 1,25,000 60,000	(2) (4) (6)

7.	1,00,000	2,50,000* (Inclusive of 1,25,000 from year-4 and 25,000 from year-6)	Nil	Set on 35,000	(6)
8.	Nil (due to loss)	1,04,167** (inclusive of 35,000 from year-6)	Set off 69,167	Set off 69,167	(8)
9.	10,000	1,04,167***	Set off 94,167	Set off 69,167 94, 1267	(8) (9)
10.	2,15,000	1,04,167** (after setting off 69, 167 from year-8 and 41,666 from year-9)	Nil	Set off 52,501	(9)

Notes: * Maximum ** Minimum

The balance of Rs.1,10,000 set on from Year-2 lapses.

7.6 INSPECTORS AND DUTIES

The Inspecting Officers/Inspectors enforce the provisions of the Act in their respective territorial jurisdictions assigned to them under the administrative control of the respective Labour Officers, Assistant Labour Commissioners and Deputy Labour Commissioners. The Act places an obligation on every employer covered under the Act to prepare and maintain certain registers, records and other documents as provided under the Rules.

7.6.1: INSPECTORS [SEC. 27]

(1) The appropriate Government may, by notification in the Official Gazette, appoint such persons as it thinks fit to be Inspectors for the purposes of this Act and may define the limits within which they shall exercise jurisdiction.

(2) An Inspector appointed under sub-section (1) may, for the purpose of ascertaining whether any of the provisions of this Act has been complied with-

(a) require an employer to furnish such information as he may consider necessary;

(b) at any reasonable time and with such assistance, if any, as he thinks fit, enter any establishment or any premises connected therewith and require anyone found in charge thereof to produce before him for examination any accounts, books, registers and other documents relating to the employment of persons or the payment of salary or wage or bonus in the establishment;

(c) examine with respect to any matter relevant to any of the purposes aforesaid, 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 an employee in

the establishment;

(d) make copies of, or take extracts from, any book, register or other document maintained in relation to the establishment;

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

(3) Every Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860).

(4) Any person required to produce any accounts, book, register or other documents or to give information by an Inspector under sub-section (1) shall be legally bound to do so.

(5) Nothing contained in this section shall enable an Inspector to require a banking company to furnish or disclose any statement or information or to produce, or give inspection of any of its books of account or other documents, which a banking company cannot be compelled to furnish, disclose, produce or give inspection of, under the provisions of section 34A of the Banking Regulation Act, 1949 (10 of 1949).

7.6.2: OFFENCES AND PENALTIES [SEC 28 & 29]

Offences by companies

(1) If the person committing an offence under this Act is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation-For the purposes of this section,-

(a) "Company" means any body corporate and includes a firm or other association of individuals; and

(b) "Director", in relation to a firm, means a partner in the firm.

Penalty

If any person-

- (a) contravenes any of the provisions of this Act or any rule made there under; or
- (b) to whom a direction is given or a requisition is made under this Act fails to comply with the direction or requisition, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

7.6.3: COGNIZANCE OF OFFENCES [SEC.30]

(1) No court shall take cognizance of any offence punishable under this Act, save on complaint made by or under the authority of the appropriate Government or an officer of that Government (not below the rank of a Regional Labour Commissioner in the case of an officer of the Central Government, and not below the rank of a Labour Commissioner in the case of an officer of the State Government) specially authorised in this behalf by that Government.

(2) No court inferior to that of a presidency magistrate or a magistrate of the first class shall try any offence punishable under this Act.

7.6.4: PROTECTION OF ACTION TAKEN UNDER THE ACT [SEC 31]

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

7.7 SUMMING UP

The preamble of the Act states that the main objective of the Act is to provide for the payment of bonus, persons in certain establishments on the basis of profits just to maintain peace and harmony between labour and capital. The scheme of the Act, broadly stated, is four- dimensional i.e.-

- (i) To impose statutory liability upon the employer of an establishment covered by this Act to pay bonus to employees of the establishment;
- (ii) To define the principle of payment of bonus according to the prescribed formula;
- (iii) To provide for minimum and maximum bonus and linking the payment of bonus with the 'set on' and 'set off' scheme; and
- (iv) To provide machinery for the enforcement of the liability for payment of bonus.

A minimum bonus has been fixed by the act at 8.33% of the wages or salary of an employee irrespective of the fact whether there is a profit in the concern or not. Bonus is no longer linked with production or producing. Liabilities for payment of bonus are statutory liability and not a contingent liability.

7.8 RECOMMENDED READING

1. N. D. Kapoor, *Handbook of Industrial Laws*, Sultan Chand and Sons.
2. K. K. Saha Roy, *Industrial and Labour Laws of India*, Prentice Hall.

7.9 QUESTIONS

7.9.1: SHORT ANSWER TYPE QUESTIONS

1. Who is entitled to bonus under the Payment of Bonus Act, 1965?
2. Referring the provisions of the Payment of Bonus Act, 1965, state whether the following persons are entitled to bonus under the Act:
 - i. An apprentice;
 - ii. An employee dismissed on the ground of misconduct;
 - iii. A temporary workman;
 - iv. A piece-rated worker.
1. During the accounting year 2005-06, XYZ Limited to which the Payment of Bonus Act, 1965 applies, suffered heavy losses. The Board of Directors of the company decided not to pay any bonus to its employees. The employees moved the Court for relief. Referring to the provisions of the Act, decide whether the employees of the company would be given any relief by the Court?
2. Does this Act prescribe any disqualifications also for claiming bonus? Explain.
3. What is the minimum bonus prescribed by the Act ?
4. Mr. 'E' joined as supervisor on monthly salary of Rs. 3,400 on 1.02.2007 and resigned from his job on 28.02.2007. The company declared a bonus of 20% to all eligible employees and paid it on time. Mr. 'E' knowing the facts made a claim to HRD, which in turn rejected the claim. Examine the validity in the light of the provisions of the Payment of Bonus Act, 1965.

7.9.2: LONG ANSWER TYPE QUESTIONS

1. How to compute the 'Gross Profit' under the provision of the Payment of Bonus Act, 1965?
2. Write a short note on the Payment of Bonus Act, 1965.
3. Briefly describe the role of Inspectors as under the provision of the Payment of Bonus Act, 1965.
4. What are the machineries to identify and tackle offences as stated under the provision of the Payment of Bonus Act, 1965?

UNIT-8: LAW FOR LABOUR WELFARE

UNIT STRUCTURE

8.1 OBJECTIVES OF THIS MODULE

8.2 EMPLOYEES' PROVIDENT FUNDS & MISCELLANEOUS PROVISIONS ACT, 1952

8.2.1 INTRODUCTION

8.2.2 DEFINITIONS

8.2.3 OBJECT OF THE ACT

8.2.4 EMPLOYEES PROVIDENT FUNDS SCHEME, 1952

8.2.5 EMPLOYEES' PENSION SCHEME, 1995

8.2.6 EMPLOYEES' DEPOSIT LINKED INSURANCE SCHEME, 1976

8.2.7 INSPECTORS & DUTIES

8.3 MATERNITY BENEFIT ACT, 1961

8.3.1 INTRODUCTION

8.3.2 DEFINITIONS

8.3.3 OBJECT OF THE ACT

8.3.4 MATERNITY BENEFITS

8.3.5 INSPECTORS & DUTIES

8.4 EMPLOYEES' STATE INSURANCE ACT, 1948

8.4.1 INTRODUCTION

8.4.2 DEFINITION:

8.4.3 OBJECTIVE

8.4.4 EMPLOYEES' STATE INSURANCE FUND

8.4.5 BENEFITS

8.5 PAYMENT OF GRATUITY ACT, 1972

8.5.1 INTRODUCTION

8.5.2 DEFINITIONS

8.5.3 OBJECTIVES

8.5.4 PAYMENT OF GRATUITY

8.5.5 DETERMINATION OF THE AMOUNT OF GRATUITY

8.5.6 INSPECTORS & DUTIES

8.6 SUMMING UP

8.7 RECOMMENDED READING

8.8 QUESTIONS

8.8.1 SHORT ANSWER TYPE QUESTIONS

8.8.2 LONG ANSWER TYPE QUESTIONS

8.1 OBJECTIVES OF THIS MODULE

- i. This module may help students to acquire basic ideas of different laws relating to Labour Welfare.
- ii. Students can be able to get an overall idea over Employees' Provident Funds & Miscellaneous Provisions Act, 1952.
- iii. Students can be able to understand the basic idea relating to Maternity Benefit Act, 1961.
- iv. This module will help students to understand the benefits under Employees' State Insurance Act, 1948.
- v. It will help students to gather information about the process of determining gratuity and some other relevant areas under Payment of Gratuity Act, 1972.

8.2 EMPLOYEES' PROVIDENT FUNDS & MISCELLANEOUS PROVISIONS ACT, 1952

8.2.1: INTRODUCTION

The umbrella legislation relating to provident fund is **the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 (EPF & MP Act)**. The Act was enacted with the main objective of making some provisions for the future of industrial workers after their retirement and for their dependents in case of death. It provides insurance to workers and their dependents against risks of old age, retirement, discharge, retrenchment or death of the workers. It is **applicable** to every establishment which is engaged in any one or more of the industries specified in Schedule I of the Act or any activity notified by Central Government in the Official Gazette and employing 20 or more persons.

The Act is administered by the Government of India through the Employees' Provident Fund Organisation (EPFO). EPFO is one of the largest provident fund institutions in the world in terms of members and volume of financial transactions that it has been carrying on. It is an autonomous tripartite body under the control of Ministry of Labour with its head office in New Delhi. It aims to extend the reach and quality of publicly managed old-age income security programs through its consistent efforts and ever-improving standards of compliance and benefit delivery system to its members. This way it seeks to contribute to the economic and social well-being of the country.

8.2.2: DEFINITIONS

According to this Act, unless the context otherwise requires, the different related terms are defined as under follows:

(A) "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;

(AA) "Authorized officer" 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;

(B) "Basic wages" means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include:

(i) the cash value of any food concession;

(ii) any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house-rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;

(iii) any presents made by the employer;

(C) "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];

(D) "Controlled industry" means any industry the control of which by the Union has been declared by a Central Act to be expedient in the public interest;

(E) "Employer" means:

(i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and, where a person has been named as a manager of the factory under clause (f) of sub-section (1) of section 7 of the Factories Act, 1948, the person so named; and

(ii) in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent;

(F) "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,

(i) employed by or through a contractor in or in connection with the work of the establishment;

(ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961, or under the standing orders of the establishment];

(G) "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;

(H) "Fund" means the provident fund established under a Scheme;

(I) "industry" means any industry specified in Schedule I, and includes any other industry added to the Schedule by notification under section 4;

(i) "Insurance Fund" means the Deposit-linked Insurance Fund established under sub-section (2) of section 6C;

(ii) "Insurance Scheme" means the Employees' Deposit-linked Insurance Scheme framed under sub-section (1) of section 6C;

(iii) "Manufacture" or "manufacturing process" 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;

(J) "Member" means a member of the fund;

(K) "Occupier of a factory" means the person who has ultimate control over the affairs of the factory, and, where the said affairs are entrusted to a managing agent, such agent shall be deemed to be the occupier of the factory;

(i) "Pension Fund" means the Employees' Pension Fund established under sub-section (2) of section 6A;

(ii) "Pension Scheme" means the Employees' Pension Scheme framed under sub-section (1) of section 6A;

(iii) "Recovery Officer" means any officer of the Central Government, State Government or the Board of Trustees constituted under section 5A, 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;

(L) "Scheme" means the Employees' Provident Fund Scheme framed under section 5;

(m) "Tribunal" means the Employees' Provident Funds Appellate Tribunal constituted under section 7D.

8.2.3: OBJECT OF THE ACT

The Act was passed with a view to making some provision for the future of the industrial worker after his retirement or for his dependants in case of his early death and inculcating the habit of saving among the workers. The object of the Act is to provide substantial security and timely monetary assistance to industrial employees and their families when they are in distress and/or unable to meet family and social obligations and to protect them in old age, disablement, early death of the breadwinner and in some other contingencies.

The Act provides for a scheme for the institution of provident fund for specified classes of employees. Accordingly, the Employees' Provident Fund-Scheme was framed under Section 5 of the Act, which came into force on 1st November 1952. On a review of the working of the scheme over the years, it was found that provident fund was no doubt an effective old age and survivorship benefit; but in the event of the

premature death of an employee, the accumulations in the fund were not adequate enough to render long-term financial protection to his family. This lacuna led to the introduction of the Employees' Family Pension Scheme with effect from 1st March 1971. The Act was further amended in 1976 with a view to introducing Employees' Deposit Linked Insurance Scheme, a measure to provide an insurance cover to the members of the provident fund in covered establishments without the payment of any premium by these members. Thus; three schemes have been framed under the Employees' Provident Funds and Miscellaneous Provisions Act.

8.2.4: EMPLOYEES PROVIDENT FUNDS SCHEME, 1952

1. The Central Government may, by notification in the Official Gazette, frame a Scheme to be called the Employees' Provident Funds Scheme for the establishment of provident funds under this Act for employees or for any class of employees and specify the [establishments] or class of [establishments] to which the said Scheme shall apply [and there shall be established, as soon as may be after the framing of the Scheme, a Fund in accordance with the provisions of this Act and the Scheme.]

1A. The Fund shall vest in, and be administered by, the Central Board constituted under section 5A.

1B. Subject to the provisions of this Act, a Scheme framed under sub-section (1) may provide for all or any of the matters specified in Sch. II.

2. A Scheme framed under sub-section (1) 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.

8.2.5: EMPLOYEES' PENSION SCHEME, 1955

(1) The Central Government may, by notification in the Official Gazette, frame a scheme to be called the Employees' Pension Scheme for the purpose of providing for:

- (a) superannuation pension, retiring pension or permanent total disablement pension to the employees of any establishment or class of establishments to which this Act applies; and
- (b) widow or widower's pension, children pension or orphan pension payable to the beneficiaries of such employees.

(2) Notwithstanding anything contained in section 6, there shall be established, as soon as may be after framing of the Pension Scheme, a Pension Fund into which there shall be paid, from time to time, in respect of every employee who is a member of the Pension Scheme:

- (a) such sums from the employer's contribution under section 6, not exceeding eight and one-third per cent of the basic wages, dearness allowance and retaining allowance, if any, of the concerned employees, as may be specified in the Pension Scheme;
- (b) such sums as are payable by the employers of exempted establishments under sub-section (6) of section 17;
- (c) the net assets of the Employees' Family Pension Fund as on the date of the establishment of the Pension Fund;
- (d) such sums as the Central Government may, after due appropriation by Parliament by law in this behalf, specify.

(3) On the establishment of the Pension Fund, the Family Pension Scheme (hereinafter referred to as the ceased scheme) shall cease to operate and all assets of the ceased scheme shall vest in and shall stand transferred to, and all liabilities under the ceased scheme shall be enforceable against, the Pension Fund and the beneficiaries under the ceased scheme shall be entitled to draw the benefits, not less than the benefits, they were entitled to under the ceased scheme, from the Pension Fund.

(4) The Pension Fund shall vest in and be administered by the Central Board in such manner as may be specified in the Pension Scheme.

(5) Subject to the provisions of this Act, the Pension Scheme may provide for all or any of the matters specified in Schedule III.

(6) The Pension Scheme may provide that all or any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in that behalf in that Scheme.

(7) A Pension Scheme, framed under sub-section (1) 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 scheme or both Houses agree that the scheme should not be made, the scheme 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 scheme.

8.2.6: EMPLOYEES' DEPOSIT LINKED INSURANCE SCHEME, 1976

(1) The Central Government may, by notification in the Official Gazette, frame a Scheme to be called the Employees' Deposit-linked Insurance Scheme for the purpose of providing life insurance benefits to the employees of any establishment or class of establishments to which this Act applies.

(2) There shall be established, as soon as may be after the framing of the Insurance Scheme, a Deposit-linked Insurance Fund into which shall be paid by the employer from time to time in respect of every such employee in relation to whom he is the employer, such amount, not being more than one per cent of the aggregate of the basic wages, dearness allowance and retaining allowance (if any) for the time being payable in relation to such employee as the Central Government may, by notification in the Official Gazette, specify.

(3) The employer shall pay in to the Insurance Fund such further sums of money, not exceeding one-fourth of the contribution which he is required to make under sub-section (2), as the Central Government may, from time to time, determine to meet all the expenses in connection with administration of the Insurance Scheme other than the expenses towards the cost of any benefits provided by or under that Scheme.

(4) The Insurance Fund shall vest in the Central Board and be administered by it in such manner as may be specified in the Insurance Scheme.

(5) The Insurance Scheme may provide for all or any of the matters specified in Schedule IV.

(6) 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 that Scheme.

8.2.7: INSPECTORS & DUTIES

(1) The appropriate government may, by notification in the Official Gazette, appoint such persons as it thinks fit to be Inspectors for the purposes of this Act [, the Scheme [, the [Pension] Scheme or the Insurance Scheme]], and may define their jurisdiction.

(2) Any Inspector appointed under sub-section (1) may, for the purpose of inquiring into the correctness of any information furnished in connection with this Act or with any [Scheme or the Insurance Scheme] or for the purpose of ascertaining whether any of the provisions of this Act or of any [Scheme or the Insurance Scheme] have been complied with [in respect of [an establishment] to which any [Scheme or the Insurance Scheme] applies or for the purpose of ascertaining whether the provisions of this Act or any [Scheme or the Insurance Scheme] are applicable to any [establishment] to which the [Scheme or the Insurance Scheme] has not been applied or for the purpose of determining whether the conditions subject

to which exemption was granted under section 17 are being complied with by the employer in relation to an exempted [establishment];

(a) require an employer [or any contractor from whom any amount is recoverable under section 8A] to furnish such information as he may consider necessary;

(b) at any reasonable time [and with such assistance, if any, as he may think fit, enter and search] any [establishment], or any premises connected therewith and require any one found in charge thereof 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) examine, with respect to any matter relevant to any of the purposes aforesaid, the employer [or any contractor from whom any amount is recoverable under sections 8A], his agent or servant or any other person found in charge of the [establishment], or any premises connected there with or whom the Inspector has reasonable cause to believe to be or to have been, an employee in the [establishment];

(d) makes copies of, or take extracts from, any book, register or other document maintained in relation to the establishment and, where he has reason to believe that any offence under this Act has been committed by an employer, seize with such assistance as he may think fit, such book, register or other document or portions thereof as he may consider relevant in respect of that offence;

(e) exercise such other powers as the [Scheme or the Insurance Scheme] may provide.

(2A) Any Inspector appointed under sub-section (1) may, for the purpose of inquiring into the correctness of any information furnished in connection with the [Pension] Scheme or for the purpose of ascertaining whether any of the provisions of this Act or of the [Pension] Scheme have been complied with in respect of an establishments to which the [Pension] Scheme applies, exercise all or any of the powers conferred on him under clause (a), (b), (c) or (d) of sub-s. (2).

(2B) The provisions of the [Code of Criminal Procedure, 1898], shall, so far as may be, apply to any search or seizure under sub-section (2) [or under sub-section (2A), as the case may be,] as they apply to any search and seizure made under the authority of a warrant issued under [section 98] of the said Code.

8.3 MATERNITY BENEFIT ACT, 1961

8.3.1: INTRODUCTION

With the object of providing maternity leave and benefit to women employee the Maternity Benefit Bill was passed by both the Houses of Parliament and subsequently it received the assent of President on 12th December, 1961 to become an Act under short title and numbers "THE MATERNITY BENEFIT ACT, 1961 (53 OF 1961)". Maternity benefit is one of the important benefits provided under the Employees State Insurance Act, 1948. Another important legislation in this respect is the Maternity Benefit Act, 1961. The Act covers only those persons who are not covered by the Employees State Insurance Act. The Act entitles a woman employee to claim maternity leave from her employer if she has actually worked for a period of at least 160 days in the 12 months immediately proceeding the day of her expected delivery. The act further provides for the payment of medical bonus of Rs. 250 to the confined woman worker. The committee on the status of women in India 1974 has, therefore, recommended the following changes in the Act.

The **Maternity benefit Act** provides guidelines to regulate the employment of women in certain establishments for certain period before and after child-birth and to provide for maternity benefit and certain other benefits.

8.3.2: DEFINITIONS

According to this Act, unless the context otherwise requires, the different related terms are defined as under follows:

(A) "Appropriate government" means, in relation to an establishment being a mine or an establishment where in persons are employed for the exhibition of equestrian, acrobatic and other performances, the Central Government and in relation to any other establishment, the State Government;

(B) "Child" includes a still-born child;

(C) "Delivery" means the birth of a child;

(D) "Employer" means-

- (i) in relation to an establishment which is under the control of the government a person or authority appointed by the government for the supervision and control of employees or where no person or authority is so appointed, the head of the department;
- (ii) in relation to an establishment under any local authority, the person appointed by such authority for the supervision and control of employees or where no person is 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 and where the said affairs are entrusted to any other person whether called a manager, managing director, managing agent, or by any other name, such person;

(E) "establishment" means

- (i) a factory;
- (ii) a mine;
- (iii) a plantation;
- (iv) an establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performance;
- (v) an establishment to which the provisions of this Act have been declared under sub-section (1) of section 2 to be applicable;]

(F) "Factory" means a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);

(G) "Inspector" means an Inspector appointed under section 14;

(H) "Maternity benefit" means the payment referred to in sub-section (1) of section 5;

(I) "Mine" means a mine as defined in clause (j) of section (2) of the Mines Act, 1952 (35 of 1952);

(J) "Miscarriage" means expulsion of the contents of a 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 (45 of 1860);

(K) "Plantation" means a plantation as defined in clause (f) of section 2 of the Plantations Labor Act, 1951 (69 of 1951);

(L) "Prescribed" means prescribed by rule made under this Act;

(M) "State Government", in relation to a Union territory, means the Administrator thereof;

(N) "Wages" means all remuneration paid or payable in cash to a woman, if the terms of the contract of employment, express or implied, were fulfilled and includes-

- (1) such cash allowances (including dearness allowance and house rent allowances) as a woman is for the time being entitled to,
- (2) incentive bonus, and
- (3) the money value of the concessional supply of food grains and other articles but does not include-
 - (i) any bonus other than incentive bonus;
 - (ii) over-time earnings and any deduction or payment made on account of fines;
 - (iii) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the woman under any law for the time being in force; and
 - (iv) any gratuity payable on the termination of service;

(O) "Woman" means a woman employed, whether directly or through any agency, for wages in any establishment.

8.3.3: OBJECT OF THE ACT

The object of maternity leave and benefit is to protect the dignity of motherhood by providing for the full and healthy maintenance of women and her child when she is not working. With the advent of modern age, as the number of women employees is growing, the maternity leave and other maternity benefits are becoming increasingly common. But there was no beneficial piece of legislation in the horizon which is intended to achieve the object of doing social justice to women workers employed in factories, mines and plantation.

8.3.4: MATERNITY BENEFITS

This Act applies to 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 over-time 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.

A brief detail of the maternity benefits provided for the above mentioned women as follows:

- (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.

- (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 than¹³[eighty days] in the twelve months immediately preceding the date of her expected delivery, provided that the qualifying period of ¹³[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 sub-section the days on which a woman has actually worked in the establishment, ¹⁴[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.

- (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 and provided 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 mentioned period, then, for the days up to and including the date of the death of the child.

The provisions of Sec.5 of the Act quoted above make it clear that a woman worker who expects a child is entitled to maternity benefits for a maximum period of twelve weeks which is split up into two periods viz. pre-natal and post-natal. The first one i.e. pre-natal or ante-natal period is limited to the period of woman's actual absence extending upto six weeks immediately preceding and including the day on which her delivery occurs and the second one which is post-natal compulsory period consists of six weeks immediately following the day of delivery. B. Shah v. Presiding Officer, Labor Court Coimbatore, AIR 1978 SUPREME COURT 12

8.3.5: INSPECTORS & DUTIES

The appropriate government may, by notification in the Official Gazette, appoint such officers as it thinks fit to be Inspectors for the purposes of this Act and may define the local limits of the jurisdiction within which they shall exercise their functions under this Act. Every Inspector appointed under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

Inspector may, subject to such restrictions or conditions as may be prescribed, exercise all or any of the following powers, namely:-

- (a) enter at all reasonable times with such assistants, if any, being person in the service of the government or any local or other public authority, as he thinks fit, any premises or place where women are employed or work is given to them in an establishment, for the purposes of examining any register, records and notices required to be kept or exhibited by or under this Act and require their production for inspection;
- (b) examine any person whom he finds in any premises or place and who, he has reasonable cause to believe, is employed in the establishment, provided that no person shall be compelled under this section to answer any question or give any evidence tending to incriminate himself;
- (c) require the employer to give information regarding the names and addresses of women employed, payments made to them and applications or notices received from them under this Act; and
- (d) take copies of any registers and records or notices or any portions thereof.

8.4 EMPLOYEES' STATE INSURANCE ACT, 1948

8.4.1: INTRODUCTION

An Act to provide for certain benefits to employees in case of sickness, maternity and 'employment injury' and to make provision for certain other matters in relation thereto. 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, and death due to employment injury resulting in loss of wages or earning capacity. The Act also guarantees reasonably good medical care to workers and their immediate dependants. The Employee State Insurance Act, [ESIC] 1948, is a piece of social welfare legislation enacted primarily with the object of providing certain benefits to employees in case of sickness, maternity and employment injury and also to make provision for certain others matters incidental thereto. The Act in fact tries to attain the goal of socio-economic justice enshrined in the Directive principles of state policy under part 4 of our constitution, in particular, articles 41, 42 and 43 which enjoin the state to make effective provision for securing, the right to work, to education and public assistance in cases of unemployment, old age, sickness and disablement. The act strives to materialize these avowed objects through only to a limited extent.

The comprehensive and well-designed social security programme is administered by an apex corporate body called the Employee State Insurance Corporation. It comprises members representing vital interest groups that include, employee, employers, the central and state government, besides, representatives of parliament and medical profession. The corporation is headed by the union minister of labour, as its chairman, whereas, the director general, appointed by the central government functions as its chief executive officer. A standing committee constituted from amongst the members of the corporation, acts as an executive body. The medical benefit council, constituted by the central government, is yet another statutory body that advises the corporation on matters related to effective delivery of services to the beneficiary population. The corporation with its central head quarters at New Delhi operates through a network of 26 regional and sub- regional offices located in various States. The respective state governments take care of the administration of medical benefit except in case of Delhi and Noida, greater Noida areas of Uttar pradesh, where, the corporation administers medical facilities directly.

8.4.2: DEFINITION:

According to this Act, unless the context otherwise requires, the different related terms are defined as under follows:

(1) “Appropriate Government” means, in respect of establishments under the control of the Central Government or a railway administration or a major port or a mine or oil-field, the Central Government, and in all other cases, the State Government ;

(2) “Confinement” means labour resulting in the issue of a living child, or labour after twenty-six weeks of pregnancy resulting in the issue of a child whether alive or dead;

(3) “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 this Act;

(4) ”Corporation” means the Employees’ State Insurance Corporation set up under this Act ;

(5) “Dependant” means any of the following relatives of a deceased insured person, namely : —

(i) a widow, a legitimate or adopted son who has not attained the age of twenty-five years, an unmarried legitimate or adopted daughter;

(ia) a widowed mother;

(ii) if wholly dependent on the earnings of the insured person at the time of his death, a legitimate or adopted son or daughter who has attained the age of twenty-five and who is infirm ;

(iii) if wholly or in part dependent on the earnings 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 person is alive ;

(6) “Duly appointed” means appointed in accordance with the provisions of this Act or with the rules or regulations made there-under ;

(7) “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;

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

(i) 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

(ii) who is employed by or through an 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

(iii) whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service ;

(9) “Exempted employee” means an employee who is not liable under this Act to pay the employee’s contribution;

(10) “Family” means all or any of the following relatives of an insured person, namely: —

(i) a spouse ;

(ii) a minor legitimate or adopted child dependent upon the insured person ;

(iii) a child who is wholly dependent on the earnings of the insured person and who is —

(a) receiving education, till he or she attains the age of twenty-one years,

(b) an unmarried daughter ;

(iv) a child who is infirm by reason of any physical or mental abnormality or injury and is wholly dependent on the earnings of the insured person, so long as the infirmity continues ;

(v) dependant parents, whose income from all sources does not exceed such income as may be prescribed by the Central Government ;

(vi) in case the insured person is unmarried and his or her parents are not alive, a minor brother or sister wholly dependant upon the earnings of the insured person ;

(11) “Factory” means any premises including the precincts thereof whereon ten or more persons are employed or were employed on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on or is ordinarily so carried on, but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a railway running shed;

(12) “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 work which is ordinarily part of the work of the factory or establishment of the principal 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 an employee who has entered into a contract of service with him are temporarily lent or let on hire to the principal employer and includes a contractor.

(13) “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 ;

(i) “managing agent” means any person appointed or acting as the representative of another person for the purpose of carrying on such other person’s trade or business, but does not include an individual manager subordinate to an employer ;

(ii) “manufacturing process” shall have the meaning assigned to it in the Factories Act, 1948;

(iii) “mis-carriage” means expulsion of the contents of a 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 (45 of 1860);

(14) “Occupier” of the factory shall have the meaning assigned to it in the Factories Act, 1948;

(i) “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 :

Provided that every injury specified in Part II of the Second Schedule shall be deemed to result in permanent partial disablement ;

(ii) “ 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 :

Provided that permanent total disablement shall be 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.

(15) “Prescribed” means prescribed by rules made under this Act ;

(16) “Principal employer” means —

(i) in a 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 3[the Factories Act, 1948] (63 of 1948), the person so named ;

(ii) in any establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf or where no authority is so appointed, the head of the department ;

(iii) in any other establishment, any person responsible for the supervision and control of the establishment ;

(17) “Regulation” means a regulation made by the Corporation ;

(18) “Schedule” means a schedule to this Act ;

(19) “Sickness” means a condition which requires medical treatment and attendance and necessitates abstention from work on medical grounds;

(20) "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 the injury;

(21) "Wages" means all remuneration paid or payable in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled and includes any payment to an employee in respect of any period of authorized leave, lock-out, strike which is not illegal or layoff and other additional remuneration, if any, paid at intervals not exceeding two months, but does not include —

(a) any contribution paid by the employer to any pension fund or provident fund, or under this Act ;

(b) any travelling allowance or the value of any travelling concession ;

(c) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment ; or

(d) any gratuity payable on discharge ;

(22) "Wage period" in relation to an employee means the period in respect of which wages are ordinarily payable to him whether in terms of the contract of employment, express or implied or otherwise;

8.4.3: OBJECTIVE

The ESI Act is a social welfare legislation enacted with the object of providing certain benefits to employees in case of sickness, maternity and employment injury. Under the Act, employees will receive medical relief, cash benefits, maternity benefits, pension to dependents of deceased workers and compensation for fatal or other injuries and diseases.

8.4.4: EMPLOYEES' STATE INSURANCE FUND

(1) All contributions paid under this Act and all other moneys received on behalf of the Corporation shall be paid into a fund called the Employees' State Insurance Fund which shall be held and administered by the Corporation for the purposes of this Act.

(2) The Corporation may accept grants, donations and gifts from the Central or any State Government, local authority, or any individual or body whether incorporated or not, for all or any of the purposes of this Act.

(3) Subject to the other provisions contained in this Act and to any rules or regulations made in this behalf, all moneys accruing or payable to the said Fund shall be paid into the Reserve Bank of India or such other bank as may be approved by the Central Government to the credit on an account styled the account of the Employees' State Insurance Fund.

(4) Such account shall be operated on by such officers as may be authorized by the Standing Committee with the approval of the Corporation.

8.4.5: BENEFITS

The different benefits are given as per the provisions of this Act to the insured employees are discussed below-

(1) Subject to the provisions of this Act, the insured persons, their dependants or the persons hereinafter mentioned, as the case may be, shall be entitled to the following benefits, namely,-

(a) periodical payments to any insured person in case of his sickness certified by a duly appointed medical practitioner or by any other person possessing such qualifications and experience as the Corporation may, by regulations, specify in this behalf;

(b) periodical payments to an insured woman in case of confinement or miscarriage or sickness arising out of pregnancy, confinement, premature birth of child or miscarriage, such woman being certified to be eligible for such payments by an authority specified in this behalf by the regulations;

(c) periodical payments to an insured person suffering from disablement as a result of an employment injury sustained as an employee under this Act and certified to be eligible for such payments by an authority specified in this behalf by the regulations;

(d) periodical payments to such dependants of an insured person who dies as a result of an employment injury sustained as an employee under this Act, as are entitled to compensation under this Act (hereinafter referred to as dependants' benefit);

(e) medical treatment for and attendance on insured persons (hereinafter referred to as medical benefit);
(f) payment to the eldest surviving member of the family of an insured person who has died, towards the expenditure on the funeral of the deceased insured person or, where the insured person did not have a family or was not living with his family at the time of his death, to the person who actually incurs the expenditure on the funeral of the deceased insured person, provided that the amount of such payment shall not exceed such amount as may be prescribed by the Central Government and the claim for such payment shall be made within three months of the death of the insured person or within such extended period as the Corporation or any officer or authority authorized by it in this behalf may allow.

(2) The Corporation may, at the request of the appropriate government, and subject to such conditions as may be laid down in the regulations, extend the medical benefit to the family of an insured person.

Sickness benefit

The qualification of a person to claim sickness benefit, the conditions subject to which such benefit may be given, the rates and period thereof shall be such as may be prescribed by the Central Government.

Maternity benefit

The qualification of an insured woman to claim maternity benefit, the conditions subject to which such benefit may be given, the rates and period thereof shall be such as may be prescribed by the Central Government.

Disablement benefit

Subject to the provisions of this Act

(a) a person who sustains temporary disablement for not less than three days (excluding the day of accident) shall be entitled to periodical payment ⁹³[at such rates and for such period and subject to such conditions as may be prescribed by the Central Government];

(b) a person who sustains permanent disablement, whether total or partial, shall be entitled to periodical payment at such rates and for such period and subject to such conditions as may be prescribed by the Central Government

Dependant's Benefit

If an insured person meets with an accident in the course of his employment and dies as a result thereof, his dependants, i.e. his widow, legitimate or adopted sons and legitimate unmarried daughters get this benefit.

Other benefits

- a. Funeral expenses - On the death of an insured person subject to a maximum of a Rs.2,500 payable at the local office.
- b. Vocational rehabilitation - In case of disabled insured persons under 45 years of age with 40% or more disablement.
- c. Free supply of physical aids and appliances such as crutches, wheelchairs, spectacles and other such physical aids.
- d. Preventive health care services such as immunization, family welfare services, HIV/AIDS detection, treatment etc.
- e. Medical bonus Rs.250 is paid to an insured woman or in respect of the wife of an insured person in case she does not avail hospital facilities of the scheme for child delivery.

8.5 PAYMENT OF GRATUITY ACT, 1972

8.5.1: INTRODUCTION

An Act to provide for a scheme for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments and for matters connected therewith or incidental thereto. The meaning of gratuity is a sort of retiring benefit to the workmen who have rendered long and unblemished service to the employer. The Payment of Gratuity Act 1972 was passed as Act No : 30 Of 1972 and received the assent of the President of India on August 21, 1972. It was enforced with effect from September 16, 1972. This Act extends to the whole of India. Of course so far as this act relates to plantation or port, it shall not extend to the State of Jamu and Kashmir. In this unit we will deal with scope, objectives and various important provisions of the payment of Gratuity Act, 1972.

8.5.2: DEFINITIONS

According to this Act, unless the context otherwise requires, the different related terms are defined as under follows:

(A) "Appropriate Government" means,-

(i) in relation to an establishment-

(a) belonging to, or under the control of, the Central Government,

(b) having branches in more than one State,

(c) of a factory belonging to, or under the control of, the Central Government,

(d) of a major port, mine, oilfield or railway company, the Central Government,

(ii) in any other case, the State Government;

(B) "Completed year of service" means continuous service for one year;

(C) "Continuous service" means uninterrupted service and includes service which is interrupted by sickness, accident, leave, layoff, strike or a lock-out or cessation of work not due to any fault of the employee concerned, whether such interrupted or interrupted service was rendered before or after the commencement of this Act.

(D) "Controlling authority" means an authority appointed by the appropriate Government under section 3;

(E) "Employee" means any person (other than an apprentice) employed on wages, not exceeding one thousand rupees per mensem, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, but does not include any such person who is employed in a managerial or administrative capacity, or who holds a civil post under the Central Government or a State Government, or who is subject to the Air Force Act, 1950, (45 of 1950) the Army Act, 1950, (46 of 1950) or the Navy Act, 1957 (62 of 1957).

(F) "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 or a State 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 the local authority,

(iii) in any other case, the persons, 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;

(G) "Factory" has the meaning assigned to it in clause (m) of section 2 of the Factories Act, 1948;

(H) "Family", in relation to an employee, shall be deemed to consist of-

(i) in the case of a male employee, himself, his wife, his children, whether married or unmarried, his dependent parents 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 dependent parents of her husband and the widow and children of her predeceased son, if any :

Provided that if a female employee, by a notice in writing to the controlling authority, expresses her desire

to exclude her husband from her family, the husband and his dependent parents shall not longer be deemed, for the purposes of this Act, to be included in the family of such female employee unless the said notice is subsequently withdrawn by such female employee.

(I) "Major port" has the meaning assigned to it in clause (8) of section 3 of the Indian Ports Act, 1908

(J) "Mine" has the meaning assigned to it in clause (j) of sub-section (1) of section 2 of the Mines Act, (K)

"Notification" means a notification published in the Official Gazette;

(L) "Oilfield" has the meaning assigned to it in clause (e) of section 3 of the Oilfields (Regulation and Development) Act, 1948;

(M) "Plantation" has the meaning assigned to in clause (f) of section 2 of the Plantations Labor Act, 1951 (69 of 1951);

(N) "Port" has the meaning assigned to it in clause (4) of section 3 of the Indian Ports Act, 1908 (15 of 1908);

(O) "Prescribed" means prescribed by rules made under this Act;

(P) "Railway company" has the meaning assigned to it in clause (5) of section 3 of the Indian Railways Act, 1890 (9 of 1890);

(Q) "Retirement" means termination of the service of an employee otherwise than on superannuation;

(R) "Superannuation", in relation to an employee, means,-

(i) the attainment by the employee of such age as is fixed in the contract or conditions of service as the age on the attainment of which the employee shall vacate the employment; and

(ii) in any other case, the attainment by the employee of the age of fifty-eight years;

(S) "Wages" means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his 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, overtime wages and any other allowance.

8.5.3: OBJECTIVES

The main objective of this Act is to provide for a Scheme for the payment of Gratuity to employees engaged in factories, mines, oil fields plantations, ports, railway companies, shops or other establishments and for matter related thereof.

The objects of the Payment of Gratuity Act, 1972 are mentioned below-

i) To provide for a Scheme for the payment of Gratuity to employees.

ii) To provide for matters connected with or incidental to the Scheme for payment of Gratuity.

iii) To provide retiring benefits to employees who have rendered continuous services to his employer and thereby contributed to his prosperity.

iv) To define the principles of payment of gratuity according to the prescribed formula.

v) To provide machinery for the employment of liability for payment of gratuity.

8.5.4: PAYMENT OF GRATUITY

(1) 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;

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or if no nomination has been made, to the heirs.

(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned:

Provided that in the case of piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account : Provided further that in the case of an employee employed in a seasonal establishment, the employer shall pay the gratuity at the rate of seven days' wages for each season.

(3) The amount of gratuity payable to an employee shall not exceed twenty months' wages.

(4) For the purpose of 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 as so reduced.

(5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

(6) Notwithstanding anything contained in sub-section (1),-

(a) the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;

(b) the gratuity payable to an employee shall be wholly forfeited,-

(i) if the services 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 services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

8.5.5: DETERMINATION OF THE AMOUNT OF GRATUITY

(1) A person who is eligible for payment of gratuity under this Act or any person authorized, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.

(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of Gratuity so determined.

(3) The employee shall arrange to pay the amount of gratuity, within such time as may be prescribed, to the person to whom the gratuity is payable.

(4) (a) If there is any dispute as to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity.

(b) The controlling authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the amount of gratuity payable to an employee, and, if as a result of such inquiry any amount in excess of the amount deposited by the employer is found to be payable, the controlling authority shall direct the employer to pay such amount as is in excess of the amount deposited by him.

(c) The controlling authority shall pay the amount deposited including the excess amount, if any, deposited by the employer, to the person entitled thereto.

(d) as soon as may be after a deposit is made under clause (a), the controlling authority shall pay the amount of the deposit-

(i) to the applicant where he is the employee; or

(ii) where the applicant is not the employee, to the nominee or heir of the employee if the controlling authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

(5) For the purpose of conducting an inquiry under sub-section (4), the controlling authority shall have the same powers as are vested in a court, while trying a suit, under the Code of Civil Procedure, 1908, (5 of 1908) in respect of the following matters, namely :-

- (a) enforcing the attendance of any person or examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) issuing commission for the examination of witnesses.

(6) Any inquiry under this section shall be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

(7) Any person aggrieved by an order under sub-section (4) may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf:

Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days.

(8) The appropriate Government or the appellate authority, as the case may be, may, after giving the parties to the appeal a reasonable opportunity of being heard, confirm, modify or reverse the decision of the controlling authority.

8.5.6: INSPECTORS & DUTIES

As per Sec 7A of this Act, The appropriate Government may, by notification, appoint as many Inspectors, as it deems fit, for the purposes of this Act. The appropriate Government may, by general or special order, define the area to which the authority of an Inspector so appointed shall extend and where two or more Inspectors are appointed for the same area, also provide by such order, for the distribution or allocation of work to be performed by them under this Act. Every Inspector shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

1. Subject to any rules made by the appropriate Government in this behalf, an Inspector may, for the purpose of ascertaining whether any of the provisions of this Act or the conditions, if any, of any exemption granted thereunder, have been complied with, exercise all or any of the following powers, namely:--
 - a. require an employer to furnish such information as he may consider necessary;
 - b. enter and inspect, at all reasonable hours, with such assistants (if any), being persons in the service of the Government or local or any public authority, as he thinks fit, any premises of or place in any factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act, applies, for the purpose of examining any register, record or notice or other document required to be kept or exhibited under this Act or the rules made thereunder, or otherwise kept or exhibited in relation to the employment of any person or the payment of gratuity to the employees, and require the production thereof for inspection;
 - c. examine with respect to any matter relevant to any of the purposes aforesaid, the employer or any person whom he finds in such premises or place and who, he has reasonable cause to believe, is an employee employed therein;
 - d. make copies of, or take extracts from, any register, record, notice or other document, as he may consider relevant, and where he has reason to believe that any offence under this Act has been committed by an employer, search and seize with such assistance as he may think fit, such register, record, notice or other document as he may consider relevant in respect of that offence;
 - e. exercise such other powers as may be prescribed.
2. Any person required to produce any register, record, notice or other document or to give any information by an Inspector under sub- section (1) shall be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the Indian Penal Code (45 of 1860).

3. The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall so far as may be, apply to any search or seizure under this section as they apply to any search or seizure made under the authority of a warrant issued under section 94 of that Code.

8.6 SUMMING UP

The evolution of labour jurisprudence is the culmination of the incessant struggle waged by the workers' all over the world, for just and better conditions of work as well as security of their job. Labour legislations have now acquired the status of a separate branch of jurisprudence because of its special features and changing juristic ideas. Therefore, an idea about its concept, origin, development, objectives, approaches, influences and classification etc. will be of immense help to comprehend its principles. Proper regulation of employee-employer relationship is a condition precedent for planned, progressive and purposeful development of any society. The objectives of labour legislation are a developing concept and require ceaseless efforts to achieve them on a continuous basis.

8.7 RECOMMENDED READING

1. N D Kapoor: Industrial Law, Sultan Chand & Sons, New Delhi, 2004
2. R S N Pillai ic. V Bhagwati: Business Law, S Chand & Company, New Delhi, 2005

8.8 QUESTIONS

8.8.1: SHORT ANSWER TYPE QUESTIONS

1. What are the objectives of Employees' provident Fund & Miscellaneous Provisions Act, 1952?
2. Briefly discuss Employees' Provident fund scheme.
3. What are the duties of an 'Inspector' under Maternity benefit Act, 1961?
4. Explain the term 'Dependant' in context with Employees' State Insurance Act, 1948?
5. Write a short note on Employees' deposit linked insurance scheme.

8.8.2: LONG ANSWER TYPE QUESTIONS

1. Briefly explain the Benefits under the purview of the Employees' State Insurance Act, 1948.
2. Explain the Process of determining gratuity as under Payment of Gratuity Act, 1972.
3. Discuss in brief the Maternity Benefits as per the Maternity benefit Act, 1961.
4. Briefly discuss Employees' pension scheme fund.