

**PROFESSIONAL  
PROGRAMME**

**GROUP 2  
ELECTIVE PAPER 7.3**

# **LABOUR LAWS & PRACTICE**



**THE INSTITUTE OF  
Company Secretaries of India**

**भारतीय कम्पनी सचिव संस्थान**

**IN PURSUIT OF PROFESSIONAL EXCELLENCE**

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

**STUDY MATERIAL**

**PROFESSIONAL PROGRAMME**

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**Phones :**

011-45341000 / 0120-4522000

**Website :**

*www.icsi.edu*

**E-mail :**

*info@icsi.edu / academics@icsi.edu*

**For any suggestions/clarifications students may write to *academics@icsi.edu***

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# PROFESSIONAL PROGRAMME

## LABOUR LAWS & PRACTICE

The law relating to labour and employment in India is primarily known under the broad category of “Industrial Law”. Industrialization is considered to be one of the key engines to support the economic growth of any country. The commence of industry and its growth is not a venture of the employer alone; yet it involves the hard work and tough grind of each and every stakeholder of the industry including the labourers, supervisors, managers and entrepreneurs. With the initiation of the concept of welfare state in the early realm of independence of our country, various legislative efforts have made their first move in the direction of welfare, equitable rights, social justice, social equity and equitable participation of the labour as a stakeholder at parity. A plethora of labour laws have been established to ensure elevated health, safety, and welfare of workers; to protect workers against oppressive terms as individual worker is economically weak and has little bargaining power; to encourage and facilitate the workers in the organization; to deal with industrial disputes; to enforce social insurance and labour welfare schemes and alike.

Labour laws are the one dealing with employment laws in any organization – whether it is a manufacturing organization or trading organization or shops and establishment. The labour laws address the various administrative rulings (such as employment standing orders) and procedure to be followed, compliance to be made and it address the legal rights of, and restrictions on, working people and their organizations. By and large the labour law covers the industrial relations, certification of unions, labour management relations, collective bargaining and unfair labour practices and very importantly the workplace health and safety with good environmental conditions. Further the labour laws also focus on employment standards, including general holidays, annual leave, working hours, unfair dismissals, minimum wage, layoff procedures and severance pay and many other issues related to employer and employee and the various compliance requirements.

The labour laws derive their origin, authority and strength from the provisions of the Constitution of India. The relevance of the dignity of human labour and the need for protecting and safeguarding the interest of labour as human beings has been enshrined in Chapter-III (Articles 16, 19, 23 & 24) and Chapter IV (Articles 39, 41, 42, 43, 43A & 54) of the Constitution of India keeping in line with Fundamental Rights and Directive Principles of State Policy. Labour law reforms are an ongoing and continuous process and the Government has been introducing new laws and amending the existing ones in response to the emerging needs of the workers in a constantly dynamic economic environment. Labour is a subject in the Concurrent List where both the Central & State Governments are competent to enact legislation subject to certain matters being reserved for the Centre.

Under the Companies Act, 2013 the role of the company secretary has been considerably widened in as much as now he is not only responsible for the compliances under the company law but also in respect of compliances under all other applicable laws.

Keeping in view these rapid developments and significance of role of Company Secretary in the field of Labour Laws, this study material has been prepared to provide an understanding of certain labour legislations which have direct bearing on the functioning of companies. This study material has been published to aid the students in preparing for the Labour Laws & Practice paper of the CS Professional Program, Group 2, Elective Paper 7.3.

It is part of the educational kit and takes the students step by step through each phase of preparation emphasizing key concepts, principles, legal fundamentals and procedures. Company Secretaryship being a professional course, the examination standards are set very high, with emphasis on knowledge of concepts, applications, procedures and case laws, for which sole reliance on the contents of this study material may not be enough. This study material may, therefore, be regarded as the basic material and must be read along with the Bare Acts, Rules, Regulations, Case Laws.

The legislative changes made upto May 31, 2023 have been incorporated in the study material. In addition to Study Material students are advised to refer to the updations at the Regulator’s website, supplements relevant for the subject issued by ICSI and ICSI Journal Chartered Secretary and other publications. Specifically, students are advised to read “Student Company Secretary” e-Journal which covers regulatory and other relevant developments relating to the subject, which is available at academic portal <https://www.icsi.edu/student-n/academic-portal/>. In the event of any doubt, students may contact the Directorate of Academics at academics@icsi.edu.

**The amendments to law made upto 31st May of the Calendar Year for December Examinations and upto 30th November of the previous Calendar Year for June Examinations shall be applicable.**

Although due care has been taken in publishing this study material, the possibility of errors, missions and /or discrepancies cannot be rules out. This publication is released with an understanding that the Institute shall not be responsible for any errors, omissions and/or discrepancies or any action taken in that behalf.

**PROFESSIONAL PROGRAMME**  
**Group 2**  
**Elective Paper 7.3**  
**LABOUR LAWS & PRACTICE**  
**(Max. Marks 100)**

**SYLLABUS**

**OBJECTIVE:**

To acquire expert knowledge, understanding and application of Labour Laws.

**Level of Knowledge:** Expert Knowledge

**Detailed Contents**

1. **Constitution and Labour Laws:** • Fundamental rights vis-à-vis labour laws, Equality before law and its application in Labour Laws • Equal pay for equal work • Article 16 and reservation policies, Articles 19, 21, 23 and 24 and its implications
2. **International Labour Organization:** • Aims and objects • Cooperation between Governments and Employers' and workers' organizations in fostering social and economic progress • Setting labour standards • Developing policies and devising programmes to promote decent work
3. **Law of Welfare & Working Condition:** • The Factories Act, 1948 • Contract Labour (Regulation and Abolition) Act, 1970 • The Building and Other Constructions Workers' (Regulation of Employment and Conditions of Service) Act, 1996 • The Mines Act, 1952 • The Working Journalists and Other Newspapers Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 • The Weekly Holidays Act, 1942 • Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 • The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986
4. **Law of Industrial Relations :** • Industrial Disputes Act, 1947 • The Industrial Employment (Standing Orders) Act, 1946 • Indian Trade Union Act, 1926
5. **Law of Wages:** • Payment of Wages Act, 1936 • Minimum Wages Act, 1948 • Payment of Bonus Act, 1965 • Equal Remuneration Act, 1976
6. **Social Security Legislations:** • Employees' Compensation Act, 1923 • Equal Reuneration Act, 1948 • Employees' State Insurance Act, 1948 • Employees' Provident Funds and Miscellaneous Provisions Act, 1952 • Payment of Gratuity Act, 1972 • Maternity Benefit Act, 1961 • The Unorganized Workers' Social Security Act, 2008
7. **The Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988**
8. **Introduction of Labour Codes:** • Labour Code on Wages • Labour Code on Industrial Relations • Labour Code on Social Security & Welfare • Labour Code on Safety & Working Conditions
9. **Industrial and Labour Laws Audit covering the above Acts and other Industry Specific Acts**

**ARRANGEMENT OF STUDY LESSONS**  
**LABOUR LAWS & PRACTICE**  
**Group 2 • Elective Paper 7.3**

<b>Sl. No.</b>	<b>Lesson Title</b>
1.	Constitution and Labour Laws
2.	International Labour Organization
3.	Law of Welfare & Working Condition
4.	Law of Industrial Relations
5.	Law of Wages
6.	Social Security Legislations
7.	The Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988
8.	Introduction of Labour Codes
9.	Industrial and Labour Laws Audit

# LESSON WISE SUMMARY

## LABOUR LAWS & PRACTICE

### Lesson 1: Constitution and Labour Laws

Under the Constitution of India, Labour is a subject in the Concurrent List and, therefore, both the Central and the State governments are competent to enact legislations subject to certain matters being reserved for the Centre.

Under Union List, Entry No. 55 of the Seventh Schedule of the Constitution of India dealing with Regulation of labour and safety in mines and oilfields; Entry No. 61 dealing with industrial disputes concerning Union employees and Entry No. 65 dealing with Union agencies and institutions for: (a) professional, vocational or technical training, including the training of police officers; or (b) the promotion of special studies or research; or (c) scientific or technical assistance in the investigation or detection of crime.

Under Concurrent List, Entry No. 22 of the Seventh Schedule of the Constitution of India dealing with Trade unions; industrial and labour disputes; Entry No. 23 dealing with Social security and social insurance; employment and unemployment and Entry No. 24 dealing with Welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits.

The objective of the lesson is to introduce the students regarding:

- Fundamental rights vis-à-vis labour laws;
- Equality before law and its application in Labour Laws;
- Equal pay for equal work.

### Lesson 2: International Labour Organization

India is the founder member of International Labour Organization (ILO) and has been actively contributing to evolution of global policy on labour welfare. International Labour Organization which came into existence in 1919 and has been a permanent member of the ILO Governing Body since 1922. At present the ILO has 187 Members. A unique feature of the ILO is its tripartite character. At every level in the organization, Governments are associated with the two other social partners, namely, the workers and employers. The three organs of the ILO are - (1) International Labour Conference- General Assembly of the ILO (2) Governing Body- Executive Council of the ILO and (3) International Labour Office - a Permanent secretariat.

It is expected that, at the end of this lesson, student will, inter-alia, be in a position to understand:

- Aims and objects of International Labour Organization;
- Setting labour standards;
- Developing policies and devising programmes to promote decent work.

### Lesson 3: Law of Welfare & Working Condition

The productivity of labour is an essential condition for the prosperity of enterprises and the well being of the workers and their families. The value placed by the society on dignity of labour are equally important in influencing the productivity of labour. Appropriate conditions at work are ensured by measures taken to promote safety at the workplace and minimizing occupational hazards. Under Seventh Schedule, Concurrent List, Entry No. 24 of the Constitution of India dealing with Welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits.



The objective of the lesson is to facilitate students to acquaint with:

- The Factories Act, 1948;
- The Contract Labour (Regulation and Abolition) Act, 1970;
- The Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996;
- The Mines Act, 1952 etc.

#### **Lesson 4: Law of Industrial Relations**

An economy organized for planned production and distribution, aiming at the realisation of social justice and the welfare of the masses can function effectively only in an atmosphere of industrial peace.

Sound industrial relations and effective social dialogue are a means to promote better wages and working conditions as well as peace and social justice. As instruments of good governance they foster cooperation and economic performance, helping to create an enabling environment for the realization of the objective of Decent Work at the national level.

The objective of the lesson is to familiarize the students to acquaint with:

- Industrial Disputes Act, 1947;
- The Industrial Employment (Standing Orders) Act, 1946;
- Indian Trade Union Act, 1926.

#### **Lesson 5: Law of Wages**

Wages are among the most important conditions of work and a major subject of collective bargaining. Wages in the organized sector is generally determined through negotiations and settlements between the employer and the employees. The minimum rates of wages are fixed both by Central and State Governments in the scheduled employments falling within their respective jurisdictions under the provisions of the Minimum Wages Act, 1948. The Act binds the employers to pay the workers the minimum wages so fixed from time to time.

It is expected that, at the end of this lesson, student will, *inter-alia*, be in a position to understand:

- The Minimum Wages Act, 1948;
- The Payment of Wages Act, 1936;
- The Payment of Bonus Act, 1965;
- The Equal Remuneration Act, 1976.

#### **Lesson 6: Social Security Legislations**

The social security legislations in India derives their strength and spirit from the Directive Principles of the State Policy as contained in the Constitution of India. These provide for mandatory social security benefits either solely at the cost of the employers or on the basis of joint contribution of the employers and the employees. While protective entitlements accrue to the employees, the responsibilities for compliance largely rest with the employers. The principal social security laws enacted for the organised sector in India are:

- The Employees' State Insurance Act, 1948;
- The Employees' Provident Funds & Miscellaneous Provisions Act, 1952;
- The Employee's Compensation Act, 1923;
- The Maternity Benefit Act, 1961;
- The Payment of Gratuity Act, 1972;
- The Unorganised Workers' Social Security Act, 2008.

## **Lesson 7: The Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988**

The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988 provides for the exemption of employers in relation to establishments employing a small number of persons from furnishing returns and maintaining registers under certain labour laws. Small establishments were exempted from furnishing returns and maintaining registers under certain enactments mentioned in the first Schedule to the Act and instead they were required to furnish returns and maintain registers in the forms set out in the Second Schedule to the Act.

The objective of the lesson is to facilitate students to acquaint with:

- Schedule Act;
- Small Establishment;
- Very Small Establishment;
- Exemption from maintenance of Register and Return.

## **Lesson 8: Introduction of Labour Codes**

Reforms in labour laws are an ongoing process to update the legislative system to address the need of the hour so as to make them more effective, flexible and in sync with emerging economic and industrial scenario. The Second National Commission on Labour has recommended that the existing Labour Laws should be broadly grouped into four or five Labour Codes on functional basis. Accordingly, the Government has taken steps for drafting four Labour Codes on Wages, Industrial Relations, Social Security & Welfare and Occupational Safety, Health and Working Conditions respectively, by simplifying, amalgamating and rationalizing the relevant provisions of the existing Central Labour Laws.

The objective of the lesson is to familiarize the students to acquaint with:

- Labour Code on Wages;
- Labour Code on Industrial Relations;
- Labour Code on Social Security & Welfare;
- Labour Code on Occupational Safety, Health and Working Conditions.

## **Lesson 9: Industrial and Labour Laws Audit**

In order to ensure sound corporate governance, company secretary professional could assist the companies in conducting due diligence to ensure compliance with applicable labour laws. Due diligence is one of the core competence area of company secretary professional accordingly, practicing company secretaries could assist the companies in rectifying and correcting any lacunae which are highlighted upon conducting the due diligence exercise. Labour audit covers all labour legislations applicable to an Industry/factory or other commercial establishments. Company Secretaries can conduct such audits and make value addition to the business of the employer.

It is expected that, at the end of this lesson, student will, *inter-alia*, be in a position to understand the:

- Scope of Labour Audit
- Benefit of Labour Audit
- Labour Law Compliance
- Significant Role of Company Secretary in Labour Audit

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### KEY CONCEPTS

- Fundamental rights ■ Directive Principles ■ Labour Rights ■ Social Justice ■ Socio-economic Justice
- Constitutional Remedies ■ Public Interest Litigation

### Learning Objectives

#### To understand:

- The relevance of the dignity of human labour and the need for protecting and safeguarding the interest of labour as human beings that has been enshrined in Chapter-III (Articles 16, 19, 23 & 24) and Chapter IV (Articles 39, 41, 42, 43, 43A & 54) of the Constitution of India keeping in line with Fundamental Rights and Directive Principles of State Policy
- The concept of Social Justice and Industrial Laws
- Constitutional Framework of Fundamental Rights and Industrial relations
- Constitutional Remedies against the violation of Fundamental Rights

### Lesson Outline

- Introduction
- Constitutional bearing on Industrial Laws and Industrial Relations
- Social Justice and Industrial Laws
- Constitutional Remedies
- Constitutional framework of Fundamental Rights and Industrial Relations
- Labour Laws with reference to Directive Principles of State Policy
- Social Security Provisions
- Working Conditions
- Living Wage
- Workers Participation in management
- Lesson Round-Up
- Test Yourself

***Under the Constitution of India, Labour is a subject in the Concurrent List and, therefore, both the Central and the State governments are competent to enact legislations subject to certain matters being reserved for the Centre.***



## INTRODUCTION

Majority of the countries throughout the world have a basic document of Government called "Constitution". The Constitution of a country is the fundamental law of the land on the basis of which all other laws are made and enforced. Every organ of the state, be it the executive or the legislative or the judiciary, derives its authority from the constitution and there is no authority, no department or branch of the State, which is above or beyond the Constitution or has powers unfettered and unrestricted by the Constitution.

Thus, a Constitution is supreme or fundamental law of the country which not only defines the framework of the basic political principles, but also establishes what the different government institutions should do in terms of procedure, powers and duties. A Constitution is the vehicle of a nation's progress. The Constitution is the supreme law of the country and it contains laws concerning the government and its relationships with the people.

## CONSTITUTIONAL BEARING ON INDUSTRIAL LAWS AND INDUSTRIAL RELATIONS

Industrial relations affect not merely the interest of labour and management, but also the social and economic goals to which the State is committed to materialise. Therefore, it develops within the province and function of the State to regulate these relations in society desirable channels.

The extent of state control or intervention is determined by the stage of economic development. In developed economy, work stoppages to settle claim may not have much impact, unlike in developing economy. Countries like the U.S. and England, etc. with advanced and free market economy only lay down bare rules for observance of employers and workers giving them freedom to settle their disputes. In the U.S., States intervention in industrial dispute is eliminated to actual or threatened workers' stoppages that may imperil the national economy, health or safety.

However, in developing economy, the States rules cover a wider area of relationship and there is equally greater supervision over the enforcement of these rules. This is emphatically so in developing countries with labour surplus. It is a concern of the state to achieve a reasonable growth rate in the economy and to ensure the equitable distribution thereof. This process becomes more complex in a country with democratic framework guaranteeing fundamental individual freedoms to its citizens. Hence, a state in a developing country concerns itself not only with the content of work rules but also with the framing of rules relating to industrial discipline, training, employment and so on.

The founding fathers of democratic Constitution of India were fully aware about these implications while they laid emphasis to evolve a welfare state embodying federal arrangement. Entries about labour relations are represented in all the three lists in the Constitution. Yet most important ones come under the Concurrent list. These are industrial and labour disputes, trade unions and many aspects of social securities and welfare like employer's liability, employees' compensation, provident fund, old age pensions, maternity benefit, etc. Thus, the Industrial Disputes Act, 1947, the Minimum Wages Act, 1948, the Employees' State Insurance Act, 1948, etc. come under the concurrent list. Some States have enacted separate amendment Acts to some of the above legislations to meet local needs. Such amendments are recommended either with the assent of the President of India or by promulgating rules pursuant to the powers delegated by the Central Act. Under the rule making powers delegated by the Centre, the States have often been able to adopt Central Act to local needs without the President's assent. The Central acts often delegate such powers. For example, Section 38 of the Industrial Disputes Act delegates to the appropriate government, which in many is the State Government, the power to promulgate such rules as may be needed for making the Act effective. Similarly, Section 29 and Section 30 of the Minimum Wages Act and Section 26 of the Payment of Wages Act delegated the rule making power to the State. In pursuance to this, several States have promulgated separate minimum wages rules and payment of wage rules. The Factories Act also contains similar provisions and they have been similarly availed of.

Further, the goals and values to be secured by labour legislation and workmen have been made clear in Part IV, Directive Principles of the State Policy of the Constitution. Thus, the State shall secure a social order for the promotion of welfare of the people and certain principles of policy should be followed by the State towards

securing right to adequate means of livelihood, distribution of the material resources of the community to sub serve the common good, prevention of concentration of wealth via the economic system, equal pay for equal work for both men and women, health and strength of workers including men, women and children are not abused, participation of workers in management of industries, just and humane conditions of work and that childhood and youth are protected against exploitation against exploitation and against moral and material abandonment.

By and large industrial and labour legislations have been directed towards the implementation of these directives. Factories Act, 1948, ESI Act, 1948, Employees' Compensation Act, 1923 are focused to the regulation of the employment of the women and children in factories, just and humane conditions of work, protection of health and compensation for injuries sustained during work. Minimum Wages Act, 1948 and the Payment of Wages Act, 1936 regulate wage payment. Payment of Bonus Act, 1965 seeks to bridge the gap between the minimum wage and the living wage. However, the directives relating to distribution of wealth, living wages, equal pay for equal work, public assistance, etc. have not been generally implemented as yet.



## SOCIAL JUSTICE AND INDUSTRIAL LAWS

The Preamble of the Constitution highlights the concept of socio-economic justice, being the main objectives of the State required by the Constitution. Article 38 of the Constitution provides the concept of social justice by providing that the State shall strive to promote the welfare of the people by securing and protecting, as effectively as it may, social order in which justice, social, economic and political shall inform all institutions of the national life. Further, Article 39 says that it shall be the duty of the state to apply certain principles of social justice in making laws.

“The concept social and economic justice is a living concept of revolutionary import, it gives sustenance to the rule of law, meaning and significance to the ideal of the welfare state.” (*Justice Gajendragadkar in the State of Mysore v. Workers of Gold Mines, AIR 1958 SC 923*). In the economic sphere, social justice means opportunities in greater measure to the poor and the needy for the betterment of their social and economic conditions. “It does not mean making rich man poor in order to make poor men rich. It does not mean that all wealth should be shared equally provision of basic minimum to all in response to life and living facilities for promoting one’s own values and manner worth are the essential contents of social justice.” (*K.N. Bhattacharya, Indian Plans, A Generalist Approach, (1963) p. 97*). It is the responsibility of both the State and the citizens to work hand in hand for achieving social justice. “The State has constitutional responsibilities and the citizens have moral responsibility and the combination of the two types of responsibilities tend to create an ideal society worthy to live in”. [*Chakradhar Jha, ‘Judicial Review of Legislative Acts’ (1974), p. 254.*]

### Industrial laws are socio-economic justice oriented

The concept of social justice is so innate and demonstrated in the industrial laws of our country. As proclaimed in the Preamble of the Constitution and the Directive Principles of State Policy, the industrial jurisprudence of the country is founded on the basic idea of socio-economic equality and its aim is to assist the removal of socio-economic disparities and inequalities. The laws particularly the industrial laws of the country revolve on this basic philosophy of the Constitution.

The concept of social justice is though not limited to any particular branch of legislation although it is more prominent and conspicuous in industrial laws and relations. Its scope is comprehensive and is founded to the basic ideals of social economic equality and it aims at assisting the removal of social economic disparities and inequalities of birth and the competing claims especially between the employers and workers by finding a just, fair and equitable solution to their human relation problem, so that peace, harmony and collection of the highest order prevails among them which may further the growth and progress of nations. [*Mahesh Chandra, ‘Industrial Jurisprudence’ (1976), p. 47*]

### Constitutional Limitations

The goals and values proclaimed under Part IV of the Constitution are to be effectuated consistent with the fundamental rights enshrined in Part III of the Constitution. The socio-economic reconstruction should not give scope to eat away the existence and worth of man. The fundamental rights are envisaged with the overall object of protecting individual liberty and democratic principles based on equality of all members of society. The State in its ebullience to evolve and streamline socio-economic reforms is bound to respect the dignity and worth of the citizens. Without these fundamental rights, the values of life may be stifled and annihilated. Therefore, the State cannot make laws inconsistent with the fundamental rights. Any law that contravenes fundamental rights will be void to the extent of inconsistency. Article 32 and 226 provide for remedy to enforce the fundamental rights through Supreme Court and High Courts respectively. Hence, the legislative competence of the law-making bodies is delimited by these fundamental provisions.

Article 14 requires the State not to deny to any person equality before law or the equal protection of the laws. Thus, discriminatory laws or unequal laws are not to be passed to equal or uniform laws are not to be passed to unequal. In the Industrial legislative sphere this protection extends to both the labour and the capital. The freedom of speech and expression, freedom of assembly, right to form associations and unions, guaranteed under Article 19(1)(a), (b) and (c) and the prohibition against forced labour and child labour protect some of the

vital interests of the workers strengthening their hands in forming trade unions, in staging demonstrations and in carrying on collective bargaining. (*Indian Law Institute, 'Labour Law and Labour Relations' (1968) p. 82*). The freedom of trade and occupation guaranteed in Article (19)(1)(g) primarily goes to the benefit of the employer.

What if a law enacted to enforce a directive principle infringes a Fundamental Right? On this question, the judicial view has veered round from irreconcilability to integration between the Fundamental Rights and Directive Principles and, in some of the more recent cases, to giving primacy to the Directive Principles.

The Fundamental Rights are not an end in themselves but are the means to an end. The end is specified in Directive Principles. On the other hand, the goals set out in Directive Principles are to be achieved without abrogating the Fundamental Rights. It is in this sense that Fundamental Rights and Directive Principles together constitute the core of our Constitution and combine to form its conscience. Anything that destroys the balance between the two parts will *ipso facto* destroy an essential element of the basic structure of our Constitution. (*Minerva Mills v. Union of India*, AIR 1980 SC 1789).

Supreme Court in *State of Tamil Nadu Vs. L. Abu Kavur Bai* (AIR 1984 SC 326) held that all though the directive principles are not enforceable yet the court should make an attempt at harmonising and reconciling the directive principles and the fundamental rights and any collision between the two should be avoided as far as possible. The reason why the founding fathers of our constitution did not advisedly make these principles enforceable was, the court said, perhaps due to vital consideration of giving the Government sufficient latitude to implement these principles from time to time according to capacity, situations and circumstances that may arise.

In *Unni Krishnan. J.P.V. State of A.P. (1993) 1 SCC 645*, B.P. Jeevan Reddy J. stated that "It is thus well established by the decisions of this court that the provisions of Part III and IV are supplementary and complementary to each other and *that fundamental rights are but a means to achieve* the goal indicated in part IV. It is also held that the fundamental rights must be construed in the light of the directive principles".

In *Bandhua Mukti Morcha V. Union of India*, AIR 1984 SC 802, the Court has held that "since the Directive Principles of State Policy contained in clauses (e) and (f) of Article 39, Article 41 and 42 are not enforceable in a court of law, it may not be possible to compel the State through the judicial process to make provision by statutory enactment or executive fiat for ensuring these basic essentials which go to make up a life of human dignity but where legislation is already enacted by the State providing these basic requirements to the workmen and thus investing their right to live with basic human dignity, with concrete reality and content, the State can certainly be obligated to ensure observance of such legislation for inaction on the part of the State in securing implementation of such legislation would amount to denial of the right to live with human dignity enshrined in Article 21."

Thus, the integrative approach towards Fundamental Rights and Directive Principles, or that the both should be interpreted and read together, has now come to hold the field. It has now become a judicial strategy to read Fundamental Rights along with Directive Principles with a view to define the scope and the ambit of the former. Mostly, Directive Principles have been used to broaden, and to give depth to some Fundamental Rights and to imply some more rights therefrom for the people over and above what are expressly stated in the Fundamental Rights.

Within the limits above stated and consistent with the distribution of legislative powers, Parliament and State legislatures make laws to regulate industrial relations and connected matters. The social security legislations, legislations to provide for retirement benefits, against industrial injuries, child labour, etc. are only resonating with the concept of social justice as highlighted by International Labour Organisations., since its inception in 1919. This has definitely shaped the industrial relations and labour laws of this country.

## CONSTITUTIONAL REMEDIES

The Constitution also envisages remedy by Supreme Court under Article 32 against violation of fundamental rights against injuries and illegalities etc. Article 32 is itself a fundamental right. Apart from the writ jurisdiction under Article 32, the Supreme Court is envisaged with discretionary jurisdiction to entertain appeal by special leave under Article 136 from decree, sentence, or order passed by any court or tribunal in India. Similarly,

High Courts are given writ jurisdiction under Article 226 and the power of superintendence over all courts and tribunals under Article 227. A person aggrieved by an award of the High Court can appeal to the Supreme Court under Article 132 if any constitutional question is involved or under Article 133 in civil appeal.

Can a Trade Union move the High Court under Article 226 to redress the fundamental rights of its members?. This issue was discussed by the Rajasthan High Court in *Jaipur Division Irrigation Employees Union v. State of Rajasthan and others (1994) ILLJ 26 Raj*. Here a large number of the employees of the irrigation department were declared surplus. The Union challenged it in this writ petition. The Single Bench held that the petition is not maintainable holding that the fundamental rights of the individual are not the rights of the union. On appeal, the Division Bench reversed it and sent back to the Single Bench for disposal of the writ petition in accordance with the merits of the case.

The traditional concept of *locus standi* underwent sweeping changes in the modern age of public action and public interest litigation. In the famous case of *S.P. Gupta and Ors. v. President of India and Ors. (AIR 1982 SC 149)* the question of locus standi was discussed and it was held that where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 of the Constitution of India or in the Supreme Court under Article 32 of the Constitution of India seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons.

### Public Interest Litigation

The general process of law in India is that the legal process can be initiated in a court of law at the instance of an aggrieved person. A third party generally does not have the capacity to initiate proceedings against others. The traditional rule in regard to *locus standi* is that only a person who has suffered a legal injury by reason of violation of his legal right by the impugned action or who is likely to run an injury by the reasoning of violation of his legal right, can alone approach the Court invoking its jurisdiction for the issuance of any writ either under Article 226 or under Article 32 of the Constitution of India. However, the Court now permits Public Interest Litigation (PIL) or Social Action Litigation (SAL) at the instance of 'public spirited citizens' for the enforcement of Constitutional rights and other legal rights of any person or group of persons who because of their socially or economically disadvantaged position unable to approach the Court for relief. Once the fundamental rights of labourers are infringed, they can approach the Supreme Court for relief under Article 32 or High Court for relief under Article 226 and if any other legal right is also infringed they can approach the High Court for relief under Article 226.

In *Fertilizer Corporation Kamgar Sabha v. Union of India, AIR 1976 SC 1455*, the Court held that Public Interest Litigation is part of the process of participative justice and standing in civil litigations of that pattern must have liberal reception at the judicial doorsteps. In *Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 802*, a social cause organisation approached the Supreme Court through a letter under Article 32 to request the Hon'ble Supreme Court to investigate the existence of inhuman conditions in certain mines where numerous persons were working as forced/bonded labourers. The Supreme Court directed and appointed two inquiry commissions to find out the true facts and circumstances as alleged by the petitioner. The Court rebuked the State government for raising a preliminary objection to stall in an inquiry by the Court into the matter in the following words: "We should have thought that if any citizen brings before the Court a complaint that a large number of peasants or workers are bonded serfs or are being subjected to exploitation by a few mine lessees or contractors or employers or are being denied the benefits of social welfare laws, the State Government, which is, under our constitutional scheme, charged with the mission of bringing about a new socioeconomic order where there will be social and economic justice for every one and equality of status and opportunity for all, would welcome an inquiry by the court, so that if it is found that there are in fact bonded labourers or even if the workers are not bonded in the strict sense of the term as defined in the Bonded Labour System (Abolition) Act

1976 but they are made to provide forced labour or are consigned to a life of utter deprivation and degradation such a situation can be set right by the State Government.”

The Court held that though no fundamental right of the petitioner may be said to be infringed, yet the petitioner who complains of such violation may succeed by virtue of PIL. The court further pointed out that the jurisdiction of High Court under Article 226 is wider than Supreme Court under Article 32 because the High Court can exercise its writ jurisdiction not only for the enforcement of fundamental right but also for enforcement of any legal right.

## CONSTITUTIONAL FRAMEWORK OF FUNDAMENTAL RIGHTS AND INDUSTRIAL RELATIONS

Articles 12 to 35 of the Constitution pertain to Fundamental Rights of the people. The Indian Constitution guarantees essential human rights in the form of Fundamental Rights under Part III and also Directive Principles of State Policy in Part IV which are fundamental in the governance of the country. Freedom and civil rights granted to all under Part III have been liberally construed by various pronouncements of the Supreme Court in the last half a century. The object has been to place citizens at a centre stage and make the State accountable. Fundamental Rights must not be read in isolation but together with directive principles and fundamental duties. The need for protecting and safeguarding the interest of labour as human beings has been enshrined in Article 14, 16, 19, 21, 23 and 24 giving an idea of the conditions under which labour had to be for work.

### Article 14: Equality before law

Equality is one of the magnificent corner-stones of Indian Democracy.

Article 14 of the Constitution of India reads as under:

“The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

Article 14 bars discrimination and prohibits discriminatory laws. The said Article is clearly in two parts – while it commands the State not to deny to any person ‘equality before law’, it also commands the State not to deny the ‘equal protection of the laws’. Equality before law prohibits discrimination. It is a negative concept. The concept of ‘equal protection of the laws’ requires the State to give special treatment to persons in different situations in order to establish equality amongst all. It is positive in character. Therefore, the necessary corollary to this would be that equals would be treated equally, whilst un-equals would have to be treated unequally.

In the case of the *Air India v. Nargesh Meerza (1981 AIR 1829)* Regulation 46 and 47 of Indian Airlines regulations was in question which provides that an air Hostess will retire from the service upon attaining the age of 35 years or on marriage within 4 years of Service or on first pregnancy, whoever found earlier but the managing director had the discretion that he may extend the age of retirement one year at a time beyond the age of retirement up to the age of 45 years at his option if an air hostess was found medically fit. It was held by the court that the clauses regarding retirement and pregnancy of the regulation as unconstitutional and therefore struck down. The retirement of air hostess on the ground of pregnancy was unreasonable and arbitrary and it was in violation of article 14 of the constitution law of India.

In *D.S Nakara v. Union of India, (1983 AIR 130)* the supreme court held Rule 34 of the Central Services (Pension) Rules, 1972 as unconstitutional and was struck down on the ground that the classification made by it between pensioners retiring before a certain date and retiring after that date was not depend upon the any rational principal and it is arbitrary and violates article 14 of Indian constitution.

### Article 16: Equality of opportunity in matters of public employment

1. There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
2. No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect or, any employment or office under the State.



3. Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.
4. Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.
5. Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

Article 16 assures equality of opportunity in matters of public employment and prevents the State from any sort of discrimination on the grounds of religion, race, caste, sex, descent, place of birth, residence or any of them. This Article also provides the autonomy to the State to grant special provisions for the backward classes, under-represented States, SC & ST for posts under the State. Local candidates may also be given preference in certain posts.

Article 16 is an instance of the application of the general rule of equality before law laid down in Article 14. The concept of equal protection and equal opportunity undoubtedly permeates the whole spectrum of an individual's employment from appointment through promotion and termination to the payment of gratuity and pension. Equality is for equals, that is to say, those who are similarly circumstanced are entitled to an equal treatment but the principle of equality under Articles 14 and 16 cannot be carried beyond a point. There is no bar of reasonable classification of various employees and there is no question of equality between separate and independent classes of employees. The court cannot interfere with a promotion policy unless it is vitiated by arbitrariness or discrimination; a court or Tribunal cannot issue directions in this regard.

In the case of *Randhir Singh v. Union of India* (AIR 1982 SC 879), the apex court observed: "It is true that the principle of "equal pay for equal work" is not expressly declared by our Constitution to be a fundamental right. But it certainly is a Constitutional goal. Article 39 (d) of the Constitution proclaims "equal pay for equal work for both men and women" as a Directive Principle of State Policy. "Equal pay for equal work for both men and women" means equal pay for equal work for every one and as between the sexes. Directive Principles have to be read into the fundamental rights as a matter of interpretation. Article 14 of the Constitution enjoins the State not to deny any person equality before the law or the equal protection of the laws and Article 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. These equality clauses of the Constitution must mean something to everyone. To the vast majority of the people the equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay they get. To them the equality clauses will have some substance if equal work means equal pay. Questions concerning wages and the like, mundane they may be, are yet matters of vital concern to them and it is there, if at all that the equality clauses of the Constitution have any significance to them. The preamble to the Constitution declares the solemn resolution of the people of India to constitute India into a Sovereign Socialist Democratic Republic. Again, the word 'Socialist' must mean something. Even if it does not mean 'to each according to his need', it must at least mean 'equal pay for equal work'."

In the case of *Dhirendra Chamoli and Anr. v. State of U.P.* (AIR 1982 SC 879), the Court stated: "The fact that these employees accepted employment with full knowledge that they will be paid only daily wages and they will not get the same salary and conditions of service as other Class IV employees, cannot provide an escape to the Central Government to avoid the mandate of equality enshrined in Article 14 of the Constitution. This Article declares that there shall be equality before law and equal protection of the law and implicit in it is the further principle that there must be equal pay for work of equal value. These employees who are in the service of the different Nehru Yuvak Kendras in the country and who are admittedly performing the same duties as Class IV employees, must therefore get the same salary and conditions of service as Class IV employees. It makes no difference whether they are appointed in sanctioned posts or not. So long as they are performing the same duties, they must receive the same salary and conditions of service as Class IV employees."

In *Daily Rated Casual Labour v. Union of India (1987 AIR 2342)*, it has been held that “the daily rated casual labourers in P & T Department who were doing similar work as done by the regular workers of the department were entitled to minimum pay in the pay scale of the regular workers plus D.A. but without increments. Classification of employees into regular employees and casual employees for the purpose of payment of less than minimum pay is violative of Articles 14 and 16 of the Constitution. It is also opposed to the spirit of Article 7 of the International Covenant of Economic, Social and Cultural Rights 1966. Although the directive principle contained in Articles 38 and 39 (d) is not enforceable by virtue of Article 37, but they may be relied upon by the petitioners to show that in the instant case they have been subjected to hostile discrimination: Denial of minimum pay amounts to exploitation of labour. The government cannot take advantage of its dominant position. The government should be a model employer.”

In the case of *Gopika Ranjan Choudhary v. Union of India JT 1989 (4) SC 173* it has been held that “The Third Central Pay Commission (1973) recommended unified pay scales to the combatant staff of the Force on parity with the Army staff. However, as regards the ministerial staff of the Force (such as the UDAs and LDAs with whom we are concerned in the present case), the Commission recommended two different scales of pay, one for those attached to the Head Quarters and the other to the Battalions/Units, and the same came into force by an order of the Ministry of Home Affairs issued in March 1975. The pay scales of the staff at the Headquarters were higher than those of the staff attached to the Battalions/Units” it was held that this was discriminatory and violative of Article 14 and there was no difference between staff working at the headquarters and battalion and the service of Battalion is transferrable to headquarters.”

In the case of *Mewa Ram Kanojia vs All India Institute of Medical Sciences and Ors. (AIR 1989 SC 1256)*, the Court observed: “The doctrine of ‘Equal Pay for Equal Work’ is not an abstract one, it is open to the State to prescribe different scales of pay for different posts having regard to educational qualifications, duties and responsibilities of the post. The principle of ‘Equal Pay for Equal Work’ is applicable when employees holding the same rank perform similar functions and discharge similar duties and responsibilities are treated differently. The application of the doctrine would arise where employees are equal in every respect but they are denied equality in matters relating to the scale of pay.”

Commenting on the principle of ‘Equal Pay for Equal Work’, the court has observed: “While considering the question of application of principle of ‘Equal Pay for Equal Work’ it has to be borne in mind that it is open to the State to classify employees on the basis of qualifications, duties and responsibilities of the posts concerned. If the classification has reasonable nexus with the objective sought to be achieved, efficiency in the administration, the State would be justified in prescribing different pay scale but if the classification does not stand the test of reasonable nexus and the classification is rounded on unreal, and unreasonable basis it would be violative of Article 14 and 16 of the Constitution.”

It is not necessary that for a classification to be valid, its basis must always appear on the face of the law. To find out the reasons and the justification for the classification, the court may refer to relevant material, In the case of *State of Orissa vs Balaram Sahu, (2003) 1 SCC 250* the court has observed: “Though ‘equal pay for equal work’ is considered to be a concomitant of Article 14 as much as ‘equal pay for unequal work’ will also be a negation of that right, equal pay would depend upon not only the nature or the volume of work, but also on the qualitative difference as regards reliability and responsibility as well and though the functions may be the same, but the responsibilities do make a real and substantial difference.”

### Article 19(1)(c) of the Constitution

Article 19 (1) (c) speaks about the Fundamental right of citizen to form an associations and unions. Under clause (4) of Article 19, however, the State may by law impose reasonable restrictions on this right in the interest of public order or morality or the sovereignty and integrity of India. The right of association pre-supposes organization as an organization or permanent relationship between its members in matters of common concern. It thus includes the right to form companies, societies, partnership, trade union and political parties. The right guaranteed is not merely the right to form association but also to continue with the association as such. The freedom to form association implies also the freedom to form or not to form, to join or not to join, an association or union.



In the case of *Damyanti Naranga v. The Union of India* 1971 SCR (3) 840, the court observed that: “The right to form association necessarily implies that the persons forming the society have also the right to continue to be associated with only those whom they voluntarily admit in the association. Any law by which members are introduced in the voluntary association without any option being given to the members to keep them out, or any law which takes away the membership of those who have voluntarily joined it, will be a law violating the right to form association. The right guaranteed by Article 19(1)(c) cannot be confined to the initial stage of forming an association. If it were to be so confined, the right would be meaningless because as soon as an association is formed, a law may be passed interfering with its composition so that the association formed may not be able to function at all. The right can be effective only if it is held to include within it the right to continue the association with its composition as voluntarily agreed upon by the persons forming the association. And, Article 19(4), on the face of it, cannot be called in aid to claim validity for the Act.”

In the case of *P. Balakotaiah v. Union of India* 1958 SCR 1052, the apex court held: “The argument is that action has been taken against the appellants -under the rules, because they are Communists and trade unionists, and the orders terminating their services under R. 3 amount, in substance, to a denial to them of the freedom to form associations, which is guaranteed under Art. 19(1)(c). We have already observed that that is not the true scope of the charges. But apart from that, we do not see how any right of the appellants under Art. 19(1)(c) has been infringed. The orders do not prevent them from continuing to be Communists or trade unionists. Their rights in that behalf remain after the impugned orders precisely what they were before. The real complaint of the appellants is that their services have been terminated; but that involves, apart from Art. 311, no infringement of any of their Constitutional rights. The appellants have no doubt a fundamental right to form associations under Art. 19(1)(c), but they have no fundamental right to be continued in employment by the State, and when their services are terminated by the State, they cannot complain of the infringement of any of their Constitutional rights, when no question of violation of Art. 311 arises.”

In the case of *M.H. Devendrappa v. Karnataka State Small Industries Development Corpn*, AIR 1998 SC 1064: (1998) 3 SCC 732, the Supreme Court has dissented from the *Balakotaiah* ruling entailing freedom v. service. The Court has now said that legitimate action discreetly and properly taken by a government servant with a sense of responsibility and at the proper level to remedy any malfunction in the organisation may not be barred. A person who legitimately seeks to exercise his rights under Art. 19 cannot be told that you are free to exercise the rights, but the consequences will be so serious and so damaging, that you will not, in effect, be able to exercise your freedom. This means that the *Balakotaiah* approach saying that a government servant is free to exercise his freedom under Art. 19(1)(a) or (b), but at the cost of his service, clearly amounts to deprivation of freedom of speech. Therefore, what the Court has to consider is the reasonableness of service rules which curtail certain kinds of activities amongst government servants in the interests of efficiency and discipline in order that they may discharge their public duties as government servants in a proper manner without undermining the prestige or efficiency of the organisation. If the rules are directly and primarily meant for this purpose, “they being in furtherance of Art. 19(1)(g)”,<sup>87</sup> can be upheld although they may indirectly impinge upon some other limbs of Art. 19 qua an individual employee. Courts ensure that such impingement is minimal and rules are made in public interest and for proper discharge of public interest. “A proper balancing of interests of an individual as a citizen and the right of the state to frame a code of conduct for its employees in the interest of proper functioning of the state, is required”.

Thus, *M.H. Devendrappa* case reduces somewhat the harshness of the *Balakotaiah* ruling. *Balakotaiah* seemed to suggest that a government servant cannot exercise any freedom under Art. 19 and he can enjoy his freedom only if he gives up government service. But *Devendrappa* ruling permits some space to a government servant to enjoy his freedoms subject to proper functioning of the state. A balance has to be drawn between the interests of a government servant as a citizen and the interests of the state as an employer in promoting the efficiency of public service.

## Right to Strike

In the case of *All India Bank Employees vs National Industrial Tribunal* 1962 SCR (3) 269, the court held: “The object for which labour unions are brought into being and exist is to ensure collective bargaining by labour with

the employers. The necessity for this has arisen from an incapacity stemming from the handicap of poverty and consequent lack of bargaining power in workmen as compared with employers which is the reason for the existence of labour organizations. Collective bargaining in order to be effective must be enforceable labour withdrawing its co-operation from the employer and there is consequently a fundamental right to strike a right which is thus a natural deduction from the right to form unions guaranteed by sub-cl. (c) of cl.(1) of Art. 19. As strikes, however, produce economic dislocation of varying intensity or magnitude, a system has been devised by which compulsory industrial adjudication is substituted for the right to strike. This is the ratio underlying the provisions of the Industrial Disputes Act 1947 under which Government is empowered in the event of an industrial dispute which may ultimately lead to a strike or lock-out or when such strikes or lock-outs occur, to refer the dispute to an impartial Tribunal for adjudication with a provision banning and making illegal strikes or lock-outs during the pendency of the adjudication proceedings. The provision of an alternative to a strike in the shape of industrial adjudication is a restriction on the fundamental right to strike and it would be reasonable and valid only if it were an effective substitute.”

In the case of *Mineral Miners' Union v. Kudremukh Iron Ore Co. Ltd.* ILR 1988 KAR 2878, the court held: “The consequential hardship to go on strike, due to the delay in the action of the authorities under the Act, was held to be unfortunate, by the Supreme Court; but such a delay would not vest a right in the workmen to ignore the mandatory requirements of the law. The remedy of workmen lies elsewhere. As the Act now stands, it is not possible to entertain the plea put forth by the learned Counsel for the workmen.”

In *Syndicate Bank v. K. Umesh Nayak*, (AIR 1995 SC 319) Justice Sawant opined: “The strike, as a weapon, was evolved by the workers as a form of direct action during their long struggle with the employer, it is essentially a weapon of last resort being an abnormal aspect of employer-employee relationship and involves withdrawal of labour disrupting production, services and the running of enterprise. It is abuse by the labour of their economic power to bring the employer to meet their viewpoint over the dispute between them. The cessation or stoppage of works whether by the employees or by the employer is detrimental to the production and economy and to the well-being of the society as a whole. It is for this reason that the industrial legislation, while not denying for the rights of workmen to strike, has tried to regulate it along with the rights of the employers to lockout and has also provided machinery for peaceful investigation, settlement arbitration and adjudication of dispute between them.

The strike or lockout is not to be resorted to because the concerned party has a superior bargaining power or the requisite economic muscle to compel the other party to accept its demands. Such indiscriminate case of power is nothing but assertion of the rule of ‘might is right’. Thus, initially, employees must resort to dispute settlement by alternative mechanisms. Only under extreme situations when the alternative mechanisms have totally failed to provide any amicable settlement, can they resort to a strike as a last resort.

Even a very liberal interpretation of Article 19(1) (c) cannot lead to the conclusion that the trade unions have a guaranteed right to an effective collective bargaining or to strike, either as part of collective bargaining or otherwise. The right to strike or the right to declare a lockout may be controlled or restricted by appropriate industrial legislation. (*Baldev Singh Gandhi v. State of Rajasthan*, AIR 2002 SC 1124).

### Article 21 of the Constitution

Article 21 of the constitution of India reads as:

“No person shall be deprived of his life or personal liberty except according to a procedure established by law.”

Article 21 assures every person right to life and personal liberty. The term ‘life’ has been given a very expansive meaning. The term ‘personal liberty’ has been given a very wide amplitude covering a variety of rights which go to constitute personal liberty of a citizen. Its deprivation shall only be as per the relevant procedure prescribed in the relevant law, but the procedure has to be fair, just and reasonable.

The right to life enshrined in Article 21 has been liberally interpreted so as to mean something more than mere survival and mere existence or animal existence. It therefore includes all those aspects of life which go to make a man’s life meaningful, complete and worth living.

In course of time, Article 21 has come to be regarded as the heart of Fundamental Rights. Article 21 has enough of positive content in it and it is not merely negative in its reach. This liberal interpretation of Article 21 by judiciary has led to two very spectacular results within the last two decades, viz.:

- (1) Many Directive Principles which, as such, are not enforceable have been activated and have become enforceable.
  - a) Right to livelihood;
  - b) Right to live with human dignity;
  - c) Right to medical care;
  - d) Health of labour;
  - e) Sexual harassment;
  - f) Right to health;
  - g) Economic Rights.
- (2) The Supreme Court has implied a number of Fundamental Rights from Art. 21.

In the case of *Olga Tellis & Ors v. Bombay Municipal Corporation*, AIR 1986 SC 180, the Court held: "As we have stated while summing up the petitioners' case, the main plank of their argument is that the right to life which is guaranteed by Article 21 includes the right to livelihood and since, they will be deprived of their livelihood if they are evicted from their slum and pavement dwellings, their eviction is tantamount to deprivation of their life and is hence unconstitutional. For purposes of argument, we will assume the factual correctness of the premise that if the petitioners are evicted from their dwellings, they will be deprived of their livelihood. Upon that assumption, the question which we have to consider is whether the right to life includes the right to livelihood. We see only one answer to that question, namely, that it does. The sweep of the right to life conferred by Article 21 is wide and far reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life. Indeed, that explains the massive migration of the rural population to big cities. They migrate because they have no means of livelihood in the villages. The motive force which people their desertion of their hearths and homes in the village is that struggle for survival, that is, the struggle for life. So unimpeachable is the evidence of the nexus between life and the means of livelihood. They have to eat to Live. Only a handful can afford the luxury of living to eat. That they can do, namely, eat, only if they have the means of livelihood. That is the context in which it was said by Douglas J. in *Baksey* that the right to work is the most precious liberty because, it sustains and enables a man to live and the right to life is a precious freedom. "Life", as observed by Field, J. in *Munn v. Illinois*, (1877) 94 U.S. 113, means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed"

In the case of *D.K. Yadav v. J.M.A. Industries Ltd* 1993 SCR (3) 930, the court held: "Article 21 of the Constitution clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. When it is interpreted that the colour and content of procedure established by law must be in conformity with the minimum fairness and processual justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence. The order of termination of the service of an employee/workman visits with civil consequences of jeopardising not only his/

her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee/workman, fair play requires that a reasonable opportunity to put forth his case is given and domestic enquiry conducted complying with the principles of natural justice.”

In the case of *Paschim Banga Khet Mazdoor Samity v. State of West Bengal (AIR 1996 SC 2426)*, a mazdoor fell from a running train and was seriously injured. He was sent from one government hospital to another and finally he had to be admitted in a private hospital where he had to incur an expenditure of Rs. 17,000/- on his treatment. Feeling aggrieved at the indifferent attitude shown by the various government hospitals, he filed a writ petition in the Supreme Court under Art. 32. The Court has ruled that: “the Constitution envisages establishment of a welfare state, and in a welfare state, the primary duty of the government is to provide adequate medical facilities for the people. The Government discharges this obligation by running hospitals and health centres to provide medical care to those who need them. Art. 21 imposes an obligation on the State to safeguard the right to life of every person. Preservation of human life is thus of paramount importance.”

Occupational accidents and diseases remain the most appalling human tragedy of modern industry. Health hazards faced by the workers in the Asbestos factories were brought to the attention of the Supreme Court in *CERC v. Union of India, AIR 1995 SC 922* ) in which after taking note of the cases in which it has been held that the right to life in Art. 21 includes “right to human dignity”, the Court now held that: “right to health, medical aid to protect the health and vigour of a worker while in service or post-retirement is a Fundamental Right under Article 21, read with the Directive Principles in Articles 39(1), 41, 43, 48A and all related Articles and fundamental human rights to make the life of the workmen meaningful and purposeful with dignity of person.”

The Supreme Court has made a novel use of Article 21 to ensure that the female workers are not sexually harassed by their male co-workers at their places of work.

In the case of *Vishakha & Ors. v. State of Rajasthan (1997) 6 SCC 241* whereby a woman was assaulted and harassed at her workplace, the Supreme Court observed: “Each such incident results in violation of the fundamental rights of ‘Gender Equality’ and the ‘Right of Life and Liberty’. It is clear violation of the rights under Articles 14, 15 and 21 of Constitution. One of the logical consequences of such an incident is also the violation of the victim’s fundamental right under Article 19(1)(g) ‘to practice any profession or to carry out any occupation, trade or business.’”

The Parliament enacted Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 on December 9, 2013 that seeks to protect women from sexual harassment at their place of work. This statute superseded the Vishakha Guidelines for prevention of sexual harassment introduced at work place by the Supreme Court of India.

### Article 23 and Article 24: Right Against Exploitation

According to Article 23(1), traffic in human beings, *begar*, and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. Article 23(1) proscribes three unsocial practices, viz., (1) *begar*; (2) traffic in human beings; and (3) forced labour.

The term ‘*begar*’ means compulsory work without any payment. *Begar* is labour or service which a person is forced to give without receiving any remuneration for it.

Withholding of pay of a government employee as a punishment has been held to be invalid in view of Article 23 which prohibits *begar*. ‘To ask a man to work and then not to pay him any salary or wages savours of *begar*. It is a Fundamental Right of a citizen of India not to be compelled to work without wages.’ (*Suraj v. State of Madhya Pradesh, AIR 1960 MP 303*).

The expression ‘traffic in human beings,’ commonly known as slavery, implies the buying and selling of human beings as if they are chattels, and such a practice is constitutionally abolished.

The words ‘other similar forms of forced labour’ in Article 23(1) are to be interpreted *ejusdem generis*. The kind of ‘forced labour’ contemplated by the Article has to be something in the nature of either traffic in human beings or *begar*. The prohibition against forced labour is made subject to one exception. Under Article 23(2),

the State can impose compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them. The State may thus exempt women from compulsory service for that will be discrimination on the ground of sex and this has not been forbidden by Article 23(2).

The Supreme Court has given an expansive significance to the term “forced labour” used in Art. 23(1) in a series of cases beginning with the *Asiad* case in 1982. (*People’s Union for Democratic Rights v. Union of India*, AIR 1982 SC 1473). The Court has insisted that Article 23 is intended to abolish every form of forced labour even if it has origin in a contract. Article 23 strikes at forced labour in whatever form it may manifest itself, because it is violative of human dignity and is contrary to the basic human values.

in *Sanjit Roy v. State of Rajasthan*, 1983, SCR (2) 271 case, it was held that when a person provides labour or service to another for remuneration which is less than the prescribed minimum wages, the labour so provided clearly falls within the ambit of the words ‘forced labour’ under Article 23. The rationale adopted was that when someone works for less than the minimum wages, the presumption is that he or she is working under some compulsion. Hence it was held that such a person would be entitled to approach the higher judiciary under writ jurisdiction (Article 226 or Article 32) for the enforcement of fundamental rights which include the payment of minimum wages.

Article 24 of the Constitution of India states that “no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment”. Article 24 is also enforceable against private citizens and lays down a prohibition against the employment of children below the age of fourteen years in any factory or mine or any other hazardous employment. This is also in consonance with Articles 39(e) and (f) in Part IV of the Constitution which emphasizes the need to protect the health and strength of workers, and also to protect children against exploitation. The Child Labour (Prohibition and Regulation) Act, 1986 specifically prohibits the employment of children in certain industries deemed to be hazardous and provides the scope for extending such prohibition to other sectors.

In *Peoples Union for Democratic Rights v. Union of India*: (AIR 1982 SC 1473) also known as the *Asiad Workers* case the Supreme Court observed that though the Employment of Children Act, 1938 did not include the construction work because the construction industry was not a process specified in the Schedule to the Act, yet, such construction was a hazardous occupation and under Article. 24 children under 14 could not be employed in a hazardous occupation. The right of a child against exploitation under Article 24 is enforceable even in the absence of implementing legislation.

In *M.C.Mehta v. State of T.N.*: (AIR 1997 SC 699) the Supreme Court directed that the employers of children below 14 years must comply with the provisions of the Child Labour (Prohibition and Regulation) Act providing for compensation, employment of their parents / guardians and their education.

Article 39(f) of the Constitution of India enumerates the importance of protecting children from exploitation and to give them proper opportunities and facilities to develop. These ideas are in consonance with the prohibitions against ‘forced labour’ and employment of children below the age of fourteen years, which have been laid down under Article 23 and 24 respectively.

### LABOUR LAWS WITH REFERENCE TO DIRECTIVE PRINCIPLES OF STATE POLICY

The makers of the Constitution had realized that in a poor country like India, political democracy would be useless without economic democracy. Accordingly, they incorporated a few provisions in the Constitution with a view to achieve amelioration of the socio-economic condition of the masses. Today we are living in an era of welfare state which seeks to promote the prosperity and well-being of the people. The Directive Principles strengthen and promote this concept by seeking to lay down some socio-economic goals which the various governments in India have to strive to achieve. The Directive Principles are designed to usher in a social and economic democracy in the country. These principles obligate the state to take positive action in certain directions in order to promote the welfare of the people and achieve economic democracy. These principles give directions to the legislatures and the executive in India as regards the manner in which they should exercise their power.



The Courts however do not enforce a directive principle enshrined in Part IV of the Constitution unlike rights enshrined in Part III. The reason behind the legal non-enforceability and non-justiciability of these principles is that they impose positive obligations on the state. While taking positive action, government functions under several restraints, the most crucial of these being that of financial resources. The constitution-makers, therefore, taking a pragmatic view refrained from giving teeth to these principles. They believed more in an awakened public opinion, rather than in Court proceedings, as the ultimate sanction for the fulfillment of these principles. Nevertheless, the Constitution declares that the Directive Principles, though not enforceable by any Court, are 'fundamental' in the governance of the country, and the 'state' has been placed under an obligation to apply them in making laws. The state has thus to make laws and use its administrative machinery for the achievement of these Directive Principles. Further, as reflected in its various recent judgements, the court is now more inclined in the integrative approach towards Fundamental Rights and Directive Principles; or that the both should be interpreted and read together. It has now become a judicial strategy to read Fundamental Rights along with Directive Principles with a view as the latter defines the scope and ambit of former. Mostly, Directive Principles have been used to broaden, and to give depth to some Fundamental Rights and to imply some more rights therefrom for the people over and above what are expressly stated in the Fundamental Rights. Articles 38, 39, 41, 42 and 43 have a special relevance in the field of industrial legislation and adjudication. In fact, they are the substratum or rather 'magna carta' of industrial jurisprudence. They encompass the responsibility of the Government, both Central and State, towards the labour to secure for them social order and living wages, keeping with the economic and political conditions of the country.

### Social Order Based on Socio-Economic Justice

Article 38(1) directs the state to strive "to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life."

Article 38(2) directs the state to strive "to minimise the inequalities in income," and endeavour "to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also groups of people residing in different areas or engaged in different vocations".

Article 38 needs to be read along with Article 14. This directive reaffirms what has been declared in the Preamble to the Constitution, viz., the function of the Republic is to secure, inter alia, social, economic and political justice. On the concept of equality envisaged by Article 38, the Supreme Court has observed *in the case Sri Srinivasa Theatre v. Govt. of Tamil Nadu, AIR 1992 SC 999*: "Equality before law is a dynamic concept having many facets. One facet--the most commonly acknowledged--is that there shall be no privileged person or class and that none shall be above law. A facet which is of immediate relevance herein is the obligation upon the state to bring about, through the machinery of law, a more equal society envisaged by the Preamble and Part IV of our Constitution [viz. Directive Principles]. For, equality before law can be predicated meaningfully only in an equal society, i.e., in a society contemplated by Article 38 of the Constitution."

Reading Articles 21, 38, 42, 43, 46 and 48A together, the Supreme Court has concluded in *Consumer Education & Research Centre v. Union of India (AIR 1995 SC 923)*, that "right to health, medical aid to protect the health and vigour of a worker while in service or post retirement is a Fundamental Right...to make the life of the workman meaningful and purposeful with dignity of person." Health of the worker enables him to enjoy the fruit of his labour, keeping him physically fit and mentally alert for leading a successful life, economically, socially and culturally. Medical facilities to protect the health of the workers are, therefore, the fundamental and human rights of the workmen.

Article 38 is always supplemented and must be read with Article 39 which seeks to lay down the guidelines and principles for achieving such social order.

### Principles of State Policy

Article 39 requires the state, in particular, to direct its policy towards securing:

- (a) that all citizens, irrespective of sex, equally have the right to an adequate means of livelihood;
- (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

- (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
- (d) that there is equal work for both men and women;
- (e) that the health and strength of workers, men and women, and tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
- (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

The Supreme Court has taken recourse to Art. 39(a) to interpret Art. 21 to include therein the “right to livelihood.” The Supreme Court has observed in *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180, that : “If there is an obligation upon the State to secure to the citizens an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life.”

The Supreme Court has however put a rider on the right to livelihood. The state may not be compelled, by affirmative action, “to provide adequate means of livelihood or work to the citizens.” But the state is under a negative obligation, viz., not to deprive a person of this right without just and fair procedure. Thus, according to the Court: “But, any person, who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred by Art. 21.”

In a major pronouncement in *Madhu Kishwar v. State of Bihar*, AIR 1996 SC 1870 with a view to protect the economic interests of tribal women depending on agriculture for their livelihood, the Supreme Court has ruled that on the death of the last male holder in an agricultural tribal family, the dependent family female members have the constitutional remedy of continuing to hold the land so long as they remain dependent on it to earn their livelihood. Otherwise, the females will be rendered destitute. It is only on the exhaustion of, or abandonment of land by such female descendants, can the males in the line of descent takeover the holding exclusively. The Court has come to this conclusion on the basis of Article 39(a) which puts an obligation on the state to secure to all men and women equally, the right to an adequate means of livelihood.

The directive principles of State policy have to be reconciled with the fundamental rights available to the citizens under Part III of the Constitution and the obligation of the State is to one and all and not to a particular group of citizens.

Article 39(b) and (c) are very significant constitutional provisions as they affect the entire economic system in India. The aim of socialism is the distribution of the material resources of the community in such a way as to subserve the common good. Socialism means distributive justice—an idea ingrained in Article 39(b).

Pursuant to Article 39 (d), Parliament has enacted the Equal Remuneration Act, 1976. The directive contained in Article 39 (d) and the Act passed thereto can be judicially enforceable by the court. The Act provides for payment of equal remuneration to men and women workers for the same work, or work of a similar nature and for the prevention of discrimination on grounds of sex. The Act also ensures that there will be no discrimination against recruitment of women and provides for the setting up of advisory committees to promote employment opportunities for women. Provision is also made for appointment of officers for hearing and deciding complaints regarding contravention of the provisions of the Act. Inspectors are to be appointed for the purpose of investigating whether the provisions of the Act are being complied by the employers. Non-observance of the Act by government contractors has been held to raise questions under Article 14.

Besides the principle of gender equality in the matter specifically embodied in Article 39(d), the Supreme Court has extracted the general principle of equal pay for equal work by reading Articles. 14, 16 and 39(d).

In the case of *Randhir Singh v. Union of India* (1982 AIR 879) the Supreme Court has held that the principle of “Equal pay for equal work though not a fundamental right” is certainly a constitutional goal and, therefore, capable of enforcement through constitutional remedies under Article 32 of the Constitution. The doctrine of equal pay for equal work is equally applicable to persons employed on a daily wage basis. They are also entitled to the same wages as other permanent employees in the department employed to do the identical work.

However, the doctrine of 'equal pay for equal work' cannot be put in a strait jacket. This right, although finds place in Article 39, is an accompaniment of equality clause enshrined in Articles 14 and 16 of the Constitution. Reasonable classification, based on intelligible criteria having nexus with the object sought to be achieved is permissible. Accordingly, it has been held that different scales of pay in the same cadre of persons doing similar work can be fixed if there is difference in the nature of work done and as regards reliability and responsibility.

The principle of "equal pay for equal work" was discussed in *D.S. Nakara vs. Union of India 1983 AIR 130*, the Court held that: "Article 38(1) enjoins the State to strive to promote the welfare of the people by securing and protecting as effective as it may a social order in which justice social, economic and political shall inform all institutions of the national life. In particular, the State shall strive to minimise the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities. Art.39 (d) enjoins a duty to see that there is equal pay for equal work for both men and women and this directive should be understood and interpreted in the light of the judgement of this court in *Randhir Singh v. Union of India (1982 AIR 879)*."

In *State of A.P. v. V. G. Sreenivasa Rao (1989) 2 SC 290*, it has been held that giving higher pay to a junior in the same cadre is not illegal and violative of Articles 14, 16 and 39 (d) if there is rational basis for it.

The principle of 'equal pay for equal work' may properly be applied to cases of unequal scales of pay based on no classification or irrational classification though those drawing different scales of pay do identical work under the same employer.

In *F.A.I.C. and C.E.S. v. Union of India (AIR 1988 SC 1291)*, the Supreme Court has held that different pay scales can be fixed for government servants holding same post and performing similar work on the basis of difference in degree of responsibility, reliability and confidentiality, and as such it will not be violative of the principle of equal pay for equal work, implicit in Article 14. The Court said, Equal pay must depend upon the nature of the work done. It cannot be judged by the mere volume of work. There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference.

In pursuance of the doctrine of equal pay for equal work, the Supreme Court has ruled in *State of Haryana v. Rajpal Sharma (AIR 1997 SC 449)*, *inter alia*, that teachers employed in aided schools be paid the same salary and dearness allowance as is paid to teachers employed in government schools. The Court has observed: "The application of doctrine arises where employees are equal in every respect, in educational qualifications, duties, functions and measure of responsibilities and yet they are denied equality in pay. If the classification for prescribing different scales of pay is founded on reasonable nexus the principle will not apply."

The state cannot deny to casual labourers at least the minimum pay in the pay-scales of regularly employed workmen. Such denial amounts to exploitation of labour which is not permissible.

More recently while holding that the State Government could not differentiate in the matter of pay scales between officers presiding over the Industrial Tribunal and District Judges, the Court said that although the doctrine of "equal pay for equal work" was originally propounded as part of the directive principles of State policy in Article 39(d), having regard to the constitutional mandate of equality and inhibition against discrimination in Articles 14 and 16, in service jurisprudence, the doctrine of "equal pay for equal work" has assumed the status of a fundamental right. (*State of Kerala v. B. Renjith Kumar, (2008) 12 SCC 219*).

If we read Article 39(e) and (f) together, it is obvious that one of the objectives is that the state should, in particular, direct its policy towards securing that childhood and youth are protected against exploitation and against moral and material abandonment.

Clause (f) was modified by the Constitution (42nd Amendment) Act, 1976 with a view to emphasize the constructive role of the State with regard to children. In *M. C. Mehta v. State of Tamil Nadu, (1991) 1 SCC 283* it has been held that in view of Article 39 the employment of children within the match factories directly connected with the manufacturing process of matches and fireworks cannot be allowed as it is hazardous. Children can, however, be employed in the process of packing but it should be done in area away from the place of manufacturing to avoid exposure to accidents. In another landmark judgment in *M. C. Mehta v. State of T. N. known as (Child Labour Abolition case)* a three Judges Bench of the Supreme Court held that children below the age of 14 years cannot be employed in any hazardous industry, or mines or other work.



In *Bandhua Mukti Morcha v. Union of India*, the Supreme Court read Article 21 and 23 with Article 39(e) and (f) and Article 41 and 42 to secure the release of bonded labour and free them from exploitation. The Court has observed in this connection: "This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly Articles 41 and 42."

It is not only the question of release of bonded labour but also of their proper rehabilitation after release. The Supreme Court has insisted upon effective rehabilitation of the freed bonded labour families.

### Social Security Provisions

Article 41 requires the state, within the limits of its economic capacity and development, to make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

Social security is guaranteed in our Constitution under Articles 39, 41 and 43. The Employees' State Insurance Act, 1948 is a pioneering piece of legislation in the field of social insurance. The Employees' State Insurance Scheme provides for benefits in cash except the medical benefit, which is in kind. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and the Maternity Benefit Act, 1961 are also social security measures to help fulfill the objectives of directive principles of our Constitution. The Provident Fund Scheme aimed at providing substantial security and timely monetary assistance to industrial employees and their families. The Maternity Benefit Scheme is primarily designed to provide maternity leave with full wages and security of employment. The object of the Payment of Gratuity Act, 1972 is to provide a scheme for the payment of gratuity to employees employed in factories, mines, oil fields, plantations, ports, railways, shops and establishments. Besides social security benefits, efforts have also been made to provide ample opportunities for employment and for workers' education. The Apprentices Act, 1961 was enacted to supplement the programme of institutional training by on-the-job training and to regulate the training arrangements in industry. Employment exchanges play an important role for the job seekers. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1969 has made it obligatory on the employers to notify vacancies occurring in their establishments to the prescribed employment exchanges before they are filled. The voluntary workers education scheme was launched in our country in 1958 to educate the workers in trade union philosophy and methods, and to promote physical awareness of problems, privileges and obligations as workers and citizens.

As already stated, by reading Articles 21, 39(a) and 41, the Supreme Court has included the right to livelihood as a part of right to life under Art. 21. This however does not mean that the state may be compelled by affirmative action to provide adequate means of livelihood or work to the citizens. The ground reality is that the number of available jobs is limited, and hence Courts must take a realistic view of the matter and must exercise self-restraint. But, it does certainly mean that the state shall not deprive any person of his livelihood except according to just and fair procedure established by law.

It will thus be seen that from the traditional right to life an important economic right has been derived. Art. 41 directs the state to make effective provision for securing the right to work but within the limits of its economic capacity and development. A rule made by a government company authorising it to terminate the employment of a permanent employee by giving him three months' notice and without giving him a hearing has been held to be violative of Arts. 39(a) and 41 and ultra vires Art. 14 in *Central Inland Water Transport Corpn. Ltd. v. Brojo Nath (AIR 1986 SC 1571)*. The Court has observed: "An adequate means of livelihood cannot be secured [ Art. 39(a)] to the citizens by taking away without any reason the means of livelihood. The mode of making effective provisions for securing the right to work [ Art. 41] cannot be by giving employment to a person and then without any reason throwing him out of employment."

Commenting on Article 41, the Supreme Court has observed in the case of *Delhi Development Horticulture Employees' Union v. Delhi Administration, AIR 1992 SC 789*: "This country has so far not found it feasible to incorporate the right to livelihood as a Fundamental Right in the Constitution. This is because the country has so far not attained the capacity to guarantee it, and not because it considers it any the less fundamental to life. Advisedly, therefore, it has been placed in the Chapter on Directive Principles, Article 41 of which enjoins upon the State to make effective provision for securing the same "within the limits of its economic capacity and

development.” Thus, even while giving the direction to the State to ensure the right to work, the Constitution-makers thought it prudent not to do so without qualifying it.”

### Working Conditions

Article 42 requires the state to make provision for securing just and humane conditions of work and for maternity relief.

Article 42 provides the basis of the large body of labour law that obtains in India. Referring to Arts. 42 and 43, the Supreme Court has emphasized that the Constitution expresses a deep concern for the welfare of the workers. By reading Article 21 with several Directive principles including Art 42, the Supreme Court has given broad connotation to Art 21 so as to include therein “the right to live with human dignity”.

Substantial steps have been taken to fulfill the object of Article 42 of the Constitution. The Factories Act, 1948 provides for health, safety, welfare, employment of young persons and women, hours of work for adults and children, holidays and leave with wages. Labour welfare funds have been set-up to provide welfare facilities to the workers employed in different mines such as coal, mica, iron ore and limestone. The Contract Labour (Regulation and Abolition) Act of 1970, a piece of social legislation, provides for the abolition of contract labour wherever possible and to regulate the conditions of contract labour in establishments or employments where the abolition of contract labour system is not considered feasible for the time being.

Article 42 is one of the hall marks of the Indian Constitution as it takes into consideration the very specific context of pregnancy related discrimination in the context of employment and therefore it directs the State to make provisions for securing not only just and humane conditions of work but also for Maternity Relief. It is in this context that the Government of India went on to enact the Maternity Benefit Act, 1961 which enables women in the labour force who have been employed for 160 days in a year to provide leave with pay and medical benefit.

### Living Wage

Article 43 requires the state to endeavour to secure, by suitable legislation, or economic organisation, or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full employment of leisure and social and cultural opportunities. In particular, the state is to promote cottage industries on an individual or co-operative basis in rural areas.

Article 43 imposes an obligation towards ensuring the provision of a ‘living wage’ in all sectors as well as acceptable conditions of work. This provision enunciates the revolutionary doctrine that employees are entitled as of right to certain reliefs.

A ‘living wage’ is such wage as enables the male earner to provide for himself and his family not merely the bare essentials of food, clothing and shelter, but includes education for children, protection against ill-health, requirements of essential social needs, and a measure of insurance against the more important misfortunes including old age. A ‘minimum wage’, on the other hand, is just sufficient to cover the bare physical needs of a worker and his family. Minimum wage is to be fixed in an industry irrespective of its capacity to pay. Fixation of minimum wage is in public interest and does not impose an unreasonable restriction on the right to carry on a trade guaranteed by Article 19(1)(g). (*Edward Mills Co. v. Ajmer*, AIR 1955 SC 25).

A ‘fair wage’ is a mean between ‘living wage’ and ‘minimum wage’. ‘Living’ and ‘fair’ wages have to be fixed keeping in view the capacity of the industry to pay. Commenting on Article 43, the Supreme Court has observed that while our political aim is ‘living wage’ for workers, in actual practice, this ideal has eluded our efforts so far and that our general wage structure has at best reached the lower level of ‘fair wage.’ (*All India Reserve Bank Employees v. Reserve Bank*, AIR 1966 SC 305).

To provide social justice to the unorganised labour and to prevent exploitation, the Minimum Wages Act, 1948 was enacted. The Act has been characterised “just the first step” in the direction of fulfilling the mandate given under Article 43. It provides for the fixation of minimum rates of wages by the central or state governments within a specified period for workers employed in certain scheduled employments. The minimum wage in any event must be paid irrespective of the capacity of the industry to pay.

The Supreme Court has rejected the argument that the pattern of wage fixation in case of government companies in public sector should necessarily be different from companies in private sector, arguing that Article 39 and 43 would be disobeyed if distinction is made between the same class of labourers on the ground that some of them are employed in state enterprises and others in private enterprises. (*Hindustan Antibiotics v. Workmen*, AIR 1967 SC 948)

Payment of a statutory minimum bonus even when the management sustains a loss is justifiable under Articles 39 and 43. (*Jalan Trading Co. v. D.M. Aney*, AIR 1979 SC 233).

In *D.S. Nakara v. Union of India*, AIR 1983 SC 130, the Constitution Bench of the Supreme Court has held that pension is not only compensation for loyal service rendered in the past, but also by the broader significance it is a social welfare measure rendering socio-economic justice by providing economic security in the fall of life when physical and mental prowess is ebbing corresponding to the aging process and, therefore, one is required to fall back upon savings.

The Court emphasized on three features while describing the nature of pension given to a government servant on retirement, thereof: (1) Pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and it creates a vested right; (2) pension is not an ex gratia payment but it is a payment for the past service rendered; and (3) it is a social welfare measure rendering socio-economic justice to those who in the pinnacle of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch.

The proposition that the pension and gratuity are not regarded as bounty by the state but these are regarded as statutory rights has been reiterated by the Supreme Court in several cases. (*D.V. Kapoor v. Union of India*, AIR 1990 SC 1923).

The primary aim of a socialist state is to eliminate inequality in income, status and standards of life. This envisages economic equality and equitable distribution of income.

### Workers Participation in Management

Article 43-A which was introduced by the 42nd Amendment in 1976, has a direct bearing on labour laws, in so far as it provides that the State shall take steps by suitable legislation or any other means to secure the participation of workers in the management of industrial establishments.

The workers' participation in management is not a novel and imported idea from outside. It can be dated as far back as 1920 when Mahatma Gandhi suggested participation of workers in management on the ground that workers contributed labour and brains while shareholders contributed money to the enterprise and that both should, therefore, share in its property. He said that there should be a perfect relationship of friendship and cooperation among them. For the unions, he said that the aim should be to raise the moral and intellectual height of labour and, thus, by sheer merit, make labour master of the means of production instead of the slave that it is.

After independence, the first major step in the direction of workers' participation in management in India was the enactment of the Industrial Disputes Act, 1947 with the dual purpose of prevention and settlement of industrial disputes. The Industrial Policy Resolution, 1948 advocated Workers Participation in Management by suggesting that labour should be in all matters concerning industrial production.

The First Five-Year Plan and the successive plans emphasised the need for workers' participation in management. For example, the Second Five-Year Plan' stressed the need for Workers Participation in Management in the following words: "It is necessary in this context that the worker should be made to feel that in his own way he is helping build a progressive state. The creation of industrial democracy, therefore, is a prerequisite for the establishment of a socialist society".

### Forms of Workers Participation in Management in India

The various forms of workers' participation in management currently prevalent in the country are:

1. **Suggestion schemes:** Participation of workers can take place through suggestion scheme. Under this method workers are invited and encouraged to offer suggestions for improving the working of the

enterprise. A suggestion box is installed and any worker can write his suggestions and drop them in the box. Periodically all the suggestions are scrutinized by the suggestion committee or suggestion screening committee. The committee is constituted by equal representation from the management and the workers. The committee screens various suggestions received from the workers. Good suggestions are accepted for implementation and suitable awards are given to the concerned workers. Suggestion schemes encourage workers' interest in the functioning of an enterprise.

2. **Works committee:** Under the Industrial Disputes Act, 1947, every establishment employing 100 or more workers is required to constitute a works committee. Such a committee consists of equal number of representatives from the employer and the employees. The main purpose of this committee is to provide measures for securing and preserving amity and good relations between the employer and the employees.

Functions: *Works committee deals with matters of day-to-day functioning at the shop floor level. Works committees are concerned with:*

- Conditions of work such as ventilation, lighting and sanitation.
- Amenities such as drinking water, canteens, dining rooms, medical and health services.
- Educational and recreational activities.
- Safety measures, accident prevention mechanisms etc.
- Works committees function actively in some organizations like Tata Steel, HLL, etc. but the progress of Works Committees in many organizations has not been very satisfactory due to the following reasons:
- Lack of competence and interest on the part of workers' representatives.
- Employees consider it below their dignity and status to sit alongside blue-collar workers.
- Lack of feedback on performance of Works Committee.
- Undue delay and problems in implementation due to advisory nature of recommendations.

3. **Joint Management Councils:** Under this system Joint Management Councils are constituted at the plant level. These councils were setup as early as 1958. These councils consist of equal number of representatives of the employers and employees, not exceeding 12 at the plant level. The plant should employ at least 500 workers. The council discusses various matters relating to the working of the industry. This council is entrusted with the responsibility of administering welfare measures, supervision of safety and health schemes, scheduling of working hours, rewards for suggestions, etc.

Wages, bonus, personal problems of the workers are outside the scope of Joint management councils. The council is to take up issues related to accident prevention, management of canteens, water, meals, revision of work rules, absenteeism, indiscipline etc. the performance of Joint Management Councils have not been satisfactory due to the following reasons:

- Workers' representatives feel dissatisfied as the council's functions are concerned with only the welfare activities.
- Trade unions fear that these councils will weaken their strength as workers come under the direct influence of these councils.

4. **Work directors:** Under this method, one or two representatives of workers are nominated or elected to the Board of Directors. This is the full-fledged and highest form of workers' participation in management. The basic idea behind this method is that the representation of workers at the top-level would usher Industrial Democracy, congenial employee-employer relations and safeguard the workers' interests. The Government of India introduced this scheme in several public sector enterprises such as Hindustan Antibiotics, Hindustan Organic Chemicals Ltd etc. However, the scheme of appointment of such a director from among the employees failed miserably and the scheme was subsequently dropped.

5. **Co-partnership:** Co-partnership involves employees' participation in the share capital of a company in which they are employed. By virtue of their being shareholders, they have the right to participate in the management of the company. Shares of the company can be acquired by workers making cash payment or by way of stock options scheme. The basic objective of stock options is not to pass on control in the hands of employees but providing better financial incentives for industrial productivity. But in developed countries, WPM through co-partnership is limited.
6. **Joint Councils:** The joint councils are constituted for the whole unit, in every Industrial Unit employing 500 or more workers; there should be a Joint Council for the whole unit. Only such persons who are actually engaged in the unit shall be the members of Joint Council. A joint council shall meet at least once in a quarter. The chief executive of the unit shall be the chairperson of the joint council. The vice-chairman of the joint council will be nominated by the worker members of the council. The decisions of the Joint Council shall be based on the consensus and not on the basis of voting.

In 1977 the above scheme was extended to the PSUs like commercial and service sector organizations employing 100 or more persons. The organizations include hotels, hospitals, railway and road transport, post and telegraph offices, state electricity boards.

7. **Shop councils:** *Government of India on the 30th of October 1975 announced a new scheme in WPM. In every Industrial establishment employing 500 or more workmen, the employer shall constitute a shop council. Shop council represents each department or a shop in a unit. Each shop council consists of an equal number of representatives from both employer and employees. The employers' representatives will be nominated by the management and must consist of persons within the establishment. The workers' representatives will be from among the workers of the department or shop concerned. The total number of employees may not exceed 12.*

Functions of Shop Councils:

- I. Assist management in achieving monthly production targets.
- II. Improve production and efficiency, including elimination of wastage of man power.
- III. Study absenteeism in the shop or department and recommend steps to reduce it.
- IV. Suggest health, safety and welfare measures to be adopted for smooth functioning of staff.
- V. Look after physical conditions of working such as lighting, ventilation, noise and dust.
- VI. Ensure proper flow of adequate two-way communication between management and workers.

### LESSON ROUND-UP

- Majority of the countries throughout the world have a basic document of Government called "Constitution". The Constitution of a country is the fundamental law of the land on the basis of which all other laws are made and enforced. Every organ of the state, be it the executive or the legislative or the judiciary, derives its authority from the constitution and there is no authority, no department or branch of the State, which is above or beyond the Constitution or has powers unfettered and unrestricted by the Constitution.
- The Constitution of India has conferred innumerable rights for the protection of labour. Article 14, 16, 19(1)(c), 21, 23, 24, 38, 39, 41, 42, 43 and 43A have significantly influenced the labour legislations in India and form the 'magna carta' of industrial jurisprudence in Indian context.
- Under the Constitution of India, Labour is a subject in the Concurrent list and hence both the Parliament and states are competent to enact the laws in respect of same. Labour legislations are socio-economic justice oriented and aim to achieve social and economic equalities.





### KEY CONCEPTS

■ International Labour Organisation ■ Governing Body ■ International Labour Office ■ International Labour Conference ■ Evaluation Policy ■ Declaration of Philadelphia

### Learning Objectives

#### To understand:

- History of International Labour Organisation (ILO)
- Aims and objectives of ILO
- Working of ILO
- ILO Evaluation Policy 2017
- India's Participation in ILOs

### Lesson Outline

- Introduction
- Aim and Objectives
- Working of the ILO
- Main bodies of ILO
- International Labour Conference
- Governing body
- International Labour Office
- Programme and Budget of the ILO
- Result Based Management
- Country Level Programming in the ILO
- History of the ILO
- Declaration of Philadelphia
- India & ILO
- Lesson Round-Up
- Test Yourself
- List of Further Readings



## INTRODUCTION

The only tripartite United Nation Agency, since 1919, the International Labour Organization (ILO) brings together governments, employers and workers of 187 member States, to set labour standards, develop policies and devise programmes promoting decent work for all women and men. The International Labour Organization (ILO) is devoted to promoting social justice and internationally recognized human and labour rights, pursuing its founding mission that social justice is essential to universal and lasting peace.

The main aim of the ILO is to promote rights at work, encourage decent employment opportunities, enhance social protection and strengthen dialogue on work-related issues. The unique tripartite structure of the ILO gives an equal voice to workers, employers and governments to ensure that the views of the social partners are closely reflected in labour standards and in shaping policies and programmes.

India and ILO have an enduring and vibrant relationship which is marked by close and dynamic cooperation over the years. Creation of a just and equitable World Order; securing distributive justice concurrently with economic growth and creation of employment opportunities for the purposes; increasing productivity to increase shareable gains; workers' participation; human resource development; human and environmental dimensions of technology; poverty alleviation; and economic reform with a human face are amongst the major thrust areas presented to ILO by India.

International Labour Organisation (ILO) is a nodal agency coming under the ambit of the United Nations (UN). Its primary objective is to deal with issues related to labour, namely, maintaining international labour standards, ensuring social protection and providing work opportunities to all. Established in 1919, it works towards setting up labour standards, developing policies and chalking out programmes promoting decent work for all men and women. The ILO functions with a unique tripartite structure, that brings together governments', employers' and workers' representatives.

## AIM AND OBJECTIVES

The aim and objectives of the ILO have been succinctly enshrined in the preamble to the ILO constitution, which is as follows-

Whereas universal and lasting peace can be established only if it is based upon social justice;

And whereas conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required; as, for example, by the regulation of the hours of work, including the establishment of a maximum working day and week, the regulation of the labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of equal remuneration for work of equal value, recognition of the principle of freedom of association, the organization of vocational and technical education and other measures;

Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries;

The High Contracting Parties, moved by sentiments of justice and humanity as well as by the desire to secure the permanent peace of the world, and with a view to attaining the objectives set forth in this Preamble, agree to the following Constitution of the International Labour Organization

The ILO currently has a membership of 187 states and is the oldest of UN agencies. It has its headquarters in Geneva, Switzerland, with a network of field offices present in more than 40 countries.

## ILO'S CONCEPT OF DECENT WORK

Decent work stands for the wishes and hopes of the working populace. It denotes the opportunities to work which is productive and is fairly remunerative, provides security and respectable working environment, allows

possibility of development and integration, and enables the workforce to have the decision-making power over issues affecting themselves.

The International Labour Organisation (ILO) works towards providing such a decent work and productive employment to the labour force worldwide. This is done with a view of reducing poverty rates and achieving just globalization throughout. This viewpoint has been strengthened after the economic and financial crisis of 2008.

To achieve this task, ILO looks at methods for job creation, providing rights at work, ensuring social protection, enabling channels for dialogue, all this with a basic objective of maintaining gender equality.

The concept of decent work and the constituents of this concept, namely employment creation, social protection, rights at work, and social dialogue, were included as integral elements of the UN General Assembly's 2030 Agenda for Sustainable Development. Out of the 17 sustainable development goals, important aspects of decent work were adopted in almost all the goals in varying degrees.

Heads of multilateral bodies with international standings such as G20, G7, EU, African Union etc. also pay heed to the implications of decent work and sustainable development.

The major objectives of the decent work agenda

- Set and promote standards and fundamental principles and rights at work;
- Create greater opportunities for women and men to decent employment and income;
- Enhance the coverage and effectiveness of social protection for all; and
- Strengthen tripartism and social dialogue.

### Working of the ILO

ILO functions on the basis of an underlying requirement of cooperation between governments', employers' and workers' organizations. Their cooperation is required for smooth functioning of the organization and ameliorating social and economic growth. The ILO sets labour standards, develop policies and devise programmes after taking into consideration the views put forward by all these members. This form of decision-making process is being termed as tripartism, as it includes the trinity of employers, workers and member States.

### Main bodies of ILO

There are three main bodies of ILO as prescribed in Article 2 of the ILO constitution. The article states-

*The permanent organization shall consist of:*

- a) A General Conference of representatives of the Members;
- b) A Governing Body composed as described in article 7; and
- c) An International Labour Office controlled by the Governing Body.

The outline of these bodies are given below-

#### International Labour Conference

The meeting of the members of ILO annually in Geneva is called the International Labour Conference (also known as International Parliament of Labour). Two government delegates represent each member state. All the delegates have been given equal right of expression. It's working is described under Article 3 of the ILO constitution as-

The meetings of the General Conference of representatives of the Members shall be held from time to time as occasion may require, and at least once in every year. It shall be composed of four representatives of each of the Members, of whom two shall be Government delegates and the two others shall be delegates representing respectively the employers and the workpeople of each of the Members.

The International Labour Conference has following important tasks:

- The crafting and adoption of international labour standards in the form of Conventions and Recommendations.
- To supervise the application of Conventions and Recommendations at the national level.
- To examine the Global Report prepared by the office under the follow-up procedure required by the declaration.
- Acts as a stage for the discussion of questions relating to social and labour issues. The central theme of discussion each year is the report presented by ILO's Director General.
- It is a forum to discuss the questions on social and labour importance.
- It passes resolutions for setting up guidelines for ILO's future deliberations and activities.

## GOVERNING BODY

It is the executive wing of the ILO. The governing body meets thrice a year (March, June and November) to decide ILO's policy, elect the director-general, adopts the draft programmes and budgetary requirements, which are put in front of the conference.

The functioning of the governing body has been explained under Article 7 of the ILO constitution.

The ILO's Governing Body is composed of 56 titular members (28 Governments, 14 Employers and 14 Workers) and 66 deputy members (28 Governments, 19 Employers and 19 Workers). The Employer and Worker members are elected in their individual capacity.

### Government Representatives

Of the twenty-eight persons representing governments, ten shall be appointed by the Members of chief industrial importance, and eighteen shall be appointed by the Members selected for that purpose by the Government delegates to the Conference, excluding the delegates of the ten Members mentioned above.

### States of Chief Industrial Importance

The Governing Body shall as occasion requires determine which are the Members of the Organization of chief industrial importance and shall make rules to ensure that all questions relating to the selection of the Members of chief industrial importance are considered by an impartial committee before being decided by the Governing Body. Any appeal made by a Member from the declaration of the Governing Body as to which are the Members of chief industrial importance shall be decided by the Conference, but an appeal to the Conference shall not suspend the application of the declaration until such time as the Conference decides the appeal.

### Employers' and Workers' Representatives

The persons representing the employers and the persons representing the workers shall be elected respectively by the Employers' delegates and the Workers' delegates to the Conference.

### Term of Office

The period of office of the Governing Body shall be three years. If for any reason the Governing Body elections do not take place on the expiry of this period, the Governing Body shall remain in office until such elections are held.

### Vacancies, Substitutes etc.

The method of filling vacancies and of appointing substitutes and other similar questions may be decided by the Governing Body subject to the approval of the Conference.

### Officers

The Governing Body shall, from time to time, elect from its number a chairman and two vice-chairmen, of whom one shall be a person representing a government, one a person representing the employers, and one a person representing the workers.

### Procedure

The Governing Body shall regulate its own procedure and shall fix its own times of meeting. A special meeting shall be held if a written request to that effect is made by at least sixteen of the representatives on the Governing Body.

The governing body has 56 titular members. 10 seats are permanently held by states of chief industrial importance, namely Brazil, China, France, Germany, India, Italy, Japan, the Russian Federation, the United Kingdom and the United States.

## INTERNATIONAL LABOUR OFFICE

It is the permanent secretariat of the ILO. The international labour office is the centre of all activities performed by the ILO. It functions under the watchful eye of the governing body and leadership of the Director-General. The functions of international labour office are described under article 10 of the ILO constitution.

The functions of the International Labour Office shall include the collection and distribution of information on all subjects relating to the international adjustment of conditions of industrial life and labour, and particularly the examination of subjects which it is proposed to bring before the Conference with a view to the conclusion of international Conventions, and the conduct of such special investigations as may be ordered by the Conference or by the Governing Body.

Subject to such directions as the Governing Body may give, the Office shall:

- a) Prepare the documents on the various items of the agenda for the meetings of the Conference;
- b) Accord to governments at their request all appropriate assistance within its power in connection with the framing of laws and regulations on the basis of the decisions of the Conference and the improvement of administrative practices and systems of inspection;
- c) Carry out the duties required of it by the provisions of this Constitution in connection with the effective observance of Conventions;
- d) Edit and issue, in such languages as the Governing Body may think desirable, publications dealing with problems of industry and employment of international interest.

*Generally, it shall have such other powers and duties as may be assigned to it by the Conference or by the Governing Body.*

Besides these primary bodies, expert committees come to the aid of these bodies on matters relating to vocational training, industrial relations, problems of women and young workers etc.

### Standards supervisory system of the ILO

The ILO keeps a check over the member states whether they are applying the standards being set out by the ILO. And if not, it helps countries in their application by social dialogue and technical assistance. It also indicates ways of how they could be better implemented if it notices any laxity.

### ILO as a partner for development

Development has been given a broad meaning under the 2030 sustainable development goals, encompassing the ILO's decent work agenda. The cooperation strategy of International Labour Organisation is aimed at promoting decent work entirely, as required in the 2030 Sustainable Development Growth framework, and enable the International Labour Organisation to reach global, national and local level so that it could be of better service.

Prioritized agendas are as follows :-

- a) Establishing strong relations with all the partners involved in development such as the donor community, social partners, civil society etc.
- b) Giving a push to the development efforts of the multilateral system
- c) Assembling funds for development cooperation, in addition to the budgetary funding allocated. The additional funds are also stored in the Regular Budget Supplementary Account (RBSA).
- d) Developing public- private partnership
- e) Ensuring transparency about the ILO's programmes and their financial inputs.

### **Programme and Budget of the ILO**

It creates a programme according to which work has to be proceeded, and sets out a budget, based on the priorities given in the strategic plan. The ILO's biennial programme is intimated to the member states via the Decent Work Country Programmes (DWCP's). It works as a carrier of ILO's support to the member countries. It gives boost to decent work to help it become an important component of national development strategy.

The Financial and budgetary arrangements are defined as under article 13 of the ILO constitution-

1. The International Labour Organization may make such financial and budgetary arrangements with the United Nations as may appear appropriate.
2. Pending the conclusion of such arrangements or if at any time no such arrangements are in force:
  - a. each of the Members will pay the travelling and subsistence expenses of its delegates and their advisers and of its representatives attending the meetings of the Conference or the Governing Body, as the case may be;
  - b. all other expenses of the International Labour Office and of the meetings of the Conference or Governing Body shall be paid by the Director-General of the International Labour Office out of the general funds of the International Labour Organization;
  - c. the arrangements for the approval, allocation and collection of the budget of the International Labour Organization shall be determined by the Conference by a two-thirds majority of the votes cast by the delegates present, and shall provide for the approval of the budget and of the arrangements for the allocation of expenses among the Members of the Organization by a committee of Government representatives.
3. The expenses of the International Labour Organization shall be borne by the Members in accordance with the arrangements in force in virtue of paragraph 1 or paragraph 2 (c) of this article.
4. Arrears in payment of contributions

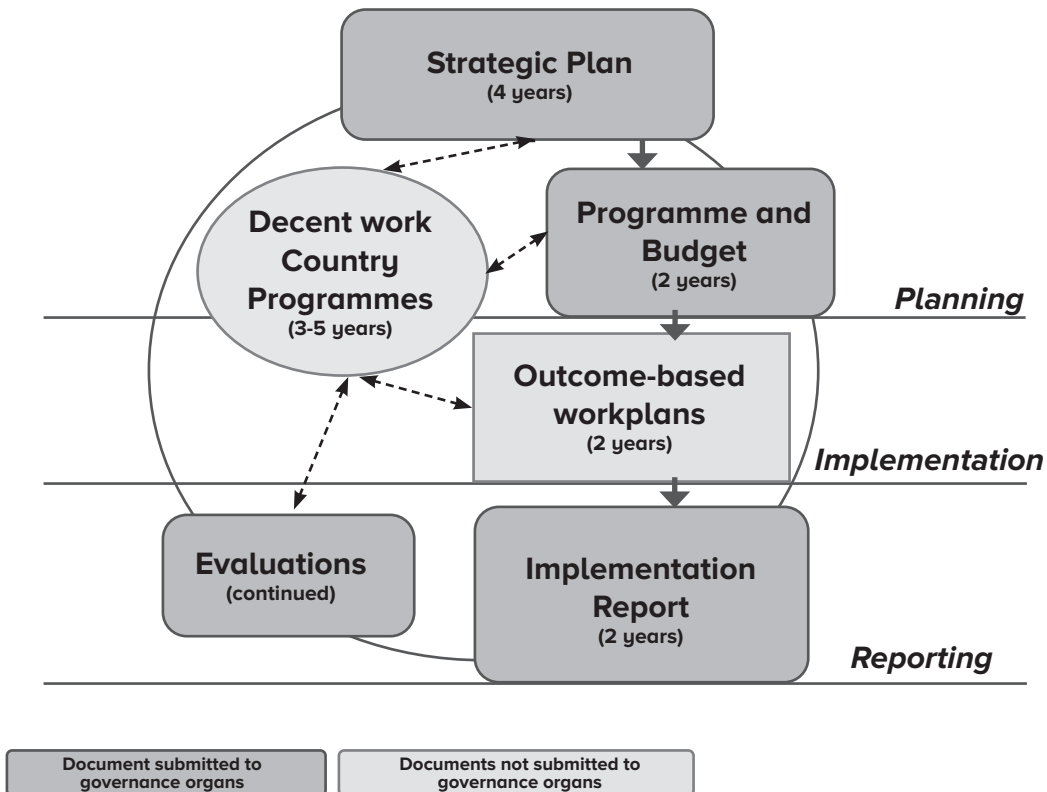
A Member of the Organization which is in arrears in the payment of its financial contribution to the Organization shall have no vote in the Conference, in the Governing Body, in any committee, or in the elections of members of the Governing Body, if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years: Provided that the Conference may by a two-thirds majority of the votes cast by the delegates present permit such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member.

5. Financial Responsibility of Director-General

The Director-General of the International Labour Office shall be responsible to the Governing Body for the proper expenditure of the funds of the International Labour Organization.

## RESULT BASED MANAGEMENT

Result based management is a cyclic programme through which International Labour Organisation undertakes its missions and objectives. The stages involved in result-based management are programme planning, Implementation, reporting and evaluation, and providing feedback to subsequent programming cycles.



### Strategic planning

The strategic plan is the ILO's medium-term document based upon its plans. It is the manifestation of the aims and objectives of the organization. It contains the long-term goals which are expected to be achieved at the end of the planning period, and for achieving this, medium-term priorities are set out by the organization through its plan making constituents, i.e. the ILO tripartite members. It also ensures for the provision of a framework within which the work being done can be assessed and the biennial programmes and the documents relating to the budgetary allocation could be defined.

The process of strategic planning also applies result-based management to identify the results for a specific period. Assistance to constituents is driven through this framework. It forms the grounds of cooperation with ILO partners, and further helps in designing the development cooperation programmes.

### Global Level Programming in the ILO

On basis of the strategic plan, a biennial programme and budget is created. The aim of this is to specify the methods ILO will apply to achieve the desired results and the input, in form of resources, which are required to do so.

This programme and budget are approved every two years by the ILC. The expectations from ILO are set out in this programme and budget, along with the capacities and resources required for the same. This programme and budget is released for a particular biennium at a time.

This biennial programme is delivered to the member states of the ILO via Decent Work Country Programmes (DWCPs), which is a promoter of the decent work ideals of the ILO, along with organising ILO knowledge, cooperation, instruments and advocacy to serve tripartite constituents. It is organized in such a way that it is specific to few country programme priorities and outcomes.

**The finances of ILO are looked after by the following sources :-**

- The regular budget, these are the funds collected from the contributions made by the member states. The assessment of the funds to be given by the member states are made by the United Nations.
- The Regular Budget Supplementary Account, these are the funds acquired from volunteers, which are key resource partners. The funding from these sources is not designated, unlike the sources obtained from the regular budget.
- Extra-Budgetary Technical Cooperation resources are another instance of funds being obtained from voluntary sources. These are resource partners including public and private organizations which support specific projects.

The plans of ILO are based according to the resources obtained through these methods in such a manner that it the plans are within the results framework and give priority to the requirements of the particular country.

At the beginning of each biennium, workplans are laid out to achieve a certain outcome, which are set within the results framework over a fix period. The resources are allocated and coordinated across the office. The inputs of the workplan are taken from both the ILO departments and field offices. The duties and ensuing accountabilities are decided, along with the deadlines of work.

ILO ensures that the funds are utilized in such a manner that the issues antecedent to the country are looked after. These workplans are periodically adjudged and altered accordingly.

### **Country Level Programming in the ILO**

The International Labour Organisation uses the Decent Work Country Programmes (DCWPs) to carry out their biennial programmes to the member countries. DCWPs provide the pathway of identifying the specific priorities of the country such that it can help specify the support required of the office. Over a 100 member states have developed indigenous DWCPs, where many states have second and third generation DWCPs. They analyse of whether the work is being done in accordance to the decent work agenda of the ILO and whether the priority issues are being dealt with in the time-bound manner.

DWCPs are built on the proactive participation of national governments', workers' organizations and employers'. The programmes are initiated with the engagement of these members. They are an important part of UN's efforts via ILO to collaborate with member states in furthering their programmes.

ILO programmes strengthen country priorities identified in the DWCPs through results orientation. They form an important aspect of ILO's development strategy through cooperation. The funds are provided in such a manner that operations are carried out in partnership between the main offices and the state branches of ILO. Through this co-dependency, work is directed towards the desired goal and the outcomes are at a more substantial scale.

### **Programme Implementation Reports**

The programme implementation report of the programmes being undertaken in the biennium are submitted to the governing body of the ILO and the International Labour Conference every two years. The report throws light on the performance and achievements of ILO for that biennium. It acts as a report card of the ILO, and holds it accountable for performance or non- performance. It also gives identification of committed mistakes, and gives suggestions of how to perform better in the upcoming bienniums.

### **Funding**

The funds being collected by the ILO consists of all sort of incomes, whether the organized income from member states or the unorganized contributions from the voluntary donors.



Voluntary non-core contributions are the ones supporting specific problems at global or national levels. They have a fixed amount of funds being allocated to particular, time-bound projects. These projects come under the ambit of ILO results framework.

Voluntary core contributions are the funds which are directed towards the Regular Budget Supplementary Account (RBSAs). They are unspecified, pliable funds which are donated to ILO for their application in strategic areas, which could be either under-funded or are new projects.

Regular budget (assessed contributions) are the funds which all the member states of ILO have to pay by the virtue of them being member of the ILO. The amount to be paid by the member states is chalked out by United Nations allocations assessment.

## Evaluation

In an organization as big as ILO, it is of high importance that the work being done should not go out of the desired path. For this, the working needs to be evaluated in a timely manner. This evaluation ensures that the ILO agenda of decent work and social justice is being forwarded. It is critically important also because the decision-making process depends upon it, which leads to generation and sharing of knowledge in the ILO. The effectiveness of result delivery of the steps taken by ILO could be gauged efficaciously through a system of evaluation.

The United Nations has set out norms for developing a policy of evaluation. The objectives of the evaluation policy are as under:

- i. Reinforce knowledge-generation sharing of the ILO's substantive work, and the processes, approaches and institutional arrangements for implementing such work;
- ii. Strengthen the complementarity between evaluation and other oversight and monitoring functions within the Office;
- iii. Clarify standards for engaging constituents in evaluation; and
- iv. Clarify the division of responsibilities in the ILO for carrying out an evaluation.

The Evaluation Policy (2017) calls for innovation that reinforces the main principles of the ILO's Strategic Plan for 2018–21, as follows:

- more strategic evaluations of projects and programme activities under identical or similar themes, programme frameworks and locations by means of clustering and integrated funding;
- evaluation approaches, methods and frameworks that are participatory and peoplecentred, are inclusive of disadvantaged workers, human rights and gender equality and are adapted to the ILO's specific mandate and context (for example tripartism, social dialogue, normative work);
- use of evaluation in post-evaluation follow-up, with a particular focus on strengthening such follow-up for decentralized evaluations;
- enhanced independence of decentralized components of the evaluation function to ensure the highest possible level of independence and impartiality of evaluations and mechanisms to further improve the use of findings at the regional level;
- automated management response systems that systematically track the follow-up to evaluation recommendations, whether independent or internal; and
- a framework for the evaluation of capacity development, including tripartite constituents and other relevant stakeholders on a demand basis. ILO provides accessibility to its evaluation data on its websites and maintains transparency.



## Evaluation Types and Responsibilities

The ILO carries out evaluation of its works at the primary level of governance and also amongst the decentralized levels. These evaluations are looked after by the evaluation office (EVAL). The types of evaluation mentioned in the document are-

- a. *Strategy and policy evaluation* - main purpose is to review major institutional policies and assess impact, effectiveness and benefits of ILO core strategies. This evaluation is done at least once per year.
- b. *Country programme evaluation* - This kind of evaluation assesses the extent to which significant impacts are being made towards decent growth. Also, being at the country level, it feeds into the tripartite dialogue of the importance of ILO dialogue at the country level. It is done once every year, but with a rider that all regions need to be covered at least once every four years.
- c. *Thematic evaluation* - This is an annual evaluation which is aimed at assessing effectiveness and impact of specific means of actions and interventions. It also creates cross-cutting lessons to innovate and feed organizational learning on operational strategies.
- d. *Project evaluation* - It assesses projects for relevance, efficiency, effectiveness, sustainability and contribution to broader impact. Planning and implementation of evaluation is the responsibility of the person to whom the project manager reports. There is no earmarked time limit. However, they are mid-term or final-term or as they are set out to be in the evaluation plan.
- e. *Organizational review (self-evaluation)* is an important form of evaluation where relevance of the programme activities in relation to actual performance against planned outcome is measured. This is important because through this we get timely information and management decision in achieving planned outcomes against target and indicators. This self-evaluation is biennial.

ILO provides accessibility to its evaluation data on its websites and maintains transparency.

After completion of the evaluation reports, they are compiled in the form of Independent high-level strategy, policy and country programme evaluations. The Annual Evaluation Report (AER) and the official management response from the office.

These reports have a high importance because they serve as a model for formulating decisions by the governing body. Also, they are the precursor to the follow up by the high-level evaluations held by Evaluation Advisory Committee, set up by the Director-General.

Apart from the centralized evaluation carried out by the governing body, there is decentralized evaluation carried out by the Evaluation Office (EVAL). Eval also collects data regarding to management response and reports to Governing Body every November. The response contains analysis of the participation and contribution of members of the tripartite.

EVAL has also laid down guidelines for ensuring that the recommendations based on the evaluation are in proper order.

Recommendations should -

- a) Be numbered in the report, and limited – ideally not more than 12
- b) Be formulated in a clear and concise manner
- c) Be relevant and useful
- d) Be supported by evidence and follow logically from findings and conclusions
- e) Link to the programme indicators when feasible
- f) Not be too general but specific to the strategy/country programme evaluated
- g) Specify who is called upon to act

- h) Specify action needed to remedy the situation
- i) Distinguish priority or importance (high, medium, low)
- j) Specify the recommended time frame for follow-up
- k) Acknowledge whether there are resource implication

Likewise, it is the duty of the ILO to ensure that the recommendations made in such manner are of the highest quality. They should be of such a form that takes cues from the beneficial practices so that they could be inculcated in future programmes. They should be easily accessible as well. Good practices, which is the term used by ILO for successful practices has been defined by ILO in the following words:

A lesson learned may become an “emerging good practice” when it additionally shows proven marked results or benefits and is determined by the evaluator to be considered for replication or up-scaling to other ILO projects.

An emerging good practice should demonstrate clear potential for substantiating a cause-effect relationship and may also show potential for replicability and broader application. It can derive from comparison and analysis of activities across multiple settings and policy sources or emerge from a simple, technically specific intervention.

*The criteria to be followed by the evaluators for creation of the lesson of findings:*

- a) A lesson learned can refer to a positive experience, in the case of successful results; or to a negative experience, in the case of malfunctioning processes, weaknesses or undesirable influences.
- b) A lesson learned should specify the context from which it is derived, establish potential relevance beyond that context, and indicate where it might be applied.
- c) A lesson learned explains how or why something did or did not work by establishing clear causal factors and effects. Whether the lesson signals a decision or process to be repeated or avoided – the overall aim is to capture lessons that management can use in future contexts to improve projects and programmes.
- d) A lesson learned should indicate how well it contributes to the broader goals of the project or programme and establish, when possible, if those goals align appropriately with the needs of beneficiaries or targeted groups.
- e) Each of the following criteria should be considered, included and adequately explained, when appropriate: Context; Challenges; Links to Project Goals; Impact on Beneficiaries; Challenges/Successes; and any Causal Factors.

The Evaluation findings are utilized in the following manner:

The collaboration between PARDEV (Partnering for Development) and EVAL (evaluation office) creates a process of appraisal meant for incorporating institutional knowledge. This knowledge is derived from independent evaluation.

Findings data for research and organizational learning: The raw data being collected in this form is very useful as it gives important contribution towards analysing administrative and technical concerns. The ILO officials have access to the i-track database. This database contains the summaries of the full evaluation reports. They are also available on the EVAL public websites.

Technical cooperation strategies are made in accordance to the data sets of recommendations. These recommendations also help in forming the source of data which is deliberated upon for future high-level thematic evaluation.

The evaluations that are made independently are made to go through a mandatory management response exercise. Upon receiving these independent evaluations, the line management must decide whether the recommendations are to be accepted or not. If they are accepted, the line management must also report the action taken on the basis of the recommendation. The results of these exercise are presented to the EVAL, which reviews it. They are then compiled for the Annual Evaluation Report presented to the Governing Body.

Evaluations are also made at the country/regional level, for which the recommendation response are presented to the Evaluation Advisory Committee (EAC) by the respective line management. All the bodies concerned with respect to the recommendations are addressed in the EAC quarterly meetings.

### Performance Management

The result-based management and the Human Resource Strategy implemented in the year 2006–09 lead to the development of Performance Management Framework (PMF). First applied in the 2010-11 biennium, it is now available through the ILO's e-Talent Management suite, ILO People.

PMF is designed in such a way that it aptly manages the performance of staff at all levels, and keeps a special focus on maintaining high standard of result and competency. The framework is designed with a very progressive and extensive approach. It involves planning, monitoring and assessment of the work being done. As a feedback mechanism, emphasis is given on dialogue exchange.

The PMF has the objective to:-

- a) Promote accountability at all levels.
- b) Provide Member States and Constituents with greater visibility regarding staff performance in achieving the goals of the ILO.
- c) Link results-based principles and objectives at the organizational level with individual results.
- d) Encourage on-going dialogue and feedback between staff members and their managers.
- e) Increase clarity regarding performance expectations through an agreed plan.
- f) Support the growth and development of all staff as well as tackle underperformance.
- g) Provide the basis for rewards and recognition.

The PMF directs the individual achievements with broader goals of their respective units and the organization as a whole, allowing the International Labour Office to make the best use of the human resource.

### Efficiency savings

Monetarily, it has been an obligation of the ILO to considerate of its spending. Thus, the ILO has a central feature regarding savings and efficiencies in all its programmes and budget documents. These savings are helpful because they allow the redirection of resources without causing any extra burden on the budget.

Along with this, steps are being taken to strengthen staff development, audit and evaluation. The aim of this is to certify security and accountability.

## HISTORY OF THE INTERNATIONAL LABOUR ORGANISATION

The ILO was created in 1919 under the treaty of Versailles. After the World War I the urgent need to placate the labour class was felt, which was increasingly becoming a powerful social strata of the society. ILO was constituted to give a pragmatic approach to the ideal that Universal and long lasting peace could only be achieved when it based on social justice.

The drafting of the constitution took place between the months of January to April in the year 1919. A labour commission, headed by Samuel Gompers (head of the American Federation of Labour (AFL) in the United States) was constituted for the purpose by the peace conference. The meetings of the commission took place in Paris and then in Versailles. The commission had the composition of members of nine countries, namely:- Belgium, Cuba, Czechoslovakia, France, Italy, Japan, Poland, the United Kingdom and the United States.

The commission ended up establishing a tripartite organisation, first of its kind in the world, which brought together governments, employers and workers in its executive bodies.

The rules that formed the part of the constitution were made on basis of the ideas tested within the confines of the International Association for Labour Legislation, founded in Basel in 1901.

The first time that an advocacy for an organisation of international standing began was by two industrialists, namely Robert Owen (1771-1853) of Wales and Daniel Legrand (1783-1859) of France.

The ILO was created after taking into account many factors, primarily relating to security, humanitarian, political and economic issues. These have been enshrined in the preamble of the ILO constitution.

The socio-political situation at the time of creation of ILO was grossly unjust to an average labourer. There was an ideological understanding amongst all the major industrialized nations that there is a pressing need to create a body which addresses the troubles being faced by the working class. The importance of social justice was felt in securing peace. Along with this, the industrial nations were also toying with the idea of globalisation. The importance of economic interdependence was being propagated and the need for cooperation to maintain an equitable working atmosphere was promulgated in all countries competing for markets.

Reflecting these ideas, the Preamble states:

Whereas universal and lasting peace can be established only if it is based upon social justice;

And whereas conditions of labour exist involving such injustice hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required;

Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries.

The areas of improvement listed in the Preamble remain relevant today, for example:

- Regulation of the hours of work including the establishment of a maximum working day and week;
- Regulation of labour supply, prevention of unemployment and provision of an adequate living wage;
- Protection of the worker against sickness, disease and injury arising out of his employment;
- Protection of children, young persons and women;
- Provision for old age and injury, protection of the interests of workers when employed in countries other than their own;
- Recognition of the principle of equal remuneration for work of equal value;
- Recognition of the principle of freedom of association;
- Organization of vocational and technical education, and other measures.

### Early days

The first international labour conference was held in Washington in 1919. Six international labour conventions were adopted relating to working hours in the industry, unemployment, maternity work protection, night work for women, minimum age and night work for younger populace engaged with the industry.

The ILO office was shifted to Geneva in 1920. France's Albert Thomas was the first director of international labour office. The international labour office is the permanent secretariat of the organisation.

The early years of ILO were not without its share of problems. Many countries began thinking that ILO was an unnecessary burden, with many conventions, additional budgetary load and highly critical in its reports. However, the international court of justice backed the ILO over this and ruled that its jurisdictional domain extends to the agricultural sector. To monitor the working, acting as an advisory body and for a general supervision, a committee of

experts was constituted in the year 1926. The committee consists of independent jurists who probe into governmental reports and form their own report on the basis this research. This research is tabled to the conference annually.

### Depression and war

A severe worldwide economic depression that took place mostly during the 1930s, called the great depression. There was a dearth of jobs due to economic slowdown causing many labourers to be rendered unemployed. The ILO was being chaired by Harold Butler, who succeeded Albert Thomas in 1932. The United Nations, seeing that the situation requires cooperating with other states, US became the part of ILO in 1934. John Winant took over in 1939, just on the cusp of world war II. For security reasons, he had transferred ILO office to montreal in Canada.

Edward Phelan, the successor of John Winant, took over the ILO leadership. He had played an important role in drafting the 1919 constitution. Another feather in his cap was during the Philadelphia meeting. It was held in the peak of second world war, the meeting attended by representatives of 41 member nations. The meeting saw the important adoption of the charter of Philadelphia. The charter is an annexure to the constitution. It contains aims and objectives of the ILO. Also under Phelan's tenure, the International Labour Conference adopted Convention No. 87 on freedom of association and the right to organize.

### DECLARATION OF PHILADELPHIA

Adopted on 10th may, 1944, the declaration of Philadelphia encompasses the aims and objectives of the ILO, and the principles upon which its policies should be made.

The declaration is divided into 5 parts.

#### PART 1

It talks about the fundamental principles upon which the organisation is based, namely-

- a. labour is not a commodity;
- b. freedom of expression and of association are essential to sustained progress;
- c. poverty anywhere constitutes a danger to prosperity everywhere;
- d. the war against want requires to be carried on with unrelenting vigour within each nation, and by continuous and concerted international effort in which the representatives of workers and employers, enjoying equal status with those of governments, join with them in free discussion and democratic decision with a view to the promotion of the common welfare.

#### PART 2

This part reaffirms that; lasting peace could only be established if it is based on social justice. The conference confirms that-

- a. all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity;
- b. the attainment of the conditions in which this shall be possible must constitute the central aim of national and international policy;
- c. all national and international policies and measures, in particular those of an economic and financial character, should be judged in this light and accepted only in so far as they may be held to promote and not to hinder the achievement of this fundamental objective;
- d. it is a responsibility of the International Labour Organization to examine and consider all international economic and financial policies and measures in the light of this fundamental objective;

- e. in discharging the tasks entrusted to it the International Labour Organization, having considered all relevant economic and financial factors, may include in its decisions and recommendations any provisions which it considers appropriate.

### **PART 3**

It talks about requirements that need to be addressed by all member nations, believing them to be the solemn obligation of the ILO. They are-

- a. full employment and the raising of standards of living;
- b. the employment of workers in the occupations in which they can have the satisfaction of giving the fullest measure of their skill and attainments and make their greatest contribution to the common well-being;
- c. the provision, as a means to the attainment of this end and under adequate guarantees for all concerned, of facilities for training and the transfer of labour, including migration for employment and settlement;
- d. policies in regard to wages and earnings, hours and other conditions of work calculated to ensure a just share of the fruits of progress to all, and a minimum living wage to all employed and in need of such protection;
- e. the effective recognition of the right of collective bargaining, the cooperation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures;
- f. the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care;
- g. adequate protection for the life and health of workers in all occupations;
- h. provision for child welfare and maternity protection;
- i. the provision of adequate nutrition, housing and facilities for recreation and culture;
- j. the assurance of equality of educational and vocational opportunity.

### **PART 4**

It talks about how better utilization of resources is primary for achieving the objectives set by the declaration. It presses upon international and national action, such that production and consumption are increased. Prevention of international economic fluctuations, promoting economic and social advancement of poorly developed regions of the world, stability in prices of primary commodities, promote steady rate of international trade, cooperation with international bodies for promotion of health, education and well-being of people.

### **PART 5**

This part ensures that principles included in the declaration are to be applicable to all the people. The manner of application of these principles, are to be dependent upon socio-political development of the people.

### **The Post-War Years**

The post war period in ILO saw great strides in development. The number of member states doubled, bringing about a marked change in the countries that affected internal working and policy making. Now more developing nations were part of the ILO as compared to the developed industrial giants. The budgetary allocation went up by five times and there was quadruple increase in the number of officials.

The ILO also established International Institute for Labour Studies in Geneva in the year 1960 and the International Training Centre in Turin in 1965.

The organisation also won Nobel peace prize in the year 1969, at its 50-year anniversary. The Nobel prize committee paid special emphasis to the 128 conventions it had chalked out up to the year 1969.

Wilfred Jenks of Britain overtook the top spot in 1970, under whose leadership ILO advanced towards creation of standards and along with it creation of methods to supervise their application. Especial focus in this regard being given to freedom of association and right to organise.

Francis Blanchard of France took over in 1973. He worked towards expansion of technical cooperation with advanced countries, and did great work in averting the damage faced by the organisation in view of USA exit as a member. The withdrawal of USA in 1977-80 caused a loss of a quarter of the budget. During this period, the ILO also played a major role in helping Poland out of dictatorship. It supported the Solidarnosc Union, on the basis of Freedom of Association and Protection of the Right to organise Convention (1948) No 87, ratified by Poland in 1957.

According to Article 3 of the convention, it was agreed that -

- a. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.
- b. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

Belgian Michel took up the reins of the organisation in 1989. He guided ILO during the period of breaking up of the Soviet Union. He laid emphasis on the key tenet of ILO, i.e. placing social justice at the heart of international economic and social policies. He also worked towards delegating work to lower levels and decentralising of activities.

Juan Somavia of Chile took over as Director-General in 1999. He worked towards furthering the initial ideal of the formation of ILO, which was to further develop upon the ideal of decent work and make it a strategic international goal. He was also a proponent of promoting fair globalisation. He stressed upon the importance of work as a means of poverty alleviation, which could be helpful to ILO in achieving the millennium development goal, which included the goal of cutting world poverty in half by 2015. The current (year 2018) director general is Britain's Guy Ryder, elected in 2012.

### List of all ILO Director-Generals\*

Albert Thomas (1919-1932) (France)  
 Harold Butler (1932-1938) (The United Kingdom)  
 John G. Winant (1939-1941) (The United States of America)  
 Edward Phelan (1941-1948) (Ireland)  
 David A. Morse (1948-1970) (The United States of America)  
 Clarence Wilfred Jenks (1970-1973) (The United Kingdom)  
 Francis Blanchard (1974-1989) (France)  
 Michel Hansenne (1989-1999) (Belgium)  
 Juan Somavia (1999-2012) (Chile)  
 Guy Ryder (2012- 2022) (The United Kingdom)  
 Gilbert F. Hounbo (October 2022 – present) ( West Africa)

*For information only.*

## The ILO Constitution

Drafted between January and April 1919, led to the creation of the tripartite organisation of governments, employers and workers, collectively called the ILO.

### *ILO in India*

India has been a permanent member of ILO since 1922 and is one of its founding members. The first ILO office in India was established in India in 1928. ILO works on the principle that all the partners need to be strengthened so that the institutional capabilities could be enhanced. The socio-economic development of ILO takes a two-pronged approach, that of overall strategies and that of ground level approaches.

For example, India in its 11th plan has aimed at faster growth which is more inclusive, the benefits anticipated are broad based and are of such a form that ensures equal opportunity to everyone. The targets aspired for in the 11th plan are in consonance with the decent work agenda of the ILO.

The decent work concept is translated to country-specific Decent Work Country Programmes (DWCPs). As for India, ILO's portfolio is centered around child labour, preventing family indebtedness employment, skills, integrated approaches for local socio-economic development and livelihoods promotion, green jobs, value-addition into national programmes, micro and small enterprises, social security, HIV/AIDS, migration, industrial relations, dealing with the effects of globalization, productivity and competitiveness, etc. A decent work support team is stationed in New Delhi which provides technical support at policy and operational levels to member States in the sub-region through a team of specialists.

The tripartite members, i.e. the representatives of the government, employers, and workers are :-

### **Government of India**

- Ministry of Labour & Employment
- Ministry of Rural Development

### **Workers' Organizations**

- Bharatiya Mazdoor Sangh (BMS)
- Indian National Trade Union Congress (INTUC)
- All India Trade Union Congress (AITUC)
- Hind Mazdoor Sabha (HMS)
- Centre of India Trade Unions (CITU)
- All India United Trade Union Centre (AIUTUC) – formerly UTUC (LS)
- Self Employed Women's Association (SEWA)
- All India Central Council of Trade Unions (AICCTU)
- Labour Progressive Federation (LPF)
- United Trade Union Congress (UTUC)
- National Front of Indian Trade Unions – Dhanbad (NFITU-DHN )

### **Employers' Organizations**

- Council of Indian Employers (Constituents - All India Organization of Employers; Employers' Federation of India; and Standing Conference of Public Enterprises)
- Federation of Indian Chambers of Commerce and Industry



## Member States of the ILO\*

The Islamic Republic of Afghanistan	Burundi	Egypt	Haiti	Libya	Pakistan	Solomon Islands	Turkmenistan
The Republic of Albania	Cambodia	El Salvador	Honduras	Lithuania	Palau	Tuvalu	
The People's Democratic Republic of Algeria	Cameroon	Equatorial Guinea	Hungary	Luxembourg	Panama	Somalia	Uganda
The Republic of Angola	Canada	Guinea	Iceland	Madagascar	Papua New Guinea	South Africa	Ukraine
Antigua and Barbuda	Cabo Verde	Eritrea	India	Malawi	Paraguay	South Sudan	The United Arab Emirates (Abu Dhabi, Dubai, Ajman, Fujairah, Ras Al Khaimah, Sharjah, Umm Al Quwain)
The Argentine Republic	The Central African Republic	Estonia	Indonesia	Malaysia	Peru	Spain	
Armenia	Chad	Ethiopia	Iran (Islamic Republic of)	Maldives	The Philippines	Sri Lanka	
Australia	Chile	Fiji	Iraq	Mali	Poland	Sudan	
Austria	China	Finland	Ireland	Malta	Portugal	Suriname	
Azerbaijan	Colombia	France	Israel	The Marshall Islands	Qatar	Swaziland	The United Kingdom
The Bahamas	The Comoros	Gabon	Italy	Mauritania	Romania	Sweden	The United States of America
Bahrain	The Congo	The Gambia	Jamaica	Mauritius	The Russian Federation	Switzerland	
Bangladesh	Cook Islands (The)	Georgia	Japan	Mexico	Rwanda	The Syrian Arab Republic	The United States of America
Barbados	Costa Rica	Germany	Jordan	The Republic of Moldova	Saint Kitts and Nevis	Tajikistan	Uruguay
Belarus	Côte D'ivoire	Ghana	Kazakhstan	Mongolia	Saint Lucia	The United Republic of Tanzania	Uzbekistan
Belgium	Croatia	Greece	Kenya	Montenegro	Saint Vincent and The Grenadines	Thailand	
Belize	D'ivoire	Ethiopia	Kiribati	Morocco	Samoa	The Former Yugoslav Republic of Macedonia	Viet Nam
Benin	Cuba	Fiji Finland	The Republic of Korea	Mozambique	San Marino	Timor-Leste	Yemen
Bolivia	Cyprus	France	Kuwait	Myanmar	Sao Tome and Principe	Togo	Zambia
Bosnia and Herzegovina	The Czech Republic	Gabon	Kyrgyzstan	Namibia	Saudi Arabia	Tonga	Zimbabwe
Botswana	Denmark	Georgia	The Lao People's Democratic Republic	Nepal	Senegal	Trinidad and Tobago	
Brazil	Djibouti	Germany	The Republic of Latvia	The Netherlands	Serbia	Tunisia	
Brunei Darussalam	Dominica	Ghana	The Republic of Liberia	New Zealand	Seychelles	Turkey	
Bulgaria	Dominican Republic	Greece	Lebanon	Nicaragua	Sierra Leone		
BurkinaFaso	Ecuador	Grenada	Lesotho	The Niger	Singapore		
		Guatemala	Liberia	Nigeria	Slovakia		
		Guinea		Norway	Slovenia		
		Guinea-Bissau		Oman			
		Guyana					

For information only.

## INDIA & ILO

India has specific representation of each major deliberative organ of the ILO, namely the International Labour Conferences, Governing Body and the International Labour Office. The ILO office is located at New Delhi in India.

Indian participation in the ILO's organisation and functioning can be understood in terms of its representation and contribution to the ILO. The organ-wise share of India is listed as below-

### 1. International Labour Conference

The International Labour Conference (ILC) has continued to meet at least once each year since 1919, (except during external interference during World War II). The conference adopts the biennial programme and budget, sets out the International Labour Standards through conventions and recommendations.

India has participated proactively in these conferences and has also contributed immensely to its membership. Till now the conference has had 4 Indian Presidents in the International Labour Conference, namely Sir. Atul Chatterjee (1927), Shri Jagjivan Ram, Minister for Labour (1950), Dr. Nagendra Singh, President, International Court of Justice (1970) and Shri Ravindra Verma, Minister of Labour and Parliamentary Affairs (1979). India also had 8 Vice Presidents, 2 from the Government, 3 from the Employers and 3 from the Workers' Group. In addition to this, Indian delegates have also chaired the important committees of the conferences.

### 2. Governing Body

India has been holding a non-elective seat on the Governing Body as one of the 10 countries of chief industrial importance since 1922 in the executive wing of the ILO. Indians have also been appointed as the chairmen of the governing body, viz., Sir Atul Chatterjee (1932-33), Shri Shamal Dharee Lall, Secretary, Ministry of Labour (1948-49), Shri S.T. Merani, Joint Secretary, Ministry of Labour (1961-62) and Shri B.G. Deshmukh, Secretary, Ministry of Labour (1984-85).

The Governing Body used to function through its committees, with India being a member of all its 6 committees. these committees were -

- (i) Programme, Planning & Administrative;
- (ii) Freedom of Association;
- (iii) Legal Issues and International Labour Standards;
- (iv) Employment & Social Policy;
- (v) Technical Cooperation; and
- (vi) Sectoral and Technical Meetings and Related issues.

The system of functioning is now based on functioning through various sections. India is a participant in all the proceedings of the sections which are Institutional Section (INS); Policy Development Section (POL); Legal Issues and International Labour Standards Section (LILS); Programme, Financial and Administrative Section (PFA); High-level Section (HL); and Working Party on the Functioning of the Governing Body and the International Labour Conference (WP/GBC)

### 3. The International Labour Office

Indians have held important positions at the international labour office, which is the focal point of implementation of decision making.

#### 4. International Labour Standards - ILO Conventions

The International Labour Standards are the primary means of bringing about action. They are in the form of convention and recommendations. India has always used the ILO conventions and recommendations as a means of its guiding principle for the creation of national policies. Labour interests have been furthered through

- legislative and administrative measures based on ILO instruments. As the conventions are legally binding, India has been selective in ratifying them. They are only ratified when they are in consonance with our local laws. However, the recommendations have played an important part for providing a framework. So far, there are 47 ILO conventions and 1 protocol ratified by India. Out of 47 Convention and 1 protocol ratified by India, of which 39 are in force, 5 Conventions and 0 Protocol have been denounced; 4 instruments abrogated.

#### 5. ILO Conventions Ratified by India\*

The list of conventions ratified by India are-

SL. No.	No. and Title of Convention	Date of Ratification
1.	No.1 Hours of Work (Industry) Convention, 1919	14.07.1921
2.*	No.2 Unemployment Convention, 1919	14.07.1921
3.	No.4 Night Work (Women) Convention, 1919	14.07.1921
4.	No.5 Minimum Age (Industry) Convention, 1919	09.09.1955
5.	No.6 Night Work of Young Persons (Industry) Convention, 1919	14.07.1921
6.	No.11 Right of Association (Agriculture) Convention, 1921	11.05.1923
7.	No.14 Weekly Rest (Industry) Convention, 1921	11.05.1923
8.	No.15 Minimum Age (Trimmers And Stokers) Convention, 1921	20.11.1922
9.	No.16 Medical Examination of Young Persons (Sea) Convention, 1921	20.11.1922
10.	No.18 Workmen's Compensation (Occupational Diseases) Convention, 1925	30.09.1927
11.	No.19 Equality of Treatment (Accident Compensation) Convention, 1925	30.09.1927
12.	No.21 Inspection of Emigrants Convention, 1926	14.01.1928
13.	No.22 Seamen's Articles of Agreement Convention, 1926	31.10.1932
14.	No.26 Minimum Wage-Fixing Machinery, Convention, 1928	10.01.1955
15.	No.27 Marking of Weight (Packages Transported By Vessels) Convention, 1929	07.09.1931
16.	No.29 Forced Labour Convention, 1930	30.11.1954
17.	No.32 Protection Against Accidents (Dockers) Convention (Revised), 1932	10.02.1947
18.@	No.41 Night Work (Women) Convention (Revised), 1934	22.11.1935
19.	No.42 Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934	13.01.1964
20.	No.45 Underground Work (Women) Convention, 1935	25.03.1938

\*for information only.

21.	No.80 Final Articles Revision Convention, 1946	17.11.1947
22. **	No.81 Labour Inspection Convention, 1947	07.04.1949
23.	No.88 Employment Services Convention, 1948	24.06.1959
24.	No.89 Night Work (Women) Convention (Revised), 1948	27.02.1950
25.	No.90 Night Work of Young Persons (Industry) (Revised), 1948	27.02.1950
26.	No.100 Equal Remuneration Convention, 1951	25.09.1958
27.	No.107 Indigenous And Tribal Population Convention, 1957	29.09.1958
28.	No.111 Discrimination (Employment & Occupation) Convention, 1958	03.06.1960
29.	No.116 Final Articles Revision Convention, 1961	21.06.1962
30.#	No.118 Equality of Treatment (Social Security) Convention, 1962	19.08.1964
31.@@	No.123 Minimum Age (Underground Work) Convention, 1965	20.03.1975
32.	No.115 Radiation Protection Convention, 1960	17.11.1975
33.	No.141 Rural Workers' Organisation Convention, 1975	18.08.1977
34.	No.144 Tripartite Consultation (International Labour Standards) Convention,1976	27.02.1978
35.	No.136 Benzene Convention, 1971	11.06.1991
36.##	No.160 Labour Statistics Convention, 1985	01.04.1992
37.	No.147 Merchant Shipping (Minimum Standards), 1976	26.09.1996
38.	No.122 Employment Policy Convention 1964	17.11.1998
39.	No.105 Abolition of Forced Labour, 1957	18.05.2000
40.	No.108 Seafarers' Identity Documents Convention, 1958	07.01.2005
41.	No.174 Prevention of Major Industrial Accidents	06.06.2008
42.	No. 142 Human Resources Development	25.3.2009
43.	No. 127 Maximum Weight	26.3.2010
44.	No.185 Seafarers' Identity Documents Convention (Revised), 2003	09-10-2015
45.@#	Maritime Labour Convention, 2006 (MLC 2006)	09-10-2015
46.	No. 138 Minimum Age Convention	13-06-2017
47.	No. 182 Worst Forms of Child labour Convention	13-06-2017
Protocol 1	P89 Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948	

\* Later denounced, The Convention requires, internal furnishing of statistics concerning unemployment every three months which is considered not practicable.

@ Convention denounced as a result of ratification of Convention No.89.

\*\* Excluding Part II.

# Branches (c) and (g) and Branches (a) to (c) and (i).

@@ Minimum Age initially specified was 16 years but was raised to 18 years in 1989.

## Article 8 of Part – II.

@#In accordance with Standard A4.5 (2) and (10), the Government has specified the following branches of social security: maternity benefit; invalidity benefit and survivors' benefit.

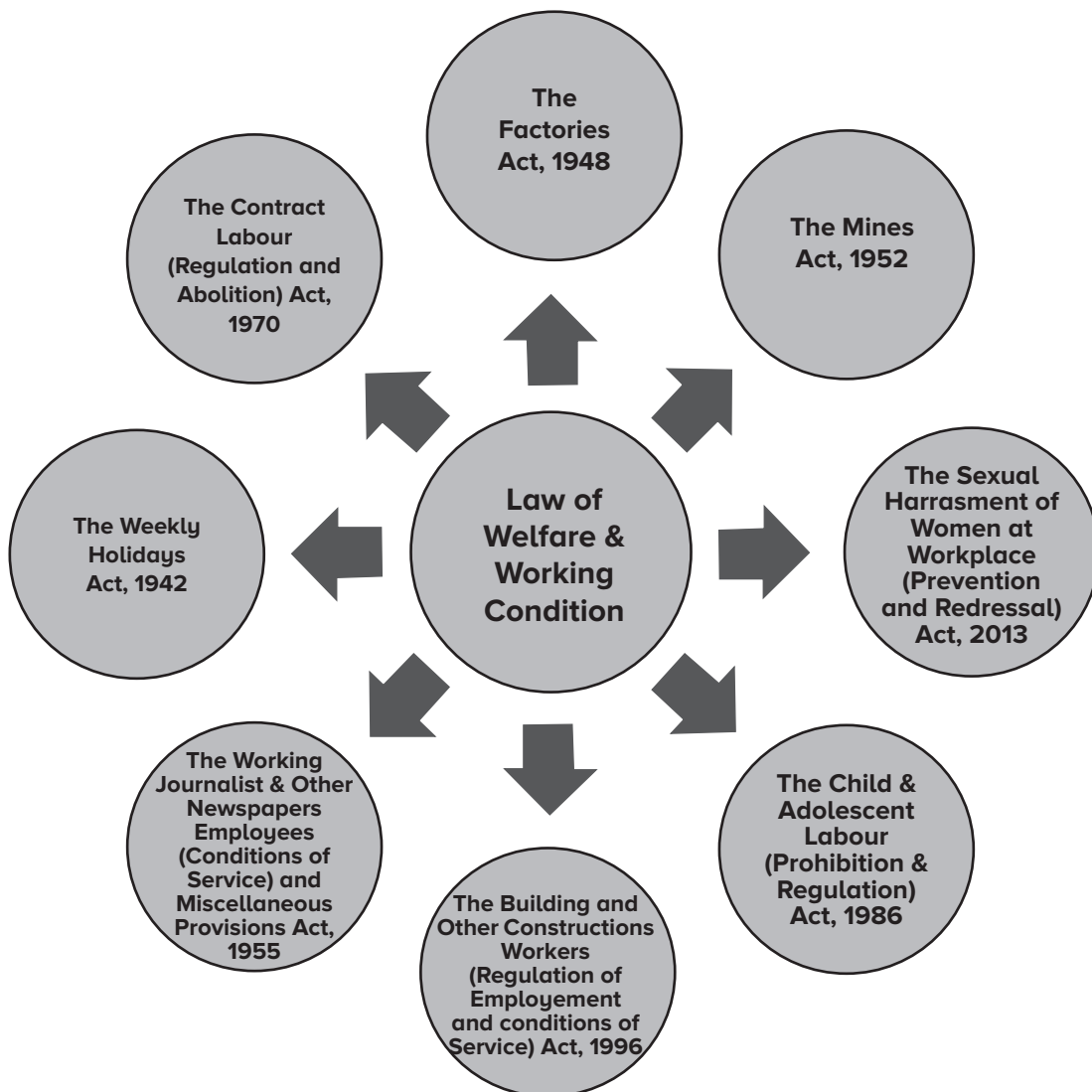
### LESSON ROUND-UP

- International Labour Organisation (ILO) is a nodal agency coming under the ambit of the United Nations (UN). Its primary objective is to deal with issues related to labour, namely, maintaining international labour standards, ensuring social protection and providing work opportunities to all.
- Established in 1919, it works towards setting up labour standards, developing policies and chalking out programmes promoting decent work for all men and women. The ILO functions with a unique tripartite structure, that brings together governments', employers' and workers' representatives.
- The International Labour Organisation (ILO) works towards providing such a decent work and productive employment to the labour force worldwide. This is done with a view of reducing poverty rates and achieving just globalization throughout.
- ILO functions on the basis of an underlying requirement of cooperation between governments', employers' and workers' organizations. Their cooperation is required for smooth functioning of the organization and ameliorating social and economic growth. The ILO sets labour standards, develop policies and devise programmes after taking into consideration the views put forward by all these members.
- Governing Body is the executive wing of the ILO. The governing body meets thrice a year to decide ILO's policy, elect the director- general, adopts the draft programmes and budgetary requirements, which are put in front of the conference.
- The international labour office is the centre of all activities performed by the ILO. It functions under the watchful eye of the governing body and leadership of the Director-General. The functions of international labour office are described under article 10 of the ILO constitution.
- The functions of the International Labour Office shall include the collection and distribution of information on all subjects relating to the international adjustment of conditions of industrial life and labour, and particularly the examination of subjects which it is proposed to bring before the Conference with a view to the conclusion of international Conventions, and the conduct of such special investigations as may be ordered by the Conference or by the Governing Body.
- India has been a permanent member of ILO since 1922 and is one of its founding members. The first ILO office in India was established in India in 1928. ILO works on the principle that all the partners need to be strengthened so that the institutional capabilities could be enhanced. The socio-economic development of ILO takes a two-pronged approach, that of overall strategies and that of ground level approaches.
- India has specific representation of each major deliberative organ of the ILO, namely the International Labour Conferences, Governing Body and the International Labour Office. The ILO office is located at New Delhi in India. Indian participation in the ILO's organisation and functioning can be understood in terms of its representation and contribution to the ILO.





The improvement of labour welfare and increasing productivity with reasonable level of social security is one of the prime objectives concerning social and economic policy of the Government. Economic development means not only creation of jobs but also working conditions in which one can work in freedom, safety and dignity. To improving life and dignity of labour force of country by protecting & safeguarding the interest of workers, promotion of welfare and providing social security to the labour force both in Organized and Unorganized Sectors by enactment and implementation of various Labour Laws, which regulate the terms and conditions of service and employment of workers. This Lesson Comprises the Welfare & Working Condition laws as depicted in image below:





## SECTION I: THE FACTORIES ACT, 1948

### KEY CONCEPTS

- Manufacturing Process ■ Worker, Factory ■ Occupier ■ Competent Person ■ Hazardous Process
- Adult ■ Adolescent ■ Machinery

### Learning Objectives

#### To understand:

- Legal requirements stipulated under the Factories Act.
- The history of the legislation
- The meaning of key terms such as Factory, Manufacturing Process, Occupier and Worker
- Statutory Agencies and their powers for enforcement of the act
- Duties of Occupier /Manufacturer
- Various measures to be taken by factories for health, safety and welfare of workers
- Penalties and Procedure in case the employers fail to apply factories act in true spirit

### Lesson Outline

- Introduction
- History of the Legislation
- Object of the Act
- Applicability of the Act
- Scheme of the Act
- Definitions
- Statutory Agencies and their powers for enforcement of the Act
- Duties of Occupier/Manufacturer
- Measures to be taken for health, safety and welfare of workers
  - Health
  - Safety
- Provisions relating to Hazardous processes
- Welfare
- Working hours of adults
- Employment of young persons
- Annual leave with wages
- Special provisions
- Penalties and procedure
- Supplemental
- Lesson Round-Up
- Test Yourself

*Factories Act, 1948 is an Act to consolidate and amend the law regulating labour in factories.*

## INTRODUCTION

Factories Act, 1948 is an act to consolidate and amend the law regulating labour in factories. The main objective of the Act is to ensure adequate safety measures but also to promote health and welfare of the workers employed in factories as well as to prevent haphazard growth of factories. The Factories Act, 1948 has been enacted on 23.09.1948. This Act is legislated to lay guidelines on working conditions in factories including leaves, working hours, holidays, etc. It also ensures health, safety and welfare measures of workers in factories. This Act made mandatory medical examination for children under the age of 15 while admitting to work as well periodically. Certificates of fitness is also made necessary for young workers working in harbors, constructions, etc. This Act has been amended in the year 1987. There are provisions of the Act which deals with regard to health measures including cleanliness, ventilation, lightning, drinking water, latrines & urinal, etc., safety measure includes fencing, lifting, casing of machinery, employment of young workers with dangerous machines, etc., welfare measures which include washing facilities, facilities for sitting, first aid facilities etc. This Act also focused on hazardous process by industries and the level of chemical substances permissible in work environment. The Act contain provisions regarding hazardous process, constitution of Site Appraisal Committee, compulsory disclosure of Information, appointing competent person in handling hazardous substances, etc. As far as the working hours of adult workers is concerned, e.g. weekly works and holidays, night shifts, overtime wages, etc., it is provided that an adult worker should not work more than 48 hours in a week and should get one full day holiday in a week. A women worker should not be allowed to work beyond 10pm and before 6 a.m. No children under the age of fourteen should be allowed to work in any factory. Beyond several provisions for the welfare of the workers, there are several special provisions which really give special protection with some strict measures for the purpose of the Act. Court will take cognizance only when the complaint is made in three months within the reach of Inspector. There were several other penal provisions for the offences by several authorities and experts.

## HISTORY OF THE LEGISLATION

There has been a constant struggle going on between labour and capital. Capital has been exploiting the labour to their own maximum benefit for they have better economic footing and power to dictate their terms. The industrial unrest and economic discontent led to a number of strikes and labour troubles. In Pre- Independence era, the workers were generally illiterate, poor and unconscious of their rights. Neither the government nor the Law Court took notice to these labour problems arising in the country as they believed in the policy of non-interference in employer and employees relation. The situation, with lapse of time, became so worse and the society was so much adversely affected that the government was forced to take some measures. In the post-independence period, the national government paid attention to the improvement in conditions of labour health in industry as the prosperity of the country lies upon the development of industrial growth. There were two basic concept on which the labour legislation were framed, first was that the wage earner is a partner in the production hence should be allowed due share of the profits in production. Secondly, individual employer as well as community as a whole is under obligation to protect the well-being of the workers.

The first Factories Act was enacted in 1881 which was replaced by the Act of 1934. The 1934 Act revealed a number of defects and weaknesses which hampered effective administration of the Act, therefore the Factories Act, 1948 was passed. The Factories Act, 1948 is more comprehensive than the previous act and focuses mainly on health, safety, welfare of the workers inside factories, working hours, minimum age to work, leave with pay etc. The Act is in tune with the spirit of the Constitution of India i.e. article 24, 39(e), 39(f), 42 and 48A.

The Factories Act, 1948 has been amended from time to time, especially after the Bhopal gas disaster, which could have been prevented. The amendment demanded a shift away from dealing with disaster (or disease) to prevention of its occurrence. The Factories (Amendment) Act came into force on December 1, 1987. A special chapter on occupational health and safety to safeguard workers employed in hazardous industries was added. In this chapter, pre-employment and periodic medical examinations and monitoring

of the work environment are mandatory for industries defined as hazardous under the Act. A maximum permissible limit has been laid down for a number of chemicals.

### Object of the Act

The Factories Act, 1948 was, therefore, enacted and came into force with the objective to provide adequate compensation to the affected persons. The Act extends to the whole of India and persons employed in factories, mines, plantation, construction, mechanically propelled vehicles and in some hazardous occupations are covered under the provisions of the Act. It is an Act to consolidate and amend the law regulating labour in factories (Preamble of the Act). The main object of the Factories Act, 1948 is to ensure adequate safety measures and to promote the health and welfare of the workers employed in factories.

In the case of ***Ravi Shankar Sharma v. State of Rajasthan, AIR 1993 Raj. 117***, Court held that Factories Act is a social legislation and it provides for the health, safety, welfare and other aspects of the workers in the factories. In short, the 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.

In ***Bhikusa Yamasa Kshatriya (P.) Ltd. v. UOI***, the court observed that the Act has been enacted primarily with the object of protecting workers employed in factories against industrial and occupational hazards. For that purpose, it seeks to impose upon the owner or the occupier certain obligations to protect the workers and to secure for them employment in conditions conducive to their health and safety.

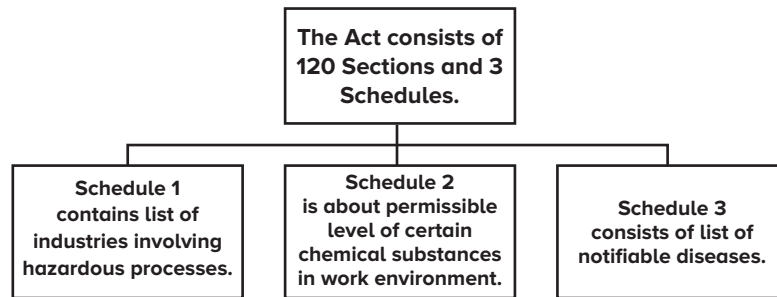
Also, in the landmark case of ***J.K. Industries Limited etc. v. The Chief Inspector of Factories***, history and significance of health and safety provisions with regards to amendments in the Factories Act were traced, with the Court observing the legal timeline for the same, providing the reasons as: "The provisions of the 1934 Act (erstwhile Factories Act) regarding safety, health and welfare of workers were found to be inadequate and unsatisfactory. In view of large and growing industrial activity in the country, an overhauling of the factories law became necessary."

It further went on to consolidate the main purpose of the Act as: "A piece of social welfare legislation enacted primarily with the object of protecting workmen employed in factories against industrial and occupational hazards. It seeks not only to ensure that workers would not be subjected to long hours of strain but also that employees should work in safe, healthy and sanitary conditions and that adequate precautions are taken for their welfare and safety. The stringent provisions relating to the obligations of the occupiers or managers with a view to protect workers and to secure to them employment in conditions conducive to their health and safety indicate the board purpose of the Act."

### Applicability of the Act

- It extends to the whole of India w.e.f. the 1st day of April, 1949.
- It applies to factories as defined under the Act. Applicable to all factories using power and employing 10 or more workers, and if not using power, employing 20 or more workers on any day of the preceding 12 months. But it does not include a mine subject to the operation of the Mines Act, 1952 or a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place.
- The benefits of this Act are available to persons who are employed in the factory and be covered within the meaning of the term "worker" as defined in the Act. But the definition of worker excludes any member of the armed forces of the Union.

## Scheme of the Act



## Definitions

Section 2 provides for definition of certain words used in the Act as – “In this Act, unless there is anything repugnant in the subject or context, -

Term	Section	Definition
<b>“Adult”</b>	Section 2(a)	Adult means a person who has completed his eighteenth year of age.
<b>“Adolescent”</b>	Section 2(b)	Adolescent means a person who has completed his fifteenth year of age but has not completed his eighteenth year.
<b>“Calendar Year”</b>	Section 2(bb)	Calendar Year means the period of twelve months beginning with the first day of January in any year.
<b>“Child”</b>	Section 2(c)	Child means a person who has not completed his fifteenth year of age.
<b>“Competent Person”</b>	Section 2(ca)	Competent Person, in relation to any provision of this Act, means a person or an institution recognized as such by the Chief Inspector for the purposes of carrying out tests, examinations and inspections required to be done in a factory under the provisions of this Act having regard to- <ul style="list-style-type: none"> <li>(i) the qualifications and experience of the person and facilities available at his disposal; or</li> <li>(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 recognized as a competent person in relation to a factory.</li> </ul>
<b>“Hazardous Process”</b>	Section 2(cb)	Hazardous process means any process or activity in relation to an industry specified in the First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, bye- products, wastes, or effluents thereof would- <ul style="list-style-type: none"> <li>(i) cause material impairment to the health of the persons engaged in or connected therewith, or</li> <li>(ii) result in the pollution of the general environment:</li> </ul> It is provided that the State Government may, by notification in the Official Gazette, amend the First Schedule by way of addition, omission or variation of any industry, specified in the said Schedule.

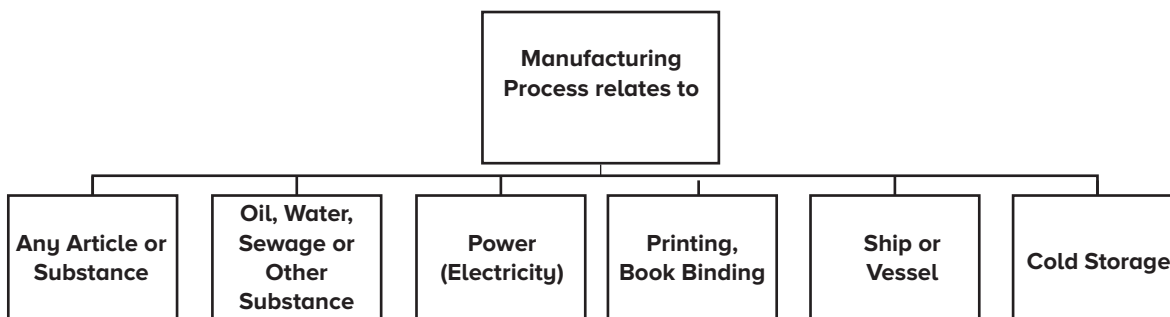
<b>“Young Person”</b>	Section 2(d)	Young person means a person who is either a child or an adolescent.
<b>“Day”</b>	Section 2(e)	Day means a period of twenty-four hours beginning at midnight.
<b>“Week”</b>	Section 2(f)	Week means a period of seven days beginning at midnight on Saturday night or such other night as may be approved in writing for a particular area by the Chief Inspector of Factories.
<b>“Power”</b>	Section 2(g)	Power means electrical energy, or any other form of energy which is mechanically transmitted and is not generated by human or animal agency.
<b>“Prime mover”</b>	Section 2(h)	Prime mover means any engine, motor or other appliance which generates or otherwise provides power.
<b>“Transmission Machinery”</b>	Section 2(i)	Transmission Machinery means any shaft, wheel drum, pulley, system of pulleys, coupling, clutch, driving belt or other appliance or device by which the motion of a prime mover is transmitted to or received by any machinery or appliance.
<b>“Machinery”</b>	Section 2(j)	Machinery includes prime movers, transmission machinery and all other appliances whereby power is generated, transformed, transmitted or applied.

**“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, or
- (ii) pumping oil, water, sewage or any other substance; or
- (iii) generating, transforming or transmitting power; or
- (iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding; or
- (v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or
- (vi) preserving or storing any article in cold storage;

On the Basis of above definition, we can say:



An important necessity for any premises to be regarded as a ‘factory’ is, that a “manufacturing process” should be conducted within the premises. Therefore, the definition is quite important and it has been the subject of judicial interpretation in large number of cases:

**(i) What is manufacturing process**

The definition of manufacturing process is exhaustive. Under the present definition even transporting, washing, cleaning, oiling and packing which do not involve any transformation as such which is necessary to constitute manufacturing process in its generic sense, are nonetheless treated as manufacturing process. The definition is artificially projected beyond the scope of natural meaning of what the words might convey thus covering very wide range of activities. Madras High Court in the case of *In re. Seshadrinatha Sarma, 1966 (2) LLJ 235*, held that to constitute a manufacture there should not be essentially some kind of transformation of substance and the article need not become commercially as another and different article from that at which it begins its existence so long as there has been an indisputable transformation of substance by the use of machinery and transformed substance is commercially marketable. Division Bench of A.P. High Court held that to determine where certain premises is factory, it is necessary that it should carry on manufacturing process and it does not require that the process should end in a substance being manufactured.

**Following processes have been held to be manufacturing processes:**

- (1) Sun-cured tobacco leaves subjected to processes of moistening, stripping, breaking up, adaption, packing, with a view to transport to company's main factory for their use in manufacturing cigarette (***V.P. Gopala Rao v. Public Prosecutor, AIR 1970 S.C. 66***).
- (2) The operation of peeling, washing etc., of prawns for putting them in cold storage is a process with a view to the sale or use or disposal of the prawns (***R.E. DSouza v. Krishnan Nair, 1968 F.J.R. 469***).
- (3) Stitching old gunny bags and making them fit for use.
- (4) In paper factory, bankas grass packed into bundles manually and despatched to the factory.
- (5) Work of garbling of pepper or curing ginger.
- (6) Process carried out in salt works in converting sea water into salt. In ***Ardeshir v. Bombay State [AIR 1962 SC 29]*** the process carried out in the salt works comes within the definition of 'manufacturing process' in Section 2 (k) in as much as salt can be said to have been manufactured from sea water by the process of treatment and adaptation of sea water into salt.
- (7) Conversion of latex into sheet rubber.
- (8) A process employed for the purpose of pumping water.
- (9) The work done on the bangles of cutting grooves in them which later would be filled with colouring, is clearly a stage in ornamentation of the bangle with view to its subsequent use for sale.
- (10) Preparation of soap in soap works.
- (11) The making of bidies. (***State of Bombay v. Ali Saheb Kashim Tamboli, [(1995) 2 LLJ 182]***)
- (12) The raw film used in the preparation of movies is an article or a substance and when by the process of tracing or adapting, after the sound are absorbed and the photos imprinted, it is rendered fit to be screened in a cinema theatre, then such a change would come within the meaning of the term treating or adapting any article or substance with a view to its use. (***re K.V.V. Sharma [(1950) 1 LLJ 29]***)
- (13) Composing is a necessary part of printing process and hence it is a manufacturing process. It cannot be said that the definition should be confined to the process by which impression is created on the paper and to no other process preceding or succeeding the marking of the impression on the paper to be printed. Everything that is necessary before or after complete process, would be included within the definition of the word 'manufacturing process'.

- (14) Preparation of food with aid of various electrical appliances in kitchen of a hotel is a manufacturing process, as decided in the case of "**Poona Industrial Hotel v. I.C. Sarin, 1980, Lab IC 100. In New Taj Mahal Cafe Ltd., Mangalore v. Inspector of Factories, Mangalore, 1956 1 LLJ 273** the preparation of foodstuffs and other eatable in the kitchen of a restaurant and use of a refrigerator for treating or adapting any article with a view to its sale were also held to be manufacturing process.
- (15) The work of mere packing cannot be called as a manufacturing process; {ref-AIR 1955 NUC2710}.
- (16) The business of sale of diesel oil, motor spirit, lubricant, servicing of cars and lorries, repairing vehicles and charging batteries with the aid of power, by employing more than 20 workers / labourers amount to manufacturing process, as noted in the case of "**Baranagar Service Station v. E.S.I Corporation (1987) 1 L.L.N 912 (Cal) (Divisional Bench) & Labl. C. 302.**
- (17) Decorticating groundnuts in electric mill is a manufacturing process (AIR 1959 Madras30).
- (18) Construction of railway - use of raw materials like sleepers, bolts, loose rails etc. to adaptation of their use for ultimately for laying down railway line (**LAB IC 1999 SC 407; Lal Mohmd. v. Indian Railway Construction Co. Ltd.**).
- (19) Hon'ble Supreme Court in **G.L. Hotels Limited and Ors. v. T.C. Sarin and Anr. (1993) 4 SCC 363** where it was held that since the manufacturing process in the form of cooking and preparing food is carried on in the kitchen and the kitchen is a part of the hotel or a part of the precinct of the hotel, the entire hotel falls within the purview of the definition of 'factory'.

The definition takes in all acts which bring in not only some change in the article or substance but also the act done for the protection and maintenance of such article by packing, oiling, washing, cleaning, etc. [(**P. Natrajan v. E.S.I. Corporation (1973) 26 FLR 19**)], Preparation of food and beverages and its sale to members of a club (**CCI v. ESIC, 1992 LAB IC 2029 Bom.**), receiving products in bulk, in packing and packing as per clients requirements (**LLJ I 1998 Mad. 406**).

### (ii) **What is not a manufacturing process**

No definite or precise test can be prescribed for determining the question whether a particular process is a manufacturing process. Each case must be judged on its own facts regard being had to the nature of the process employed, the eventual result achieved and the prevailing business and commercial notions of the people. In deciding whether a particular business is a manufacturing process or not, regard must be had to the circumstances of each particular case. To constitute a manufacturing process, there must be some transformation i.e. article must become commercially known as something different from which it acquired its existence.

### **Following processes are not manufacturing processes:**

- (1) Exhibition of films process.
- (2) Industrial school or Institute imparting training, producing cloth, not with a view to its sale.
- (3) Receiving of news from various sources on a reel in a teleprinter of a newspaper office, is not a manufacturing process in as much as news is not the article or substance to which Section 2(k)(i) has referred.
- (4) Any preliminary packing of raw material for delivering it to the factory (AIR 1969 Mad. 155).
- (5) Finished goods and packing thereof: *F. Hare v. State AIR 1955, 2710.*
- (6) Transportation of goods on contract basis from one place to another by road with the assistance of transport carriers is not a manufacturing process- as decided in the case of **regional Director E.S.I.C v. Jaihind Roadways, Bangalore (2001), 1 L.L.J 1187 (Karnataka).**



- (7) Breaking up of boulders is a manufacturing process – as decided in case of **“Larsen & Toubro v. state of Orissa, 1992 Lab IC 1513 (Orissa- Divisional Bench).**
- (8) Selling of petrol or diesel by a petrol dealer or repairing of motor vehicle will not come within the term “manufacturing process”, as noted in the case of : **National Service Centre and Petrol Pump v. E.S.I. Corporation, 1983 Lab.C. 412 (P&H).**

**Supreme Court has held that the process undertaken in zonal and sub-stations and electricity generating stations, transforming and transmitting electricity generated at the power station does not fall within the definition of manufacturing process and could not be said to be factories... (Workmen of Delhi Electric Supply Undertaking v. Management of D.E.S.U., AIR 1973 S.C. 365).**

### “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;

A person to be a worker within the meaning of the Factories Act must be a person employed in the premises or the precincts of the factory. As held by the court in the **State of Uttar Pradesh v. M. P. Singh (1960) 2 SCR 605: (AIR 1960 SC 569)** field workers who are employed in guiding, supervising and controlling the growth and supply of sugar cane to be used in the factory are not employed either in the precincts of the factory or in the premises of the factory. Hence the provisions of the Factories Act do not apply to them. **AIR 1978 SUPREME COURT 849, RohtasIndustries Ltd v. Ramlakhan Singh.**

**The definition contains following ingredients:**

**(i) There should be an ‘employed person’**

- (a) **Meaning of the word “employed”:** The concept of “employment” involves three ingredients, viz. employer, employee, and contract of employment. The ‘employer’ is one who employs, i.e., one who engages the services of other persons. The ‘employee’ is one who works for another for hire.

The employment is the contract of service between employer and employee whereunder the employee agrees to serve the employer subject to his control and supervision. The prima facie test for determination of the relationship between the employer and employee is the existence of the right of the employer to supervise and control the work done by the employee not only in the matter of directing what work the employee is to do but also the manner in which he shall do his work (**Chintaman Rao v. State of M.P. AIR 1958 S.C. 388**).

Therefore, ‘supervision and control’ is the natural outcome when a person is employed by another person. Moreover, the ‘employment’ referred to in the section is in connection with a manufacturing process that is carried on in the factory which process normally calls for a large measure of coordination between various sections inside a factory and between various individuals even within a section. The persons will have to be guided by those placed in supervisory capacity. A certain amount of control is thus necessarily present in such a case.

**In Shankar Balaji Waje v. State of Maharashtra, AIR 1963 Bom. 236**, the question arose whether bidi roller is a worker or not. The management simply says that the labourer is to produce bidies rolled in a certain form. How the labourer carried out the work is his own concern and is not controlled by the management, which is concerned only with getting bidies rolled in a particular style with certain contents. The Supreme Court held that the bidi roller is not a worker. The whole conception of service



does not fit in well with a servant who has full liberty to attend to his work according to his pleasure and not according to the orders of his master. Where the employer did retain direction and control over the workers both in manner of the nature of the work as 'also its details, they will be held as workers.

In ***State of Kerala v. V M Patel, [1961 (1) LLJ 549 (SC)]*** the Supreme Court held that the work of garbling pepper by winnowing, cleaning, washing and drying in lime and laid out to dry in a warehouse are manufacturing processes and therefore the persons employed in these processes were workers within the meaning of Section 2(l) of the Act.

A day labourer, where there was no evidence to show that he was free to work for such period as he likes, free to come and go whenever he chose and free to absent himself at his own sweet will, was held to be a worker. Similarly, women and girls employed in peeling, washing etc., of consignment of prawns brought on the premises at any time of the day or night, without any specified hours of work and without any control over their attendance or the nature, manner or quantum of their work and who after finishing the work go to other premises in the locality where similar consignment of prawns are received, are not Workers (***State of Kerala v. R.E. DSouza***).

- (b) **Whether relationship of master and servant necessary:** The expression "employed" does not necessarily involve the relationship of master and servant. There are conceivable cases in which where no such relationship exists and yet such persons would be workers. The expression a person employed, according to Justice Vyas, means a person who is actually engaged or occupied in a manufacturing process, a person whose work is actually utilised in that process. The definition of worker is clearly enacted in terms of a person who is employed in and not in terms of person who is employed by. It is immaterial how or by whom he is employed so long as he is actually employed in a manufacturing process.

In ***Birdh Chand Sharma v. First Civil Judge, Nagpur, [AIR 1961 SC 644]*** where the respondents prepared bidis at the factory and they were not at liberty to work at their homes. They worked within certain hours which were the factory hours. They were, however, not bound to work for the entire period and they could go whenever they like. Their attendance was noted in the factory. They could come and go away at any time they liked. However no worker was allowed to work after midday even though the factory was closed at 7 p.m. and no worker was allowed to continue work after 7 p.m. There were standing orders in the factory and, according to these orders a worker who remained absent for eight days presumably without leave could be removed. The payment was made on piece rate according to the quantum of work done, but the management had the right to reject such bidis as did not come up to the proper standard. On these facts the Supreme Court held that respondents were workers under section 2 (1) of the Act.

- (c) **Piece-rate workers – Whether workers: Piece-rate workers can be workers within the definition of 'worker' in the Act, but they must be regular workers and not workers who come and work according to their sweet will (*Shankar Balaji Waje v. State of Maharashtra, AIR 1967 S.C. 517*).** In another case workmen had to work at bidi factory when they liked. The payment was made on piece- rate according to the amount of work done. Within the factory, they were free to work. But the control of the manner in which bidies were ready, by the method of rejecting those which did not come up to the proper standards. In such a case it was exercised which was important (***Birdhi Chand Sharma v. First Civil Judge, Nagpur, AIR 1961 SC 644***). Therefore, whatever method may be adopted for the payment of wages, the important thing to see is whether the workers work under supervision and control of the employer. It makes no difference whether the worker employed in the manufacturing process is paid time rate wages or piece rate wages.
- (d) **The partners of a concern,** even though they work on premises in the factory cannot be considered to be workers within Section 2(1): (1958 (2) LLJ 252 SC).

- (e) **An independent contractor:** He is a person who is charged with work and has to produce a particular result but the manner in which the result is to be achieved is left to him and as there is no control or supervision as to the manner in which he has to achieve the work, he is not a worker.

(ii) **Employment should be direct or through some agency**

The words directly or by or through any agency in the definition indicate that the employment is by the management or by or through some kind of employment agency. In either case there is a contract of employment between the management and the person employed. There should be a privity of contract between them and the management. Only such person can be classified as worker who works either directly or indirectly or through some agency employed for doing his works of any manufacturing process or cleaning, etc., with which the factory is concerned. It does not contemplate the case of a person who comes and that too without his intervention either directly, or indirectly, and does some work on the premises of factory.

(iii) **Employment should be in any manufacturing process etc.**

The definition of “worker” is fairly wide. It takes within its sweep not only persons employed in manufacturing process but also in cleaning any part of the machinery and premises used for manufacturing process. It goes far beyond the direct connection with the manufacturing process by extending it to other kinds of work which may either be incidental to or connected with not only the manufacturing process itself but also the subject of the manufacturing process (**Works Manager, Central Rly. Workshop Jhansi v. Vishwanath and others**), the concept of manufacturing process has already been discussed. The meaning of the expression employed in cleaning any part of machinery, etc.” and employed in work incidental to process, are discussed below:

- (a) **Employed in cleaning any part of machinery etc.:** If a person is employed in cleaning any part of the machinery premises which is used for manufacturing process, he will be held as worker.
- (b) **Employed in work incidental to process:** This clause is very important because it enlarges the scope of the term, manufacturing process. Following illustrative cases will clarify the meaning of this clause:
- (1) In **Shinde v. Bombay Telephones, 1968 (11) LLJ 74**, it was held that whether the workman stands outside the factory premises or inside it, if his duties are connected with the business of the factory or connected with the factory, he is really employed in the factory and in connection with the factory.
  - (2) In **Works Manager, Central Rly. Workshop Jhansi v. Vishwanath and others**, it was held that the definition of worker does not exclude those employees who are entrusted solely with clerical duties, if they otherwise fall within the definition of ‘worker. Timekeepers employed to maintain attendance of the staff, job cards particularly of the various jobs under operation, and time-sheets of the staff engaged in production of spare parts, repairs, etc.; and head time-keeper who supervise the work of the time-keepers, perform work which is incidental to or connected with the manufacturing process carried on in the factory and would therefore, fall within the definition of the worker in the Act.
  - (3) “Muneem” in a factory is a worker.
  - (4) In **Barat Fritz Werner Ltd. v. State of Karnataka**, the Supreme Court held that running a canteen is an incidental activity of a factory, which is necessary for running it.
  - (5) **Indian Petrochemicals Corporation Ltd. vs. Shramik Sena and Others** In this case it was held that that the workmen of a statutory canteen would be the workmen of the establishment only for the purpose of the Factories Act and not for all other purposes unless it was otherwise proved that the establishment exercised complete administrative control over the employees serving in the canteen. Thus what was to be seen in the relationship between the establishment and the canteen employees, was that whether there existed a master-servant relationship.

- (6) A person employed by a gas manufacturing works as a coolie for excavating and digging trenches outside the factory for laying pipes for transporting gas to consumers, cannot be held to be a worker (**AIR 1961 Bomb. 184**).
- (7) Person employed to supply material to a mason engaged in construction of furnace will be deemed to be employed by the factory to a work incidental to or connected with manufacturing process.
- (8) In a soap-works, a carpenter preparing the packing cases is a worker because he might legitimately be considered to be engaged in a kind of work incidental to or connected with the subject of the manufacturing process, viz., packaging of soap for being sent out for sale.
- (9) In the case of *Rohtas Industries Ltd. v. Ramlakhan Singh and others*, A.I.R. 1971 SC 849, a person was employed in a paper factory. He was engaged in supervising and checking quality and weightment of waste papers and rags which are the basic raw material for the manufacture of paper. He used to deal with receipts and maintain records of stock and pass the bill of the supplier of waste paper and rags. He used to work in the precincts of the factory and in case of necessities had to work inside the factory. The Supreme Court held that he was working in the factory premises or its precincts in connection with the work of the subject of the manufacturing process, namely the raw material.
- (10) It was held by the Madras High Court in *Elangovan M. and Others v. Madras Refineries Ltd.* (2005) II L.L.J. 653 (Mad.), that the employees of a canteen run in compliance to statutory duty are workmen of the establishment running the canteen for the purposes of Factories Act, 1948 only and not for all purposes.
- (11) In *Haldia Refinery Canteen Employees Union and Another v. Indian Oil Corporation Ltd. and Others* (2005) II L.L.J. 684 (SC), the respondent corporation was running a statutory canteen through a contractor. The workmen employed by the contractor in the canteen claimed regularization in service of the corporation. The Supreme Court held their claim as not sustainable because the control that the respondent corporation exercised over the contractor was only to ensure that the canteen was run in efficient manner. Further the corporation was not reimbursing to the contractor the wages of the workmen. Secondly two settlements had been made between the contractor and the canteen workmen and the respondent was not a party to either of them. Therefore, it was held that the workmen in canteen became workers of the respondent corporation only for the purposes of the Factories Act, 1948 and not for any other purpose.

**(iv) Employment may be for remuneration or not**

A person who receives wages as remuneration for his services, a person who receives remuneration on piecework basis, a person may be working as an apprentice, and a person who is a honorary worker, all come within the definition of a worker. Therefore to be a worker, it is immaterial whether a person is employed for wages or for no wages.

**(v) Any member of the armed forces of the Union is excluded from the definition of worker**

**(vi) Whether all employees are workers?**

Since the word employee has not been defined in the Act it follows that all the workers within the ambit of the definition under the Act would be employees, while all employees would not be workers (**Harbanslal v. State of Karnataka, (1976) 1 Karnt.J. 111**). All persons employed in or in connection with a factory whether or not employed as workers are entitled to the benefits of the Act (**Union of India v. G.M. Kokil, 1984 SCC (L&S) 631**).

Once it is established prima facie that premises in question is a factory within the meaning of the Act, the provisions of Section 103 as to the presumption of employment are immediately attracted and onus to prove the contrary shifts to the accused (**Prafulbhai Patadia v. The State, 1976 (12) E.L.R. 329**).

**“Factory” {Section 2(m)}**

Factory means any premises including the precincts thereof-

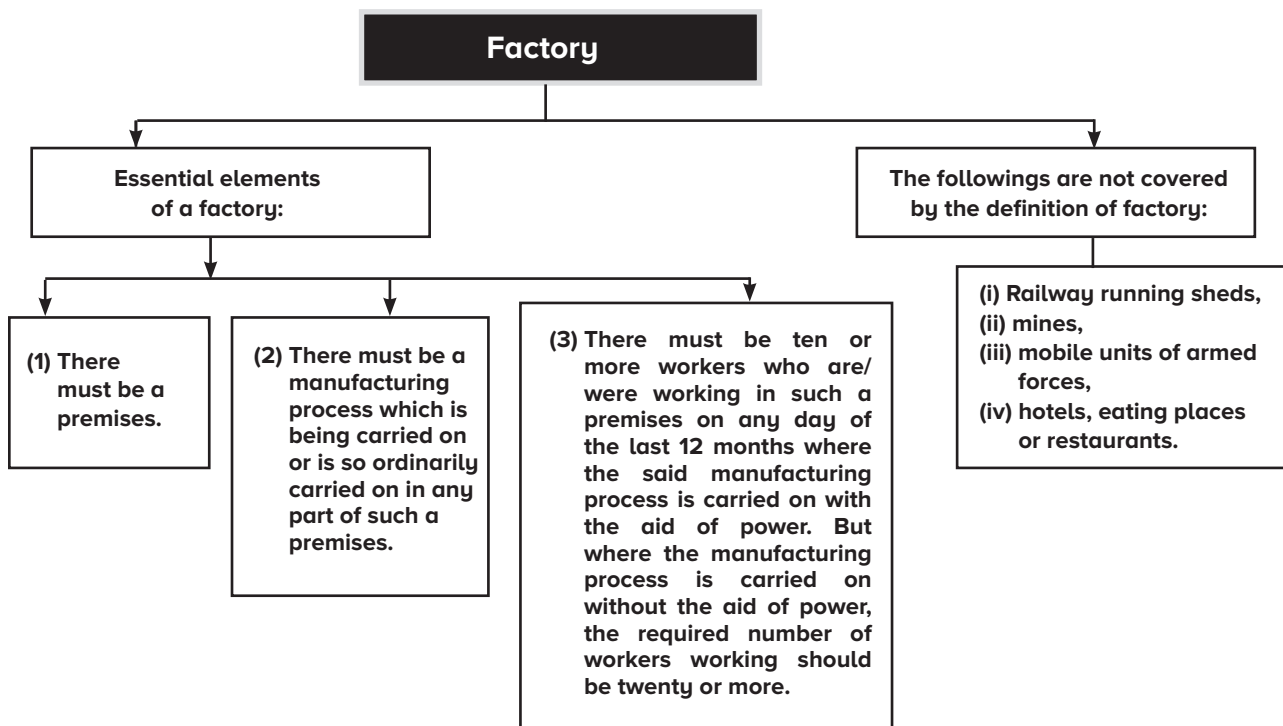
- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) Whereon twenty or more workers are working, or were working on 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,-

The definition of factory specifically excludes from its purview a mine subject to the operation of the Mines Act, 1952 or a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place.

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

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

(i)



Considering the following pointers is necessary for a better understanding of the term Factory under the Factories Act 1948:

- For computations of the number of workers in the Factory, the workers in different relays and groups on a particular day must be taken into account.
- A manufacturing process shall be carried out on the premises to be construed as a factory, and the installation of electronic data processing unit or computer unit cannot suffice for the same.

### (ii) Meaning of words “premises and precincts”

The word “premises” is a generic term meaning open land or land with building or building alone. The term ‘precincts’ is usually understood as a space enclosed by walls. Expression ‘premises’ including precincts does not necessarily mean that the premises must always have precincts. It merely shows that there may be some premises with precincts and some premises without precincts. The word ‘including is not a term’ restricting the meaning of the word ‘premises’, but is a term which enlarges its scope. All the length of railway line would be phase wise factories. Company engaged in construction of railway line is factory. **(LAB IC 1999 SC 407).**

The case law of **K.V.V.Sharma AIR, 1953, Mad 269**, stated precincts as; “a space enclosed by walls or fences. A place solely used for some purpose other than the manufacturing process carried on in a factory or a workshop does not constitute a factory.”

The Supreme Court in **Ardeshir H. Bhiwandiwalla v. State of Bombay, AIR 1962 S.C. 29**, observed that the legislature had no intention to discriminate between workers engaged in a manufacturing process in a building and those engaged in such a process on an open land and held that the salt works, in which the work done is of conversion of sea water into crystals of salt, come within the meaning of the word ‘premises’. It was held that the word ‘premises’ is a generic term meaning open land or land with buildings or building alone. The expression, “premises including precincts” does not necessarily mean that the premises must always have precincts. Even

buildings need not have any precincts. The word ‘including’ is not a term restricting the meaning of the word ‘premises’ but is a term which enlarges its scope. The use of the word ‘including’, therefore does not indicate that the word ‘premises’ must be restricted to main building and not to be taken to cover open land as well.

As decided in the case of **‘Workmen, Delhi electricity Supply Undertaking v. Management, AIR 1973 SC 365;** “Factory” is a premise where manufacturing process is carried on.”. No manufacturing process was held to take place either in the sub-stations or in the zonal stations of the Delhi Electricity Supply Undertaking, because the workmen employed therein have no part in any manufacturing process”.

### (iii) Manufacturing process is being carried on or ordinarily so carried on

The word ordinarily came up for interpretation in the case of **Employers Association of Northern India v. Secretary for Labour U.P. Govt.** The question was whether a sugar factory ceases to be a factory when no manufacturing process is carried on during the off-season. It was observed that the word ‘ordinarily’ used in the definition of factory cannot be interpreted in the sense in which it is used in common parlance. It must be interpreted with reference to the intention and purposes of the Act. Therefore, seasonal factories or factories carrying on intermittent manufacturing process, do not cease to be factories within the meaning of the Act.

### (iv) Ten or twenty workers

The third essential content of ‘factory’ is that ten or more workers are employed in the premises using power and twenty or more workers are employed in the premises not using power.

Where seven workers were employed in a premises where the process of converting paddy into rice by mechanical power was carried on and in the same premises, three persons were temporarily employed for repairs of part of the machinery which had gone out of order but the manufacturing was going on, it was held that since three temporary persons were workers, consequently there were ten workers working in the ‘premises’ and the premises is a factory **(AIR 1959, All. 794).**

According to explanation to Section 2(m), all the workers in different relays in a day shall be taken into account while computing the number of workers.

Bombay High Court held that the fact that manufacturing activity is carried on in one part of the premises and the rest of the work is carried on in the other part of the premises cannot take the case out of the definition of the

word 'factory' which says that manufacturing process can be carried on in any part. The cutting of the woods or converting the wood into planks is essentially a part of the manufacturing activity (***Bharati Udyog v. Regional Director ESI Corpn., 1982 Lab. I.C. 1644***).

A workshop of Polytechnic Institution registered under the Factories Act imparting technical education and having power generating machines, was carrying on a trade in a systematic and organised manner. Held, it will come under the definition of factory as defined under Section 2(m) read with Section 2(k) (1981 Lab. I.C. NOC 117).

### “Occupier” {Section 2(n)}

Occupier of a factory means the person who has ultimate control over the affairs of the factory;

#### Provided that –

- (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.

**It is 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 office-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;

In nutshell following points must be kept in mind regarding occupier:

Occupier is one who have ultimate Control over the affairs of the factory				
Firm	Company	Factory owned by Govt.	Dry Dock	Ship
Partner	Director	Person appointed by Govt.	Owner of Dock	Owner, Master or Officer in Charge



**J.K. INDUSTRIES LIMITED versus THE CHIEF INSPECTOR OF FACTORIES AND BOILERS & ORS.**

SLP (C) No. 12498/96, Supreme Court held that:

(i) In the case of a company, which owns a factory, it is only one of the director of the company who can be notified as the occupier of the factory for the purposes of the Act and the company cannot nominate any other employee to be the occupier of the factory:

(2) Where the company fails to nominate one of its directors as the occupier of the factory, the Inspector of Factories shall be at liberty to proceed against any one of the directors of the company, treating him as the deemed occupier of the factory, for prosecution and punishment in case of any breach or contravention of the provisions of the Act or for offences committed under the Act.

Therefore an employee of company or factory cannot be occupier. Proviso (ii) to Section 2(n) does not travel beyond scope of main provision and is not violative of Article 14 of Constitution of India. Proviso (ii) is not ultra vires main provisions of Section 2(n). No conflict exists between main provisions of Section 2(n) and proviso (ii). Further, proviso (ii) to Section 2(n) read with Section 92, does not offend Article 21.

Under Section 2(n)(iii), for the purpose of deciding who is an occupier of the factory, the test to be applied is who has ultimate control over its affairs in a government company, in fact the ultimate control lies with government though the company is separate legal entity by having right to manage its affairs. Persons appointed by central government to manage its affairs of factories (of government companies) were therefore deemed to be appointed as occupiers under the Act (*IOC v. CIF, LLJ II SC 1998 604*)

In *Indian Oil Corporation vs. Chief Inspector of Factories [1998(4) SCALE 116]*, it was observed that it is the Government which looks after the successful implementation of the Factories Act and, therefore, it is not likely to evade its implementation. That appears to be the reason why the legislature thought it fit to make a separate provision for the Government and local authorities, and so on. The legislature has provided that in the case of a factory owned or controlled by any of these authorities the person or persons appointed to manage the affairs of the factory shall be deemed to be the occupier. Therefore, if it is a case of a factory, in fact and in reality, owned or controlled by the Central Government or other authority, the person or persons appointed to manage the affairs of the factory shall have to be deemed to be the occupier even though for better management of such a factory, a corporate form is adopted by the Government. It was held in the case that the relevant provisions regarding the establishment of the appellant corporation and its working leave no doubt that the "ultimate control" over all the affairs of the corporation, including opening and running of the factories, is with the Central Government. Acting through the corporation is only a method employed by the Central Government for running its petroleum industry. In the context of Sec. 2(n), it will have to be held that all the activities of the corporation are really carried on by the Central Government with a corporate mask.

**Exemption of occupier or manager from liability in certain cases**

Section 101 provides exemptions from liability of occupier or manager. It permits an occupier or manager of a factory who is charged with an offence punishable under the Act to bring into the Court any other person whom he charges actual offender and also proves to the satisfaction of the Court that: (a) he has used due diligence to enforce the execution of this Act; and (b) that the offence in question was committed without his knowledge, consent or connivance, by the said other person. The other person shall be convicted of the offence and shall be liable to the like punishment as if he were the occupier or manager of the factory. In such a case occupier or manager of the factory is discharged from liability. The Section is an exception to principles of strict liability, but benefit of this would be available only when the requirements of this section are fully complied with and the court is fully satisfied about the proof of facts contemplated in (a) and (b) above.

**Group/Relay/Shift {Section 2(r)} :**

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

### Statutory Agencies and their powers for enforcement of the act

The State Governments assume the main responsibility for administration of the Act and its various provisions by utilising the powers vested in them.

- (i) **Reference to time of day (Section 3):** This section empowers the State Government to make rules for references to time of day where Indian Standard Time, being 5-1/2 hours ahead of Greenwich Mean-Time is not ordinarily observed. These rules may specify the area, define the local mean time ordinarily observed therein, and permit such time to be observed in all or any of the factories situated in the area.
- (ii) **Power to declare different departments to be separate factories or two or more factories to be a single factory (Section 4):** The State Government may on its own or on an application made in this behalf by an occupier, direct, by an order in writing and subject to such conditions as it may deem fit, that for all or any of the purposes of this act different departments or branches of a factory of the occupier specified in the application shall be treated as separate factories or that two or more factories of the occupier specified in the application shall be treated as a single factory.

It is mandatory for the State Government to provide an opportunity of being heard to the occupier before passing any such order.

- (iii) **Power to exempt during public emergency (Section 5):** In any case of public emergency the State Government may, by notification in the Official Gazette, exempt any factory or class or description of factories from all or any of the provisions of this Act except section 67 for such period and subject to such conditions as it may think fit. It is provided that no such notification shall be made for a period exceeding three months at a time.

**Explanation:** For the purposes of this section “public emergency” means a grave emergency whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance.

- (iv) **Power of the State Government to make rules with reference to approval, licensing and registration of factories:**

Section 6 (1) of the Act authorize the State Government to make rules-

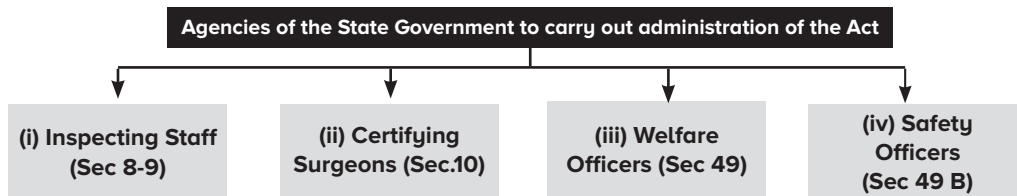
- (a) requiring, for the purposes of the Act, the submission of plans of any class or description of factories to the Chief Inspector or the State Government;
- (aa) requiring the previous permission in writing of the State Government or the Chief Inspector to be obtained for the site on which the factory is to be situated and for the construction or extension of any factory or class or description of factories;
- (b) requiring for the purpose of considering applications for such permission the submission of plans and specifications;
- (c) prescribing the nature of such plans and specifications and by whom they shall be certified;
- (d) 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 licenses;
- (e) requiring that no license shall be granted or renewed unless the notice specified in section 7 has been given.

**Deemed Approval:** 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 Inspectors 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. (Sub-section 2)



**Appeal to the Central Government :** 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.

*Explanation* clarifies 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.



### (i) Inspectors

*Appointment:* Section 8 empowers the State Government to appoint Inspectors, Additional Inspectors and Chief Inspectors, such persons who possess prescribed qualifications. Section 8(2) empowers the State Government to appoint any person to be a Chief Inspector. To assist him, the government may appoint Additional, Joint or Deputy Chief Inspectors and such other officers as it thinks fit.

Every District Magistrate shall be an Inspector for his district. The State Government may appoint certain public officers, to be the Additional Inspectors for certain areas assigned to them. The appointment of Inspectors, Additional Inspectors and Chief Inspector can be made only by issuing a notification in the Official Gazette.

When in any area, there are more inspectors than one, the State Government may by notification in the Official Gazette, declare the powers which such Inspectors shall respectively exercise and the Inspector to whom the prescribed notices are to be sent. Inspector appointed under the Act is an Inspector for all purposes of this Act. Assignment of local area to an inspector is within the discretion of the State Government.

A Chief Inspector is appointed for the whole State. He shall in addition to the powers conferred on a Chief Inspector under this Act, exercise the powers of an Inspector throughout the State. Therefore, if a Chief Inspector files a complaint, the court can legally take cognizance of an offence. Even assignment of areas under Section 8(6) does not militate in any way against the view that the Chief Inspector can file a complaint enabling the court to take cognizance. The Additional, Joint or Deputy Chief Inspectors or any other officer so appointed shall in addition to the powers of a Chief Inspector, exercise the powers of an Inspector throughout the State.

### Powers of Inspectors (Section 9)

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

- (a) enter, with such assistants, being persons in the service of the government, or any local or other public authority, or with an expert as he thinks fit, any place which is used, or which he has reason to believe is used, as a factory;
- (b) make examination of the premises, plant, machinery, article or substance;
- (c) inquire into any accident or dangerous occurrence, whether resulting in bodily injury, disability or not, and take on the spot or otherwise statements of any person which he may consider necessary for such inquiry;
- (d) require the production of any prescribed register or any other document relating to the factory;

- (e) seize, or take copies of, any register, record or other document or any portion thereof as he may consider necessary in respect of any offence under this Act, which he has reason to believe, has been committed;
- (f) direct the occupier that any premises or any part thereof, or anything lying therein, shall be left undisturbed (whether generally or in particular respects) for so long as is necessary for the purpose of any examination under clause (b);
- (g) take measurements and photographs and make such recordings as he considers necessary for the purpose of any examination under clause (b), taking with him any necessary instrument or equipment;
- (h) in case of any article or substance found in any premises, being an article or substance which appears to him as having caused or is likely to cause danger to the health or safety of the workers, direct it to be dismantled or subject it to any process or test (but not so as to damage or destroy it unless the same is, in the circumstances necessary, for carrying out the purposes of this Act), and take possession of any such article or substance or a part thereof, and detain it for so long as is necessary for such examination;
- (i) exercise such other powers as may be prescribed.

It is provided that no person shall be compelled under this section to answer any question or give any evidence tending to incriminate himself.

### **(ii) Certifying surgeons**

According to section 10, the State Government may appoint qualified medical practitioners to be certifying surgeons for the purposes of this Act within such local limits or for such factory or class or description of factories as it may assign to them respectively. A certifying surgeon may, with the approval of the State Government, authorize any qualified medical practitioner to exercise any of his powers under this Act for such period as the certifying surgeon may specify and subject to such conditions as the State Government may think fit to impose, and references in this Act to a certifying surgeon shall be deemed to include references to any qualified medical practitioner when so authorized.

No person shall be appointed to be, or authorized to exercise the powers of a certifying surgeon, or having been so appointed or authorized, continue to exercise such powers, who is or becomes the occupier of a factory or is or becomes directly or indirectly interested therein or in any process or business carried on therein or in any patent or machinery connected therewith or is otherwise in the employ of the factory. It is provided that the State Government may, by order in writing and subject to such conditions as may be specified in the order, exempt any person or class of persons from the provisions of this sub-section in respect of any factory or class or description of factories.

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

- (a) the examination and certification of young persons under this Act;
- (b) the examination of persons engaged in factories in such dangerous occupations or processes as may be prescribed;
- (c) the exercising of such medical supervision as may be prescribed for any factory or class or description of factories where –
  - (i) cases of illness have occurred which it is reasonable to believe are due to the nature of the manufacturing process carried on, or other conditions of work prevailing, therein;
  - (ii) by reason of any change in the manufacturing process carried on or in the substances used therein or by reason of the adoption of any new manufacturing process or of any new substance for use in a manufacturing process, there is a likelihood of injury to the health of workers employed in that manufacturing process;

- (iii) young persons are, or are about to be, employed in any work which is likely to cause injury to their health.

**Explanation:** In this section “qualified medical practitioner” means a person holding a qualification granted by an authority specified in the Schedule to the Indian Medical Degrees Act, 1916, or in Schedules to the Indian Medical Council Act, 1933.

### (iii) Welfare Officer

Section 49 of the Act imposes statutory obligation upon the occupier of the factory of the appointment of Welfare Officer/s wherein 500 or more workers are ordinarily employed. Duties, qualifications and conditions of service may be prescribed by the State Government.

### (iv) Safety Officer

Section 40-B empowers the State Government for directing a occupier of factory to employ such number of Safety Officers as specified by it where more than 1,000 workers are employed or where manufacturing process involves risk of bodily injury, poisoning or disease or any other hazard to health of the persons employed therein. The duties, qualifications and working conditions may be prescribed by the State Government.

## Duties of Occupier /Manufacturer

- (i) **Notice by occupier (Section 7)** According to sub-section (1), a written notice shall be sent by the occupier, at least fifteen days before he begins to occupy or use any premises as a factory, to the Chief Inspector. The notice shall contain following details:-
  - (a) The name and situation of the factory;
  - (b) the name and address of the occupier;
  - (bb) 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 communications 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.

Sub-section (2) states that 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.

In pursuance to sub-section (3), the occupier shall send a written notice to the Chief Inspector containing the particulars specified in sub-section (1) at least thirty days before the date of the commencement of work, in case

of 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,

**Notice of appointment of new manager:** 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.

**Manager, deemed manager:** 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 a 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.

### (ii) General duties of the occupier (Section 7A)

Sub-section (1) mandates that every occupier shall ensure, so far as is reasonably practicable, the health, safety and welfare of all workers while they are at work in the factory. Apart from general provisions of sub-section 1, sub-section (2) provides the matters covered under this duty of the occupier:

- (a) the provision and maintenance of plant and systems of work in the factory that are safe and without risks to health;
- (b) the arrangements in the factory for ensuring safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;
- (c) the provision of such information, instruction, training and supervision as are necessary to ensure the health and safety of all workers at work;
- (d) the maintenance of all places of work in the factory in a condition that is safe and without risks to health and the provision and maintenance of such means of access to, and egress from, such places as are safe and without such risks;
- (e) the provision, maintenance or monitoring of such working environment in the factory for the workers that is safe, without risks to health and adequate as regards facilities and arrangements for their welfare at work.

Except in such cases as may be prescribed, every occupier shall prepare, and, as often as may be appropriate, revise, a written statement of his general policy with respect to the health and safety of the workers at work and the organization and arrangements for the time being in force for carrying out that policy, and to bring the statement and any revision thereof to the notice of all the workers in such manner as may be prescribed.

### (iii) General duties of manufacturers, etc., as regards articles and substances for use in factories (Section 7B)

Sub-section (1) casts an obligation on every person who designs, manufactures, imports or supplies any article for use in any factory that he shall-

- (a) ensure, so far as is reasonably practicable, that the article is so designed and constructed as to be safe and without risks to the health of the workers when properly used;
- (b) carry out or arrange for the carrying out of such tests and examination as may be considered necessary for the effective implementation of the provisions of clause (a);
- (c) take such steps as may be necessary to ensure that adequate information will be available
  - (i) in connection with the use of the article in any factory;
  - (ii) about the use for which it is designed and tested; and

- (iii) about any conditions necessary to ensure that the, when put to such use, will be safe, and without risks to the health of the workers.

It is provided that where an article is designed or manufactured outside India, it shall be obligatory on the part of the importer to see-(a) that the article conforms to the same standards if such article is manufactured in India, or (b) if the standards adopted in the country outside for the manufacture of such article is above the standards adopted in India, that the article conforms to such standards.

Every person, who undertakes to design or manufacture any article for use in any factory may carry out or arrange for the carrying out of necessary research with a view to the discovery and, so far as is reasonably practicable, the elimination or minimization of any risks to the health or safety of the workers to which the design or article may give rise.

The above provisions shall be construed to require a person to repeat the testing, examination or research which has been carried out otherwise than by him or at his instance in so far as it is reasonable for him to rely on the results thereof for the purposes of the said sub-sections.

Any duty imposed on any person by above provision shall extend only to things done in the course of business carried on by him and to matters within his control.

Where a person designs, manufactures, imports or supplies an article on the basis of a written undertaking by the user of such article to take the steps specified in such undertaking to ensure, so far as is reasonably practicable, that the article will be safe and without risks to the health of the workers when properly used, the undertaking shall have the effect of relieving the person designing, manufacturing, importing or supplying the article from the duty imposed by clause (a) of sub-section (1) to such extent as is reasonable having regard to the terms of the undertaking.

For the purposes of this section, an article is not to be regarded as properly used if it is used without regard to any information or advice relating to its use which has been made available by the person who has designed, manufactured, imported or supplied the article.

**Explanation :** For the purposes of this section, “article” shall include plant and machinery.

### Measures to be taken by factories for health, safety and welfare of workers

These measures are provided under Chapters III, IV and V of the Act which are as follows:

## HEALTH (SECTIONS 11 TO 20)

### A. Health

Chapter III of the Act deals with the following aspects:

Cleanliness (Section 11)				Inside walls / partitions/ ceilings / passages and staircases			
Sweeping/ Dusting	Floor Wash	Wet Floor due to Manufacturing	Doors/ Windows	Varnish	Washable Water Paint	smooth impervious surfaces	Any other case
Daily	Every Week	Proper Drainage	Paint in 5 years	Once in 5 years	Wash in 6 months + paint in 3 years (1 coat)	Clean once in 14 Months	once in 14 Months

Disposal of wastes (Section 12)	Ventilation and temperature (Section 13)	Dust and fume (Section 14)	Artificial humidification (Section 15)
<i>effective arrangements for the treatment of wastes and effluents</i>	<ul style="list-style-type: none"> <li>● <i>adequate ventilation</i></li> <li>● <i>temperature reasonable</i></li> <li>● <i>Measures to reduce excessive/y high temperature</i></li> <li>● <i>walls and roofs of such material that reduce temperature</i></li> <li>● <i>In excessively high temperatures, adequate measures</i></li> </ul>	<i>exhaust in open air</i>	<i>as per standards</i>
Overcrowding (Section 16)	Lightening (Section 17)	Drinking water (Section 18)	Latrines and urinals (Section 19)
<ul style="list-style-type: none"> <li>● <i>14.2 cubic meters of space per worker</i></li> <li>● <i>space more than 4.2 meters above the level of the floor, will not be taken into consideration</i></li> </ul>	<ul style="list-style-type: none"> <li>● <i>sufficient and suitable lighting, natural or artificial</i></li> <li>● <i>Windows kept clean</i></li> </ul>	<ul style="list-style-type: none"> <li>● <i>Convenient points</i></li> <li>● <i>legibly marked</i></li> </ul>	<ul style="list-style-type: none"> <li>● <i>6 meter away from drinking water</i></li> <li>● <i>1 seat for 20 workers</i></li> <li>● <i>separate for male and female workers</i></li> <li>● <i>washed once in 7 days with detergents</i></li> </ul>

These are discussed below:

**(i) Cleanliness:** Section 11 of the Act makes provisions for ensuring cleanliness in the factory. It states that every factory shall be kept clean and free from effluvia arising from any drain, privy or other nuisance, and in particular-

- accumulation 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;
- 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;
- 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;
- all inside walls and partitions, all ceilings or tops of rooms and all walls, sides and tops of passages and staircases shall-
  - where they are painted otherwise than with washable water-paint or varnished, be repainted or revarnished at least once in every period of five years;
  - Where they are painted with washable water-paint, be repainted 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;
  - 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 whitewashed or colour washed, and the whitewashing or colour washing shall be carried out at least once in every period of fourteen months;
- 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;
- the dates on which the processes required by clause (d) are carried out shall be entered in the prescribed register.

*Power of State Government to exempt:* If the State Government finds that a particular factory cannot comply with the above requirements due to its nature of manufacturing process, it may exempt the factory from the compliance of these provisions and suggest some alternative method for keeping the factory clean.

#### **(ii) Disposal of wastes and effluents (Section 12)**

Every occupier of a factory shall make effective arrangements for the treatment of wastes and effluents due to the manufacturing process carried on in the factory so as to render them innocuous and for their disposal. Such arrangements should be in accordance with the rules, if any, laid down by the State Government. If the State Government has not laid down any rules in this respect, arrangements made by the occupier should be approved by the prescribed authority, if required by the State Government.

#### **(iii) Ventilation and temperature (Section 13)**

Section 13 provides that every factory should make suitable and effective provisions for securing and maintaining (1) adequate ventilation by the circulation of fresh air; and (2) such a temperature as will secure to the workers reasonable conditions of comfort and prevent injury to health. What is reasonable temperature depends upon the circumstances of each case. The State Government has been empowered to lay down the standard of adequate ventilation and reasonable temperature for any factory or class or description of factories or parts thereof. It may direct that proper measuring instruments at such places and in such position as may be specified shall be provided and prescribed records shall be maintained.

**Measures to reduce excessively high temperature:** To prevent excessive heating of any workroom following measures shall be adopted:

- (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 there from, by separating the process which produces such temperatures from the workroom, by insulating the hot parts or by other effective means.

The Chief Inspector is empowered to direct any factory to adopt such methods which will reduce the excessively high temperature. In this regard, he can specify the measures which in his opinion should be adopted.

#### **(iv) Dust and fume (Section 14)**

There are certain manufacturing processes like chemical, textile or jute, etc., which generates lot of dust, fume or other impurities. It is injurious to the health of workers employed in such manufacturing process. Therefore, section 14 provides for the following measures to be adopted in this respect:

- Effective measures should be taken to prevent the inhalation and accumulation of dust, fumes etc., in the work-rooms.
- Wherever necessary, an exhaust appliances should be fitted, as far as possible, to the point of origin of dust fumes or other impurities. Such point shall also be enclosed as far as possible.
- In stationery internal combustion engine, exhaust should be connected into the open air.



- In cases of other internal combustion engine, effective measures should be taken to prevent the accumulation of fumes therefrom.

It may be pointed that the evidence of actual injury to health is not necessary. If the dust or fume by reason of manufacturing process is given off in such quantity that it is injurious or offensive to the health of the workers employed therein, the offence is committed under this Section. The offence committed is a continuing offence. If it is an offence on a particular date it does not cease to be an offence on the next day and so on until the deficiency is rectified.

**(v) Artificial humidification (Section 15)**

Humidity means the presence of moisture in the air. In certain industries like cotton, textile, cigarette, etc., higher degree of humidity is required for carrying out the manufacturing process. For this purpose, humidity of the air is artificially increased. This increase or decrease in humidity adversely affects the health of workers. In respect of all factories in which the humidity of the air is artificially increased, the State Government may make rules-

- prescribing standards of humidification;
- regulating the methods used for artificially increasing the humidity of the air;
- directing prescribed tests for determining the humidity of the air to be correctly carried out and recorded;
- prescribing methods to be adopted for securing adequate ventilation and cooling of the air in the workrooms.

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

**(vi) Overcrowding (Section 16)**

Overcrowding in the work-room does not only affect the workers in their efficient discharge of duties but their health also. Section 16 has been enacted with a view to provide sufficient air space to the workers. The section prohibits the overcrowding in the work-rooms to the extent it is injurious to the health of the workers. Apart from this general prohibition, the section lays down minimum working space for each worker as 14.2 cubic metres of space per worker in every workroom. For calculating the work area, the space more than 4.2 metres above the level of the floor, will not be taken into consideration.

*Posting of notice:* 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. According to Section 108, notice should be in English and in a language understood by the majority of the workers. It should be displayed at some conspicuous and convenient place at or near, the entrance. It should be maintained in clean and legible conditions.

*Exemptions :* The chief Inspector may by order in writing, exempt any work-room from the provisions of this section, subject to such conditions as he may think fit to impose, if he is satisfied that non-compliance of such provision will have no adverse effect on the health of the workers employed in such work-room.

**(vii) Lightening (Section 17)**

Section 17 made it mandatory to provide and maintain sufficient and suitable lighting, natural or artificial, or both in every part of a factory where workers are working or passing. 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 section 13 will allow, free from obstruction. 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.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.

**(viii) Drinking water (Section 18)**

Section 18 deals with the provisions relating to arrangements for drinking water in factories. It provides that 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. All such points shall be legibly marked "drinking water" in a language understood by a majority of the workers employed in the factory, and no such point shall be situated within six meters of any washing place, urinal, latrine, spittoon, open drain carrying sullage or effluent or any other source of contamination] unless a shorter distance is approved in writing by the Chief Inspector.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. 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 this section and for the examination by prescribed authorities of the supply and distribution of drinking water in factories.

**(ix) Latrines and urinals (Section19)**

The section made it mandatory that 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.

For the factories employing more than two hundred and fifty workers ordinarily, there shall be provided all latrine and urinal accommodation of prescribed sanitary types; the floors and internal walls, up to a height of ninety 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; 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.

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.

**(x) Spittoons (Section20)**

According to the section, there shall be provided, in every factory, a sufficient number of spittoons in convenient places and they shall be maintained in a clean and hygienic condition.

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

A notice containing the provision shall be prominently displayed at suitable places in the premises that no person shall spit within the premises of a factory except in the Spittoons provided for the purpose. The notice shall also stipulates the penalty for its violation which shall exceeding five rupees.

## SAFETY (SECTIONS 21 TO 41)

## B. SAFETY

Chapter IV of the Act contains provisions relating to safety.

<b>Fencing of machinery (Section 21)</b>	<i>moving part of a prime mover</i>	<b>Pits, sumps, opening in floors, etc. (Section 33)</b>	<i>source of danger shall be either securely covered or securely fence.</i>
<b>Work on or near machinery in motion (Section 22)</b>	<i>No woman or young person shall be allowed to clean, lubricate or adjust any part of a prime-mover if risky for them.</i>	<b>Excessive weights (Section 34)</b>	<i>no person shall lift, carry or make any load as to be likely to cause him injury</i>
<b>Employment of young persons on dangerous machines (Section 23)</b>	<i>Young person only allowed to work on dangerous machine if</i> <ul style="list-style-type: none"> <li>● <i>received training</i></li> <li>● <i>under supervision</i></li> </ul>	<b>Protection of eyes (Section 35)</b>	<i>effective screens or suitable goggles for the protection</i>
<b>Striking gear and devices for cutting off power (Section 24)</b>	<i>suitable striking gears shall be provided and maintained and used to move driving belts to and from fast and loose pulleys.</i>	<b>Precautions against dangerous fumes, gases, etc. (Section 36)</b>	<i>special measures have been taken under the Factories Act</i>
<b>Self-acting machines (Section 25)</b>	<i>No traversing part of a self-acting machine in any factory be allowed to run on its outward or inward traverse within a distance of forty-five centimeters from any fixed structure which is not part of the machine.</i>	<b>Precautions regarding the use of portable electric light (Section 36-A)</b>	<i>prohibits use of portable electric light or any other electric appliance of voltage exceeding 24 volts</i>
<b>Casing of new machinery (Section 26)</b>	<i>all machinery driven by power and installed in any factory encased or otherwise effectively guarded as to prevent danger</i>	<b>Explosive or inflammable dust, gas, etc. (Section 37)</b>	<i>measures to prevent any such explosion</i>
<b>Prohibition of employment of women and children near cotton-openers (Section 27)</b>	<i>No woman or child shall be employed in any part of a factory for pressing cotton in which a cotton opener is at work.</i>	<b>Precautions in case of fire (Section 38)</b>	<i>measures shall be taken to prevent outbreak of fire and its spread</i>

<b>Hoists and lifts (Section 28)</b>	<ul style="list-style-type: none"> <li>● <i>good mechanical construction, adequate strength</i></li> <li>● <i>properly maintained</i></li> <li>● <i>examined once in 6 months</i></li> <li>● <i>sufficiently protected by an enclosure fitted with gates</i></li> </ul>	<b>Power to require specifications of defective parts or tests of stability (Section 39)</b>	<i>If Inspector feels that any building, machinery or plant in a factory is in condition dangerous to human life or safety, inspector serve order on the occupier or manager or both of the factory to furnish such drawings &amp; conduct test.</i>
<b>Lifting machines, chains, ropes and lifting tackles (Section 29)</b>	<ul style="list-style-type: none"> <li>● <i>lifting machine shall be of good construction, adequate strength and free from defects;</i></li> <li>● <i>properly maintained; and thoroughly examined</i></li> </ul>	<b>Safety of buildings and machinery (Section 40)</b>	<i>If Inspector feels that any building, machinery or plant in a factory is in condition dangerous to human life or safety, inspector serve order on the occupier or manager or both of the factory specifying the measures, which in his opinion should be adopted.</i>
<b>Revolving machinery (Section 30)</b>	<i>placing a notice in every factory in which process of grinding is carried on</i>	<b>Maintenance of buildings (Section 40-A)</b>	<i>If Inspector feels that any building is in a state of disrepair, he may serve on the occupier or manager or both of the factory an order of maintenance.</i>
<b>Pressure plant (Section 31)</b>	<i>atmospheric pressure, does not exceed the limits</i>	<b>Safety Officers (Section 40-B)</b>	<i>wherein 1000 or more workers are employed</i>
<b>Floors, stairs and means of access (Section 32)</b>	<i>sound construction and properly maintained and shall be kept free from obstruction</i>	<b>Power to make rules to supplement this Chapter (Section 41)</b>	<i>State Government has authority to make rules</i>

These are discussed below:

### (i) Fencing of machinery (Section 21)

According to the section, fencing of machinery in use or in motion is obligatory. This Section requires that following types of machinery or their parts, while in use or in motion, shall be securely fenced by safeguards of substantial construction and shall be constantly maintained and kept in position, while the parts of machinery they are fencing are in motion or in use. Such types of machinery or their parts are:

- (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 convector;
  - (b) every part of transmission machinery; and
  - (c) every dangerous part of any other machinery.

It is provided that for the purpose of determining whether any part of machinery is in such position or is of such construction as to be safe as aforesaid, account shall not be taken of any occasion when-

- (i) it is necessary to make an examination of any part of the machinery aforesaid while it is in motion or, as a result of such examination, to carry out lubrication or other adjusting operation while the machinery is in motion, being an examination or operation which it is necessary to be carried out while that part of the machinery is in motion, or
- (ii) in the case of any part of a transmission machinery used in such process as may be prescribed (being a process of a continuous nature the carrying on of which shall be, or is likely to be, substantially interfered with by the stoppage of that part of the machinery), it is necessary to make an examination of such part of the machinery while it is in motion or, as a result of such examination, to carry out any mounting or shipping of belts or lubrication or other adjusting operation while the machinery is in motion, and such examination or operation is made or carried out in accordance with the provisions section 22.

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.

### **(ii) Work on or near machinery in motion (Section 22)**

Section 22 lays down the procedure for carrying out examination of any part while it is in motion or as a result of such examination to carry out the operations mentioned under Section 21. Such examination or operation shall be carried out only by 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 appointment and while he is so engaged. No woman or young person shall be allowed to clean, lubricate or adjust any part of a prime-mover or 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 and adjustment thereof would expose the woman or the young person to risk of injury from any moving part either of that machine or of any adjacent machinery.

### **(iii) Employment of young persons on dangerous machines (Section 23)**

According to the section, any young person shall not 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.

The above provision 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 person's ought not to work at them unless the foregoing requirements are complied with.

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

The section provides that in every factory suitable striking gears or other efficient mechanical appliances 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 and such gear or appliances shall be so constructed, placed and maintained as to prevent the belt from creeping back on the fast pulley. Further, driving belts when not in use shall not be allowed to rest or ride upon shafting in motion. Suitable devices for cutting off power in emergencies from running machinery shall be provided and maintained in every work-room in every factory. It is also provided that when a device which can inadvertently shift from 'off' to 'on position in a factory', cutoff power arrangements shall be provided for locking the devices on safe position to prevent accidental start of the transmission machinery or other machines to which the device is fitted.

**(v) Self-acting machines (Section 25)**

The section provides further safeguards to the workers injured by self-acting machines. It provides that no traversing part of a self-acting machine in any factory and no material carried thereon shall, if the space over which it runs is a space over which any person is liable to pass, whether in the course of his employment or otherwise, be allowed to run on its outward or inward traverse within a distance of forty-five centimeters from any fixed structure which is not part of the machine. It is provided that the Chief Inspector may permit the continued use of a machine installed before the commencement of this Act which does not comply with the requirements of this section on such conditions for ensuring safety as he may think fit to impose.

**(vi) Casing of new machinery (Section 26)**

The section provides for mandatory casing of new machinery to safeguard the lives of workers, It makes it mandatory to provide 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 or 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.

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.

A statutory punishment has been prescribed for everyone who sells or lets on hire or, as agent of a seller or hirer, causes or procures to be sold or let on hire, for use in a factory any machinery driven by power which does not comply with the provisions this section or any rules made under thereunder. It has prescribed imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

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

**(viii) Hoists and lifts (Section 28)**

Section 28 (1) requires that in every factory 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;

Every hoist way and lift way 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; 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; 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;

Every gate referred to 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.

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.

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 above provisions upon such conditions for ensuring safety as he may think fit to impose.

If State Government it is of opinion that it would be unreasonable to enforce any of above requirement in respect of any class or description of hoist or lift, it may, by order, direct such requirement shall not apply to such class or description of hoist or lift.

**Explanation:** For the purposes of this section, no lifting machine or appliance shall be deemed to be a hoist or lift unless it has a platform or cage, the direction or movement of which is restricted by a guide or guides.

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

The section provides for that the following provisions shall be complied in any factory 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 traveling 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 meters of that place.

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.

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 sections

- (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.

**(x) Revolving machinery (Section 30)**

This section prescribes for permanently affixing or placing a notice in every factory in which process of grinding is carried on. Such notice shall indicate maximum safe working peripheral speed of every grindstone or abrasive wheel, the speed of the shaft or spindle upon such shaft or spindle necessary to secure such safe working peripheral-speed. Speed indicated in the notice shall not be exceeded and effective measures in this regard shall be taken to ensure that the safe working peripheral speed of every revolving vessel, cage, basket, fly-wheel, pulley, disc or similar appliance driven by power is not exceeded.

**(xi) Pressure plant (Section 31)**

The section provides for taking effective measures to ensure that safe working pressure of any plant and machinery, used in manufacturing process operated at pressure above atmospheric pressure, does not exceed the limits. The State Government may make rules to regulate such pressures or working and may also exempt any part of any plant or machinery from the compliance of this section.

**(xii) Floors, stairs and means of access (Section 32)**

The section provides that 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 obstruction 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, be so far as is reasonably practicable, be provided, and maintained safe means of access of 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.

**(xiii) Pits, sumps, opening in floors, etc. (Section 33)**

The section requires that in every factory every fixed vessel, sump, tank, pit or opening in the ground or in a floor which, by reason of its depth, situation, construction, or contents is or may be source of danger shall be either securely covered or securely fence. The State Government may exempt any factory from the compliance of the provisions of this Section subject to such conditions as it may prescribe.



**(xiv) Excessive weights (Section 34)**

This section provides that no person shall be employed in any factory to lift, carry or make any load so heavy as to be likely to cause him injury. 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.

**(xv) Protection of eyes (Section 35)**

The section requires the State Government to make rules and require for providing the effective screens or suitable goggles for the protection of persons employed on or in immediate vicinity of any such manufacturing process carried on in any factory which involves

- (i) risk of injury to the eyes from particles or fragments thrown off in the course of the process or;
- (ii) risk to the eyes by reason of exposure to excessive light.

**(xvi) Precautions against dangerous fumes, gases, etc.(Section 36)**

In order to prevent the factory workers against dangerous fumes, special measures have been taken under the Factories Act. The Act prohibits entry in 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, except in cases where there is a provision of a manhole of adequate size or other effective means of egress. [Section 36 (1)]. No person shall be required or allowed to enter any confined space such as is referred to in sub-section (1) until all practicable measures have been taken to actually remove the gas, fumes 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. [Section 36 (2)].

**(xvii) Precautions regarding the use of portable electric light (Section 36-A)**

The Act prohibits use of portable electric light or any other electric appliance of voltage exceeding 24 volts inside any chamber, tank, vat, pit, pipe, flue or other confined space in any factory unless adequate safety devices are provided; and 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 flame proof construction shall be permitted to be used therein unless adequate safety devices are provided.

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

The section provides for mandatory requirement to take all practicable measure in every factory where any manufacturing process produces dust, gas, fume or vapour of such character and to such extent to be likely to explode on ignition, to prevent any such explosion. These practical measures include

- (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; and
- (c) exclusion or effective enclosure of all possible sources of ignition.

**(xix) Precautions in case of fire (Section 38)**

In every factory all practicable measures shall be taken to 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 fire; and



- (b) the necessary equipment and facilities for extinguishing fire. 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 outline to be followed in such case.

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.

The Chief Inspector may, 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, 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.

**(xx) 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 buildings, ways, machinery or plant can be used with safety; or
- (b) to carry out such tests in such manner as may be specified in the order, and to inform the Inspector of the results thereof.

**(xxi) Safety of buildings and machinery (Section 40)**

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.

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.

**(xxii) Maintenance of buildings (Section 40-A)**

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.

**(xxiii) Safety Officers (Section 40-B)**

If State Government requires, by notification in Official Gazette, the occupier shall employ such number of Safety Officers as may be specified in that notification 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 person employed in the factory.

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

**(xxiv) Power to make rules to supplement this Chapter (Section 41)**

This section vests in the State Government authority to make rules requiring the provision in any factory or in any class or description of factories of such further devices and measures for securing safety of persons employed therein as it may deem necessary.

## PROVISIONS RELATING TO HAZARDOUS PROCESSES (SECTIONS 41A TO 41H)

### Provisions relating to Hazardous Processes

The Factories (Amendment) Act, 1987, has inserted this new chapter in the Act after Chapter IV. The new Chapter lays down provisions relating to hazardous process in sections 41A to 41H.

### Constitution of Site Appraisal Committees (Section 41A)

The State Government may, for purposes of advising it to consider applications for grant of permission for the initial location of a factory involving a hazardous process or for the expansion of any such factory, appoint a Site Appraisal Committee. The Committee shall examine an application for the establishment of a factory involving hazardous process and make its recommendation to the State Government within a period of ninety days of the receipt of such application in the prescribed form.

Where any process relates to a factory owned or controlled by the Central Government or to a corporation or a company owned or controlled by the Central Government, the State Government shall co-opt in the Site Appraisal Committee a representative nominated by the Central Government as a member of that Committee. The Committee shall have power to call for any information from the person making an application for the establishment or expansion of a factory involving a hazardous process.

Where the State Government has granted approval to an application for the establishment or expansion of a factory involving a hazardous process, it shall not be necessary for an applicant to obtain a further approval from the Central Board or the State Board established under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981.

### Compulsory disclosure of information by the occupier (Section 41B)

The occupier of every factory involving a hazardous process shall disclose in the manner prescribed, all information regarding dangers including health hazards and the measures to overcome such hazards arising from the exposure to or handling of the materials or substances in the manufacture, transportation, storage and other processes, to the workers employed in the factory, the Chief Inspector, the local authority, within whose jurisdiction the factory is situate, and the general public in the vicinity. The information furnished shall include accurate information as to the quantity, specifications and other characteristics of wastes and the manner of their disposal.

The occupier shall, at the time of registering the factory involving a hazardous process lay down a detailed policy with respect to the health and safety of the workers employed therein and intimate such policy to the Chief Inspector and the local authority and, thereafter, at such intervals as may be prescribed, inform the Chief Inspector and the local authority of any change made in the said policy.

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

Every occupier of a factory shall inform the Chief Inspector of the nature and details of the process in such form and in such manner as may be prescribed if

- (a) such factory is engaged in a hazardous process on the commencement of the Factories (Amendment) Act, 1987 within a period of thirty days of such commencement; and
- (b) if such factory purposes to engage in a hazardous process at any time after such commencement, within a period of thirty days before the commencement of such process. Where any occupier of a factory contravenes this provision, the license issued under section 6 to such factory shall, notwithstanding any penalty to which the occupier of the factory shall be subjected to under the provisions of this Act, be liable for cancellation.

The occupier of a factory involving a hazardous process shall, with the previous approval of the Chief Inspector, lay down measures for the handling usage, transportation and storage of hazardous substances inside the factory premises and the disposal of such substances outside the factory premises and publicise them in the manner prescribed among the workers and the general public living in the vicinity.

#### **Specific responsibility of the occupier in relation to hazardous processes (Section 41C)**

Every occupier of a factory involving any hazardous process shall maintain accurate and up-to-date health records or, as the case may be, medical records, of the workers in the factory who are exposed to any chemical, toxic or any other harmful substances which are manufactured, stored, handled or transported and such records shall be accessible to the workers subject to such conditions as may be prescribed.

Such occupier shall appoint persons who possess qualifications and experience in handling hazardous substances and are competent to supervise such handling within the factory and to provide at the working place all the necessary facilities for protecting the workers in the manner prescribed. It is provided that where any question arises as to the qualifications and experience of a person so appointed, the decision of the Chief Inspector shall be final.

Such occupier shall provide for medical examination of every worker-

- (i) before such worker is assigned to a job involving the handling of, or working with, a hazardous substance, and
- (ii) while continuing in such job, and after he has ceased to work in such job, at intervals not exceeding twelve months in such manner as may be prescribed,

In the case of ***Bayer (India) Limited and others v. State of Maharashtra***, the judges focused on the adverse effects that can be caused by proximity and exposure to hazardous chemicals and substances, stating that “it is inherent that overriding considerations of Public health & danger to life must be issues to which top priority consideration is bestowed. Where there is a failure in this regard, the court will have to step in, in the exercise of the inherent powers vested in them and strike down or prohibit any action that offends these basic tenets.”

#### **Power of Central Government to appoint Inquiry Committee (Section 41D)**

The Central Government may, in the event of the occurrence of an extraordinary situation involving a factory engaged in a hazardous process, appoint an Inquiry Committee to inquire into the standards of health and safety observed in the factory with a view to finding out the causes of any failure or neglect in the adoption of all measures or standards prescribed for the health and safety of the workers employed in the factory or the general public affected, or likely to be affected, due to such failure or neglect and for the prevention and recurrence of such extraordinary situations in future in such factory or elsewhere.

The Committee so appointed shall consist of a Chairman and two other members and the terms of reference of the Committee and the tenure of office of its members shall be such as may be determined by the Central Government according to the requirements of the situation.

The recommendations of the Committee shall be advisory in nature.

#### **Emergency standards (Section 41E)**

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

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

### Permissible limits of exposure of chemical and toxic substances (Section 41F)

The maximum permissible threshold limits of exposure of chemical and toxic substances in manufacturing processes (whether hazardous or otherwise) in any factory shall be of the value indicated in the Second Schedule. The Central Government may, at any time, for the purpose of giving effect to any scientific proof obtained from specialised institutions or experts in the field, by notification in the Official Gazette, make suitable changes in the said Schedule.

### Workers' participation in safety management (Section 41G)

The section provides for constitution of Safety Committee consisting of equal number of representatives of workers and management. Such Safety Committee shall be set up by the occupier in every factory where a hazardous process takes place, or where hazardous substances are used or handled. The functions of the Safety Committee are to promote co-operation between the workers and the management in maintaining proper safety and health at work and to review periodically the measures taken in that behalf.

It is provided that the State Government may, by order in writing and for reasons to be recorded, exempt the occupier of any factory or class of factories from setting up such Committee.

The composition of the Safety Committee, the tenure of office of its members and their rights and duties shall be such as may be prescribed.

### Right of workers to warn about imminent danger (Section 41H)

Where the workers employed in any factory engaged in a hazardous process have reasonable apprehension that there is a likelihood of imminent danger to their lives or health due to any accident, they may, bring the same to the notice of the occupier, agent, manager or any other person who is in-charge of the factory or the process concerned directly or through their representatives in the Safety Committee and simultaneously bring the same to the notice of the Inspector. It shall be the duty of such occupier, agent, manager or the person in-charge of the factory or process to take immediate remedial action if he is satisfied about the existence of such imminent danger and send a report forth-with of the action taken to the nearest Inspector.

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

## PROVISION RELATING TO WELFARE (SECTIONS 42 TO 50)

Chapter V of the Act contains provisions relating to welfare.

Washing Facilities (Section 42)	Facilities for storing & drying clothing (Section 43)	Facilities for Sitting (Section 44)
<ul style="list-style-type: none"> <li>adequate and suitable facilities</li> <li>separate for male and female workers</li> <li>kept clean</li> </ul>	State Government may prescribe rules	suitable sitting arrangements for workers obliged to work in a standing position.
First Aid Appliances (Section 45)	Canteen (Section 46)	Shelter, rest & lunch room (Section 47)
<ul style="list-style-type: none"> <li>1 box or cupboard for every 150 workers</li> <li>Medical room of the prescribed size, for more than 500 workers</li> </ul>	factory wherein more than 250 workers are employed	<ul style="list-style-type: none"> <li>factory wherein more than 150 workers are employed</li> <li>canteen maintained u/s 46 shall be regarded as part of the requirements in this section</li> </ul>

Creches (Section 48)	Welfare Officer (Section 49)	Power to make rules to supplement this chapter (Section 50)
<ul style="list-style-type: none"> <li>● <i>factory wherein more than 30 women workers are employed</i></li> <li>● <i>children under the age of 6 years can use</i></li> <li>● <i>State Government will make rules</i></li> </ul>	<i>Factory wherein 500 or more workers are employed</i>	<i>State Government is empowered to make rules</i>

These are discussed below:

### Washing facilities (Section 42)

In every factory, there shall be provided

- (a) adequate and suitable facilities for washing shall be provided and maintained for 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.

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 place for keeping clothing not worn during working hours and for the drying of wet clothing.

### Facilities for sitting (Section 44)

There shall be suitable arrangements for sitting in every factory and they shall be maintained for all workers obliged to work in a standing position. The provision ensures such worker may take advantage of any opportunities for rest which may occur in the course of their work.

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.

The State Government is vested with the power to exempt, by notification in the Official Gazette, any specified factory or class or description of factories or to any specified manufacturing process from compliance of the provisions of this section.

### First-aid-appliances (Section 45)

In every factory, there shall be provided and maintained so as to be readily accessible during all working hours' first-aid boxes or cupboards equipped with the prescribed contents. At least one such box or cupboard shall be provided and maintained for every one hundred and fifty workers ordinarily employed at any one time in the factory. It is also mandatory that nothing except the prescribed contents shall be kept in a first-aid box or cupboard.

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 recognized by the State Government and who shall always be readily available during the working hours of the factory. There shall be provided and maintained an ambulance

room of the prescribed size, containing the prescribed equipment in every factory wherein more than five hundred workers are ordinarily employed. The ambulance shall be 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)**

The State Government may make rules requiring that the occupier shall provide and maintain a canteen or canteens for the use of the workers in any specified factory wherein more than two hundred and fifty workers are ordinarily employed. Without prejudice in the generality of the foregoing power, such rules may provide for-

- (a) the date by which such canteen shall be provided;
- (b) the standard 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 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)**

It is mandatory to provide and maintain 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 in every factory wherein more than one hundred and fifty workers are ordinarily employed.

It is provided that any canteen maintained in accordance with the provisions of section 46 shall be regarded as part of the requirements of this section. It is also provided further that where a lunch-room exists no worker shall eat any food in the work-room.

The shelters or rest-room or lunch-room to be provided shall be sufficiently lighted and ventilated and shall be maintained in a cool and clean condition. 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)**

It is compulsory to provide and maintain a suitable room or rooms for the use of children under the age of six years of women in every factory wherein more than thirty women workers are ordinarily employed. 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.

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 the 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):

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. The State Government may prescribe the duties, qualifications and conditions of service of officers so employed.

In the case of **Associated Cement Cos. Ltd. v. Sharma, A.I.R. 1965 S.C. 1595**, the Supreme Court held that Rule 6 of Punjab Welfare Officers Recruitment and Conditions of Service Rules, 1952, requiring the concurrence of the Labour Commissioner before the management can dismiss or terminate the services of Welfare Officer is not ultra vires.

### Power to make rules to supplement this Chapter (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 factories shall be associated with the management of the welfare arrangements of the workers.

## WORKING HOURS OF ADULTS (SECTIONS 51 TO 66)

### Weekly hours (Section 51)

No adult worker shall be required or allowed to work in a factory for more than forty-eight hours in any week.

### Weekly holidays (Section 52)

There shall be holiday for the whole day in every week and such weekly holiday shall be on the first day of the week (i.e Sunday). However, such holiday may be substituted for any one of the three days immediately before or after the first day of the week provided the manager of the factory has:

- (i) delivered a notice at the office of the Inspector; and
- (ii) displayed a notice in the factory to this effect.

The effect of all this is that subject to above said conditions (i) and (ii) there shall be a holiday during ten days. In other words no adult worker shall work for more than ten days consecutively without a holiday for the whole day. It is not possible for an employer to change the weekly off solely on the ground that there was no material available for work to be provided on a particular date, avoiding requirements to be fulfilled under Section 25(m) of Industrial Disputes Act regarding lay off (**LAB IC 1998 Bom. 1790**). Such notices of substitution may be cancelled by an appropriate notice but not later than the day of weekly holiday or the substituted holiday whichever is earlier.

### Compensatory holidays (Section 53)

Where, as a result of the passing of an order of 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 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. The State Government may prescribe the manner in which the holidays for which provision is made shall be allowed.

### Daily hours (Section 54)

An adult worker, whether male or female shall not be required or allowed to work in a factory for more than 9 hours in any day. Section 54 should be read with Section 59. In other words, the daily hours of work should be so adjusted that the total weekly hours does not exceed 48. The liability of the employer under this Section cannot be absolved on the ground that the workers are willing to work for longer hours without any extra payment. The daily maximum hours of work specified in Section 54 can be exceeded provided

- (i) it is to facilitate the change of shift; and
- (ii) the previous approval of the Chief Inspector has been obtained.

### Intervals for rest (Section 55)

The periods of work of adult workers in a factory each day shall be so fixed that no period shall exceed five hours and that no worker shall work for more than five hours before he has had an interval for rest of at least half an hour. However, this can be increased to six hours with the prior approval Director of Factories/ Chief Inspector of Factories. The State Government or, subject to the control of the State Government, the Chief Inspector, may, by written order and for the reason specified therein, exempt any factory from compliance of this section so, however, that the total number of hours worked by a worker without an interval does not exceed six.

### Spread over (Section 56)

The period of work of an adult worker in a factory shall be so arranged that inclusive of his intervals for rest under section 55, they shall not spread over more than ten and a half hours in any day. It is provided that the Chief Inspector may, for reasons to be specified in writing, increase the spread over up to twelve hours.

### Night shifts (Section 57)

Where a worker in a factory works on a shift which extends beyond midnight,-

- (a) for the purposes of sections 52 and 53, a holiday for a whole day shall mean in his case a period of twenty-four consecutive hours beginning when his shift ends;
- (b) the following day for him shall be deemed to be the period of twenty-four hours beginning when such shift ends, and the hours he has worked after midnight shall be counted in the previous day.

### Prohibition of overlapping shifts (Section 58)

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. The State Government or subject to the control of the State Government, the Chief Inspector, may, by written order and for the reasons specified therein, exempt on such conditions as may be deemed expedient, any factory or class or description of factories or any department or section of a factory or any category or description of workers therein from the provisions of this section.

### Extra wages for overtime (Section 59)

Where a worker works in a factory for more than nine hours in any day or for more than forty-eight hours in any week, he shall, in respect of overtime work, be entitled to wages at the rate of twice his ordinary rate of wages. The ordinary rate of wages here means the basic wages plus such allowances, including the cash equivalent of the advantage accruing through the concessional sale to workers of foodgrains and other articles, as the worker is for the time being entitled to, but does not include a bonus and wages for overtime work.



*House rent allowance, though payable to employers who were not provided with accommodation, cannot be taken into account to calculate overtime wages of employees provided with such accommodation (Govind Bapu Salve v. Vishwanath Janardhan Joshi, 1995 SCC (L&S) 308). An employer requiring the workman to work for more than the maximum number of hours overtime work postulated by Section 64(4)(iv) cannot merely on this ground, deny him overtime wages for such excessive hours (HMT v. Labour Court, 1994 I LLN 156).*

Where any workers in a factory are paid on a piece-rate basis, the time-rate shall be deemed to be equivalent to the daily average of their full-time earnings for the days on which they actually worked on the same or identical job during the month immediately preceding the calendar months during which the overtime work was done, and such time-rates shall be deemed to be the ordinary rates of wages of those workers.

Provided that in the case of a worker who has not worked in the immediately preceding calendar month on the same or identical job, the time-rate shall be deemed to be equivalent to the daily average of the earnings of the worker for the days on which he actually worked in the week in which the overtime work was done.

**Explanation.** - For the purposes of this sub-section in computing the earnings for the days on which the worker actually worked, such allowances including the cash equivalent of the advantage accruing through the concessional sale to workers of food grains and other articles, as the worker is for the time being entitled to,

shall be included but any bonus or wages for overtime work payable in relation to the period with reference to which the earnings are being computed shall be excluded.

The cash equivalent of the advantage accruing through the concessional sale to a worker of food-grains and other articles shall be computed as often as may be prescribed on the basis of the maximum quantity of food-grains and other articles admissible to a standard family.

**Explanation 1.** - "Standard family" means a family consisting of the worker, his or her spouse and two children below the age of fourteen years requiring in all three adult consumption units.

**Explanation 2.** - "Adult consumption unit" means the consumption units of a male above the age of fourteen years, and the consumption unit of a female above the age of fourteen years and that of a child below the age of fourteen years shall be calculated at the rates of 8 and 6, respectively of one adult consumption unit.

The State Government may make rules prescribing-

- (a) the manner in which the cash equivalent of the advantage accruing through the concessional sale to a worker of food grains and other articles shall be computed; and
- (b) the registers that shall be maintained in a factory for the purpose of securing compliance with the provisions of this section.

### Restriction on double employment (Section 60)

No adult worker shall be required or allowed to work in any factory on any day on which he has already been working in any other factory, save in such circumstances as may be prescribed.

### Notice of periods of work for adults (Section 61)

There shall be displayed and correctly maintained in every factory in accordance with the provisions for sub-section (2) of section 108, a notice of periods of work for adults, showing clearly for every day the periods during which adult workers may be required to work. The periods shown in the notice shall be fixed beforehand in accordance with the following provisions of this section, and shall be such that workers working for those periods would not be working in contravention of any of the provisions of sections 51, 52, 54, 55, 56 and 58.

Where all the adult workers in a factory are required to work during the same periods, the manager of the factory shall fix those periods for such workers generally. Where all the adult workers in a factory are not required to work during the same periods, the manager of the factory shall classify them into groups according to the nature of their work indicating the number of workers in such group.

For each group, which is not required to work on a system of shifts, the manager of the factory shall fix the periods during which the group may be required to work. Where any group is required to work on system of shifts and the relays are to be subject to pre-determined periodical changes or shifts, the manager of the factory shall fix the periods during which each relay of the group may be required to work.

Where any group is to work on a system of shifts and the relays are to be subject to pre-determined periodical changes of shifts, the manager of the factory shall draw up a scheme of shifts, whereunder the period during which any relay or group may be required to work and the relay which will be working at any time of the day shall be known for any day.

The State Government may prescribe forms of the notice and the manner in which it shall be maintained. In the case of a factory beginning work after the commencement of this Act, a copy of the notice shall be sent in duplicate to the Inspector before the day on which work is begun in the factory.

Any proposed change in the system of work in any factory which will necessitate a change in the notice shall be notified to the Inspector in duplicate before the change is made, and except with the previous sanction of the Inspector, no such change shall be made until one week has elapsed since that last change.

### **Register of adult workers (Section 62)**

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 shift, the relay to which he is allotted; and
- (e) such other particulars as may be prescribed.

It is provided that if the Inspector is of opinion that any muster-roll or register maintained as a part of the routine of a factory gives in respect of any or all the workers in the factory the particulars required under this section, he may, by order in writing, direct that such muster-roll or register shall to the corresponding extent be maintained in place of, and be treated as, the register of adult workers in that factory.

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

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

### **Hours of work to correspond with notice under section 61 and register under section 62 (Section 63)**

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.

### **Power to make exempting rule (Section 64)**

The State Government may make rules defining the persons who hold positions of supervision or management or are employed in a confidential position in a factory or empowering the Chief Inspector to declare any person, other than a person defined by such rules as a person holding position of supervision or management or employed in a confidential position in a factory if, in the opinion of the Chief Inspector, such person holds such position or is so employed and the provision of this Chapter, other than the provisions of clause (b) of sub-section (1) of section 66 and of the proviso to that sub-section, shall not apply to any person so defined or declared :

Provided that any person so defined or declared shall, where the ordinary rate of wages of such person does not exceed the wage limit specified in sub-section (6) of section 1 of the Payment of Wages Act, 1936, as amended from time to time, be entitled to extra wages in respect of overtime work under section 59.

The State Government may make rules in respect of adult workers in factories providing for the exemption, to such extent and subject to such conditions as may be prescribed-

- (a) of workers engaged on urgent repairs, from the provisions of sections 51, 52, 54, 55 and 56;
- (b) of workers engaged in work in the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working of the factory, from the provisions of sections 51, 54, 55 and 56;
- (c) of workers engaged in work which is necessarily so intermittent that intervals during which they do not work while on duty, ordinarily amount to more than the intervals for rest required by or under section 55, from the provisions of sections 51, 54, 55 and 56;
- (d) of workers engaged in any work which for technical reasons must be carried on continuously from the provisions of sections 51, 52, 54, 55 and 56;
- (e) of workers engaged in making or supplying articles of prime necessity which must be made or supplied every day, from the provisions of section 51 and section 52;
- (f) of workers engaged in a manufacturing process which cannot be carried on except during fixed seasons, from the provisions of section 51, section 52 and section 54;
- (g) of worker engaged in a manufacturing process, which cannot be carried on except at times dependent on the irregular action of natural forces, from the provisions of sections 52 and 55;
- (h) of workers engaged in engine-rooms of boiler-houses or in attending to power-plant or transmission machinery, from the provisions of section 51 and section 52;
- (i) of workers engaged in the printing of newspapers, who are held up on account of the breakdown of machinery, from the provisions of sections 51, 54 and 56.

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

- (j) of workers engaged in the loading (or unloading) of railway wagons or lorries or trucks, from the provisions of sections 51, 52, 54, 55 and 56;
- (k) of workers engaged in any work, which is notified by the State Government in the Official Gazette as a work of national importance, from the provisions of section 51, section 52, section 54, section 55 and section 56.

Rules made under this section providing for any exemption may also provide for any consequential exemption from the provisions of section 61 which the State Government may deem to be expedient, subject to such conditions as it may prescribe.

In making rules under this section, the State Government shall not exceed, except in respect of exemption under clause (a), the following limits of work inclusive of overtime: -

- (i) the total number of hours of work in any day shall not exceed ten;
- (ii) the spreadover, inclusive of intervals for rest, shall not exceed twelve hours in any one day.

Provided that the State Government may, in respect of any or all of the categories of workers referred to in clause (d), make rules prescribing the circumstances in which, and the conditions subject to which, the restrictions imposed by clause (i) and clause (ii) shall not apply in order to enable a shift worker to work the whole or part of a subsequent shift in the absence of a worker who has failed to report for duty:

- (iii) the total number of hours of work in a week including overtime, shall not exceed sixty;
- (iv) the total number of hours of overtime shall not exceed fifty for any one quarter.

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

It may be noted that rules made under this section shall remain in force for not more than five years.

### Power to make exempting orders (Section 65)

Where the State Government is satisfied that, owing to the nature of the work carried on or to other circumstances, it is reasonable to require that the periods of work of any adult worker in any factory or class or description of factories should be fixed beforehand, it may, by written order, relax or modify the provisions of section 61 in respect of such workers therein, to such extent and in such manner as it may think fit, and subject to such conditions as it may deem expedient to ensure control over periods of work.

The State Government or, subject to the control of the State Government the Chief Inspector may, by written order, exempt on such conditions as it or he may deem expedient, any or all of the adult workers in any factory or group or class or description of factories from any or all of the provisions of sections 51, 52, 54 and 56 on the ground that the exemption is required to enable the factory or factories to deal with an exceptional pressure of work. However, any exemption so granted shall be subject to the following conditions, namely:

- the total number of hours of work in any day shall not exceed twelve;
- the spreadover, inclusive of intervals for rest, shall not exceed thirteen hours in any one day;
- the total number of hours of work in any week, including overtime, shall not exceed sixty;
- no worker shall be allowed to work overtime, for more than seven days at a stretch and the total number of hours of overtime work in any quarter shall not exceed seventy-five.

In nutshell it can be said that daily 04 hours overtime is allowed subject to weekly overtime of 12 hours (12 X 4 = 48) and further restriction of 75 hours overtime per quarter when there is an exemption received from the department as per the provisions of Section 65.

### Further restriction on employment of women (Section 66)

The provisions of this Chapter shall, in their application to women in factories, be supplemented by the following further restrictions, namely:-

- (a) no exemption from the provisions of section 54 may be granted in respect of any woman;
- (b) no woman shall be required or allowed to work in any factory except between the hours 6 A.M. and 7 P.M.;

Provided that the State Government may, by notification in the Official Gazette, in respect of any factory or group or class or description of factories, vary the limits laid down in clause (b), but so that no such variation shall authorise the employment of any woman between the hours of 10 P.M. and 5 A.M.

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

The State Government may make rules providing for the exemption from these restrictions to such extent and subject to such conditions as it may prescribe, of women working in fish-curing or fish-canning factories, where the employment of women beyond the hours specified in the said restrictions, is necessary to prevent damage to, or deterioration in any raw material. These rules made shall remain in force for not more than three years at a time.

The Madras High Court in the case of **Vasantha R. v. Union of India (2001) II LLJ 843 Mad1**, struck down Section 66(1)(b) on the grounds that it was violative of Article 14, 15 and 16 of the Constitution of India. The petitioners

were women workers who were working in the mill and some who were on the management of the various mills or factories filed petitions challenging the constitutionality and the batch of writ petitions was filed on the grounds that no discrimination should be practiced against women on account of their gender. The petitioner could not work in the third shift between 10 p.m. and 6 a.m. due to the statutory provisions banning night work of women. The Court held that, "potential employment cannot be denied on the sole ground of sex when no other factor arises" and struck down Section 66(1) (b).

## **EMPLOYMENT OF YOUNG PERSONS (SECTIONS 67 TO 77)**

### **Prohibition of employment of young children (Section 67)**

There cannot be employed any child who has not completed his fourteenth year in any factory.

### **Non-adult workers to carry tokens (Section 68)**

A child who has completed his fourteenth year or an adolescent can required or allowed to work in any factory only if

- (a) a certificate of fitness granted with reference to him under section 69, is in the custody of 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)**

A certifying surgeon shall, on the application of any young person or his parent or guardian accompanied by a document signed by the manager of a factory that such person will be employed therein if certified to be fit for work in a factory, or on the application of the manager of the factory, in which any young person wishes to work, examine such person and ascertain his fitness for work in a factory.

The certifying surgeon, after examination, may grant to such young person, in the prescribed form, or may renew-

- (a) certificate of fitness to work in a factory as a child, if he is satisfied that the young person has completed his fourteenth year, that he has attained the prescribed physical standards and that he is fit for such work;
- (b) a certificate of fitness to work in a factory as an adult, if he is satisfied that the young person has completed his fifteenth year and is fit for a full day's work in a factory.

It is provided that unless the certifying surgeon has personal knowledge of the place where the young person proposes to work and of the manufacturing process in which he will be employed, he shall not grant or renew a certificate under this sub-section until he has examined such place.

A certificate of fitness granted or renewed

- (a) shall be valid only for a period of twelve months from the date thereof
- (b) may be made subject to conditions in regard to the nature of the work in which the young person may be employed, or requiring reexamination of the young person before the expiry of the period of twelve months.

A certifying surgeon shall revoke any certificate granted or renewed if in his opinion the holder of it is no longer fit to work in the capacity stated therein in a factory. Where a certifying surgeon refuses to grant or renew a certificate or a certificate of the kind requested or revokes a certificate, he shall, if so requested by any person who could have applied for the certificate or the renewal thereof, state his reasons in writing for so doing.

Where a certificate under this section with reference to any young person is granted or renewed subject to such conditions, the young person shall not be required or allowed to work in any factory except in accordance with

those conditions. Any fee payable for a certificate under this section shall be paid by the occupier and shall not be recoverable from the young person, his parents or guardian.

### **Effect of certificate of fitness granted to adolescent (Section 70)**

An adolescent who has been granted certificate of fitness to work as an adult in a factory by the Certifying Surgeon u/s 69 of the Act, is to be treated as an adult for the purposes of working hours and annual leave with wages. But in case, such certificate has not been granted to him then irrespective of his age he is to be treated as child for the purpose of this Act. But an adolescent who has not attained the age of seventeen years but has obtained a certificate of fitness to work in a factory as an adult shall be required or allowed to work between 6 a.m. and 7 p.m. only. However, the State Government may, by notification in the Official Gazette, in respect of any factory or group or class or description of factories: “vary the limit laid down in this sub-section. So, however, that no such sub-section authorise the employment of any female adolescent between 10 p.m. and 5 a.m.,” State Government may grant exemption from the provision of this sub-section in case of serious emergency where national interest is involved.

### **Section 71. Working hours for children.**

A child is not permitted to be employed or work in any factory for more than four and a half hours in any day and during the night. Here, “night” shall mean a period of at least twelve consecutive hours which shall include the interval between 10 P.M. and 6 A.M. The period of work of all children employed in a factory shall be limited to two shifts which shall not overlap or spreadover more than five hours each; and each child shall be employed in only one of the relays which shall not, except with the previous permission in writing of the Chief Inspector, be changed more frequently than once in a period of thirty days.

The provisions of section 52 dealing with weekly holidays shall apply also to child workers and no exemption from the provisions of that section may be granted in respect of any child.

A child shall be not be required or allowed to work in any factory on any day on which he has already been working in another factory. A female child shall not be required or allowed to work in any factory except between 8 A.M. and 7 P.M.

### **Notice of period of work for children (Section 72)**

It is mandatory in every factory to display and maintain correctly a notice of periods of work for children in accordance with the provisions of section 108. The notice shall show clearly for every day the periods during which children may be required or allowed to work. This requirement is applicable in factories employing children.

The periods shown in the notice shall be fixed beforehand in accordance with the method laid down for adult workers in section 61, and shall be such that children working for those periods would not be working in contravention of any of the provisions of section 71.

The provisions of sub-sections (8), (9) and (10) of section 61 shall apply also to the notice required by this section.

### **Register of child workers (Section 73)**

It is mandatory for the manager of every factory in which children are employed to maintain a register of child workers. This register shall be available to the Inspector at all times during working hours or when any work is being carried on in a factory. The register shall contain the following particulars -

- the name of each child worker in the factory,
- the nature of his work,
- the group, if any, in which he is included,
- where his group works on shifts, the relay to which he is allotted, and

- the number of his certificate of fitness granted under section 69.

A child worker shall neither be required nor allowed to work in any factory unless his name and other particulars have been entered in the register of child workers. 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.

### **Hours of work to correspond with notice under section 72 and register under section 73 (Section 74)**

A child shall not be employed in any factory otherwise than in accordance with the notice of periods of work for children displayed in the factory and the entries made beforehand against his name in the register of child workers of the factory.

### **Power to require medical examination. (Section 75)**

Where an Inspector is of opinion –

- that any person working in factory without a certificate of fitness is a young person, or
- that a young person working in a factory with a certificate of fitness is no longer fit to work in the capacity stated therein, he may serve on the manager of the factory a notice requiring that such person or young person, as the case may be shall be, examined by a certifying surgeon, and such person or young person shall not, if the Inspector so directs, be employed, or permitted to work, in any factory until he has been so examined and has been granted a certificate of fitness or a fresh certificate of fitness, as the case may be, under section 69, or has been certified by the certifying surgeon examining him not to be a young person.

### **Power to make rules (Section 76)**

This section has vested power in the State Government to make rules covering the following:

- prescribing the forms of certificate of fitness to be granted under section 69, providing for the grant of duplicates in the event of loss of the original certificate, and fixing the fees which may be charged for such certificates and renewals thereof and such duplicates;
- prescribing the physical standards to be attained by children and adolescents working in factories;
- regulating the procedure of certifying surgeons under this Chapter;
- specifying other duties which certifying surgeons may be required to perform in connection with the employment of young persons in factories, and fixing the fees which may be charged for such duties and the persons by whom they shall be payable.

### **Certain other provisions of law not barred (Section 77)**

The provisions of this Chapter shall be in addition to, and not in derogation of, the provisions of the Employment of Children Act, 1938.

## **ANNUAL LEAVE WITH WAGES (SECTIONS 78 TO 84)**

### **Application of Chapter (Section 78)**

The provisions of this Chapter shall not

- operate to prejudice of any right to which a worker may be entitled under any other law or under the terms of any award, agreement including settlement or contract of service. It is provided that if such award, agreement (including settlement) or contract of service provides for a longer annual leave with wages than provided in this Chapter, the quantum of leave, which the worker



shall be entitled to, shall be in accordance with such award, agreement or contract of service, but in relation to matters not provided for in such award, agreement or contract of service or matters which are provided for less favourable therein, the provisions of sections 79 to 82, so far as may be, shall apply.

- (ii) not apply to workers in any factory of any railway administered by the Government, who are governed by leave rules approved by the Central Government.

### Annual leave with wages (Section 79)

According to section 79, the following provisions have been made with regard to annual leave with wages.:

- (i) **Basis of leave:** Where a worker has worked for a minimum period of 240 days or more in a factory during any calendar year, i.e., the year beginning from 1st January, he is entitled to leave with wages on the following basis –
  - (i) for adults – One day for every 20 days of work performed by them during the previous calendar year.
  - (ii) for children – One day for every fifteen days of work performed by him during the previous calendar year.

If a worker does not commence his services from 1st January, he is entitled to these leaves at the above mentioned rates provided he has worked for 2/3rd of the total number of days in the remaining part of the calendar year. These leaves are exclusive of all holidays whether occurring during or at either end of the period of leave.

In calculating leave, fraction of leave of half a day or more shall be treated as one full day's leave and fraction of less than half a day shall be ignored.

- (ii) **Computation of qualifying period of 240 days:** For the purpose of calculating the minimum period, following periods are also included:
  - (i) any days of lay-off as agreed or as permissible under the Standing Orders.
  - (ii) for female workers, period of maternity leave not exceeding 12 weeks.
  - (iii) leave earned in the year prior to that in which the leave is enjoyed.

Though the above mentioned days included in calculated the qualifying period, but the worker will not be entitled to earn leave for these days. A worker who is discharged or dismissed from service or quits his employment or is superannuated or dies while in service during the course of calendar year, he or his heir or nominee as the case may be, shall be entitled to wages in lieu of the quantum of leave to which he was entitled immediately before his discharge, dismissal, quitting of employment, superannuation or death, calculated at the rates specified in sub-section (1), even if he had not worked for the entire period specified in this section making him eligible to avail of such leave and such payment shall be made:

- (i) where the worker is discharged or dismissed or quits employment, before the expiry of second working day from the date of such discharge, dismissal or quitting;
  - (ii) where the worker is superannuated or dies while in service, before the expiry of two months from the date of such superannuation or death.
- (iii) **Accumulation or carry forward of leaves:** If any worker does not avail any earned leave entitled to him during the calendar year, it can be carried forward to the next calendar year subject to the maximum of 30 days for an adult worker and 40 days for a child worker. But if a worker applies for leave with wages and is not granted such leave in accordance with any approved scheme under this section, or in contravention of this section, he can carry forward the leave refused, without any limit.
  - (iv) **How to apply for leave with wages:** If a worker wants to avail leave with wages earned by him during the year, he must apply in writing, to the manager of the factory at least 15 days before the date on



which he wishes to go on leave. In case a worker is employed in a public utility service as defined in Section 2(n) of the Industrial Disputes Act, 1947, the application for leave with wages shall be made at least 30 days in advance. The annual leave with wages cannot be availed for more than three times during any year.

The application to avail annual leave with wages for illness purposes can be made at any time. An application for leave which does not contravene the provisions of the section shall not be refused unless the refusal is in accordance with the scheme for the time being in operation under this section.

- (v) **Scheme of leave** :To ensure continuity of work, the grant of leave can be regulated. For this purpose, the occupier or the manager should prepare a scheme in writing, regulating the grant of leave to the workers and lodge it with the Chief Inspector. The Scheme should be prepared in agreement with the following bodies or persons:
- (a) (i) Works Committee formed under Section 3 of the Industrial Disputes Act, 1947, or
- (i) Such other Committee formed under any other Act, or
- (ii) In the absence of any of the above Committee, the representatives of the workers chosen in the prescribed manner.

The scheme shall be valid for 12 months from the date on which it comes into force. It can be renewed, with or without modification, for a further period of 12 months. A notice of renewal shall be sent to the Chief Inspector. The Scheme shall be displayed at some conspicuous and convenient places in the factory.

### Wages during leave periods (Section 80)

Provision is made in section 80 to calculate wages for which a worker will be entitled to during leave periods. For the leave allowed to him under section 78 or section 79, as the case may be, a worker shall be entitled to wages at a rate equal to the daily average of his total full time earnings for the day on which he actually worked during the months immediately preceding his leave, exclusive of any overtime and bonus but inclusive of dearness allowance and the cash equivalent of advantage accruing through the concessional sale to the worker of food-grains and other articles.

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

The cash equivalent of the advantage accruing through the concessional sale to the worker of food-grains and other articles shall be computed as often as may be prescribed, on the basis of the maximum quantity of food-grains and other articles admissible to a standard family.

**Explanation 1.** - “Standard family” means a family consisting of a worker, his or her spouse and two children below the age of fourteen years requiring in all three adult consumption units.

**Explanation 2.** - “Adult consumption unit” means the consumption unit of a male above the age of fourteen years; and the consumption unit of a female above the age of fourteen years, and that of a child below the age of fourteen years shall be calculated at the rates of 8 and 6 respectively of one adult consumption unit.

The State Government may make rules prescribing –

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

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

### Payment in advance in certain cases (Section 81)

A worker who has been allowed leave for not less than four days, in the case of an adult, and five days, in the case of a child, shall, before his leave begins, be paid the wages due for the periods of the leave allowed.

### Mode of recovery of unpaid wages (Section 82)

Any sum required to be paid by an employer, under this Chapter but not paid by him, shall be recoverable as delayed wages under the provisions of the Payment of Wages Act, 1936.

### Power to make rules (Section 83)

The State Government may make rules directing managers of factories to keep registers containing such particulars as may be prescribed and requiring the registers to be made available for examination by Inspectors.

### Power to exempt factories (Section 84)

Where the State Government is satisfied that the leave rules applicable to workers in a factory provide benefits which in its opinion, are not less favourable than those for which this Chapter makes provisions, it may by written order, exempt the factory from all or any of the provisions of this Chapter subject to such conditions as may be specified in the order.

**Explanation.** - For the purposes of this section, in deciding whether the benefits which are provided for by any leave rules are less favourable than those for which this Chapter makes provision, or not, the totality of the benefits shall be taken into account.

## SPECIAL PROVISIONS (SECTIONS 85 TO 91A)

### Power to apply the Act to certain premises (Section 85)

An exception may be created by the State Government, by notification in the Official Gazette, declare that all or any of the provisions of this Act shall apply to any place wherein a manufacturing process is carried on with or without the aid of power or is so ordinarily carried on, notwithstanding that -

- (i) the number of persons employed therein is less than ten, if working with the aid of power, and less than twenty if working without the aid of power, or
- (ii) the persons working therein are not employed by the owner thereof but are working with the permission of, or under agreement with, such owner. It is provided that the manufacturing process is not being carried on by the owner only with the aid of his family.

After a place is so declared, it shall be deemed to be a factory for the purposes of this Act, and the owner shall be deemed to be the occupier, and any person working therein, to be a worker.

**Explanation.** - For the purpose of this section “owner” shall include a lessee or mortgagee with possession of the premises.

### Power to exempt public institution (Section 86)

The State Government may exempt, subject to such conditions as it may consider necessary, any workshop or workplace where a manufacturing process is carried on and which is attached to a public institution maintained for the purposes of education training, research or information, from all or any of the provisions of this Act. It is provided that no exemption shall be granted from the provisions relating to hours of work and holidays unless the persons having the control of the institution submit, for the approval of the State Government, a scheme of the regulation of the hours of employment, intervals for meals, and holidays of the persons employed in or

attending the institution or who are inmates for the institution, and the State Government is satisfied that the provisions of the scheme are not less favourable than the corresponding provisions of the Act.

### **Dangerous operations (Section 87)**

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

- (a) specifying the manufacturing process or operation and declaring it to be dangerous;
- (b) prohibiting or restricting the employment of women, adolescents or children in the manufacturing process or operation;
- (c) providing for the periodical medical examination for persons employed or seeking to be employed, in the manufacturing process or operation, and prohibiting the employment of persons not certified as fit for such employment and requiring the payment by the occupier of the factory of fees for such medical examination;
- (d) providing for the protection of all persons employed in the manufacturing process or operation or in the vicinity of the places where it is carried on;
- (e) prohibiting, restricting or controlling the use of any specified materials or processes in connection with the manufacturing process or operation;
- (f) requiring the provision of additional welfare amenities and sanitary facilities and the supply of protective equipment and clothing, and laying down the standards thereof, having regard to the dangerous nature of the manufacturing process or operation.

### **Power to prohibit employment on account of serious hazard (Section 87A)**

Where it appears to the Inspector that conditions in a factory or part thereof are such that they may cause serious hazard by way of injury or death to the persons employed therein or to the general public in the vicinity, he may, by order in writing to the occupier of the factory, state the particulars in respect of which he considers the factory or part thereof to be the cause of such serious hazard and prohibit such occupier from employing any person in the factory or any part thereof other than the minimum number of persons necessary to attend to the minimum tasks till the hazard is removed. Any order issued by the Inspector shall have effect for a period of three days until extended by the Chief Inspector by a subsequent order.

Any person aggrieved by an order of the Inspector or the Chief Inspector, shall have the right to appeal to the High Court. Any person, whose employment has been affected by such order, shall be entitled to wages and other benefits and it shall be the duty of the occupier to provide alternative employment to him wherever possible and in the manner prescribed. These provisions of appeal shall be without prejudice to the rights of the parties under the Industrial Disputes Act, 1947.

### **Notice of certain accident (Section 88)**

Where in any factory an accident occurs which causes death, or which causes any bodily injury by reason of which the person injured is prevented from working for a period of forty-eight hours or more immediately following the accident, or which is of such nature as may be prescribed in this behalf, the manager of the factory shall send notice thereof to such authorities, in such form and within such time, as may be prescribed. Where such a notice relates to an accident causing death, the authority to whom the notice is sent shall make an inquiry into the occurrence within one month of the receipt of the notice or if there is no such authority, the Chief Inspector cause the Inspector to make an inquiry within the said period. The State Government may make rules for regulating the procedure inquires under this section.

### **Notice of certain dangerous occurrences (Section 88A)**

Where in a factory any dangerous occurrence of such nature as may be prescribed, occurs, whether causing any bodily injury or disability, or not, the manager of the factory shall send notice thereof to such authorities, and in such form and within such time, as may be prescribed.

### **Notice of certain diseases (Section 89)**

Where any worker in a factory contracts any disease specified in the Third Schedule, the manager of the factory shall send notice thereof to such authorities, and in such form and within such time, as may be prescribed. If any medical practitioner attends on a person, who is or has been employed in a factory, and who is, or is believed by the medical practitioner to be suffering from any disease specified in the Third Schedule, the medical practitioner shall without delay send a report in writing to the office of the Chief Inspector stating -

- the name and full postal address of the patient,
- the disease from which he believes the patient to be suffering, and
- the name and address of the factory in which the patient is, or was last employed.

Where the report is so confirmed to the satisfaction of the Chief Inspector, by the certificate of the certifying surgeon or otherwise, that the person is suffering from a disease specified in the Third Schedule, he shall pay to the medical practitioner such fee as may be prescribed, and the fee so paid shall be recoverable as an arrear of land revenue from the occupier of the factory in which the person contacted the disease. If any medical practitioner fails to comply with his obligations under this section, he shall be punishable with fine which may extend to one thousand rupees.

The Central Government may, by notification in the Official Gazette, and to or alter the Third Schedule and any such addition or alteration shall have effect as if it had been made by this Act.

### **Power to direct inquiry into cases of accident or disease (Section 90)**

The State Government may, if it considers it expedient so to do, appoint a competent person to inquire into the causes of any accident occurring in a factory or into any case where a disease specified in the Third Schedule has been, or is suspected to have been, contracted in a factory, and may also appoint one or more persons possessing legal or special knowledge to act as assessors in such inquiry. The person appointed to hold an inquiry under this section shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908, for the purposes of enforcing the attendance of witnesses and compelling the production of documents and material objects and may also, so far as may be necessary for the purposes of the inquiry, exercise any of the powers of an Inspector under this Act; and every person required by the person making the inquiry to furnish any information, shall be deemed to be legally bound so to do within the meaning of section 176 of the Indian Penal Code.

The person holding an inquiry under this section shall make a report to the State Government stating the cause of the accident, or as the case may be, disease, and any attendant circumstances, and adding any observations which he or any of the assessors may think fit to make. The State Government may, if it thinks fit, cause to be published any report made under this section or any extracts therefrom. The State Government may make rules for regulating the procedure of inquiries under this section.

### **Power to take samples (Section 91)**

An Inspector may at any time during the normal working hours of a factory, after informing the occupier or manager of the factory or other person for the time being purporting to be in-charge of the factory, take, in the manner hereinafter provided, a sufficient sample of any substance used or intended to be used in the factory, such use being -

- in the belief of the Inspector, in contravention of any of the provisions of this Act or the rules made thereunder, or
- in the opinion of the Inspector, likely to cause bodily injury to, or injury to the health of, workers in the factory.

Where the Inspector takes a sample under this section, he shall, in the presence of the person informed, unless such person wilfully absents himself, divide the sample into three portions and effectively, seal and suitably mark them, and shall permit such person to add his own seal and mark thereto. The person informed shall, if the Inspector so requires, provide the appliances for dividing, sealing and marking the sample taken under this section. The Inspector shall-

- (a) forthwith give one portion of the sample to the person informed under this section.
- (b) forthwith send the second portion to a Government analyst for analysis and report thereon;
- (c) retain the third portion for production to the Court before which proceedings, if any, are instituted in respect of the substance.

Any document purporting to be a report under the hand of any Government analyst upon any substance submitted to him for analysis and report under this section, may be used as evidence in any proceeding instituted in respect of the substance.

### Safety and occupational health surveys (Section 91A)

The Chief Inspector, or the Director-General of Factory Advice Service and Labour Institutes, or the Director-General of Health Services, to the Government of India, or such other officer as may be authorised in this behalf by the State Government or the Chief Inspector or the Director-General of Factory Advice Service and Labour Institutes or the Director-General of Health Services, may, at any time during the normal working hours of a factory, or at any other time as is found by him to be necessary, after giving notice in writing to the occupier or manager of the factory or any other person who for the time being purports to be in-charge of the factory, undertake safety and occupational health surveys and such occupier or manager or other person shall afford all facilities for such survey, including facilities for the examination and testing of plant and machinery and collection of samples and other data relevant to the survey.

For the purpose of facilitating surveys, every worker shall, if so required by the person conducting the survey, present himself to undergo such medical examinations as may be considered necessary by such person and furnish all information in his possession and relevant to the survey. Any time spent by a worker for undergoing medical examination or furnishing information shall, for the purpose of calculating wages and extra wages for overtime work, be deemed to be time during which such worker worked in the factory.

### Penalties and Procedure

The Factories Act, 1948 was enacted for betterment of condition of workmen in factories. Yet some employers have still not applied the prescribed guidelines. Hence the act prescribes fines and imprisonment if the employers fail to apply factories act in true spirit. Section 92 – 106 provide for Penalties and Procedure along with procedural matters.

Sl. No.	Section	Provision	Penalty
1.	<p><b>Section 92. General penalty for offences</b></p> <p><i>Who shall be liable?</i> The occupier or manager of the factory</p>	<ul style="list-style-type: none"> <li>● Except as otherwise expressly provided in this Act and subject to the provisions of section 93</li> <li>● Contravention               <ol style="list-style-type: none"> <li>(i) of the provisions of this Act or</li> <li>(ii) of any rules made thereunder or</li> <li>(iii) of any order in writing given thereunder</li> </ol> </li> </ul>	Imprisonment-Max. 2 years or Fine- Max. 1 lakh rupees or Both

		<ul style="list-style-type: none"> <li>Continued Contravention</li> </ul> <p>If any of following contravention has resulted in an accident causing death or serious bodily injury:</p> <ul style="list-style-type: none"> <li>the provisions of Chapter IV or any rule made thereunder or</li> <li>under section 87</li> </ul>	<p>Further fine which may extend to one thousand rupees for each day on which the contravention is so continued.</p> <p>(i) Min. Fine Rs.25,000 in the case of an accident causing death</p> <p>(ii) Min. Fine Rs.5,000 in the case of an accident causing serious bodily injury.</p>
2.	<b>Section 94. Enhanced penalty after previous conviction</b>	<p>(i) Contravention of the same provision of Sec. 92.</p> <p>(ii) If contravention of any of the provisions has resulted in an accident causing death or serious bodily injury</p> <ul style="list-style-type: none"> <li>of Chapter IV or any rule made thereunder or</li> <li>under Section 87.</li> </ul>	<p>(i) Imprisonment which may extend to 3 years or with fine, not &lt; Rs.10,000 but which may extend to Rs.2 Lakh or both</p> <p>Provided that the Court may, for any adequate and special reasons to be mentioned in the judgement impose a fine of less than Rs. 10,000</p> <p>The fine shall not be less than Rs. 35,000 in case of death and Rs. 10,000 in the case of an accident causing serious bodily injury.</p>
		<p>Note: No cognizance shall be taken of any conviction made more than two years before the commission of the offence for which the person is subsequently convicted.</p>	
3.	<b>Section 95. Penalty for obstructing inspector</b>	<p>Whoever wilfully obstructs an Inspector in the exercise of any power conferred on him by or under this Act, or fails to produce on demand by an Inspector any register or other documents kept in his custody in pursuance of this Act or of any rules made thereunder, or conceals or prevents any workers, in a factory from appearing before, or being examined by, an inspector.</p>	<p>Imprisonment for a term which may extend to six months or with fine which may extend to Rs.10,000 or with both.</p>
4.	<b>Section 96. Penalty for wrongfully disclosing results of analysis under section 91</b>	<p>Whoever, except in so far as it may be necessary for the purposes of a prosecution for any offence punishable under this Act, publishes or discloses to any person the results of an analysis made under section 91.</p>	<p>Imprisonment for a term, which may extend to six months or with fine, which may extend to Rs.10,000 or with both.</p>

5.	<b>Section 96A. Penalty for contravention of the provisions of sections 41B, 41C and 41H</b>	<p>(i) in respect of such failure or contravention,</p> <p>(ii) in case the failure or contravention continues</p> <p>(iii) If the failure or contravention continues beyond a period of one year after the date of conviction.</p>	<p>(i) Imprisonment for a term which may extend to seven years and with fine which may extend to two lakh rupees</p> <p>(ii) with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues, after the conviction for the first such failure or contravention.</p> <p>(iii) Imprisonment for a term which may extend to ten years.</p>
6.	<b>Section 97. Offences by workers</b>	<p>(1) Subject to the provisions of section 111, if any worker employed in a factory contravenes any provision of this Act or any rules or orders made thereunder, imposing any duty or liability on workers,</p> <p>(2) Where a worker is convicted of an offence punishable under subsection (1) the occupier or manager of the factory shall not be deemed to be guilty of an offence in respect of that contravention, unless it is proved that he failed to take all reasonable measures for its prevention.</p>	Fine which may extend to five hundred rupees.
7.	<b>Section 98. Penalty for using false certificate of fitness</b>	Whoever knowingly uses or attempts to use, as a certificate of fitness granted to himself under section 70, a certificate granted to another person under that section, or who, having procured such a certificate, knowingly allow it to be used, or an attempt to use it to be made by, another person,	Imprisonment for a term, which may extend to two months or with fine which may extend to one thousand rupees or with both.
8.	<b>Section 99. Penalty for permitting double employment of child</b>	If a child works in a factory on any day on which he has already been working in another factory, the parent or guardian of the child or the person having custody of or control over him or obtaining any direct benefit from his wages,	Fine which may extend to one thousand rupees, unless it appears to the Court that the child so worked without the consent or connivance of such parent, guardian or person.



**Note:**

1. - In section 92 and in section 94 “serious bodily injury” means an injury which involves, or in all probability will involve, the permanent loss of the use of, or permanent injury to, any limb or the permanent loss of, or injury to sight or hearing, or the fracture of any bone, but shall not include, the fracture of bone or joint (not being fracture of more than one bone or joint) of and phalanges of the hand or foot.

In the matter of **Shri Suresh Kumar Jalan & Ors v. State of Bihar, (2011)**, the petitioners were the directors of a factory called Carbon Resources Private Limited, where a factory inspector investigated the premises and discovered numerous violations of the Factories Act. The inspector filed a prosecution report against the petitioners, who were factory directors. Under Section 92 of the Factories Act, the Chief Judicial Magistrate took charge of the offence. The petitioners filed an appeal with the High Court of Patna to quash the order of the Chief Judicial Magistrate.

The issue involved was whether the petitioner’s appeal with the High Court of Patna to quash the Chief Judicial Magistrate’s judgment under Section 92 of the Factories Act had merit or not.

The petitioner’s counsel was providing evidence to show that, according to Section 92 of the Factories Act, only the manager or occupier can be held responsible for violations committed in the factory. However, based on the judgment rendered by the Chief Judicial Magistrate, directors of the factory cannot be penalised under Section 92 of the Factories Act. The Chief Judicial Magistrate’s order was quashed by the High Court of Patna because directors cannot be penalised under Section 92 of the Act. It was noted from this case that directors cannot be held responsible for the Act’s violations; only the manager or occupier is responsible.

In the matter of **P. Trivikrama Prasad v. The State of AP by its Assistant Inspector of Factories, (2016)**, the deputy chief inspector of factories filed a private complaint against the petitioner for violations of Section 32(a) and Section 41 of the Factories Act, which are punishable under Section 92 of the Act. The petitioner failed to provide D-rings to the cane trolley side plate to support the employees as they would safely get down from the trolley once the crane loading was complete. They also failed to provide ladders and helmets, which resulted in some unskilled workers getting hit while working and causing them to die. Since no helmet, d-rings, or ladders were provided, the occupier/managing director of the entity or the manager (i.e., the petitioner) was made responsible. Then the petitioner filed a criminal petition against the factory inspector.

The issue involved was whether the criminal petition filed against the accused would be rejected or allowed to proceed.

The Hyderabad High Court held that the occupier or managing director (petitioner), who neglects to provide d-rings, ladders, and helmets to the employees for their safety and fails to teach them during hazardous times, is at fault. Therefore, the criminal petition brought against the respondent is dismissed and quashed. As a result, the petitioner is responsible for his ignorance and failure to maintain the factory properly.

### Liability of owner of premises in certain circumstances (Section 93)

It is the owner of the premises who shall be responsible for the provision and maintenance of common facilities and services such as approach roads, drainage, water-supply, lighting and sanitation where in any premises separate building are being leased out by the owner to different occupiers for use as separate factories. Where in any premises, independent floors or flats are leased to different occupiers for use as separate factories, the owner shall be liable as if he were the manager or occupier of a factory for any contravention of the provisions of this Act in respect of

- (i) latrines, urinals, washing facilities and common supply of water for this purpose;
- (ii) fencing of machinery and plant belonging to the owner and not entrusted to the custody or use of an occupier;
- (iii) safe means of access to floors or flats and maintenance and cleanliness of staircase and common passages;



- (iv) precautions in case of fire;
- (iv) maintenance of hoists and lifts; and
- (vi) maintenance of any other common facilities provided in the premises.

But the liability of the owner arises only wherein any premises, independent rooms with common latrine, urinals and washing facilities are leased to different occupiers for use as separate factories so that the owner should also comply with the provisions of maintaining such facilities.

The whole of the premises shall be deemed to be single factory for the purposes computing the total number of workers employed,

The owner is liable for contravention of Chapter III except Sections 14 and 15; Chapter IV except Sections 22, 23, 27, 34, 35 and 36 where in any premises, portions of a room or a shed leased out to different occupiers for use as separate factories. It is provided that in respect of the provisions of Sections 21, 24 and 32, the owners liability shall be only in so far as such provisions relate to things under his control and the occupier shall be responsible for complying with the provisions of Chapter IV in respect of plant and machinery belonging to or supplied by him and for contravention of Section 42. The Chief Inspector has been empowered to issue orders to the owners in respect of the carrying out of the provisions as mentioned above but subject to the control of the State Government.

#### **Exemption of occupier or manager from liability in certain cases (Section 101)**

Where the occupier or manager of a factory is charged with an offence punishable under this Act and he charges another person as the actual offender, he can bring such person before the Court at the time appointed for hearing the charge. But before doing this, he shall make a due complaint and give the prosecutor at least three clear days' notice in writing of his intention so to do. If, after the commission of the offence has been proved, the occupier or manager of the factory, as the case may be, proves to the satisfaction of the Court -(a) that he has used due diligence to enforce the execution of this Act, and (b) that the said other person committed the offence in question without his knowledge, consent or connivance, then that other person shall be convicted of the offence and shall be liable to the like punishment as if he was the occupier or manager of the factory, and the occupier or manager, as the case may be, shall be, discharged from any liability under this Act in respect of such offence.

It is provided that in seeking to prove as aforesaid, the occupier or manager of the factory, as the case may be, may be examined on oath, and his evidence and that of any witness whom he calls in his support, shall be subject to cross-examination on behalf of the person he charges as the actual offender and by the prosecutor.

It is provided further that, if the person charged as the actual offender by the occupier or manager, cannot be brought before the court at the time appointed for hearing the charge, the court shall adjourn the hearing from time to time for a period not exceeding three months and if by the end of the said period the person charged as the actual offender cannot still be brought before the court, the court shall proceed to hear the charge against the occupier or manager and shall, if the offence be proved, convict the occupier or manager.

#### **Power of court to make orders (Section 102)**

Where the occupier or manager of a factory is convicted of an offence punishable under this Act the court is vested with the power to require him, by order in writing, to take such measures as may be so specified for remedying the matters in respect of which the offence was committed. This power of the court is in addition to awarding any punishment. The person so ordered shall fulfill the same within a period specified in the order (which the court may, if it thinks fit and on application in such- behalf, from time to time extend).

In case of such an order being made, the occupier or manager of the factory, as the case may be, shall not be liable under this Act in respect of the continuation of the offence during the period or extended period, if any,

allowed by the court, but if, on the expiry of such period or extended period, as the case may be, the order of the court has not been fully complied with, the occupier or manager, as the case may be, shall be deemed to have committed a further offence, and may be sentenced therefor by the court to undergo imprisonment for a term which may extend to six months or to pay a fine which may extend to one hundred rupees for every day after such expiry on which the order has not been complied with, or both to undergo such imprisonment and to pay such fine as aforesaid.

### **Presumption as to employment (Section 103)**

If a person is found in a factory at any time, except during intervals for meals or rest, when work is going on or the machinery is in motion, he shall until the contrary is proved, be deemed for the purposes of this Act and the rules made thereunder to have been at that time employed in the factory.

### **Onus as to age (Section 104)**

When any act or omission would, be an offence punishable under this Act, if a person was under a certain age and such person is in the opinion of the Court prima facie under such age, the burden shall be on the accused to prove that such person is not under such age. A declaration in writing by a certifying surgeon relating to a worker that he has personally examined him and believes him to be under the age stated in such declaration shall, for the purposes of this Act and the rules made thereunder, be admissible as evidence of the age of that worker.

### **Onus of proving limits of what is practicable, etc. (Section 104A.)**

In any proceeding for an offence for the contravention of any provision of this Act or rules made thereunder consisting of a failure to comply with a duty or requirement to do something, it shall be for the person who is alleged to have failed to comply with such duty or requirement, to prove that it was not reasonably practicable or as the case may be, all practicable measures were taken to satisfy the duty or requirement.

### **Cognizance of offences (Section 105)**

An offence punishable under this Act can be tried only by a Court which is equivalent or superior to the rank that of a Presidency Magistrate or of a Magistrate of the first class. Such Court can take cognizance of any offence under this Act only on complaint by an Inspector or with previous sanction in writing of an Inspector.

### **Limitation of prosecution (Section 106)**

The complaint under this Act shall be made within three months of the date when the alleged commissioning of offence came to the knowledge of an Inspector. A court can only then take cognizance of any offence punishable under this Act. It is provided that where the offence consists of disobeying a written order made by an Inspector, complaint thereof may be made within six months of the date on which the offence is alleged to have been committed.

Explanation. - For the purposes of this section, -(a) in the case of a continuing offence, the period of limitation shall be computed with reference to every point of time during which the offence continues; (b) where for the performance of any act time is granted or extended on an application made by the occupier or manager of a factory the period of limitation shall be computed from the date on which the time so granted or extended expired.

### **Jurisdiction of a Court for entertaining proceedings, etc., for offence (Section 106-A)**

For the purposes of conferring jurisdiction on any Court in relation to an offence under this Act or the rules made thereunder in connection with the operation of any plant, the place where the plant is for the time being situate shall be deemed to be the place where such offence has been committed.

## SUPPLEMENTAL (SECTIONS 107 TO 119)

### Appeals (Section 107)

The section gives an opportunity to the manager of a factory on whom an order in writing by an Inspector has been served under the provisions of this Act or the occupier of the factory that he may appeal against it to the prescribed authority. Such authority may confirm, modify or reverse the order. Appeal shall be filed within thirty days of the service of the order.

The appellate authority may, or if so required in the petition of appeal shall, hear the appeal with the aid of assessors, one of whom shall be appointed by the appellate authority and the other by such body representing the industry concerned as may be prescribed.

It is provided that if no assessor is appointed by such body before the time fixed for hearing the appeal, or if the assessor so appointed fails to attend the hearing at such time, the appellate authority may, unless satisfied that the failure to attend is due to sufficient cause, proceed to hear the appeal without the aid of such assessor or, if it thinks fit, without the aid of any assessor.

Subject to such conditions as to partial compliance or the adoption of temporary measures as the appellate authority may in any case think fit to impose, the appellate authority may, if it thinks fit, suspend the order appealed against pending the decision of the appeal.

The provisions of the section are subject to such rules as may be made by the State Government with respect to them.

### Display of notices (Section 108)

The section provides for statutory requirement of displaying in every factory a notice containing such abstracts of this Act and of the rules made thereunder as may be prescribed and also the name and address of the Inspector and the certifying surgeon. This requirement is in addition to the notices required to be displayed in any factory by or under this Act.

All notices required by or under this Act to be displayed in a factory shall be in English and in a language understood by the majority of the workers in the factory, and shall be displayed at some conspicuous and convenient place at or near the main entrance to the factory, and shall be maintained in a clean and legible condition. The Chief Inspector may, by order in writing served on the manager of any factory, require that there shall be displayed in the factory any other notice or poster relating to the health, safety or welfare of the workers in the factory.

### Service of notices (Section 109)

The State Government may make rules prescribing the manner of the service of orders under this Act on owners, occupiers or managers of factories.

### Returns (Section 110)

The State Government may make rules requiring owners, occupiers or managers of factories to submit such returns, occasional or periodical, as may be, in its opinion be required for the purposes of this Act.

### Obligations of workers (Section 111)

Apart from imposing obligations on occupier or manager of a factory for welfare of workers, the Act also provides for prohibition on workers too. According to this section, a worker in a factory shall not be indulged in the following activities:

- (a) wilfully interfere with or misuse any appliance, convenience or other thing provided in a factory for the purposes of securing the health, safety or welfare of the workers therein;
- (b) wilfully and without reasonable cause do anything likely to endanger himself or others; and

- (c) wilfully neglect to make use of any appliance or other thing provided in the factory for the purposes of securing the health or safety of the workers therein.

If any worker employed in a factory contravenes any of the provisions of this section or of any rule or order made thereunder, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both.

### **Right of workers, etc. (Section 111-A)**

The section gives certain right to every worker as follows:

- (i) obtain from the occupier, information relating to workers' health and safety at work,
- (ii) get trained within the factory wherever possible, or, to get himself sponsored by the occupier for getting trained at a training centre or institute, duly approved by the Chief Inspector, where training is imparted for workers' health and safety at work,
- (iii) represent to the Inspector directly or through his representative in the matter of inadequate provision for protection of his health or safety in the factory.

### **General power to make rules (Section 112)**

The State Government may make rules providing for any matter which, under any of the provisions of this Act, is to be or may be prescribed or which may be considered expedient in order to give effect to the purposes of this Act.

### **Power of Centre to give directions (Section 113)**

The Central Government may give directions to a State Government as to the carrying into execution of the provisions of this Act.

### **No charge for facilities and conveniences (Section 114)**

Subject to the provisions of section 46, no fee or charge shall be realised from any worker in respect of any arrangements or facilities to be provided, or any equipments or appliances to be supplied by the occupier under the provisions of this Act.

### **Application of Act to Government factories (Section 116)**

Unless otherwise provided this Act shall apply to factories belonging to the Central or any State Government.

### **Protection to persons acting under this Act (Section 117)**

The section provides for immunity from any suit, prosecution or other legal proceeding which shall not lie against any person for anything which is in good faith done or intended to be done under this Act.

### **Restriction on disclosure of information (Section 118)**

An Inspector is prohibited from disclosing any information relating to any manufacturing or commercial business or any working process which may come to his knowledge in the course of his official duties. This prohibition is applicable not only when he is in service but also after leaving the service. However, he may disclose such information only in connection with the execution, or for the purposes, of this Act.

But an Inspector may disclose any such information

- with the previous consent in writing of the owner of such business or process or
- for the purposes of any legal proceeding (including arbitration) pursuant to this Act or of any criminal proceeding which may be taken, whether pursuant to this Act or otherwise, or
- for the purposes of any report of such proceedings as aforesaid.

The statutory punishment on an Inspector for contravention of above provisions is imprisonment for a term which may extend to six months, or fine which may extend to one thousand rupees, or both.

### **Restriction on disclosure of information (Section 118-A)**

Every Inspector shall treat as confidential the source of any complaint brought to his notice on the breach of any provision of this Act. No Inspector shall, while making an inspection under this Act, disclose to the occupier, manager or his representative that the inspection is made in pursuance of the receipt of a complaint. It is provided that name of the complainant can be disclosed with his previous consent.

### **Act to have effect notwithstanding anything contained in Act 37 of 1970 (Section 119)**

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Contract Labour (Regulation and Abolition) Act, 1970 or any other law for the time being in force.

The Fundamental Rights and the Directive Principles of State Policy of the Constitution of India are also relevant to the Factories Act as the workers working therein are also the Citizens of India and as such are entitled to those Rights.

1. Article 14 Dealing with Equality before Law
2. Article 19 Providing for Protection of Certain Rights regarding Freedom of Speech
3. Article 23 dealing with Prohibition of Traffic in human beings and forced labour
4. Article 24 Prohibition of Employment of Children in Factories.
5. Article 32 Remedies for Enforcement of Rights conferred by this Part of the Constitution of India
6. Article 39 Certain Principles of Policy to be followed by the State
7. Article 39 A Equal Justice and Free Legal Aid
8. Article 42 Provisions for Just and Humane Conditions of work and maternity benefit
9. Article 43 Living wage, etc. for workers
10. Article 43 A Participation of Workers in Management and Industries.

### **Conventions of International Labour Organisation and the Factories Act, 1948**

ILO's Convention No. 29	Relating to Forced Labour
Convention No. 105	Relating to Abolition of Forced Labour
Convention Nos. 3 & 103	Concerning Maternity Protection
Convention No. 183	Concerning Maternity Benefit
Convention Nos. 110, 4, 89 & 45	Dealing with Conditions of Work and Night Work of Women employed in industry
Convention Nos. 5, 10, 33 59, 60, 138	Concerning Minimum Age for Admission to Employment
Convention Nos. 6, 14, 79 90	Concerning Night Work by Children and Young Persons
Convention No. 146	Concerning Minimum Age, National Policy, Hazardous Employment, Conditions of Work and Enforcement
Convention No. 182	Concerning Worst Forms of Child Labour

### LESSON ROUND-UP

- According to the Factories Act, 1948, a 'factory' means "any premises including the precincts thereof - (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on; but this does not include a mine subject to the operation of the Mines Act, 1952, or a mobile unit belonging to the armed forces of the union, a railway running shed or a hotel, restaurant or eating place."
- No adult worker shall be required or allowed to work in a factory: - (i) for more than forty-eight hours in any week; and/ or (ii) for more than nine hours in any day.
- Where a worker works in a factory for more than nine hours in any day or for more than forty-eight hours in any week, he shall, in respect of overtime work, be entitled to wages at the rate of twice his ordinary rate of wages. The 'ordinary rate of wages' means the basic wages plus such allowances, including the cash equivalent of the advantage accruing through the concessional sale to workers of food grains and other articles, as the worker is for the time being entitled to, but does not include a bonus and wages for overtime work.
- Where a worker is deprived of any of the weekly holidays, 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.
- The periods of work of adult workers in a factory each day shall be so fixed that no period shall exceed five hours and that no worker shall work for more than five hours before he has had an interval for rest of at least half an hour.
- 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 at the rate of -
  - (i) if an adult, one day for every twenty days of work performed by him during the previous calendar year;
  - (ii) if a child, one day for every fifteen days of work formed by him during the previous calendar year.
 In the case of a female worker, maternity leave for any number of days not exceeding twelve weeks.
- In order to safeguard the health of the workers:-
  - Every factory shall be kept clean and free from effluvia arising from any drain, privy or other nuisance and in particular accumulations of dirt.
  - 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.
  - Effective and suitable provision shall be made in every factory for securing and maintaining in every workroom adequate ventilation by the circulation of fresh air; and such a temperature that will secure to workers reasonable conditions of comfort and prevent injury to health.
  - No room in any factory shall be overcrowded to an extent injurious to the health of the workers employed therein.
  - Every part of a factory, where workers are working or passing, shall be provided with sufficient and suitable lighting, natural or artificial, or both.
  - In every factory effective arrangements shall be made to provide, at suitable points conveniently situated for all workers employed therein, a sufficient supply of wholesome drinking water.

- In order to ensure safety of the workers: -
  - Every dangerous part of any machinery shall be securely fenced and constantly maintained to keep it in position.
  - No young person shall be required or allowed to work at any dangerous machine unless he has been fully instructed as to the dangers arising from it and the precautions to be observed as well as has received sufficient training in work at the machine.
  - No woman or child shall be employed in any part of a factory for pressing cotton in which a cotton- opener is at work (subject to the given conditions).
  - In every factory every hoist and lift shall be - (i) of good mechanical construction, sound material and adequate strength; (ii) properly maintained, and thoroughly examined by a competent person at least once in every period of six months.
  - 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 the workers, unless it is provided with a manhole of adequate size or other effective means of egress.
- Certain facilities to be provided to the workers: -
  - Every factory shall provide and maintain readily accessible first-aid boxes or cupboards equipped with the prescribed contents, and the number of such boxes or cupboards shall not be less than one for every one hundred and fifty workers ordinarily employed at any one time in the factory.
  - In any 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.
  - In every factory wherein more than one hundred and fifty workers are ordinarily employed, adequate and suitable shelters, rest rooms and 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.
  - In every factory wherein more than thirty women workers are ordinarily employed, there shall be a suitable room or rooms for the use of children under the age of six years of such women. Such rooms shall provide adequate accommodation, lighting and ventilation with clean and sanitary condition.
- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Contract Labour (Regulation and Abolition) Act, 1970 or any other law for the time being in force.

### TEST YOURSELF

*(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)*

1. Discuss the object and scope of the Factories Act, 1948.
2. Define the terms: Adult, Adolescent, Manufacturing Process, Factory and Worker.
3. Discuss the various provisions under the Factories Act, 1948 regarding the health of the Workers.
4. What are working hours for children and women in a factory?
5. What are the provisions regarding annual leave with wages?
6. Shubham advised workers in his factory to work on all Sundays in a month by compensating the weekly holiday on Wednesdays. Purna, a worker without availing the weekly holidays, claimed double of the wages for working on Sundays and normal wages for working on Wednesdays. Whether the claim of Purna is correct? Justify your answer with reasons.
7. "One of the important measures to be taken by Factories for Health, Safety and Welfare of the workers is 'Ventilation and Temperature' in the work environment". Explain the statutory provisions in this regard under Factories Act, 1948.

## SECTION II: THE CONTRACT LABOUR (REGULATION AND ABOLITION) ACT, 1970

### KEY CONCEPTS

■ Appropriate Government ■ Contract Labour ■ Contractor ■ Controlled Industry ■ Establishment ■ Principal Employer ■ Occupier ■ Workman

### Learning Objectives

#### To understand:

- The legal frame work stipulated under the Contract Labour (Regulation and Abolition) Act, 1970
- The history, Object and Scope of the legislation
- Meaning of Contract Labour, Contractor, Establishment, Principal Employer and Workman
- The provisions for appointment of Registering Officers and Registration of certain establishment
- The Constitution of the Advisory Boards
- Process for Appointment of Licensing Officer and Licensing of Contractors
- The rules regarding Appeal
- Penalties and Procedure in case of contravention of the provisions of this Act

### Lesson Outline

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| <ul style="list-style-type: none"> <li>➤ Introduction</li> <li>➤ History of the Legislation</li> <li>➤ Judicial Activism in Reference to Contract Labour Abolition</li> <li>➤ Constitutional Validity of the Act</li> <li>➤ Contract Labour vis-a-vis Employees</li> <li>➤ Object and Scope of the Act</li> <li>➤ Definitions</li> <li>➤ The Advisory Boards</li> <li>➤ Registration of Establishments Employing Contract Labour</li> <li>➤ Jurisdiction of Industrial Tribunals to abolish contract labour</li> <li>➤ After effect of abolition of Contract Labour</li> <li>➤ Appointment of Licensing Officer and Licensing of Contractors</li> </ul> | <ul style="list-style-type: none"> <li>➤ Rules regarding Appeal</li> <li>➤ Welfare and Health of Contract Labour</li> <li>➤ Penalties and Procedure</li> <li>➤ Inspecting staff</li> <li>➤ Registers and other records to be maintained</li> <li>➤ Effect of laws and agreements inconsistent with this Act</li> <li>➤ Power to exempt in special cases</li> <li>➤ Protection of action taken under this Act</li> <li>➤ Power to give directions.</li> <li>➤ Power to make rules</li> <li>➤ Important Case studies</li> <li>➤ Lesson Round-Up</li> <li>➤ Test Yourself</li> </ul> |
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***An Act to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith.***



## INTRODUCTION

Before the enactment of this Act, there was no specific legislation which dealt in detail with the problem of contract labour. Although there were legislations like Industrial Disputes Act, 1947, Payment of Wages Act, 1936 etc. But these enactments were not specifically designed to solve the problem of contract labour. Therefore, there was a need to for a specific legislation to stop exploitation of contract labourer by Contractors and Establishments. The Government enacted the Contract Labour (Regulation and Abolition) Act in 1970 and it came into force on 10.2.1971.

The main object of the Act is to provide for regulation of the employment of contract labour and its abolition under certain circumstances. The Act has been brought to the fore to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith. The Act essentially applies to the principal employer of an establishment and the contractor who employed 20 or more workmen even for one day, in the preceding twelve months as the contract labourer. The Act, however, does not pertain to seasonal employment or intermittent employment. This Act makes an endeavor to create a balance between, providing minimum wages to contract workers through the licensing of contractors and holding the principle employers accountable for the enforcement of the law. The Contract Labour (Regulation & Abolition) Act 1970 is one of the thirteen enactments being subsumed under the Occupational Safety, health and working conditions Code 2020. It regulates registration of establishment, licensing of Contractors, ensure that suitable working conditions are provided and incur penalties where any of these provisions are contravened.

The Act enumerates certain joint and several responsibilities on the principal employer and the contractor. It is the duty of the principal employer to ensure that the contractor adheres to the liabilities under the Act. The principal employer is obliged under the CLA to ensure that wages have been paid to the contract labour in the presence of its (principal employer's) authorized representative. If the contractor fails to pay wages to any worker, the principal employer has been made duty bound to pay the same.

## HISTORY OF THE LEGISLATION

Contract Labour has its root from time immemorial but the size of contract labour in India has significantly expanded in the post-independence period with the expansion of construction activity following substantial investment in the Plans. During the early period of industrialisation, the industrial establishments were always faced with the problems of labour recruitment. Low status of factory workers, lack of labour mobility, caste and religious taboo, language, etc., were some of the problems with which most of the employers in general and British employers or their representatives, in particular were not familiar. They were unable to solve these problems. Therefore, they had to depend on middlemen who helped them in recruitment and control of labour. These middlemen or contractors were known by different names in various parts of the country. Contract Labourers were considered as exploited section of the working class mainly due to lack of organisation on their part. Due to this, the Whitley Commission (1860) recommended the abolition of contract labour by implication. Before 1860, in addition to the many disadvantages suffered by the contract labour, the Workman's Breach of Contract Act 1859 operated in holding them criminally responsible in the event of a breach of contract service.

Following this, the Government constituted various committees to study the socio-economic conditions of contract labours e.g. The Bombay Textile Labour Enquiry Committee (1938), The Bihar Labour Enquiry Committee (1941), The Rega Committee (1946). As a result of recommendations of these committees, the scope of the definition of "workers" in the Factories Act (1948), the Mines Act (1952) and the Plantations Labour Act (1951), was enlarged to include contract labour.

In the Second Five Year Plan, the Planning Commission stressed the need of improvement in the working conditions of contract labour and thus, recommended for a special treatment to the contract labour so as to ensure them continuous employment where it was not possible to abolish such type of labour. It was discussed at various meetings of Tripartite Committees at which the State Governments were also represented and the general consensus of opinion was that the system of contract should be abolished wherever possible and practicable and that in case where this system could not be abolished altogether, the working conditions of

contract labour should be regulated so as to ensure payment of wages and provision of essential amenities. Based on these views “The Contract Labour (Regulation and Abolition) Act, 1970” was passed by both the Houses of Parliament and received the assent of the President on 5th September, 1970 and it came into force from 10th February, 1971. The Contract Labour (Regulation and Abolition) Central Rules, 1971 were also notified for enforcement of the Act.

### Judicial activism in reference to Contract Labour Abolition

The Courts took very active role in interpreting and favouring of the abolition of the Contract Labour and regulating the rights of the Contract Labour.

The First of it is the landmark judgement in ***Standard Vacuum Refining Company v. Its Workmen, [1960] 3 SCR 466*** in which the Supreme Court had affirmed the direction of the Industrial Tribunal for the abolition of the contract system of labour. Further the judgement of the Supreme Court in this historic case said that contract labour should not be employed where

- (a) the work is perennial and goes on from day to day;
- (b) the work is necessary for the factory;
- (c) the work is sufficient to employ a considerable number of whole-time workmen; and
- (d) the work is being done in most concerns through regular workmen.

Further in *Catering Cleaners of Southern Railway v. Union of India & Ors., AIR 1987 SC 777* the Supreme Court expressed its dismay with reference to contract labour engagement as follows: “Of late there has been a noticeable tendency on the part of big companies including public sector companies to get the work done through contractors rather than through their own departments”. “it is a matter of surprise that employment of contract labour is steadily on the increase in many organised sectors including the public sector, which one expects to function as a model employer.”

Further in ***Gujarat Electricity Board v. Hind Mazdoor Sabha***, Supreme Court has expressed its dismay “While parting with these matters, we cannot help expressing our dismay over the fact that even the undertakings in the public sector have been indulging in unfair labour practice by engaging contract labour when workmen can be employed directly even according to the tests laid down by Section 10 of the Act. The only ostensible purpose in engaging the contract labour instead of the direct employees is the monetary advantage by reducing the expenditure. Apart from the fact that it is an unfair labour practice, it is also an economically short-sighted and unsound policy, both from the point of view of the undertaking concerned and the country as a whole.

The economic growth is not to be measured only in terms of production and profits. It has to be gauged primarily in terms of employment and earnings of the people. Man has to be the focal point of development. The attitude adopted by the undertakings is inconsistent with the need to reduce unemployment and the Government policy declared from time to time, to give jobs to the unemployed. This is apart from the mandate of the directive principles contained in Articles 38, 39, 41, 42, 43 and 47 of our Constitution.”

From the above, it can be inferred that the courts are also of the view that the Contract Labour engagement shall be abolished over a period of time as it leads to the abuse of labour rights for the economic benefit of the employers and is used mainly to depart from the responsibilities being an employer towards the employees.

### Constitutional Validity of the Act

The Supreme Court in ***Gammon India Ltd. v. Union of India 1974 SCC (L&S) 252*** while dealing with the Contract Labour Act, 1970 held that “The Act provides for regulation and abolition of contract labour. The underlying policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provision of essential amenities. That is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent

contemplated by section 10 of the Act. Section 10 of the Act deals with abolition while the rest of the Act deals mainly with regulation. The dominant idea of the section 10 of the Act is to find out whether contract labour is necessary for the industry, trade, business, manufacture or occupation which is carried on in the establishment. The Act in section 10 empowers the Government to prohibit employment of contract labour in any establishment.” and it was further held that “the Act does not violate Articles 14 and 15 of the Constitution of India.”

According to the case ***Basti Sugar Mills Ltd. v. Ram Ujagar and others*** which was decided before the enactment of this Act but still answers the question that whether obligations regarding conferring amenities on contract labourers is in contradiction to Article 19(1)(g) or not. In this case the court clearly stated that public welfare comes above private interests. Right to carry on trade and business does not give a right to the employer to exploit his workers. The practice of employing a contractor so as to evade the benefits conferred by major Acts on industrial labour was totally criticized and discouraged by the Court.

### Contract Labour vis-a-vis Employees

According to the Act a “contract labour” is hired in or in connection with such work by or through a contractor and such hiring is with or without the knowledge of the principal employer. However “An employee” is “a person who works in the service of another under express or implied contract for hire, under which the employer has the right to control details of work performance” (**Black’s Law Dictionary**).

“Contract labour” can be distinguished from employees in terms of employment relationship with the principal establishment and the method of wage payment. A workman is deemed to be a contract labour when he/she is hired in connection with the work or contract for service of an establishment by or through a contractor. They are indirect employees. Contract labour is neither borne on pay roll or muster roll or wages paid directly to the employer.

In ***Basanta Kumar Mohanty v. State Of Orissa (1992) ILLJ 190 Ori.*** it was held that “a workman shall be deemed to have been employed as contract labour when he is hired in, or in connection with a particular work of the principal employer. The determinative factor, therefore, is whether a workman was hired in or in connection with work of an establishment. A permanent employee who during his employment can be placed at different establishments at the choice of the contractor cannot be called to be a contract labour because he is not hired in or in connection with the work of any particular establishment. The logic behind this conclusion is that where employment of a person is unrelated with any specific work of any establishment, he is not a contract labour, because his employment has no nexus with any particular work of any establishment.”

### Object and Scope of the Act

The preamble of the Act states that it is an Act to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith.

Application of the Act to pending construction works does not amount to unreasonable restriction on the right under Act 19(1) (g). The whole statute is constitutional and valid. Act does not violate Arts. 14 and 15. ***Gammon India Ltd. v. Union of India, (1974) 1 SCC 596,603: 1974 SCC (L & S) 252.***

In ***Gammon India Ltd. vs. Union of India, (1974-I-LLJ-489)*** the Supreme Court while dealing with the object for which the Contract Labour (Regulation and Abolition) Act, 1970 was enacted observed that the Act was passed to prevent the exploitation of contract labour and also to introduce better conditions of work. The Act provides for regulation and abolition of contract labour. The underlying policy of the Act is to abolish contract labour, whenever possible and practicable, and where it cannot be abolished, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities.

In exercise of the powers conferred by section 35 of the Contract Labour (Regulation and Abolition) Act, 1970 the Central Government made the rules, "The Contract Labour (Regulation and Abolition) Central Rules, 1971.

According to section 1, the Act extends to the whole of India. It applies –

- (a) to every establishment in which twenty or more workmen, are employed or were employed on any day of the preceding twelve months as contract labour;
- (b) to every contractor who employs or who employed on any day of the preceding twelve months twenty or more workmen.

However, 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 to any establishment or contractor employing such number of workmen less than twenty as may be specified in the notification.

Where the dispute relates to service conditions of the workmen engaged in the factory canteen maintained by the company and there is no question of abolition of contract labour, the dispute can be referred to the industrial Tribunal for adjudication ***Indian Explosives Ltd. v. State of u. P., (1981) 1 LLJ 423 (All H.C.)***

According to section 1(5), the Act is not applicable to establishments in which work only of an intermittent or casual nature is performed. If a question arises whether work performed in an establishment is of an intermittent or casual nature, the appropriate Government shall decide that question after consultation with the Central Board or, as the case may be, a State Board, and its decision shall be final.

*Explanation.*-For the purpose of this sub-section, work performed in an establishment shall not be deemed to be of an intermittent nature-

- (i) if it was, performed for more than one hundred and twenty days in the preceding twelve months, or
- (ii) if it is of a seasonal character and is performed for more than sixty days in a year.

## Definitions

According to section 2(1) – In this Act, unless the context otherwise requires, –

**'Appropriate Government'** means,-

- (i) in relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947, is the Central Government;
- (ii) in relation to any other establishment, the Government of the State in which that other establishment is situated. {Section 2(1)(a)}

## "Contract Labour"

A workman shall be deemed to be employed as "contract labour" in or in connection with the work-of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. {Section 2(1)(b)}

*"Contract labour" can be distinguished from employees in terms of employment relationship with the principal establishment and the method of wage payment. A workman is deemed to be a contract labour when he/she is hired in connection with the work or contract for service of an establishment by or through a contractor. They are indirect employees. Contract labour is neither borne on pay roll or muster roll or wages paid directly to the employer.*

## "Contractor"

Contractor in relation to an establishment, means- a person

- who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or;

- who supplies contract labour for any work of the establishment and includes a sub-contractor.  
{Section 2(1)(c)}

S.2 (1)(c)-Contractor engaged for S. 2(1) (c) covers construction of building. **Gammon India Ltd. v. Union of India, (1974) 1 SCC 596: 1971 SCC (L & S) 252.**

Ss. 2(1)(c) & 12-Where a person undertook to collect and manufacture quarry products for and on behalf of railways by engaging workmen to carry out his contract works under the railway establishment, the workmen employed by him for such work are to be deemed as “contract labour” as provided under S.2 (1)(b). The supply of such quarry products would produce a given result for the establishment, thus he fulfils all requirements of a “contractor” under S. 2 (1)(c) and therefore, is obliged to take licence under S. 12(1). **H.C. Bathra v. Union of India, 1976 Lab IC 1199 (Gauhati).**

S.2 (1)(c)-‘Contractor’ is one who supplies contract labour to an establishment undertaking to produce a given result for it. He hires labour in connection with the work of an establishment. **State of Gujarat v. Vogue Garments, (1983) 1 LLJ 255: 1983 Lab IC 129 (Guj HC).**

S. 2 (1) (c)-Sub-contractors or ‘piece wagers’, are contractors ( **Labourers Working on Salal Hydro Project v. State of J & K, (1983)/2 SCG 181.**)

### “Controlled Industry”

Controlled industry means any industry the control of which by the Union has been declared by any Central Act to be expedient in the public interest. {Section 2(1)(d)}

### “Establishment”

Establishment means-

- any office or department of the Government or a local authority, or
- any place where any industries, trade, business, manufacture or occupation is carried on;

{Section 2(1)(e)}

S.2 (1)(e)(ii)-A ship or vessel in which repair work is carried on is a place and an “establishment” within the meaning of S. 2 (1) (e) (ii). The work site or place may or may not belong to the principal employer, but that will not stand in the way of application of the Act or in holding that a particular place or work site where industry, trade, business, manufacture or occupation is carried on is not an establishment. **Lionel Edwards Led. v. Labour Enforcement Officer, (1977) 51 FJR 199 (Cal).**

S.2(1)(e)(ii)-Any object for the time being covering the surface and where industry, trade, business, manufacture or occupation is carried on would be a place and an “establishment” within the meaning of S. 2 (1) (e) (ii).

S.2(1)(e)(ii). A ship anchored or berthed in a port would be a work site and the workmen employed for loading and unloading of the cargo, security, repairs to the ship would be all in connection with the business or trade. The Docks in which a ship may be berthed is controlled by the Port Authorities and the ship owners’ agents would be unable to provide facilities for canteens, rest rooms etc. But these defects cannot be ground for totally excluding a ship in a port from the ambit of “establishment”. **Lionel Edwards Ltd. v. Labour Enforcement Officer, (1978) 53 FJR 116 (Cal DB).**

### “Principal Employer”

Principal employer means –

- in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as “the Government or the local authority, as the case may be, may specify in this behalf,
- in a factory, the owner or occupier of the factory and where a person has been named as the manager of the factory under the Factories Act, 1948, the person so named.

- (iii) in a mine, the owner or agent of the mine and where a person has been named as the manager of the mine, the person so named,
- (iv) in any other establishment, any person responsible for the supervision and control of the establishment.

{Section 2(1)(g)}

*Explanation.*-For the purpose of sub-clause (iii) of this clause expressions mine”, “owner” and “agent” shall have the meanings respectively assigned clause (j), clause (1) and clause (c) of sub-section (1) of Section 2 of the ‘Mines Act, 1952;

“**Occupier**” of a factory under section 2(n) of the Factories Act; 1948 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.

### “Wages”

Wages shall have the meaning assigned to it in clause (vi) of Section 2 of the Payment of Wages Act, 1936;

{Section 2(1)(h)}

### “Workman”

Workman means any person employed in or in connection with the work of any establishment to do any skilled, semi-skilled or un-skilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, but does not include any such person-

- (A) who is employed mainly in a managerial or administrative capacity; or
- (B) who, being employed in a supervisory capacity draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him functions mainly of a managerial nature; or
- (C) who is an out worker, that is to say, a person to whom any articles and materials are given out by or on behalf of’ the principal employer 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 the principal employer and 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 the principal employer.

{Section 2(1)(i)}

Even when the contractor fails to obtain license under the Contract Labour (Regulation and Abolition) Act, the workers as employed by him would not be treated as employees of the principal employer.

**[General Labour Union (Red Flag) Bombay vs. K.M. Desai, (1990) 60 FLR 239: 1990 LLR 208: 1990-1 LLN 181 (Bom HC)].**

## The Advisory Boards

### (1) Central Advisory Board.

*Constitution of Central Board:* In pursuance to the provisions of section 3, the Central Government shall, constitute a board to be called the Central Advisory Contract Labour Board (hereinafter referred to as the Central Board).

*Function of the Central Board:* The Central Board shall perform function of advising the Central Government on such matters arising out of the administration of this Act as may be referred to it and to carry out other functions assigned to it under this Act.



*Composition of the Central Board:* The Central Board shall consist of--

- (a) a Chairman to be appointed by the Central Government;
- (b) the Chief Labour Commissioner (Central), *ex officio*;
- (c) such number of members, not exceeding seventeen but not less than eleven, as the Central Government may nominate to represent that Government, the Railways, the coal industry, the mining industry, the contractors, the workmen and any other interests which, in the opinion of the Central Government ought to be represented on the Central Board.

The number of persons to be appointed and members from each of the categories specified above, the term of office and other conditions of service of, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among, the members of the Central Board shall be such as may be prescribed. *Provided that the number of members nominated to represent the workmen shall not be less than the number of members nominated to represent the principal employers and the contractors.*

Ss. 3 & 10- A member of the Central Board does not cease to be a member as soon as he ceases to represent the interest which he purports to represent on the board. ***J.P. Gupta v. Union of India, 1981 Lab IC 641 (Pat HC).***

## **(2) State Advisory Board**

*Constitution of the State Board:* Section 4 empowers the State Government to constitute a board to be called the State Advisory Contract-Labour Board (hereinafter referred to as the State Board).

*Note:* It is mandatory for the Central Government to constitute the Central Board u/s 3 of the Act while it is discretionary for the State Government to constitute the State Board u/s 4 of the Act.

*Function of State Board:* The State Board is constituted to advise the State Government on such matters arising out of the administration of this Act as may be referred to it and to carry out other functions assigned to it under this Act.

*Composition of the State Board:* The State Board shall consist of –

- (a) a Chairman to be appointed by the State Government;
- (b) the Labour Commissioner, *ex officio*, or in his absence any other officer nominated by the State Government in that behalf;
- (c) such numbers, not exceeding eleven but not less than nine, as the State Government may nominate to represent that Government, the industry, the contractors, the workmen and any other interests which, in the opinion of the State Government, ought to be represented on the State Board.

The number of persons to be appointed as members from each of the specified categories, the term of office and other conditions of service of, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among, the members of the State Board shall be such as may be prescribed. However, it is provided that the number of members nominated to represent the workmen shall not be less than the number of members nominated to represent the principal employers and the contractors.

## **(3) Power to constitute committees**

According to section 5, the Central Board or the State Board, as the case may be, may constitute such committees and for such purpose or purposes as it may think fit. The committee shall meet at such time and places and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed. The members of a committee shall be paid such fees and allowances for attending its meetings as may be prescribed:

*Provided that no fees shall be payable to a member who is an officer of Government or of any corporation established by any law for the time being in force.*

### Registration of Establishments Employing Contract Labour

**(1) Appointment of Registering Officers:** According to section 6, the Appropriate Government may, by an order notified in the Official Gazette-(a) appoint such persons, being Gazetted Officers of Government, as it thinks fit to be registering officers for the purposes of this Chapter; and (b) define the limits, within which a registering officer shall exercise the powers conferred on him by or under this Act.

**(2) Registration of certain establishment:** Section 7 makes it mandatory for every principal employer of an establishment to which this Act applies to make an application to the registering office in the prescribed manner for registration of the establishment. The appropriate Government may, by notification in the Official Gazette, fix time period for making such application with respect to establishments generally or with respect to any class of them. It is provided that the registering officer may entertain any such application for registration after expiry of the period fixed in this behalf, if the registering officer is satisfied that the applicant was prevented by sufficient cause from making the application in time.

If the application for registration is complete in all respects, the registering officer shall register the establishment and issue to the principal employer of the establishment a certificate of registration containing such particulars as may be prescribed.

Section 7 (1) of the Act read with Rule 17 (1) of The Contract Labour (Regulation and Abolition) Central Rules, 1971 (Rules) mandates that every principal employer of an establishment to which this Act applies shall, in the time limit so fixed, make an application in triplicate, in Form I, to the registering office in the prescribed manner for registration of the establishment accompanied by treasury receipt showing payment of the fees for the registration of the establishment (Rule 17(2)). Such application shall be either personally delivered to the registering officer or sent to him by registered post. (Rule 17(3))

The Registering Officer may at his discretion entertain any such application for registration after expiry of the period fixed in this behalf upon being satisfied that there is sufficient cause for delay. The Registering authority under Rule 18 of The Contract Labour (Regulation and Abolition) Central Rules, 1971 shall issue a Certificate of Registration in Form I annexed to the Rationalisation of Forms and Reports under Certain Labour Laws Rules, 2017. Further, Rule 18( 4) of the Act mandates that, if there is any change, in the particulars specified in the certificate of registration, the principal employer of the establishment shall intimate to the registering officer, within 30 (Thirty) days from the date when such change takes place, the particulars of, and the reasons for, such change for continuous compliance. The registering officer shall maintain a register in Form III showing the particulars of establishments in relation to which certificate of registration have been issued by him. (Rule 18(3)).

The persons appointed by the principal employer through the contractor would not be deemed to be the direct employees of the principal employer since the Act does not provide for total abolition of contract labour but it provides for abolition by the appropriate government. [*Dena Nalh v. National Fertilisers Ltd.*, AIR 1992 SC 457: 1992 LIC 75: (1992) 1 FLR 191: (1992) 1 SCC 695: 1992 LLR 46: 1992 (64) FLR 39: 1992·CLR 1 (SC)].

Engagement of workers on contract merely as camouflage will be against the spirit of Contract Labour (R&A) Act and the workers working under different contractors for last ten years will be absorbed by principal employer.

[*RK. Panda v. Steel Aullwarily of India*, (1994) 85 FLR 140: (1994) 2 LLN 378: (1994) 5 SCC 304: 1994 LLR 634: 1994 (69) FLR 256 (SC)].

**(3) Revocation of registration in certain cases:** Section 8 provides that if the registering officer is satisfied, either on a reference made to him in this behalf or otherwise, that the registration of any establishment has been obtained by mis-representation or suppression of any material fact, or- that for any other reason the registration has become useless or ineffective and, therefore requires to be revoked, the registering officer may revoke the registration. He can do so only after giving an opportunity to the principal employer of the establishment to be heard and with the previous approval of the appropriate Government.

**Rule 19 prescribes the circumstances in which application for registration may be rejected. –**

- (1) If any application for registration is not complete in all respects, the registering officer shall require the principal employer to amend the application so as to make it complete in all respects.



- (2) If the principal employer, on being required by the registering officer to amend his application for registration, omits or fails to do so, the registering officer shall reject the application for registration.

**(4) Effect of non-registration:** According to section 9, no principal employer of an establishment, to which this Act applies, shall employ contract labour in the establishment after the expiry of the period under section 7 in the case of the establishment which is required to be registered under Section 7, but which has not been registered within the time fixed for the purpose under that section.

The principal employer shall also not employ contract labour in the establishment after the revocation of registration of such establishment under Section 8.

Employees having completed 240 days of service and engaged through unlicensed/unregistered contractors will be deemed as employees of principal employer when the contract labour system was a sham and the contractor was only a name lender. [**Secretary, Haryana State Electricity Board v. Suresh, 1999 LIC 1323: (1999) 94 FJR 554: (1999) 1 LLJ 1086: 1999 LLR 433 (SC): 1999-1 CLR 959: 1999 (81) FLR 1016**].

It has been well settled by the various judgements of Apex Court & High Courts that the contractor's employees will not automatically become the employees of the principal employer, even if the principal employer does not get registration and the contractor does not hold licence, though employing contract labour without obtaining registration or without obtaining licence is an offence under the Act. Legal Consequences for default on the part of contractor for non-renewal of his licence have been discussed by a bench of Madras High Court in *Workmen of Best & Crompton Industries Limited* represented by their **General Secretary of Socialist Workers Union, Madras v. Management of Best & Crompton Engineering Ltd., Madras (1985-1-LLJ, 492)**, their lordship observed that:

*"The contractor's licence has not been renewed within the prescribed time limit and that the registration under section 7 was initially granted for 30 workmen, has not been amended to cover engagement of 75 workmen."*  
*"Rule 29 requires that the application of renewal should be made before the validity of license."*

*It would therefore, be inferred that the contractor is not eligible to apply for renewal at all and that his only remedy if he wants to work as a licensed contractor, is to apply for a fresh and new license. Otherwise, the workmen would not be deemed to be employed as contract labour."*

The Act mandates that the principal employer should be registered and the contractor have a valid license prior to engaging contract labours. In **Workmen of Best & Crompton Industries Ltd. v. Best & Crompton Industries Ltd.**, the Madras High Court has held that the principal employer must engage contract labour through a contractor who has a valid license, because an invalid license of a contractor would imply direct employment of contract labour by the principal employer. Further, such a license of the contractor is job specific, non-transferable for any other job and indicative of the maximum number of contract labours to be engaged.

In **Food Corporation of India Workers Union vs. Food Corporation of India and other, 1992 LLJ (Guj.)** – It has been held that workmen can be employed as contract labour only through licensed contractors, who shall obtain licence under section 12. As per section 7, the principal employer is required to obtain Certificate of Registration. Unless both these conditions are complied with, the provisions of Contract Labour Act will not be attracted. Even if one of these conditions is not complied with, the provisions of Contract Labour Act will not apply. In a situation where in either of these two conditions is not satisfied, the position would be that a workman employed by an intermediary is deemed to have been employed by the principal employer.

**(5) Prohibition of employment of contract labour:** According to section 10, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment. Section 10 vests overriding power in Appropriate Government irrespective of anything contained in the Act.

But before issuing any such notification in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour that establishment and other relevant factors, such as-

- (a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment;

- (b) whether it is of perennial nature, that is to say, it is so of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;
- (c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;
- (d) whether it is sufficient to employ considerable number of whole-time workmen.

**Explanation.-** If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final. But where the government fails to disclose the basis for refusing to abolish contract labour, it amounts to non-application of mind to the requirements of Section 10(2) and the court can order abolition of contract labour (**GEA v. Union of India, 1997 Lab IC 1701 Bom.**).

### Cases regarding criteria and circumstances for abolition of Contract Labour

1. Feeding hoppers incidental and allied to main work-Loading and unloading sporadic and intermittent work.

The dispute related to the abolition of contract labour in the seeds godown and solvent extraction plants in the appellant's factory engaged in the manufacture of edible oils and its by products. The appellant company maintained that in both the departments the work was intermittent and sporadic type and hence contract labour was both efficient and economic. The union, on behalf of the workmen, challenged this standpoint and furnished charts, etc., to prove the continuous and perennial nature of the work. It also referred to the practice in certain other companies.

If the work for which contract labour is employed is incidental to and closely connected with the main activity of the industry and is of a perennial and permanent nature, the abolition of contract labour should be justified. It is also open to the Industrial Tribunal to have regard to the practice obtaining in other industries in or about the same area.

It is clear that the feeding of hoppers in the solvent extraction plant is an activity closely and intimately connected with the main activity of the appellant. This item of work is incidental to the nature of the industry carried on by the appellant, which must be done almost every day and there should be no difficulty in having regular workmen in the employment of the appellant to do this type of work. Also on comparison with other factories doing the same work it follows that the feeding of hoppers is an essential part of the industry carried on by the appellant and that it could very well be done by the departmental workman as is being done by others.

On merits the direction of the Industrial Tribunal abolishing contract labour regarding loading and unloading cannot be sustained. When it is shown that in similar establishment this type of work is not ordinarily done through regular workmen, but by contract labour that is a circumstance which will operate in favour of the appellant.

No doubt, the Industrial Tribunal referred to Section 10 of the Central Act, but the Tribunal misapplied those provisions when it directed abolition of contract labour regarding loading and unloading operations. **Vegolis Pvt. Ltd. v. Workmen, (1971) 2 SCC 724, 730, 733,740.**

2. Provincial Govt. has exclusive jurisdiction in regard to prohibition of employment of contract labour. Industrial Tribunal cannot issue directions to an establishment to abolish contract labour w.e.f. a date after coming into force of the Act. **Vegoils Pvt. Ltd. v. Workmen, (1971) 2 SCC 724.**
3. S.10 -Central Government is not required to put on record that they have examined the question of prohibition of contract labour in the establishments after taking into account each fact separately. It is for the person challenging the notification to establish that the notification in question had been issued on some extraneous considerations or without taking into account the relevant factors mentioned in S. 10(2). **J.P. Gupta v. Union of India, 1981 Lab IC 641 (Pat HC).**

4. S.10 (1)-A single notification prohibiting contract labour can be issued in respect of different establishments if the operation and nature of work are similar in all establishments Hence notification prohibiting/ contract labour in coal mines was proper. **J. P. Gupta v. Union of India, 1981 Lab IC 641 (Pat HC).**

### Jurisdiction of Industrial Tribunals to abolish contract labour

It has been held by the Supreme Court in **Vegolis Private Ltd. v. The Workmen, (1971)II-LLJ p. 567**, that after enforcement of the Contract Labour (Regulation and Abolition) Act, 1970, the sole jurisdiction for abolition of contract labour in any particular operation vested with the appropriate Government and thereafter the Tribunals have no jurisdiction to abolish contract labour. Supreme Court cannot under Article 32 of the Constitution order for abolition of Contract Labour System in any establishment (1985 1 SCC 630).

In **Gujarat Electricity Board case, AIR 1995 SC 2942**, the Supreme Court held that:

- (a) all undertakings on their own discontinue the contract labour who satisfy the factors mentioned in classes (a) to (d) of Section 10(2) of the Act, and abolish as many of the labour as is feasible as their direct employees.
- (b) both the Central and State Governments should appoint a committee to investigate the establishments in which the contract labour is engaged and were on the basis of criteria laid down in clauses (a) to (d) of Section 10(2) of the Act, the contract labour system can be abolished and direct employment can be given to the contract labour.

The appropriate Government on its own should take initiative to abolish the labour contracts in the establishments concerned by following the procedure laid down under the Act.

- (c) the Central Government should amend the Act by incorporating a suitable provision to refer to industrial adjudicator the question of the direct employment of the contract workers of the ex-contractor in principal establishments, when the appropriate Government abolishes the contract labour.

Industrial Tribunal is competent to decide that the workers engaged through the contractor will be entitled to same rights which the other employees of the principal employer were enjoying. [**Gujarat Electricity Board vs. Hind Mazdoor Sabha, (1995) III LL Supp 218: 1991 LLR 572: 1991-11 CLR 60 (Guj HC)**].

Industrial Tribunal can also direct the principal employer for absorption of the contract labour on abolition of the system. [**Gujarat Electricity Board, Thermal Power Station, Ukai, Gujarat vs. Hind Mazdoor Sabha, AIR 1995 SC 1893: 1995 L1C 2207: (1995) 71 FLR 102: (1995) 5 SCC 27: 1995 LLR 552: 1995II LLI 790 (SC)**].

### After-effect of abolition of contract labour

In the case of **R.K. Panda v. Steel Authority** of India where the same issue was in question the Supreme Court held that the Act regulates contract labour but has never proposed to abolish it entirely. The primary object of the Act can be taken as to save the contract labourers from exploitation. But the right to be absorbed by the employer directly is neither proposed nor mentioned in the Act. The Supreme Court also said that insertion of certain clauses in the contract with the contract labourers by the industry does not give them a right to escape from the duty of providing the contract labourers rights.

On these basis of the Supreme Court gave the following decision –

The labourers who were continuing in the employment for the last 10 years, in spite of change of contractors and have not crossed the age of superannuation and were medically fit, should be absorbed as regular employees in the order of seniority.

Regular wages will be payable only for the period subsequent to absorption and not prior to that.

At present there is no provision in the Act for absorption of contract labour in the event of prohibition of employment of contract labour in any category of work/jobs under Section 10 of the Act. There have been complaints that contract workers are being thrown out of employment in the jobs covered by the relevant notification.

On the crucial question as to after effect of abolition of contract labour under Section 10 of the Act, the Supreme Court in ***Air India Statutory Corporation v. United Labour Union, AIR 1997 SC 645***, held that a High Court in exercise of its jurisdiction under Article 226 of the Constitution, can direct a principal employer in an appropriate case to absorb the workman concerned after abolition of the contract labour. It overruled its earlier decision of two member bench of the Court (***Dena Nath case 1991 AIR SC 3026***). In this case, it was held that High Court in exercise of its power under Article 226 could not drive at the absorption of contract labour (on its abolition) as direct employees of the principal employer. The Court also overruled another important case (***Gujarat Electricity Board, AIR 1995 SC 2942***) wherein it was held that on abolition of contract labour their employees are free to raise their cause for reference under Section 10 of Industrial Disputes Act, 1947 seeking absorption of contract labour. After abolition of contract labour system, if the principal employer omits to abide by the law and fails to absorb the contract labour worked in the establishment on regular basis, the workmen have no option but to seek redress under Article 226 of the Constitution.

Judicial review being the basic feature of the constitution, the High Court is to have the notification enforced at the first instance. Further, the affected employees have a fundamental right to life. Meaningful right to life springs from continued work to earn their livelihood. The right to employment, therefore, is an integral facet of right to life. When they are engaged as contract labour and were continuously working in the establishment of the appellant to make their right to social and economic justice meaningful and effective, they are required to be continuously engaged as contract labour, so long as the work is available in the establishment. When the work is of perennial nature and on abolition of contract labour system, they are entitled, per force to be absorbed on regular basis.

Thus, in *Air India Statutory Corporation* case, the Supreme Court has held though there exists no express provision in the Act for absorption of employees in establishments where contract labour system is abolished by publication of notification under Section 10(1) of the Act, the principal employer is under obligation to absorb the contract labour. The linkage between the contractor and employee stood snapped and direct relationship stood restored between the principal employer and contract labour as its employees. Where the contract labour through a contractor engaged in keeping industrial premises clean and hygiene, but no licence was obtained by principal employer nor contractor and the contract itself stipulating number of employees to be engaged by contractor and overall control of working of contract labour including administrative control remaining with principal employer, it was held by the Court that the contract is a camouflage which could be easily pierced and the employee and the employer relationship could be directly visualised. Employees who have put in 240 days of work is ordered to be absorbed (***1999 LAB IC SC 1323 HSEB v. Suresh***).

In ***Steel Authority of India v. National Union of Water Front Workers and others, AIR 2001 SC 3527***, the Supreme Court overruled the judgement delivered in the *Air India Statutory Corporation* case. The Apex Court held that neither Section 10 of the Act nor any other provision in the Act whether expressly or by necessary implication provides for automatic absorption of contract labour on issuing a notification by the Appropriate Government under Section 10(1) prohibiting employment of contract labour in any process or operation or other work in any establishment. Consequently, the principal employer cannot be required to order absorption of contract labour working in the concerned establishment.

### Appointment of Licensing Officer and Licensing of Contractors

Apart from registration of establishments employing contract labour, the Act contains provisions for licensing of contractors. Section 11 empowers the appropriate Government to appoint Gazetted Officers to be licensing officers and define the limits of their jurisdiction. Orders regarding appointment of licensing officers and the limits of their jurisdiction are to be notified in the Official Gazette.

- (i) **Appointment of licensing officers:** According to section 11, the appropriate Government may, by an order notified in the Official Gazette,-
  - (a) appoint such persons, being Gazetted Officers of Government, as it thinks fit to be licensing officers for the purposes of this Chapter; and

- (b) define the limits, within which a licensing officer shall exercise the powers conferred on licensing officers by or under this Act.
- (ii) **Licensing of contractors:** According to section 12, with effect from such date as the appropriate Government may, by notification in the Official Gazette, appoint, no contractor to whom this Act applies, shall undertake or execute any work through contract labour except under and accordance with a licence issued in that behalf by the licensing officer. Subject to the provisions of this Act, such a licence may contain such conditions including, in particular, conditions as to hours or work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with the rules, if any, made under Section 35 and shall be issued on payment of such fees and on the deposit of such sum, if any, as security for the due performance of the conditions as may be prescribed.

According to section 12, “Sub-contractors” or “piece wagers” are equally responsible for obtaining licence and implementing the provisions of the Act and the Rules. Execution of a work in a government project by piece wagers through workers employed by them either directly or through khatedars must be in accordance with the licence obtained under S. 12 (1).

Failure to obtain licence will amount to criminal offence punishable under Ss. 16 to 21 read with Rules 41 to 62 of the Rules. **Labourers Working on Salal Hydro Project v. State of J & K, (1983) 2 SCC 181: (1983) 1 LLJ 494.**

Sections 12 & 2(1)(e)(ii)-Where a firm under all agreement undertook the work of holding and storage of another company’s materials and for that purpose utilized the services of some labourers employed through sirdars, the firm, its partners and employees could not be prosecuted for not obtaining licence under S. 12 as the firm is an “establishment” within the meaning of S. 2(1)(e)(ii) and not the company’s contractor. Assuming the partners and employees of the firm or any of them were principal employers, they could not be both contractors and principal employers in relation to the same establishment. Moreover, each of the sirdars was a contractor within the meaning of the act in relation to the firm i.e. the establishment. The concerned workmen having been supplied through the medium of sirdars, neither the firm nor the partners nor the employees could be deemed to be a contractor in relation to the said workmen. Their liability to take out a licence cannot, therefore, arise. **Feroze Sons v. B. C. Basu, (1979) 54, FJR 158 (Cal).**

Section 12 imposed a liability not to undertake or execute any work through contract labour without licence, a liability which continued until the licence was obtained and its requirement was complied with. It was an act which continued. Undertaking or executing any work through contract labour without a licence, therefore, constituted a fresh offence everyday on which it continued. **Padam Prasad Jain v. State of Bihar, 1978 Lab IC 145.**

Section 12(1) of the Act mandates that no contractor to whom the Act applies, shall undertake or execute any work through contract labour, except under and accordance with a licence issued in that behalf by the licensing officer which may contain such conditions as envisaged under section 12(2) of the Act which includes, in particular, conditions as to hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with the rules, if any, made under Section 35 of the Act. The Contractor shall apply for license under Rule 21(1) of the Rules stating that every application by a contractor for the grant of a licence in triplicate, in Form II annexed to the Rationalisation of Forms and Reports under Certain Labour Laws Rules, 2017, shall be made to the licensing officer of the area in which the establishment, in relation to which he is the contractor, is located along with requisite treasury receipts as to the deposit of the security at the rates specified in Rule 24 and the payment of the fees at the rates specified in Rule 26. Further under Rule 21(2) of the rules such application shall be accompanied by a certificate by the principal employer in Form III annexed to the Rationalisation of Forms and Reports under Certain Labour Laws Rules, 2017 to the effect that the applicant has been employed by him as a contractor in relation to his establishment and

that he undertakes to be bound by all the provisions of the Act and the rules made there under insofar as the provisions are applicable to him as principal employer in respect of the employment of contract labour by the applicant.

**In *Labourers Working on Salal Hydro-Project v. State of Jammu & Kashmir and Others***, it was held by the Supreme Court that “if (sub-) contractors undertake or execute any work through contract labour without obtaining a licence under section 12 sub-section (1), they would be guilty of a criminal offence punishable under section 23 or section 24. In *Padam Prasad Jain v. State of Bihar*, 1978 Lab IC 145 it was held that “by providing that no person shall undertake or execute any work through a contract labour except without a licence, Section 12 imposed a liability not to undertake or execute any work through contract labour without licence, a liability which continued until the licence was obtained and its requirement was complied with. It was an act which continued. Undertaking or executing any work through contract labour, without a licence, therefore, continued a fresh offence every day on which it continued.”

What is a continuing offence was explained by the **Supreme Court in *State of Bihar v. Deokaran A.I.R. 1973 S.C. 908*** as follows: “Continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arise out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirements is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and recurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act of omission which continues and therefore constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all.”

- (iii) **Grant of licences.**- According to section 13, every application for the grant of a licence under section 12 shall be made in the prescribed form and shall contain the particulars regarding the location of the establishment, the nature of process, operation or work for which contract labour is to be employed and such other particulars as may be prescribed.

The licensing officer may make such investigation in respect of the application received and in making any such investigation the licensing officer shall follow such procedure as may be prescribed. A licence granted under this Chapter shall be valid for the period specified therein and may be renewed from time to time for such period, and on payment of such fees and on such conditions as may be prescribed.

Under Rule 25, every licence granted under section 12 shall be “in Form VI annexed to the Rationalisation of Forms and Reports under Certain Labour Laws Rules, 2017” and every licence granted under sub-rule (1) or renewed under Rule 29 shall be subject to the following conditions, namely-

- (i) the licence shall be nontransferable;
- (ii) the number of workmen employed as contract labour in the establishment shall not, on any day, exceed the maximum number specified in the licence.

According to Rule 27, every licence granted under Rule 25 or renewed under Rule 29 shall remain in force for twelve months from the date it is granted or renewed.

- (iv) **Revocation, suspension and amendment of licences.**- According to section 14, if the licensing officer is satisfied, either on a reference made to him in this behalf or otherwise, that-(a) a licence granted under Section 12 has been obtained by misrepresentation or suppression of any material fact, or (b) the holder of a licence has, without reasonable cause, failed to comply with the conditions subject to



which the licence has been granted or has contravened any of the provisions of this Act or the rules made thereunder, then the licensing officer may, revoke or suspend the licence or forfeit the sum, if any, or any portion thereof deposited as security for the due performance of the conditions subject to which the licence has been granted. However before taking any such action, the licensing officer shall give the holder of the licence an opportunity of showing cause.

This action of licensing officer does not prejudice any other penalty to which the holder of the licence may be liable under this Act. Subject to any rules that may be made in this behalf, the licensing officer may vary or amend a licence granted under Section 12.

Licensing Officer under S. 14 is not a Court. Provisions of this section does not violate Arts. 14 and 19 (1) (f). ***Gammon India Ltd. v. Union of India, (1974) 1 SCC 596.***

- (v) **Appeal.**- According to section 15, any person aggrieved by an order made under Section 7, Section 8, Section 12 or Section 14 may, within thirty days from the date on which the order is communicated to him, prefer an appeal to an appellate officer who shall be a person nominated in this behalf by the appropriate Government. It is provided that the appellate officer may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

On receipt of an appeal, the appellate officer shall, after giving the appellant an opportunity of being heard dispose of the appeal as expeditiously as possible.

### Rules regarding Appeal

#### Rule 33: Form of Appeal

- (1) (i) Every appeal under sub-section (1) of Section 15 shall be preferred in the form of a memorandum signed by the appellant or his authorised agent and presented to the Appellate Officer in person or sent to him by registered post.
- (ii) The memorandum shall be accompanied by a certified copy of the order appealed from and a treasury receipt for Rs. 10.
- (2) The memorandum shall set forth concisely and under distinct heads the grounds of appeal to the order appealed from.

#### Rule 34 : Rejection of Appeal

- (1) Where the memorandum of appeal does not comply with the provisions of sub-rule (2) of Rule 33 it may be rejected or returned to appellant for the purpose of being amended within a time to be fixed by the Appellate Officer.
- (2) Where the Appellate Officer rejects the memorandum under sub- rule (1) he shall record the reason for such rejection and communicate the order to the appellant.
- (3) Where the memorandum of appeal is in order the Appellate Officer shall admit the appeal, endorse thereon the date of presentation and shall register the appeal in a book to be kept for the purpose called the Register of Appeals.
- (4) (i) When the appeal been admitted, the Appellate Officer shall send the notice of the appeal to the Registering Officer or the Licensing Officer as the case may be from whose order the appeal has been preferred and the Registering Officer or the Licensing Officer shall send the record of the case to the Appellate Officer.
- (ii) On receipt of the record, the Appellate Officer shall send a notice to the appellant to appear before him at such date and time as may be specified in the notice for the hearing of the appeal.

**Rule 35. Failure to appear on date or hearing.-**

If on the date fixed for hearing, the appellant does not appear, the Appellate Officer may dismiss the appeal for default of appearance of the appellant.

**Rule 36. Restoration or appeals.-**

- (i) Where an appeal has been dismissed under Rule 35 the appellant may apply to the Appellate Officer for the re-admission of the appeal and where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing the Appellate Officer shall restore the appeal on its original number.
- (ii) Such an application shall, unless the Appellate Officer extends the time for sufficient reason, be made within 30 days of the date of dismissal.

**Rule 37. Hearing or appeal.-**

- (1) If the appellant is present when the appeal is called on for the hearing, the Appellate Officer shall proceed to hear the appellant or his authorised agent and any other person summoned by him for this purpose, and pronounce judgment on the appeal either confirming, reversing or varying the order appealed from.
- (2) The judgment of the Appellate Officer shall state the points for determination, the decisions thereon and reasons for the decisions.
- (3) The order shall be communicated to the appellant and copy thereof shall be sent to the Registering Officer or the Licensing Officer from whose order the appeal has been preferred.

**Welfare and Health of Contract Labour**

**(i) Canteens.-** According to section 16, the appropriate Government may make rules requiring that one or more canteens shall be provided and maintained by the contractor for the use of such contract labour in every establishment- (a) to which this Act applies, (b) wherein work requiring employment of contract labour is likely to continue for such period as may be prescribed, and (c) wherein contract labour numbering one hundred or more is ordinarily employed by a contract, one or more canteens shall be provided and maintained by the contractor for the use of such contract labour.

In addition to above, the appropriate Government may provide rules for -

- (a) the date by which the canteens shall be provided;
- (b) the number of canteens that shall be provided, and the standards in respect of construction, accommodation, furniture and other equipment of the canteens; and
- (c) the foodstuffs which may be served therein and the charges which may be made therefore.

**(ii) Rest-rooms.** According to section 17, it is mandatory for the contractor to provide and maintain for the use of the contract labour such number of rest-rooms or such other suitable alternative accommodation within such time as may be prescribed in every place wherein contract labour is required to halt at night in connection with the work of an establishment-

- (a) to which this Act applies, and
- (b) in which work requiring employment of contract labour is likely to continue for such period as may be prescribed, there shall be provided and maintained by the contractor.

The rest-rooms or the alternative accommodation to be provided shall be sufficiently lighted and ventilated and shall be maintained in a clean and comfortable condition.

Provisions, held are not unreasonable. *Gammon India Ltd. v. Union of India, (1974) 1 SCC 596.*



**(iii) Other facilities.-** According to section 18, It shall be the duty of every contractor employing contract labour in connection with the work of an establishment to which this Act applies, to provide and maintain-

- (a) a sufficient supply of wholesome drinking water for the contract labour at convenient places;
- (b) a sufficient number of latrines and urinals of the prescribed types so situated as to be convenient and accessible to the contract labour in the establishment; and
- (c) washing facilities.

Provision, held, reasonable. *Gammon India Ltd. v. Union of India*, (1974) 1 SCC 596.

**(iv) First-aid facilities.-** According to section 19, there shall be provided and maintained by the contractor so as to be readily accessible during all working hours a first aid box equipped with the prescribed contents at every place where contract labour is employed by him.

**(v) Liability of principal employer in certain cases.-** According to section 20, If any amenity required to be provided under Section 16, Section 17, Section 18 or Section 19 for the benefit of the contract labour employed in an establishment is not provided by the contractor within the time prescribed therefor, such amenity shall be provided by the principal employer within such time as may be prescribed. All expenses incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

Section 20 & 21- Obligation to provide amenities conferred under the Act to the workers is on the principal employer. Government will be responsible for enforcement of those amenities where contractors engaged by it for executing its construction project fail to provide the amenities to its workers. Government's failure to perform its obligation amounts to violation of Art. 21 and workers can enforce their right by writ petition under Art. 32. *Peoples Union for Democratic Rights v. Union of India*, (1982) 3 SCC 235: 1982 SCC (L & S) 275.

**(vi) Responsibility for payment of wages.-** Section 21 makes a contractor statutorily responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed.

Section 21(1) of the Act read with Rule 63 states that a contractor shall be responsible for fixing the wage periods in respect of which wages shall be payable and payment of wages to each worker employed by him as contract labour and such wages shall be paid if, as per Rule 65 of the Rules, the wages of every person employed as contract labour in an establishment or by a contractor where less than one thousand such persons are employed shall be paid before the expiry of the seventh day and in other cases before the expiry of tenth day after the last day of the wage period, which as per Rule 64 of the Rules shall not be one month, in respect of which the wages are payable.

Every principal employer shall nominate a representative duly authorised by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.

Section 21(2) read with Rules 72 and 73 of the Rules states that every principal employer shall nominate a representative duly authorised by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages and shall record under his signature a certificate at the end of the entries in the Register of Wages or the Register of Wage-cum-Muster Roll, as the case may be in such manner as may be prescribed.

It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorised representative of the principal employer. In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor any contract as a debt payable by the contractor.

Payment of wages including overtime wages etc. must be made directly to the workers in full except with authorised statutory deductions, if any. Payment through khatedars after deducting any advance repayable

by the workers to the khatedars or any messing charges etc. was not proper. Due amounts could be recovered from the workers after paying full wages.

### **Equal pay for contract labour:**

Rule 25(2) (v) (a) of the Rules states that in cases where the workmen employed by the contractor perform the same or similar kind of work as the workmen directly employed by the principal employer of the establishment, the wage rates, holidays, hours of work and other conditions of service of the workmen of the contractor shall be the same as applicable to the workmen directly employed by the principal employer of the establishment on the same or similar kind of work. However in the case of any disagreement with regard to the type of work the same shall be decided by the Chief Labour Commissioner (Central).

In *B.H.E.L Workers Association, Hardwar v. UOI* it was further held that “No invidious distinction can be made against Contract labour. Contract labour is entitled to the same wages, holidays, hours of work, and conditions of service as are applicable to workmen directly employed by the principal employer of the establishment on the same or similar kind of work. They are entitled to recover their wages and their conditions of service in the same manner as workers employed by the principal employer under the appropriate Industrial and Labour Laws. If there is any dispute with regard to the type of work, the dispute has to be decided by the Chief Labour Commissioner (Central).”

A principal employer must compensate underpaid contract labour. [*Hindustan Steel Works Construction Ltd. vs. Commissioner of Labour, (1996) 74 FLR 2151; (1996) 10 SCC 599; (1996) 2 LLN 1068; 1996 L1C 2250; 1996 LLR 865 (SC)*].

Formation of a co-operative society by contractual workmen will not change their status of contract labour. [*Kerala Food Corporation of India Labourers Federation, vs. Union of India, 1996 LLR 783; 1996 Lab IC 1006; (1998) III LLI 474 (Supp) (Ker HC)*].

### **Penalties and Procedure**

- (i) **Obstructions** - According to section 22, Whoever obstructs an inspector in the discharge of his duties under this Act or refuses or wilfully neglects to afford the inspector any reasonable facility for making any inspection, examination, inquiry or investigation authorised by or under this Act in relation to an establishment to which, or a contractor to whom, this Act applies, 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.

Section 22 also provides for that a person 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 if he wilfully refuses to produce on the demand of an inspector any register or other document kept in pursuance of this Act or prevents or attempts to prevent or does anything which he has reason to believe is likely to prevent any person from appearing before or being examined by an inspector acting in pursuance of his duties under the Act.

- (ii) **Contravention of provisions regarding employment contract labour** - Section 23 provides for that a person shall be punishable with imprisonment for a term which may extend to three months, or with fine which may/extend to one thousand rupees, or with both, if he contravenes any provision of this Act or of any rules made thereunder prohibiting, restricting or regulating the employment of contract labour, or contravenes any condition of a licence granted under this Act.

In the case of a continuing contravention with an additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

S. 23 -Mere allegation of contravention is not sufficient. The complainant has to allege as to who are those persons who have contravened the prohibition of or restriction on the employment of contract labour. *J.P. Gupta v. Union of India, 1981 Lab IC 641 (Pat HC)*.

- (iii) **Other offences** - According to section 24, if any person contravenes any of the provisions of this Act or of any rules made thereunder for which no other penalty is elsewhere provided, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.
- (iv) **Offences by companies** - Section 25 provides for that if the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

It is 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.

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

*Explanation.*-For the purpose of this section-(a) "company" means 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.

- (v) **Cognizance or offences** - According to section 26, no court shall take cognizance of any offence under this Act except on a complaint made by, or with the previous sanction in writing of, the inspector and no court inferior to that of a Presidency Magistrate or a magistrate of the first class shall try any offence punishable under this Act.
- (vi) **Limitation or prosecution** - According to section 27, no court shall take cognizance of an offence punishable under this Act unless the complaint thereof is made within three months from the date on which the alleged commission of the offence came to the knowledge of an inspector.

It is provided that where the offence consists of disobeying a written order made by an inspector, complaint thereof may be made within six months of the date on which the offence is alleged to have been committed.

## MISCELLANEOUS

### Inspecting staff

According to section 28, 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 powers under this Act.

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

- (a) enter, at all reasonable hours, with such assistance (if any), being persons in the service of the Government or any local or other public authority as he thinks fit, any premises or place where contract labour is employed, for the purpose of examining any register or record or notices required to be kept or exhibited by or under this Act or rules made 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 a workman employed therein;

- (c) require any person giving out work and any workman, to give any information, which is in his power to give with respect to the names and addresses of the persons to, for and from whom the work is given out or received, and with respect to the payments to be made for the work;
- (d) seize to take copies of such register, record of wages or notices or portions, thereof as he may consider relevant in respect of an offence under this Act which he has reason to believe has been committed by the principal employer or contractor; and
- (e) exercise such other powers as may be prescribed.

Any person required to produce any document or thing or to give any information required by an inspector shall be deemed to be legally bound to do so within the meaning of Section 175 and Section 176 of the Indian Penal Code, 1860. The provisions of the Code of Criminal Procedure, 1898, shall, so far as may be, apply to any search or seizure under this section as they apply to any search or seizure made under the authority of a warrant issued under Section 98 of the said Code.

S. 28 - Frequent, detailed and thorough inspection should be undertaken by senior officers for ensuring compliance with S. 21. ***Labourers Working Salal Hydro Project v. State of J. & K., (1983) 2SCC 181.***

### Registers and other records to be maintained

According to section 29, every principal employer and every contractor shall maintain such registers and records giving such particulars of contract labour employed, the nature of work performed by the contract labour, the rates of wages paid to the contract labour and such other particulars in such form as may be prescribed.

Every principal employer and every contractor shall keep exhibited in such manner as may be prescribed within the premises of the establishment where the contract labour is employed, notices in the prescribed form containing particulars about the hours of work, nature of duty and such other information as may be prescribed.

### Effect of laws and agreements inconsistent with this Act

Section 30 states that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any agreement or contract of service, or in any standing orders applicable to the establishment whether made before or after the commencement of the Act. It is provided that where under any such agreement, contract of service standing orders the contract labour employed in the establishment are entitled to benefits in respect of any matter which are more favourable to them than those to which they would be entitled under this Act the contract the labour shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that they received benefits in respect of other matters under this Act.

As this Act is for the benefit of contract labour, therefore, nothing contained in this Act shall be construed as precluding any such contract labour from entering into an agreement with the principal employer or the contractor, as the case may be, for granting them rights or privileges in respect of any matter which are more favourable to them than those to which they would be entitled under this Act.

### Power to exempt in special cases

Section 31 vests the appropriate Government with the power that it may, in the case of an emergency, direct, by notification in the Official Gazette, that subject to such conditions and restrictions if any, and for such period or periods as may be specified in the notification, all or any of the provisions of this Act or the rules made thereunder shall not apply to any establishment or class of establishments or any class of contractors.

### Protection of action taken under this Act

Section 32 provides for statutory immunity as it states that no suit, prosecution or other legal proceedings shall lie against any registering officer, licensing officer or any other Government servant or against any member of

the Central Board or the State Board as the case may be, for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder. No suit or other legal proceeding shall lie against the Government for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

### Power to give directions

According to section 33, the Central Government may give directions to the Government of any State as to the carrying into execution in the State of the provisions contained in this Act.

### Power to make rules

Section 35 authorise the appropriate Government, subject to the condition of previous publication, to make rules for carrying out the purposes of this Act.

In exercise of the powers conferred by section 35 of the Contract Labour (Regulation and Abolition) Act, 1970 the Central Government made the rules called, **“The Contract Labour (Regulation and Abolition) Central Rules, 1971.”**

The Central Government, in exercise of the powers conferred by section 35 of the Act has notified the rules called **“the Rationalisation of Forms and Reports under Certain Labour Laws Rules, 2017.”** The rules provide for maintenance of Forms under the Act. It overrides the provisions of Contract Labour (Regulation And Abolition) Central Rules, 1971 by stating that notwithstanding anything contained in any rules made under the Contract Labour (Regulation and Abolition) Act, 1970, “the Forms specified in the Schedule annexed to these rules shall be maintained either electronically or otherwise and used for the purposes of the aforesaid enactments and the rules made thereunder, as specified therein.” If the Forms referred to under these rules are required for inspection by the concerned Inspector appointed under any of the enactments referred to in the said sub-rule, the concerned persons shall make available such Forms or provide the necessary particulars for the purposes of accessing the information, as the case may be.

### Important Case Studies

1. In *L.&T. McNeil Ltd. v. Government of Tamil Nadu, 2001 I CLR 804 (S.C.)* The High Court rejected the challenge given to the Notification of Government of Tamil Nadu, prohibiting contract labour, in the process of sweeping and scavenging in the establishments/factories employing 50 or more workmen. The Supreme Court, while quashing the impugned notification, observed that no definite view, was expressed by Labour Advisory Board and in the absence of the same and in the absence of any other material, it is not very clear as to how the Government could have reached the conclusion one way or the other. Thus the decision of the Government in issuing the impugned notification under section 10(1) of the Act, is vitiated because of non-consideration of relevant materials.
2. In *Steel Authority of India Ltd. v. National Union Water Front Workers, 2001 III CLR 349 (S.C.)*. in a challenge to the Central Government Notification dated 9-12-1976, prohibiting employment of contract labour for sweeping, etc. in the buildings owned and occupied by establishments in respect of which Central Government is appropriate Government, the Supreme Court held that the said notification apart from being an omnibus notification, does not reveal the compliance of section 10(1) of the Act. Besides the Notification also exhibits non-application of mind by the Central Government and hence impugned notification cannot be sustained.
3. In *B.H.E.L Workers Association, Hardwar v. UOI* the court observed that “The Contract Labour (Regulation and Abolition) Act, 1970 does not provide for the total abolition of contract labour, but only for its abolition in certain circumstances, and for the regulation of the employment of contract labour in certain establishments. The court further held that “Parliament has not abolished contract labour but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970. It is not for the court to enquire into the question

and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. This is a matter for the decision of the Government after considering the matters required to be considered under section 10 of the Act.

4. In *Catering Cleaners of Southern Railway v. UOI*, the court held that writ of mandamus directing Central Government to abolish the contract labour system cannot be issued because section 10 had vested the power in the appropriate government. In the circumstances, the appropriate order to make according to Court, was to direct the Central Government to take suitable action under section 10 of the Act within six months from the date of order. It was also observed that without waiting for the decision of the Central Government, the Southern Railway was free on its own motion to abolish the system and regularise the services of the employees.
5. In *Gujarat Electricity Board v. Hind Mazdoor Sabha* where it was held that only the appropriate government can abolish contract labour in accordance with section 10 and no court or industrial adjudicator has jurisdiction on the matter of absorption.
6. In *Municipal Corporation of Greater Mumbai v. K.V. Shramik Sangh & Ors.* 2002 II CLR 299 allowing the appeal filed by the Municipal Corporation of Greater Mumbai, the Supreme Court held that “directions given by the High Court, not being consistent with Constitution Bench judgment in Steel Authorities’ case (2001 III CLR 349), impugned judgment is set aside, leaving it open to the respondent union to seek remedies available in terms of para 125 of the aforesaid SAIL Judgment, before the State Government or industrial adjudicator as the case may be.”
7. *Bhilwara Dugdh Utpadak Sahakar Ltd. Vs Vinod Kumar Sharma Dead by LRS & ORS* (01.09.2011)  
In a judgment on *Bhilwara Dugdh Utpadak Sahakar Ltd.* the Supreme Court of India dismissing the appeal of the appellate hold that, the workmen employed through a contractor are the employees of the Principal Employer and not of the Contractor and added that the judgment on *SAIL Vs. National Union Waterfront Workers* (2001) has no application in the present case.
8. *Superintending Engineer, Mettur Thermal Power Station, Mettur vs. Appellate Authority, Joint Commissioner of Labour, Coimbatore & Anr, 2012 LLR 1160*  
The Madras High Court, in its judgment in the case of *Superintending Engineer, Mettur Thermal Power Station, Mettur vs. Appellate Authority, Joint Commissioner of Labour, Coimbatore & Anr*, was called upon to decide on an issue dealing with the payment of gratuity to an employee of the Mettur Thermal Power Station, Mettur, (Power Station) whose services were terminated in 2003. The employee concerned worked at the Power Station between 1988 and 1999, as a contract employee. In 1999, the employee was directly hired by the Power Station and he continued to be so employed till 2003. Upon termination of his services, the employee claimed gratuity payments for a period of sixteen years, between 1988 and 2003. The Power Station claimed that its responsibility to pay gratuity would lie only in respect of the period during which the employee was employed directly by the Power Station (i.e., 1999 – 2003) and not for the period when he was a contract employee. The Madras High Court held that gratuity, being a termination payment required to be paid under a law, would constitute ‘wages’ under the CLRA and in accordance with section 21(4) of the CLRA, the Power Station (being the principal employer for the period between 1988 and 1999) would be responsible for the payment of gratuity to the contract employee.
9. *Hem Chand vs, Government of National Capital Territory of Delhi, 2003 LLR 582 (Del HC).*  
High Court not being empowered to issue writ petition for regularization of contractor’s workers covered under Contract Labour (Regulation & Abolition) Act, will not issue an interim order against their continuation to work when a new contractor has been engaged by the principal employer and also the dispute has been referred, under the industrial Disputes Act where the workers can also take up the plea of the violation of its section 33 relating to prior approval/permission, for discharge/dissmissal of the workers who are admittedly out of job.



10. *Bharat Heavy Electricals Ltd. vs. State of Uttar Pradesh, (2003) 6 SCC 528, AIR 2003 SC 3024, 2003 LLR 817, 2003 (III) LLJ 215, 2003 (98) FLR 826 (SC).*

The gardeners engaged by a Government company through a contractor for upkeep of the parks inside the factory premises and its residential colony will be deemed as employees of the company and the High Court has rightly concurred with the findings of the Labour Court directing to initiate prosecution proceedings against the company.

11. *Tractors and Farm Equipments Ltd., Karnataka Operations, Doddabalapur vs. (1) State of Karnataka, Bangalore (2) T.A.F.E. Employees Union, Chikkabommasandra, 2003 LLR 1057: (2003) 3 LLN 1110, 2003 (III) LLJ 760, 2003 (99) FLR 1155 (Karn HC)*

Before issuing notification, the Labour Commissioner had neither held any enquiry nor given any opportunity to the petitioner or the contractors or the employees to express their views in the matter hence recommendation of, the Advisory Board in this case has also been made in a mechanical manner without any kind of enquiry or application of mind hence the notification suffered from legal mala fides hence not legal.

### LESSON ROUND-UP

- “The Contract Labour (Regulation and Abolition) Act, 1970” provides for regulation of the employment of contract labour and its abolition under certain circumstances.
- It covers every establishment in which 20 or more workmen are employed on any day of the preceding 12 months as ‘contract labour’ and every contractor who employs or who employed on any day of the preceding 12 months, 20 or more contract employee. It does not apply to establishments where the work is of intermittent and casual nature unless work performed is more than 120 days and 60 days in a year respectively (Section 1).
- The Act provides for setting up of Central and State Advisory Contract Labour Boards by the Central and State Governments to advise the respective Governments on matters arising out of the administration of the Act (Section 3 & 4).
- The establishments covered under the Act are required to be registered as principal employers with the appropriate authorities. Every contractor is required to obtain a licence and not to undertake or execute any work through contract labour, except under and in accordance with the licence issued in that behalf by the licensing officer. The licence granted is subject to conditions relating to hours of work, fixation of wages and other essential amenities in respect of contract as prescribed in the rules (Section 7 & 12).
- The Act has laid down certain amenities to be provided by the contractor to the contract labour for establishment of Canteens and rest rooms; arrangements for sufficient supply of wholesome drinking water, latrines and urinals, washing facilities and first aid facilities have been made obligatory. In case of failure on the part of the contractor to provide these facilities, the Principal Employer is liable to provide the same (Section 16, 17, 18, 19 and 20).
- The contractor is required to pay wages and a duty is cast on him to ensure disbursement of wages in the presence of the authorised representative of the Principal Employer. In case of failure on the part of the contractor to pay wages either in part or in full, the Principal Employer is liable to pay the same. The contract labour who performs same or similar kind of work as regular workmen, will be entitled to the same wages and service conditions as regular workmen as per the Contract Labour (Regulation and Abolition) Central Rules, 1971 (Section 21).
- For contravention of the provisions of the Act or any rules made thereunder, the punishment is imprisonment for a maximum term upto 3 months and a fine upto a maximum of Rs.1000/- (Section 23 & 24).





## SECTION III: THE BUILDING AND OTHER CONSTRUCTION WORKERS (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT, 1996

### KEY CONCEPTS

- Beneficiary ■ Board ■ Building and Other Construction Work ■ Building Worker ■ Contractor ■ Employer
- Establishment ■ Wages ■ Appropriate Government

### Learning Objectives

#### To understand:

- The provisions of Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996
- The History and Object of the Legislation
- The constitution of Advisory Committee and Expert Committee
- Process for Registration of Establishments and time period for making appeal in case of revocation of registration
- Provisions for registration of building workers as beneficiaries of the Building and Other Construction Workers' Welfare Fund
- Constitution of Welfare Boards by every State Government, their constitution and functioning
- Provisions for working hours, overtime wages and other social welfare of building workers
- The requirement for appointment of Director-General, Chief Inspector and Inspectors and their powers, functions and limitations
- Penalties for contravention of provisions of the Act

### Lesson Outline

- |   |   |
|---|---|
| ➤ Introduction                                      | ➤ Building and other Construction Workers' Welfare Boards                             |
| ➤ History of the Legislation                        | ➤ Hours of Work, Welfare Measures and Other Conditions of Service of Building Workers |
| ➤ Challenge to constitutional validity of the Act   | ➤ Safety and Health Measures  |
| ➤ Object of the Act                                 | ➤ Inspecting Staff  |
| ➤ Applicability of the Act                          | ➤ Special Provisions  |
| ➤ Definitions                                       | ➤ Penalties and Procedures  |
| ➤ The Advisory Committees and Expert Committees     | ➤ Miscellaneous   |
| ➤ Registration of Establishments                    | ➤ Lesson Round-Up   |
| ➤ Registration of Building Workers as Beneficiaries | ➤ Test Yourself   |

***An Act to regulate the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare measure and for other matter connected therewith or incidental thereto.***

## INTRODUCTION

The Constitution of India has provisions for ensuring occupational health and safety for workers in the form of three Articles: 24, 39 (e and f) and 42. The important legislations related to occupational health, safety and welfare of workers are the Factories Act, 1948, the Mines Act, 1952 and the Dock Workers (Safety, Health & Welfare) Act, 1986, Workmen's Compensation Act, 1923 and Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996. Among these laws, Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 came into force from 19th August, 1996 to regulate the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare. It was further supplemented by "The Building and Other Construction Workers Cess Act, 1996" for the purpose of "augmenting the resources" of the Welfare Boards set up under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.

It is further governed by the Central Rules, 1998 & each of the State has got the powers to frame their own rules for implementation of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.

Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act was enacted to regulate the employment and conditions of service and to provide for safety, health and welfare measures for crores of building and other construction workers in the country. The Act is applicable to every establishment which employs 10 or more workers in any building or other construction work. There is also provision of constitution of Central and the State Advisory Committee to advise the appropriate Governments on matters arising out of administration of the law besides constitution of Welfare Boards by the State Governments and registration of beneficiaries under the Act and provision for their identity cards etc. The Building and other Construction Workers "Welfare Cess Act" was enacted simultaneously to provide levy of cess on construction cost to be paid by employer. These legislations provide for regulating the employment and conditions of service, safety and health and welfare measures for the construction workers by setting up a Welfare Fund at the State level for crediting thereto contribution made by beneficiaries and collection made out from levy of cess of 1% of the construction cost incurred by an employer on construction works. The Fund is to be used for providing financial assistance to the families of beneficiaries in case of accident, old age pension, housing loans, payment of insurance premia, children's education, medical and maternity benefits etc. The Act exempts for the construction of residential houses for own purpose constructed with a cost not exceeding Rs. 10 Lakh. The Act provides for constitution of Safety Committee in every establishment employing 500 or more workers. The provision of Workmen's Compensation Act, 1923 also applies to building worker as if the employment to which this Act applies had been included in the Second Schedule to that Act.

## HISTORY OF THE LEGISLATION

The construction workers constitute one of the largest categories of workers in the unorganized sector. As per the Fifth Employment Unemployment Survey (2015-16) there are five crore nineteen thousand four hundred and nineteen workers engaged throughout the country in building and other construction works. These workers are one of the most vulnerable segments of the unorganised labour in India. Their work is of temporary nature, the relationship between employer and the employee is temporary, working hours are uncertain. Basic amenities and welfare facilities provided to these workers are inadequate. Risk to life and limb is also inherent. In the absence of adequate statutory provisions to get the requisite information regarding the number and nature of accidents was quite difficult and due to this to fix responsibility or to take corrective measures was not an easy job. Although the provisions of certain Central Acts were applicable to the building and other construction workers yet a need was felt for a comprehensive Central Legislation for regulating the safety, welfare and other conditions of service of these workers. In pursuant to the decision of the 41st Labour Ministers Conference held on 18th May, 1995, the Committee of State Labour Ministers had expressed its consensus for the Central Legislation on this subject.

### Stages of the Act coming into force

**(i) Promulgation of The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1995 (Ord. 14 of 1995)**

In order to regulate the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare measures the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1995 (Ord. 14 of 1995) was promulgated by the President on 3rd November, 1995 as the Parliament was not in session. To replace this Ordinance a Bill was introduced in the Lok Sabha on 1st December, 1995. Since the Bill could not be taken up for consideration it lapsed.

**(ii) Promulgation of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Second Ordinance, 1996 (Ord. 3 of 1996)**

On 5th January, 1996 the President promulgated the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1996 (Ord. 3 of 1996). To replace this Ordinance, a Bill was introduced in the Parliament which could not be passed and the President promulgated the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Second Ordinance, 1996 (Ord. 15 of 1996) on 27th March, 1996 with a view to provide continued effect to the legislative protection

**(iii) Promulgation of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Third Ordinance, 1996 (Ord. 25 of 1996) on 20th June, 1996**

As second Ordinance could not be replaced by an Act of Parliament, the President promulgated the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Third Ordinance, 1996 (Ord. 25 of 1996) on 20th June, 1996.

**(iv) Enactment of The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996**

In order to replace third Ordinance, the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Bill was introduced in the Parliament. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Bill having been passed by both the Houses of Parliament received the assent of the President on 19th August, 1996. It came on the Statute Book as Parliament simultaneously enacted "The Building and Other Construction Workers Cess Act, 1996" as a complementary legislation to the Building and Other Construction Workers

(Regulation of Employment and Conditions of Service) Act, 1996 (hereinafter referred as BOCW Act, 1996) and for the purpose of "augmenting the resources" of the Welfare Boards set up under the BOCW Act, 1996. The BOCW Cess Act, 1996 envisages the levy of a cess of a minimum of 1% of the "cost of construction", to be paid by the 'employer' to the state authorities. The cess so recovered is to be used for carrying out the statutory functions of the various state-level Welfare Boards.

Further, the Building and Other Construction Workers (RECS) Central Rules, 1998 were notified on 19.11.1998. These rules are applicable to establishments for which appropriate Government is the Central Government under the Act. For other establishment where State Government is the appropriate Government, rules are framed by concerned State Government to give effect to the provisions of the Act in it's respective State.

### CHALLENGE TO CONSTITUTIONAL VALIDITY OF THE ACT

- (1) The constitutional validity of the BOCW Act and the Cess Act was challenged in the Delhi High Court by the Builders Association of India. As regards the BOCW Act it was contended that it is bad for vagueness and as far as the Cess Act is concerned, it was contended that the cess is a compulsory and involuntary exaction without reference to any special benefit for the payer of the cess and therefore the cess was in fact a tax. It was contended that Parliament lacked legislative competence to impose a tax on lands and buildings which was the effect of the Cess Act.

In *Builders Association of India v. Union of India*, ILR (2007) 1 Del 1143 the contentions urged were repelled by the Delhi High Court and the constitutional validity of the BOCW Act and the Cess Act was upheld.

- (2) The decision of the Delhi High Court was challenged and that challenge was repelled in *Dewan Chand Builders & Contractors v. Union of India* (2012) 1 SCC 101. The Supreme Court, while upholding the constitutional validity of both the Acts, noted the scheme of the BOCW Act in the context of Article 21 of the Constitution and observed as follows:

*“It is thus clear from the scheme of the BOCW Act that its sole aim is the welfare of building and construction workers, directly relatable to their constitutionally recognised right to live with basic human dignity, enshrined in Article 21 of the Constitution of India. It envisages a network of authorities at the Central and State levels to ensure that the benefit of the legislation is made available to every building and construction worker, by constituting Welfare Boards and clothing them with sufficient powers to ensure enforcement of the primary purpose of the BOCW Act. The means of generating revenues for making effective the welfare provisions of the BOCW Act is through the Cess Act, which is questioned in these appeals as unconstitutional.”*

- (3) The interpretation of the BOCW Act and the Cess Act was again considered in *A. Prabhakara Reddy and Company v. State of Madhya Pradesh* (2016) 1 SCC 600. The emphasis in this case was on registering the construction workers and providing them necessary benefits. Since the levy of cess is a fee, it was urged that urgent steps should be taken for implementation of the two Acts. It was further observed that merely because there was some delay in the effective implementation of both the statutes it could not be a ground for invalidating the levy of cess, nor could the levy of cess be said to have retrospective application.

## OBJECT OF THE ACT

The Preamble of the Act specifies the object of the Act as,

*“An Act to regulate the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare measure and for other matter connected therewith or incidental thereto.”*

It is further governed by the Central Rules, 1998 & each of the State has got the powers to frame their own rules for implementation of the BOCW Act, 1996.

The Building and Other Construction Workers Welfare Cess Act, 1996, provides for levy and collection of cess on the cost of construction incurred by the employers to be added to the resources of the Building and Other Construction Workers Welfare Boards.

In the case of ***National Campaign Committee for Central Legislation on Construction Labour v. Union of India and Others***(2011) 4 SCC 655, the Supreme Court held that:

*“The object of the Act is to confer various benefits to the construction workers, like fixing hours for normal working days, weekly paid rest day, wages for overtime, basic welfare amenities at site, temporary living accommodation near site, safety and health measures, etc. Every State is required to constitute a State Welfare Board to provide assistance in case of accident, to provide pension, to sanction loans, to provide for group insurance, to provide financial assistance for educating children, medical treatment, etc. Though the Welfare Boards were to be constituted with adequate full-time staff, many States have not constituted the Welfare Boards. In some States, even though the Boards are constituted, they are not provided with necessary staff or facilities. As a result, welfare measures to benefit the workers are not been taken. Section 3 of the Building and Other Construction Workers’ Welfare Cess Act, 1996, provides for collection of cess from every employer at the rates prescribed, on the cost of construction incurred by an employer. We are told that many of the State Governments have collected the cess as contemplated under the Cess Act. But these amounts have not been passed on to the Welfare Boards to extend the benefits to the workers as contemplated by the Act. Even the registration of building workers*

as beneficiaries under the Act is not being taken up. Overall, the implementation of the provisions of the Act is far from satisfactory. There is an urgent need to extend the benefits of the Act to the unorganized section of the building workers in a meaningful manner.”

In the case of ***Dewan Chand Builders & Contractors v. Union of India***, while upholding the Constitutional validity of The Building and Other Construction Workers’ (Regulation of Employment and Conditions of Service) Act, 1996; The Building and Other Construction Workers’ (Regulation of Employment and Conditions of Service) Central Rules, 1998; The Building and Other Construction Workers’ Welfare Cess Act, 1996 and The Building and Other Construction Workers’ Welfare Cess Rules, 1998, the Supreme Court observed that:

“The scheme of the Act is that it empowers the Central Government and the State Governments to constitute Welfare Boards to provide and monitor social security schemes and welfare measures for the benefit of the building and other construction workers. It is clear from the scheme of the BOCW Act that its sole aim is the welfare of building and construction workers, directly relatable to their constitutionally recognised right to live with basic human dignity, enshrined in Article 21 of the Constitution of India. It envisages a network of authorities at the Central and State levels to ensure that the benefit of the legislation is made available to every building and construction worker, by constituting Welfare Boards and clothing them with sufficient powers to ensure enforcement of the primary purpose of the BOCW Act. It is manifest from the overarching schemes of the BOCW Act, the Cess Act and the Rules made there under that their sole object is to regulate the employment and conditions of service of building and other construction workers, traditionally exploited sections in the society and to provide for their safety, health and other welfare measures.”

### APPLICABILITY OF THE ACT (SEC 1)

- It extends to the whole of India.
- It shall be deemed to have come into force on the 1st day of March, 1996.
- It applies to every establishment which employs, or had employed on any day of the preceding twelve months, ten or more building workers in any building or other construction work.

(Sec 1(4)).

*Explanation* – For the purposes of this sub-section, the building workers employed in different relays in a day either by the employer or the contractor shall be taken into account in computing the number of building workers employed in the establishment.

#### The Act is not applicable to:

- a person who is employed, in connection with any building or other construction work, mainly in a managerial or administrative capacity.
- a person who is employed, in connection with any building or other construction work, in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.
- Any building or construction work to which the provisions of the Factories Act, 1948 or the Mines Act, 1952 are applicable (This means, only the establishments registered under respective State’s Shops & Commercial Establishments Act will get covered under BOCW Act.)
- Establishment which employs, or had employed on any day of the preceding twelve months less than ten building workers in any building or other construction work.
- An individual who employs such workers in any building or construction work in relation to his own residence the total cost of such construction not being more than rupees ten lakhs.

### CASE LAW

The Hon'ble High Court of Orissa in the matter of ***Sterlite Energy Limited v. State of Orissa & Ors. [reported at 2011 III LLJ 349 (DB)]*** has held that the provisions of the Factories Act, 1948 and the BOCW Act do not overlap, holding that the BOCW Act applies to factories under construction while the Factories Act, 1948 is generally applicable to completed factories.

The fact that construction workers are not covered under the Factories Act, 1948, and are therefore entitled to welfare measures under the BOCW Act was put forth in the case of Lanco Anpara Power Ltd. V. State Of Uttar Pradesh & Others dated Oct. 10, 2016.

**Facts of the case:**

The petitioner construction companies were issued various show cause notices for failing to register under the BOCW Act and for payment of tax under the BOCW Act. The validity of these notices were challenged in several writ petitions before various High Courts on the ground that the BOCW Act was not applicable to these factories as they were registered under the Factories Act. The petitioner construction companies, which are engaged in construction activities, argued that once the undertaking or the establishment had obtained a license for registration under the Factories Act, the BOCW Act was not applicable on account of the exclusion under Section 2(1)(d) of the BOCW Act. However, the respondents called for a more beneficial interpretation to the exclusion clause on the ground that the legislation must cater to the benefits of construction workers.

**Issue:**

The issue before the Supreme Court was whether the BOCW Act was applicable to those premises that are registered under the Factories Act, 1948.

**Judgment:**

The Court held that the establishments/premises registered under the Factories Act, 1948, employing construction workers in the construction of factory premises were not excluded from the application of the BOCW Act in terms of the exclusion clause. The Court reasoned that an establishment/premise would become a factory under Section 2 (m) of the Factories Act only when the manufacturing process as defined under Section 2(k) of the Factories Act commenced. Consequently, the provisions of the Factories Act would apply only when the manufacturing process commences, and even upon commencement of the manufacturing activity, it only covered those workers who are engaged in such manufacturing activity under the Factories Act and not construction workers.

Hence, construction activities which are carried out in relation to establishments/registered premises / licensed under the Factories Act, 1948, would not attract the exclusion clause of the BOCW Act by itself. Workers carrying on such activities would be covered under the BOCW Act.

### Definitions (Section 2)

In this Act, unless the context otherwise requires, –

- (1) **“Appropriate Government”** means, –
- (i) the Central Government in relation to following establishments:
- an establishment (which employs building workers either directly or through a contractor) in respect of which the appropriate Government under the Industrial Disputes Act, 1947, is the Central Government,;
  - any such establishment, being a public sector undertaking, as the Central Government may by notification specify which employs building workers either directly or through a contractor

*Explanation.* –For the purposes of sub-clause (ii), “public sector undertaking” means any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956 which is owned, controlled or managed by the Central Government;



(ii) **the Government of the State in which that establishment is situated**

- in relation to any other establishment which employs building workers either directly or through a contractor;

{Section 2(1)(a)}

(2) **“Beneficiary”**

Beneficiary means a building worker registered under section 12 – {Section 2(1)(b)}

(3) **“Board”** means a Building and Other Construction Workers’ Welfare Board constituted under sub-section (1) of section 18 – {Section 2(1)(c)}(4) **“Building and Other Construction Work”** means the construction, alteration, repairs, maintenance or demolition, of or, in relation to, buildings, streets, roads, railways, tramways, airfields, irrigation, drainage, embankment and navigation works, flood control works (including storm water drainage works), generation, transmission and distribution of power, water works (including channels for distribution of water), oil and gas installations, electric lines, wireless, radio, television, telephone, telegraph and overseas communications, dams, canals, reservoirs, watercourses, tunnels, bridges, viaducts, aqueducts, pipelines, towers, cooling towers, transmission towers and such other work as may be specified in this behalf by the appropriate Government, by notification but does not include any building or other construction work to which the provisions of the Factories Act, 1948 or the Mines Act, 1952 apply; {Section 2(1)(d)}

Any building or construction work to which the provisions of the Factories Act, 1948 or the Mines Act, 1952 are applicable are not covered under the definition and hence workers employed therein will not get benefit under “The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act”.

(5) **“Building Worker”** means a person who is employed to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied, in connection with any building or other construction work but does not include any such person –

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

{Section 2(1)(e)}

This Act is also applicable to casual workers and daily wage workers. **In *Municipal Corporation of Delhi v. Female Workers, AIR 2000 SC 1274***, the Supreme Court declared that there is nothing in the Maternity Benefit Act which entitles only regular women employees to the benefit of maternity leave and should be extended to women engaged in work on casual basis or on muster roll on daily-wage basis. The provision for maternity benefit is also granted to women employees who are covered under the Building and Other Construction Workers (Regulation of Employment and Condition of Service) Act 1996, from the welfare fund.

(6) **“Contractor”** means a person

- who undertakes to produce a given result for any establishment, other than a mere supply of goods or articles of manufacture, by the employment of building workers or;
- who supplies building workers for any work of the establishment; and
- includes a sub-contractor.

{Section 2(1)(g)}

- (7) **“Employer”**, in relation to an establishment, means the owner thereof, and includes, –
- (i) in relation to a building or other construction work carried on by or under the authority of any department of the Government, directly without any contractor, the authority specified in this behalf, or where no authority is specified, the head of the department;
  - (ii) in relation to a building or other construction work carried on by or on behalf of a local authority or other establishment, directly without any contractor, the chief executive officer of that authority or establishment;
  - (iii) in relation to a building or other construction work carried on by or through a contractor, or by the employment of building workers supplied by a contractor, the contractor;

For the private projects and infrastructure sector, the underlined portion, taken together implies that the ‘employer’ means an owner of an establishment and includes a contractor.

{Section 2(1)(i)}

The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (BOCW Act) stipulates the welfare measures and the Building and Other Construction Workers Welfare Cess Act, 1996, (Cess Act) has been enacted for levy and collection of cess on the ‘cost of construction’ incurred, from the ‘employer’ for use for the welfare of construction workers who are registered with the respective state.

Liability to pay cess would be that of employer and as per the definitions referred to above, the employer in relation to an establishment would mean the owner thereof and would include the contractor in case where the building or other construction work is carried on by or through a contractor.

Section 3 of CESS Act doesn’t specifically state as to whether cess is required to be paid by owner or contractor for a particular establishment. However, in the case of **Delhi Metro Rail Corporation**, it has been held by High Court that there is nothing wrong in deduction of the amount of cess from the bills of the contractor. There can be a deduction of cess at source without prior assessment so long as it remains adjustable against any final liability that may be determined at the end of the assesment.

In **Gannon Dunkerley and Co. Ltd. v. State of Madhya Pradesh, reported as 2009 (5) MPHT 258**, a Single Judge of the Madhya Pradesh High Court at Jabalpur, dealing with the issue of interpretation of the expression “employer” in the Cess Act and the Cess Rules, held that “the intention of the Legislature is, therefore, not only to include the owner of the establishment in the present case the Company but also the Contractors who carries out the work of building or other construction work and is an employer for the purpose of the Construction Workers Act, 1996 and the Cess Act, 1996. Thus, there is no escape for the contractors who have undertaken the building and other construction work in the establishment belonging to the Company”

**The Hon’ble High Court of Delhi, in the case of Builders Association of India & Ors. v. Union of India & Ors.[9]** held that: “There appears to be a definitive scheme in the definition itself. A range of choices has been made available to the government for levying cess and the intention is not to confine it only to the owner of a building or the person expending for the construction. The idea is to seek to levy and collect the cess from the contractor or the owner as the case may be. It is not possible to accept the submission that both the contractor and the owner would be taxed vis-à-vis the same construction activity.”

- (8) **“Establishment”** means
- any establishment belonging to, or under the control of, Government, anybody corporate or firm, an individual or association or other body of individuals which or who employs building workers in any building or other construction work; and



- includes an establishment belonging to a contractor,
- but does not include an individual who employs such workers in any building or construction work in relation to his own residence the total cost of such construction not being more than rupees ten lakhs.

{Section 2(1)(j)}

- (9) **“Wages”** shall have the same meaning as assigned to it in clause (vi) of section 2 of the Payment of Wages Act, 1936. {Section 2(1)(n)}

Any reference in this Act to any law which is not in force in any area shall, in relation to that area, be construed as a reference to the corresponding law, if any, in force in that area. {Section 2(2)}

## THE ADVISORY COMMITTEES AND EXPERT COMMITTEES

Chapter II (Sections 3-5) of the Act deals with constitution of Advisory Committee at Centre and State Level to advise the concerned Government w.r.t. administration of the Act. It also provides for constitution of Expert Committee by the appropriate Government.

### Central Advisory Committee (Section 3)

The Central Government shall constitute the Central Building and Other Construction Workers' Advisory Committee (hereinafter referred to as the Central Advisory Committee) to advise the Central Government on such matters arising out of the administration of this Act as may be referred to it.

The Central Advisory Committee shall consist of –

- (a) a Chairperson to be appointed by the Central Government;
- (b) three Members of Parliament of whom two shall be elected by the House of the People and one by the Council of States –members;
- (c) the Director-General –member, *ex officio*;
- (d) such number of other members, not exceeding thirteen but not less than nine, as the Central Government may nominate to represent the employers, building workers, associations of architects, engineers, accident insurance institutions and any other interests which, in the opinion of the Central Government, ought to be represented on the Central Advisory Committee.

The number of persons to be appointed as members from each of the categories specified in clause (d) above, the term of office and other conditions of service of, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among, the members of the Central Advisory Committee shall be such as may be prescribed.

It is to be noted that the members nominated to represent the building workers shall not be less than the number of members nominated to represent the employers.

The office of member of the Central Advisory Committee shall not disqualify its holder for being chosen as, or for being, a Member of either House of Parliament.

### State Advisory Committee (Section 4)

The State Government shall constitute a committee to be called the State Building and Other Construction Workers' Advisory Committee (hereinafter referred to as the State Advisory Committee). It will function with State Government like Central Advisory Committee will work with Central Government. The role of State Advisory Committee is to advise the State Government on such matters arising out of the administration of this Act as may be referred to it.

The State Advisory Committee shall consist of –

- (a) a Chairperson to be appointed by the State Government;
- (b) two members of the State Legislature to be elected from the State Legislature –members; (c) a member to be nominated by the Central Government;
- (d) the Chief Inspector –member, *ex officio*;
- (e) such number of other members, not exceeding eleven, but not less than seven, as the State Government may nominate to represent the employers, building workers, associations of architects, engineers, accident insurance institutions and any other interests which, in the opinion of the State Government, ought to be represented on the State Advisory Committee.

The number of persons to be appointed as members from each of the categories specified in clause (e) above the term of office and other conditions of service of, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among, the members of State Advisory Committee shall be such as may be prescribed.

Provided that the number of members nominated to represent the building workers shall not be less than the number of members nominated to represent the employers.

### Expert committees (Section 5)

Expert Committee is constituted by the appropriate Government. The appropriate government may constitute one or more expert committees consisting of persons specially qualified in building or other construction work for advising that Government for making rules under this Act.

The members of the expert committee shall be paid such fees and allowances for attending the meetings of the committee as may be prescribed.

If a member is also an officer of Government or of any body corporate established by or under any law for the time being in force, he shall not be entitled to any fee or allowances.

## REGISTRATION OF ESTABLISHMENTS

Chapter III (Section 6-10) deals with registration of establishment under the Act. Every employer of an establishment to which this Act applies and to which this Act may be applicable at any time is required to make an application in the prescribed form with prescribed fee for the registration of his establishment within a period of sixty days of the commencement of the Act or within sixty days from the date on which this Act becomes applicable to the establishment.

### Appointment of registering officers (Section 6)

For the purposes of the Act, the registering officers are appointed by the appropriate Government, by order notified in the Official Gazette. The appropriate government in it's order also define the limits within which a registering officer shall exercise the powers conferred on him by or under this Act.

### Registration of establishments (Section 7)

*Application for registration:*

Every employer shall, –

- (a) in relation to an establishment to which this Act applies on its commencement, within a period of sixty days from such commencement; and
- (b) in relation to any other establishment to which this Act may be applicable at any time after such commencement, within a period of sixty days from the date on which this Act becomes applicable to such establishment, make an application to the registering officer for the registration of such establishment.

Provided that the registering officer may entertain any such application after the expiry of the periods aforesaid, if he is satisfied that the applicant was prevented by sufficient cause from making the application within such period.

So, registration is mandatory under the Act for every establishment to which this Act applies.

**Form of application:** The section provides that every such application shall be in such form and shall contain such particulars and shall be accompanied by such fees as may be prescribed.

**Issue of registration certificate:** After the receipt of an application for registration as stated above, the registering officer shall register the establishment and issue a certificate of registration to the employer thereof in such form and within such time and subject to such conditions as may be prescribed.

**Intimation of change:** Where, after the registration of an establishment under this section, any change occurs in the ownership or management or other prescribed particulars in respect of such establishment, the particulars regarding such change shall be intimated by the employer to the registering officer within thirty days of such change in such form as may be prescribed.

### Revocation of registration in certain cases. (Section 8)

If the registering officer is satisfied, either on a reference made to him in this behalf or otherwise, that the registration of any establishment has been obtained by misrepresentation or suppression of any material fact or that the provisions of this Act are not being complied with in relation to any work carried on by such establishment, or that for any other reason the registration has become useless or ineffective and, therefore, requires to be revoked, he may, after giving an opportunity to the employer of the establishment to be heard, revoke the registration.

### Appeal (Section 9)

*Time period for making an appeal:* Any person aggrieved by an order of revocation of registration made under section 8 may, within thirty days from the date on which the order is communicated to him, prefer an appeal to the appellate officer who shall be a person nominated in this behalf by the appropriate Government.

The appellate officer may entertain the appeal after the expiry of the said period of thirty days if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

On receipt of an appeal, the appellate officer shall, after giving the appellant an opportunity of being heard, confirm, modify or reverse the order of revocation as expeditiously as possible.

### Effect of non-registration (Section 10)

No employer of an establishment which is required to be registered but has not been registered or registration of such an establishment has been revoked and no appeal has been preferred or where an appeal has been preferred but it has been dismissed, can employ building workers in the establishment after the expiry of the period for making application for registration under section 7, or after the revocation of registration under section 8 or after the expiry of the period for preferring an appeal under section 9 or after the dismissal of the appeal, as the case may be.

## REGISTRATION OF BUILDING WORKERS AS BENEFICIARIES

Chapter IV (Sections 11-17) contains provisions w.r.t. registration of building workers as beneficiaries of the Building and Other Construction Workers' Welfare Fund (hereinafter referred as Fund).

### Beneficiaries of the Fund (Section 11)

Section 11 of the Act provides for that subject to the provisions of this Act, every building worker registered as a beneficiary under this Act shall be entitled to the benefits provided by the Board from its Fund under this Act.

### Registration of building workers as beneficiaries. (Section 12)

*Who shall be eligible for registration as a beneficiary:* Every building worker who has completed eighteen years of age, but has not completed sixty years of age, and who has been engaged in any building or other construction work for not less than ninety days during the preceding twelve months shall be eligible for registration as a beneficiary under this Act.

**Application for registration in prescribed form:** An application for registration shall be made in such form, as may be prescribed, to the officer authorised by the Board in this behalf. The application shall be accompanied by such documents together with such fee not exceeding fifty rupees as may be prescribed.

**Registration as beneficiary:** If the officer authorised by the Board in this regard is satisfied that the applicant has complied with the provisions of this Act and the rules made thereunder, he shall register the name of the building worker as a beneficiary under this Act. An application for registration shall not be rejected without giving the applicant an opportunity of being heard.

**Right to appeal :** Any person aggrieved by the decision of the Board (refusal to grant registration) may, within thirty days from the date of such decision, prefer an appeal to the Secretary of the Board or any other officer specified by the Board in this behalf. The decision of the Secretary or such other officer on such appeal shall be final. The Secretary or any other officer specified by the Board in this behalf may entertain the appeal after the expiry of the said period of thirty days if he is satisfied that the building worker was prevented by sufficient cause from filing the appeal in time.

**Maintenance of registers:** The Secretary of the Board shall cause to maintain such registers as may be prescribed.

### Identity Cards (Section 13)

**Issue of Identity Cards:** The Board shall give to every beneficiary an identity card with his photograph duly affixed thereon and with enough space for entering the details of the building or other construction work done by him.

**Obligation of employer:** Every employer shall enter in the identity card the details of the building or other construction work done by the beneficiary and authenticate the same and return it to the beneficiary.

**Presentation of identity card for inspection:** A beneficiary who has been issued an identity card under this Act shall produce the same whenever demanded by any officer of Government or the Board, any inspector or any other authority for inspection.

### Cessation as a beneficiary. (Section 14)

*When does a build work cease to be beneficiary under the Act:*

A building worker who has been registered as a beneficiary under this Act shall cease to be as such when

- (i) he attains the age of sixty years or
- (ii) when he is not engaged in building or other construction work for not less than ninety days in a year:

If building work remains absent from the building or other construction work due to any personal injury caused to him by accident arising out of and in the course of his employment, then such period of absence shall not be considered while calculating the said period of ninety days.

**Exception:** Notwithstanding anything stated above, if a person had been a beneficiary for at least three years continuously immediately before attaining the age of sixty years, he shall be eligible to get such benefits as may be prescribed.

**Explanation.** –For computing the period of three years as a beneficiary with a Board under this sub-section, there shall be added any period for which a person had been a beneficiary with any other Board immediately before his registration.

### Register of beneficiaries (Section 15)

Every employer shall maintain a register in such form as may be prescribed showing the details of employment of beneficiaries employed in the building or other construction work undertaken by him and the same may be inspected without any prior notice by the Secretary of the Board or any other officer duly authorised by the Board in this behalf.

### Contribution of building workers (Section 16)

A registered beneficiary, until he attains the age of sixty years, has to contribute to the Fund at the rates specified by the State Government. If any beneficiary is unable to pay his contribution due to any financial hardship, the Building and Other Construction Workers' Welfare Board can waive the payment of contribution for a period not exceeding three months at a time.

A beneficiary may authorise his employer to deduct his contribution from his monthly wages and to remit the same, within fifteen days from such deduction, to the Board.

### Effect of non-payment of contribution (Section 17)

If any beneficiary fails to pay his contribution for a continuous period of not less than one year, he ceases to be a beneficiary of the Fund.

Provided that if the Secretary of the Board is satisfied that the non-payment of contribution was for a reasonable ground and that the building worker is willing to deposit the arrears, he may allow the building worker to deposit the contribution in arrears and on such deposit being made, the registration of building worker shall stand restored.

## BUILDING AND OTHER CONSTRUCTION WORKERS' WELFARE BOARDS

Chapter V (Sec 18-27) of the Act provides for the constitution of Welfare Boards by every State Government, their constitution and functioning for the purpose of carrying out the responsibilities and exercising powers bestowed upon State Government under the Act.

### Constitution of State Welfare Boards (Section 18)

**Notification to appoint State Welfare Board:** Every State Government shall, with effect from such date as it may, by notification, appoint, constitute a Board to be known as the \_\_\_\_\_(name of the State) Building and Other Construction Workers' Welfare Board to exercise the powers conferred on, and perform the functions assigned to, it under this Act.

**Corporate Status of the Board:** The Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal and shall by the said name sue and be sued.

**Composition of the Board:** The Board shall consist of

- (i) a chairperson,
- (ii) a person to be nominated by the Central Government and
- (iii) such number of other members, not exceeding fifteen, as may be appointed to it by the State Government.

Provided that the Board shall include an equal number of members representing the State Government, the employers and the building workers and that at least one member of the Board shall be a woman.

The terms and conditions of appointment and the salaries and other allowances payable to the chairperson and the other members of the Board, and the manner of filling of casual vacancies of the members of the Board, shall be such as may be prescribed.

### Secretary and other officers of Boards (Section 19)

*Appointment of Secretary and other officers and employees of Boards:*

The Board shall appoint a Secretary and such other officers and employees as it considers necessary for the efficient discharge of its functions under this Act.

The secretary of the Board shall be its chief executive officer.

The terms and conditions of appointment and the salary and allowances payable to the Secretary and the other officers and employees of the Board shall be such as may be prescribed.

### Meetings of Boards (Section 20)

*Procedure regarding meetings:*

The Board shall meet at such time and place and observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at such meetings) as may be prescribed.

*Who shall preside the meeting:*

- (i) The chairperson or,
- (ii) if for any reason he is unable to attend a meeting of the Board, any member nominated by the chairperson in this behalf and
- (iii) in the absence of such nomination, any other member elected by the members present from amongst themselves at the meeting, shall preside at the meeting.

*Decision by majority:* All questions which come up before any meeting of the Board shall be decided by a majority of votes of the members present and voting, and in the event of equality of votes, the chairperson, or in his absence, the person presiding, shall have a second or a casting vote.

### Vacancies, etc., not to invalidate proceedings of the Boards (Section 21)

Act or proceedings of a Board shall not be invalid merely by reason of –

- (a) any vacancy in, or any defect in the constitution of, the Board; or
- (b) any defect in the appointment of a person acting as a member of the Board; or
- (c) any irregularity in the procedure of the Board not affecting the merits of the case.

### Functions of the Boards (Section 22)

- (1) The Board may –
  - (a) provide immediate assistance to a beneficiary in case of accident;
  - (b) make payment of pension to the beneficiaries who have completed the age of sixty years;
  - (c) sanction loans and advances to a beneficiary for construction of a house not exceeding such amount and on such terms and conditions as may be prescribed;
  - (d) pay such amount in connection with premia for Group Insurance Scheme of the beneficiaries as it may deem fit;
  - (e) give such financial assistance for the education of children of the beneficiaries as may be prescribed;
  - (f) meet such medical expenses for treatment of major ailments of a beneficiary or, such dependant, as may be prescribed;

- (g) make payment of maternity benefit to the female beneficiaries; and
  - (h) make provision and improvement of such other welfare measures and facilities as may be prescribed.
- (2) **Grant of loan or subsidy:** The Board may grant loan or subsidy to a local authority or an employer in aid of any scheme approved by the State Government for the purpose connected with the welfare of building workers in any establishment.
- (3) **Annual Grants-in-aid:** The Board may pay annually grants-in-aid to a local authority or to an employer who provides to the satisfaction of the Board welfare measures and facilities of the standard specified by the Board for the benefit of the building workers and the members of their family, so, however, that the amount payable as grants-in-aid to any local authority or employer shall not exceed –
- (a) the amount spent in providing welfare measures and facilities as determined by the State Government or any person specified by it in this behalf, or
  - (b) such amount as may be prescribed, whichever is less.

### Grants and loans by the Central Government(Section 23)

The Central Government may, after due appropriation made by Parliament by law in this behalf, make to a Board grants and loans of such sums of money as the Government may consider necessary.

### Building and Other Construction Workers' Welfare Fund and its application (Section 24)

The Board shall constitute a fund to be called the Building and Other Construction Workers' Welfare Fund. Following amount shall be credited to the Fund:

- (a) any grants and loans made to the Board by the Central Government under section 23;
- (b) all contributions made by the beneficiaries;
- (c) all sums received by the Board from such other sources as may be decided by the Central Government.

**Utilisation of Fund:** The Fund shall be applied for meeting –

- (a) expenses of the Board in the discharge of its functions under section 22; and
- (b) salaries, allowances and other remuneration of the members, officers and other employees of the Board;
- (c) expenses on objects and for purposes authorised by this Act.

**Limit of Administrative expenses:** No Board shall, in any financial year, incur expenses towards salaries, allowances and other remuneration to its members, officers and other employees and for meeting the other administrative expenses exceeding five per cent of its total expenses during that financial year.

### Budget (Section 25)

The Board shall prepare, in such form and at such time each financial year, as may be prescribed, its budget for the next financial year, showing the estimated receipts and expenditure of the Board and forward the same to the State Government and the Central Government.

### Annual report (Section 26)

The Board shall prepare, in such form and at such time each financial year as may be prescribed, its annual report, giving a full account of its activities during the previous financial year, and submit a copy thereof to the State Government and the Central Government.



### Accounts and audit (Section 27)

The Board shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.

The Comptroller and Auditor-General of India or any other person appointed by him in connection with the auditing of the accounts of the Board under this Act shall have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the auditing of the Government accounts and, in particular shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Board under this Act.

*Audit of the accounts:* The accounts of the Board shall be audited by the Comptroller and Auditor-General of India annually and any expenditure incurred in connection with such audit shall be payable by the Board to the Comptroller and Auditor-General of India.

*Audited copy of accounts to be forwarded to the State Government:* The Board shall furnish to the State Government before such date as may be prescribed its audited copy of accounts together with the auditor's report.

The State Government shall cause the annual report and auditor's report to be laid, as soon as may be after they are received, before the State Legislature.

### HOURS OF WORK, WELFARE MEASURES AND OTHER CONDITIONS OF SERVICE OF BUILDING WORKERS

Chapter VI (Sections 28-37) makes provisions for working hours, overtime wages and other social welfare of building workers.

- (1) The appropriate Government may, by rules, –
  - (a) fix the number of hours of work which shall constitute a normal working day for a building worker, inclusive of one or more specified intervals;
  - (b) provide for a day of rest in every period of seven days which shall be allowed to all building workers and for the payment of remuneration in respect of such days of rest;
  - (c) provide for payment of work on a day of rest at a rate not less than the overtime rate specified in section 29.
- (2) The provisions of sub-section (1) shall, in relation to the following classes of building workers, apply only to such extent, and subject to such conditions, as may be prescribed, namely: –
  - (a) persons engaged on urgent work, or in any emergency which could not have been foreseen or prevented;
  - (b) persons engaged in a work in the nature of preparatory or complementary work which must necessarily be carried on outside the normal hours of work laid down in the rules;
  - (c) persons engaged in any work which for technical reasons has to be completed before the day is over;
  - (d) persons engaged in a work which could not be carried on except at times dependant on the irregular action of natural forces.

### Wages for overtime work (Section 29)

If any building worker is required to work on any day in excess of the number of hours constituting a normal working day, he shall be entitled to wages at the rate of twice his ordinary rate of wages.

*Meaning of ordinary rates of wages :* Here ordinary rate of wages means the basic wages plus such allowances as the worker is for the time being entitled to but does not include any bonus.

### **Maintenance of registers and records (Section 30)**

*Maintenance of register:* Every employer shall maintain such registers and records giving the following in prescribed form:

- (i) particulars of building workers employed by him,
- (ii) the work performed by them,
- (iii) the number of hours of work which shall constitute a normal working day for them,
- (iv) a day of rest in every period of seven days which shall be allowed to them,
- (v) the wages paid to them,
- (vi) the receipts given by them and such other particulars in such form as may be prescribed.

*Display of notices:* Every employer shall keep exhibited, in such manner as may be prescribed, in the place where such workers may be employed, notices in the prescribed form containing the prescribed particulars.

*Rules w.r.t. wage books or wage slips:* The appropriate Government may, by rules, provide for the issue of wage books or wage slips to building workers employed in an establishment 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.

### **Prohibition of employment of certain persons in certain building or other construction work (Section 31)**

Employer shall not require or allow any person to work in any such operation of building or other construction work which is likely to involve a risk of any accident either to the building worker himself or to any other person, if employer knows or has reason to believe that

- such person is a deaf or
- such person has a defective vision or
- such person has a tendency to giddiness.

### **Drinking water (Section 32)**

Section 32 provides for obligation of employer to make in every place where building or other construction work is in progress, effective arrangements to provide and maintain at suitable points conveniently situated for all persons employed therein, a sufficient supply of wholesome drinking water.

All such points shall be legibly marked "Drinking Water" in a language understood by a majority of the persons employed in such place and no such point shall be situated within six metres of any washing place, urinal or latrine.

### **Latrines and urinals (Section 33)**

In every place where building or other construction work is carried on, the employer shall provide sufficient latrine and urinal accommodation of such types as may be prescribed and they shall be so conveniently situated as may be accessible to the building workers at all times while they are in such place:

Provided that it shall not be necessary to provide separate urinals in any place where less than fifty persons are employed or where the latrines are connected to a water-borne sewage system.

### **Accommodation (Section 34)**

It shall be duty of the employer to provide, free of charges and within the work site or as near to it as may be possible, temporary living accommodation to all building workers employed by him for such period as the building or other construction work is in progress.

Such temporary accommodation shall have separate cooking place, bathing, washing and lavatory facilities.

As soon as may be, after the building or other construction work is over, the employer shall, at his own cost, cause removal or demolition of temporary structures so erected by him and restore the ground in good level and clean condition.

In case an employer is given any land by a Municipal Board or any other local authority for the purposes of providing temporary accommodation for the building workers under this section, he shall, as soon as may be after the construction work is over, return the possession of such land in the same condition in which he received the same.

### Creches (Section 35)

In every place wherein, more than fifty female building 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 female workers.

Such rooms shall –

- (a) provide adequate accommodation;
- (b) be adequately lighted and ventilated;
- (c) be maintained in a clean and sanitary condition;
- (d) be under the charge of women trained in the care of children and infants.

### First-aid (Section 36)

Every employer shall provide in all the places where building or other construction work is carried on such first-aid facilities as may be prescribed.

### Canteens, etc. (Section 37)

The appropriate Government may, by rules, require the employer –

- (a) to provide and maintain in every place wherein not less than two hundred and fifty building workers are ordinarily employed, a canteen for the use of the workers;
- (b) to provide such other welfare measures for the benefit of building workers as may be prescribed.

## SAFETY AND HEALTH MEASURES

Chapter VII (Sections 38-41) contains provision to ensure safety and health of building workers. It provides for the power of appropriate government to make rules for safety and health of building workers.

### Safety Committee and safety officers (Section 38)

**When shall employer constitute Safety Committee:** The employer shall constitute a Safety Committee if five hundred or more building workers are ordinarily employed in the establishment.

**Composition of Safety Committee:** The Safety Committee shall consist of such number of representatives of the employer and the building workers as may be prescribed by the State Government.

Provided that the number of persons representing the workers, shall, in no case, be less than the persons representing the employer.

**Appointment of safety officer:** Section also make it mandatory for employer of such establishment to appoint a safety officer who shall possess such qualifications and perform such duties as may be prescribed.

### Notice of certain accidents(Section 39)

*Notice of which accident is required to be given:* The employer shall give notice of following accident to such authority, in such form and within such time as may be prescribed, where in any establishment an accident occurs

- (i) which causes death or
- (ii) which causes any bodily injury by reason of which the person injured is prevented from working for a period of forty-eight hours or more immediately following the accident, or
- (iii) which is of such a nature as may be prescribed.

#### **Investigation / Inquiry into accident:**

On receipt of a notice, the prescribed authority may make such investigation or inquiry as it considers necessary.

But where such notice relates to an accident causing death of five or more persons, the authority shall make an inquiry into such accident within one month of the receipt of the notice.

### Power of appropriate Government to make rules for the safety and health of building workers (Section 40)

- (1) The appropriate Government may, by notification, make rules regarding the measures to be taken for the safety and health of building workers in the course of their employment and the equipment and appliances necessary to be provided to them for ensuring their safety, health and protection, during such employment.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: –
  - (a) the safe means of access to, and the safety of, any working place, including the provision of suitable and sufficient scaffolding at various stages when work cannot be safely done from the ground or from any part of a building or from a ladder or such other means of support;
  - (b) the precautions to be taken in connection with the demolition of the whole or any substantial part of a building or other structure under the supervision of a competent person and the avoidance of danger from collapse of any building or other structure while removing any part of the framed building or other structure by shoring or otherwise;
  - (c) the handling or use of explosive under the control of competent persons so that there is no exposure to the risk of injury from explosion or from flying material;
  - (d) the erection, installation, use and maintenance of transporting equipment, such as locomotives, trucks, wagons and other vehicles and trailers and appointment of competent persons to drive or operate such equipment;
  - (e) the erection, installation, use and maintenance of hoists, lifting appliances and lifting gear including periodical testing and examination and heat treatment, where necessary, precautions to be taken while raising or lowering loads, restrictions on carriage of persons and appointment of competent persons on hoists or other lifting appliances;
  - (f) the adequate and suitable lighting of every workplace and approach thereto, of every place where raising or lowering operations with the use of hoists, lifting appliances or lifting gears are in progress and of all openings dangerous to building workers employed;
  - (g) the precautions to be taken to prevent inhalation of dust, fumes, gases or vapours during any grinding, cleaning, spraying or manipulation of any material and steps to be taken to secure and maintain adequate ventilation of every working place or confined space;

- (h) the measures to be taken during stacking or unstacking, stowing or unstowing of materials or goods or handling in connection therewith;
- (i) the safeguarding of machinery including the fencing of every fly-wheel and every moving part of a prime mover and every part of transmission or other machinery, unless it is in such a position or of such construction as to be safe to every worker working on any of the operations and as if it were securely fenced;
- (j) the safe handling and use of plant, including tools and equipment operated by compressed air;
- (k) the precautions to be taken in case of fire;
- (l) the limits of weight to be lifted or moved by workers;
- (m) the safe transport of workers to or from any workplace by water and provision of means for rescue from drowning;
- (n) the steps to be taken to prevent danger to workers from live electric wires or apparatus including electrical machinery and tools and from overhead wires;
- (o) the keeping of safety nets, safety sheets and safety belts where the special nature or the circumstances of work render them necessary for the safety of the workers;
- (p) the standards to be complied with regard to scaffolding, ladders and stairs, lifting appliances, ropes, chains and accessories, earth moving equipments and floating operational equipments;
- (q) the precautions to be taken with regard to pile driving, concrete work, work with hot asphalt, tar or other similar things, insulation work, demolition operations, excavation, underground construction and handling materials;
- (r) the safety policy, that is to say, a policy relating to steps to be taken to ensure the safety and health of the building workers, the administrative arrangements therefor and the matters connected therewith, to be framed by the employers and contractors for the operations to be carried on in a building or other construction work;
- (s) the information to be furnished to the Bureau of Indian Standards established under the Bureau of Indian Standards Act, 1986, regarding the use of any article or process covered under that Act in a building or other construction work;
- (t) the provision and maintenance of medical facilities for building workers;
- (u) any other matter concerning the safety and health of workers working in any of the operations being carried on in a building or other construction work.

### **Framing of model rules for safety measures (Section 41)**

The Central Government may, after considering the recommendation of the expert committee constituted under section 5, frame model rules in respect of all or any of the matters specified in section 40 and where any such model rules have been framed in respect of any such matter, the appropriate Government shall, while making any rules in respect of that matter under section 40, so far as is practicable, conform to such model rules.

### **INSPECTING STAFF**

Chapter VIII of the Act consists of sections 42 and 43 providing for appointment of Director-General, Chief Inspector and Inspectors and their powers, functions and limitations.

### **Appointment of Director-General, Chief Inspector and Inspectors (Section 42)**

**Appointment of Director-General of Inspection:** The Central Government may, by notification, appoint a Gazetted Officer of that Government to be the Director-General of Inspection. He shall be responsible for laying

down the standards of inspection and shall also exercise the powers of an Inspector throughout India in relation to all the establishments for which the Central Government is the appropriate Government.

**Appointment of Chief Inspector of Inspection:** The State Government may, by notification, appoint a Gazetted Officer of that Government to be the Chief Inspector of Inspection of Building and Construction who shall be responsible for effectively carrying out the provisions of this Act in the State and shall also exercise the powers of an Inspector under this Act throughout the State in relation to establishments for which the State Government is the appropriate Government.

**Appointment of Inspectors:** The appropriate Government may, by notification, appoint such number of its officers as it thinks fit to be Inspectors for the purposes of this Act and may assign to them such local limits as it may think fit.

**Powers and function of Inspector:** Every Inspector appointed under this section shall be subject to the control of the Director-General or the Chief Inspector, as the case may be, and shall exercise his powers and perform his functions under this Act subject to general control and supervision of the Director-General or the Chief Inspector.

**Deemed public servants:** The Director-General, the Chief Inspector and every Inspector shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code 1860.

### Powers of Inspectors (Section 43)

- (1) Subject to any rules made in this behalf, an Inspector may, within the local limits for which he is appointed, –
  - (a) enter, at all reasonable hours, with such 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 building or other construction work is carried on, for the purpose of examining any register or record or notices required to be kept or exhibited by or under this Act, and require the production thereof for inspection;
  - (b) examine any person whom he finds in any such premises or place and who, he has reasonable cause to believe, is a building worker employed therein;
  - (c) require any person giving out building or other construction work to any building worker, to give any information, which is in his power to give with respect to the names and addresses of the persons to, for and whom the building or other construction work is given out or received, and with respect to the payments to be made for the building or other construction work;
  - (d) seize or take copies of such register, record of wages or notices or portions thereof as he may consider relevant in respect of an offence under this Act which he has reason to believe has been committed by the employer; and
  - (e) exercise such other powers as may be prescribed.
- (2) For the purposes of this section, the Director-General or the Chief Inspector, as the case may be, may employ experts or agencies having such qualifications and experience and on such terms and conditions as may be prescribed.
- (3) Any person required to produce any document or to give any information required by an Inspector under sub-section (1) shall be deemed to be legally bound to do so within the meaning of section 175 and section 176 of the Indian Penal Code 1860.
- (4) The provisions of the Code of Criminal Procedure, 1973, shall, so far as may be, apply to such search or seizure under sub-section (1) as they apply to any search or seizure made under the authority of a warrant issued under section 94 of the said Code.

## SPECIAL PROVISIONS

Chapter IX (Sections 44-46) contains special provisions w.r.t. responsibility of employer to ensure compliance with the provisions of the Act, payment of wages, compensation, notice of commencement of work etc.

### Responsibility of employers (Section 44)

An employer shall be responsible for providing constant and adequate supervision of any building or other construction work in his establishment as to ensure compliance with the provisions of this Act relating to safety and for taking all practical steps necessary to prevent accidents.

### Responsibility for payment of wages and compensation (Section 45)

An employer shall be responsible for payment of wages to each building worker employed by him and such wages shall be paid on or before such date as may be prescribed.

In case the contractor fails to make payment of compensation in respect of a building worker employed by him, where he is liable to make such payment when due, or makes short payment thereof, then, in the case of death or disablement of the building worker, the employer shall be liable to make payment of that compensation in full or the unpaid balance due in accordance with the provisions of the Workmen's Compensation Act, 1923 and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

### Notice of commencement of building or other construction work (Section 46)

*Notice to the jurisdictional Inspector:*

- (1) An employer shall, at least thirty days before the commencement of any building or other construction work, send or cause to be sent to the Inspector having jurisdiction in the area where the proposed building or other construction work is to be executed, a written notice containing –
  - (a) the name and situation of the place where the building or other construction work is proposed to be carried on;
  - (b) the name and address of the person who is undertaking the building or other construction work;
  - (c) the address to which communications relating to the building or other construction work may be sent;
  - (d) the nature of the work involved and the facilities, including any plant and machinery, provided;
  - (e) the arrangements for the storage of explosives, if any, to be used in the building or other construction work;
  - (f) the number of workers likely to be employed during the various stages of building or other construction work;
  - (g) the name and designation of the person who will be in overall charge of the building or other construction work at the site;
  - (h) the approximate duration of the work;
  - (i) such other matters as may be prescribed.
- (2) Where any change occurs in any of the particulars furnished under sub-section (1), the employer shall intimate the change to the Inspector within two days of such change.
- (3) Nothing contained in sub-section (1) shall apply in case of such class of building or other construction work as the appropriate Government may by notification specify to be emergent works.



## PENALTIES AND PROCEDURE

Chapter X (Sections 47-55) provides for imposition of penalties, their recovery and cognizance of offence punishable under the Act.

### Penalty for contravention of provisions regarding safety measures (Section 47)

- (1) Whoever contravenes the provisions of any rules made under section 40 shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to two thousand rupees, or with both, and in the case of a continuing contravention, with an additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction for the first such contravention.
- (2) If any person who has been convicted of any offence punishable under sub-section (1) is again guilty of an offence involving a contravention or failure of compliance of the same provision, he shall be punishable on a subsequent conviction with imprisonment for a term which may extend to six months or with fine which shall not be less than five hundred rupees but which may extend to two thousand rupees or with both.

Provided that for the purposes of this sub-section, no cognizance shall be taken of any conviction made more than two years before the commission of the offence for which the person is subsequently being convicted.

Provided further that the authority imposing the penalty, if it is satisfied that there are exceptional circumstances warranting such a course may, after recording its reasons in writing, impose a fine of less than five hundred rupees.

### Penalty for failure to give notice of the commencement of the building or other construction work (Section 48)

Where an employer fails to give notice of the commencement of the building or other construction work under section 46, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to two thousand rupees, or with both.

### Penalty for obstructions (Section 49)

- (1) Whoever obstructs an Inspector in the discharge of his duties under this Act or refuses or wilfully neglects to afford the Inspector any reasonable facility for making any inspection, examination, inquiry or investigation authorised by or under this Act in relation to an establishment shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.
- (2) Whoever wilfully refuses to produce on the demand of an Inspector any register or other document kept in pursuance of this Act or prevents or attempts to prevent or does anything which he has reason to believe is likely to prevent any person from appearing before, or being examined by, an Inspector acting in pursuance of his duties under this Act shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

### Penalty for other offences (Section 50)

- (1) Whoever contravenes any other provision of this Act or any rules made thereunder or who fails to comply with any provision of this Act or any rules made thereunder shall, where no express penalty is elsewhere provided for such contravention or failure, be punishable with fine which may extend to one thousand rupees for every such contravention or failure, as the case may be, and in the case of a continuing contravention or failure, as the case may be, with an additional fine which may extend

- to one hundred rupees for every day during which such contravention or failure continues after the conviction for the first such contravention or failure.
- (2) A penalty under sub-section (1) may be imposed –
    - (a) by the Director-General where the contravention or failure relates to a matter to which the appropriate Government is the Central Government; and
    - (b) by the Chief Inspector where the contravention or failure relates to a matter to which the appropriate Government is the State Government.
  - (3) No penalty shall be imposed unless the person concerned is given a notice in writing –
    - (a) informing him of the grounds on which it is proposed to impose a penalty; and
    - (b) giving him a reasonable opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the imposition of penalty mentioned therein, and, if he so desires, of being heard in the matter.
  - (4) Without prejudice to any other provision contained in this Act, the Director-General and the Chief Inspector shall have all the powers of a civil court under the Code of Civil Procedure, 1908, while exercising any powers under this section, in respect of the following matters, namely: –
    - (a) summoning and enforcing the attendance of witnesses;
    - (b) requiring the discovery and production of any document;
    - (c) requisitioning any public record or copy thereof from any court or office;
    - (d) receiving evidence on affidavits; and
    - (e) issuing commissions for the examination of witnesses or documents.
  - (5) Nothing contained in this section shall be construed to prevent the person concerned from being prosecuted under any other provision of this Act or any other law for any offence made punishable by this Act or by that other law, as the case may be, or for being liable under this Act or any such law to any other or higher penalty or punishment than is provided for such offence by this section.

Provided that no person shall be punished twice for the same offence.

### Appeal (Section 51)

- (1) Any person aggrieved by the imposition of any penalty under section 50 may prefer an appeal –
  - (a) where the penalty has been imposed by the Director-General, to the Central Government;
  - (b) where the penalty has been imposed by the Chief Inspector, to the State Government,
 within a period of three months from the date of communication to such person of the imposition of such penalty.
 

Provided that the Central Government or the State Government, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring an appeal within the aforesaid period of three months, allow such appeal to be preferred within a further period of three months.
- (2) The appellate authority may, after giving the appellant an opportunity of being heard, if he so desires, and after making such further inquiry, if any, as it may consider necessary, pass such order as it thinks fit confirming, modifying or reversing the order appealed against or may send back the case with such directions as it may think fit for a fresh decision.

### Recovery of penalty (Section 52)

Where any penalty imposed on any person under section 50 is not paid, –

- (i) the Director-General or, as the case may be, the Chief Inspector may deduct the amount so payable from any money owing to such person which may be under his control; or
- (ii) the Director-General or, as the case may be, the Chief Inspector may recover the amount so payable by detaining or selling the goods belonging to such person which are under his control; or
- (iii) if the amount cannot be recovered from such person in the manner provided in clause (i) or clause (ii), the Director-General or, as the case may be, the Chief Inspector may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business and the said Collector, on receipt of such certificate shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue.

### Offences by companies (Section 53)

- (1) Where an offence under this Act has been committed by 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 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.

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 had exercised all due diligence to prevent the commission of such offence.

- (2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall 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.

### Cognizance of offences (Section 54)

No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

A court shall take cognizance of any offence punishable under this Act only on a complaint –

- (a) made by, or with the previous sanction in writing of, the Director-General or the Chief Inspector; or
- (b) made by an office-bearer of a voluntary organisation registered under the Societies Registration Act, 1860; or
- (c) made by an office-bearer of any concerned trade union registered under the Trade Unions Act, 1926.

### Limitation of prosecutions (Section 55)

No court shall take cognizance of an offence punishable under this Act unless the complaint thereof is made within three months from the date on which the alleged commission of the offence came to the knowledge of the Director-General, the Chief Inspector, an office-bearer of a voluntary organisation or, as the case may be, an office-bearer of any concerned trade union.

**MISCELLANEOUS (SECTIONS 56-63)****Delegation of powers (Section 56)**

A Board may, by general or special order, delegate to the Chairperson or any other member or to the Secretary or any other officer or employee of the Board, subject to such conditions and limitations, if any, as may be specified in the order, such of its powers and duties under this Act as it may deem necessary.

**Returns (Section 57)**

Every Board shall furnish from time to time to the Central Government and to the State Government such returns as they may require.

**Application of Workmen's Compensation Act, 1923 to building workers (Section 58)**

The provisions of the Workmen's Compensation Act, 1923, shall so far as may be, apply to building workers as if the employment to which this Act applies had been included in the Second Schedule to that Act.

**Protection of action taken in good faith (Section 59)**

- (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.
- (2) No prosecution or other legal proceeding shall lie against the Government, any Board or Committees constituted under this Act or any member of such Board or any officer or employee of the Government or the Board or any other person authorised by the Government or any Board or committee, for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made or issued thereunder.

**Power of Central Government to give directions (Section 60)**

The Central Government may give directions to the Government of any State or to a Board as to the carrying into execution in that State of any of the provisions of this Act.

**Power to make rules (Section 62)**

- (1) The appropriate Government may, after consultation with the expert committee, by notification, make rules for carrying out the provisions of this Act.
- (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: –
  - (a) the number of persons to be appointed as members representing various interests on the Central Advisory Committee and the State Advisory Committees, the term of their office and other conditions of service, the procedure to be followed in the discharge of their functions and the manner of filling vacancies under sub-section (3) of section 3 or, as the case may be, under sub-section (3) of section 4;
  - (b) the fees and allowances that may be paid to the members of the expert committee for attending its meetings under sub-section (2) of section 5;
  - (c) the form of application for the registration of an establishment, the levy of fees therefor and the particulars it may contain under sub-section (2) of section 7;
  - (d) the form of certificate of registration, the time within which and the conditions subject to which such certificate may be issued under sub-section (3) of section 7;
  - (e) the form in which the change in ownership or management or other particulars shall be intimated to the registering officer under sub-section (4) of section 7;

- (f) the form in which an application for registration as a beneficiary shall be made under sub-section (2) of section 12;
- (g) the document and the fee which shall accompany the application under sub-section (3) of section 12;
- (h) the registers which the Secretary of the Board shall cause to be maintained under sub-section (6) of section 12;
- (i) the benefits which may be given under sub-section (2) of section 14;
- (j) the form in which register of beneficiaries shall be maintained under section 15;
- (k) the terms and conditions of appointment, the salaries and other allowances payable to, and the manner of filling of casual vacancies of, the Chairperson and other members of the Board under sub-section (4) of section 18;
- (l) the terms and conditions of service and the salaries and allowances payable to the Secretary and the other officers and employees of the Board under sub-section (3) of section 19;
- (m) the time and place of the meeting of the Board and the rules of procedure to be followed at such meeting under sub-section (1) of section 20 including quorum necessary for the transaction of business;
- (n) the amount payable as house building loans or advances, the terms and conditions of such payment under clause (c), educational assistance under clause (e), medical expenses payable and the persons who shall be the dependent of the beneficiaries under clause (f), and the other welfare measures for which provision may be made under clause (h), of sub-section (1) of section 22;
- (o) the limits of grants-in-aid payable to the local authorities and employers under clause (b) of sub-section (3) of section 22;
- (p) the form in which and the time within which the budget of the Board shall be prepared and forwarded to Government under section 25;
- (q) the form in which and the time within which the annual report of the Board shall be submitted to the State Government and the Central Government under section 26;
- (r) the form of annual statement of accounts under sub-section (1), and the date before which the audited copy of the accounts together with the auditor's report shall be furnished under sub-section (4) of section 27;
- (s) the matters required to be provided under sub-section (1) of section 28 and the extent up to which, and the conditions subject to which, the provisions of that sub-section shall apply to the building workers under sub-section (2) of that section;
- (t) the registers and records that shall be maintained by the employer and the form in which such registers and records shall be maintained and the particulars to be included therein under sub-section (1) of section 30;
- (u) the form and manner in which a notice shall be exhibited and the particulars it may contain under sub-section (2) of section 30;
- (v) the issue of wage books or wage slips to building workers and the manner in which entries are to be made and authenticated in wage books or wage slips under sub-section (3) of section 30;
- (w) the types of latrines and urinals required to be provided under section 33;
- (x) the first-aid facilities which are to be provided under section 36;
- (y) the canteen facilities which are to be provided under clause (a) of section 37;
- (z) the welfare measures which are to be provided under clause (b) of section 37;

- (za) the number of representatives of the employer and the building workers under sub-section (1) of section 38 and the qualifications of safety officers and the duties to be performed by them under sub-section (2) of that section;
- (zb) the form of a notice of accident, other matters to be provided in this behalf and the time within which such notice shall be given under sub-section (1) of section 39;
- (zc) the rules to be made for the safety and health of building workers under section 40;
- (zd) the powers that may be exercised by an Inspector under clause (e) of sub-section (1) of section 43 and the qualifications and experience which the experts or agencies employed under sub-section (2) of that section shall possess and the terms and conditions on which such experts or agencies may be employed;
- (ze) the date on or before which wages shall be paid to a building worker under section 45;
- (zf) the matters which are required to be prescribed under clause (i) of sub-section (1) of section 46; (zg) any other matter which is required to be, or may be, prescribed.

*In exercise of the powers conferred under sections 62 and 40 of the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996 (27 of 1996), the Central Government makes The Building And Other Construction Workers' (Regulation Of Employment And Conditions Of Service) Central Rules, 1998.*

### Applicability of the rules

They shall apply to the building or other construction work relating to any establishment in relation to which appropriate Government is the Central Government under this Act.

Where State Government is the appropriate Government, rules are framed by respective State Government under the Act.

### Saving of certain laws (Section 63)

Nothing contained in this Act shall affect the operation of any corresponding law in a State providing welfare schemes which are more beneficial to the building and other construction workers than those provided for them by or under this Act.

### Compliances by the employer under the Act

1. Every employer shall apply for registration under the Act within 60 days from the date when the Act becomes applicable to it.
2. Every employer shall enter in the identity card the details of the building or other construction work done by the beneficiary and authenticate the same and return it to the beneficiary.
3. A beneficiary may authorise his employer to deduct his contribution from his monthly wages and to remit the same, within fifteen days from such deduction, to the Board. (Sec. 16)
4. Every employer shall maintain registers and furnish returns according to the Labour Laws (Simplification of Procedure for furnishing Returns and Maintaining Registers by certain Establishments) Act, 1988.
5. Every employer shall comply provisions of the Act and rules made thereunder w.r.t. drinking water, latrines and urinals, accommodation, crèches, canteen and first aid facilities.
6. The employer shall constitute a Safety Committee if five hundred or more building workers are ordinarily employed in the establishment consisting of representatives of employers and workers in equal ratio.

7. The employer shall give notice of accident to prescribed authority which occurs in his establishment and cause death or causes such bodily injury as to make that person incapable of resuming work for at least 48 hours.
8. The employer shall follow the rules made by the Appropriate Government to give effect to the provisions of the Act.
9. The employer shall make timely payment of wages to each worker employer in his establishment.
10. The employer shall make payment for compensation according to the Workmen's Compensation Act, 1923 if contractor fails to make payment to a building worker who has died or suffered injury from accident arising out of or in the course of employment.
11. A written notice shall be sent to the jurisdictional inspector at least 30 days before commencement of construction work by the employer.

### Important note

Application of The Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988

1. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 is one of the Scheduled Act covered by The Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988.
2. Therefore, an employer in relation to any small establishment or very small establishment applies, shall furnish the returns or maintain the registers required to be furnished or maintained under The Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988.

### LESSON ROUND-UP

- The Building and Other Construction Worker's (Regulation of Employment and Conditions of Service) Act, 1996, is applicable to the establishments engaging ten or more building and other constructions workers.
- It seeks to regulate the employment and conditions of work for building and other construction workers and provides for their safety, health and other welfare measures. The establishments engaging less than ten workers are not covered under this Act.
- The Act provides for fixing hours for normal working day inclusive of one or more specified intervals; provides for a day of rest in every period of seven days and payment of work on a day of rest at the overtime rate, wages at the rate twice the ordinary rate of wages for overtime work. It also provides for adequate drinking water, latrines and urinals and accommodation for workers, crèches, first-aid, and canteens at the work site.
- The appropriate government (Central or State) is empowered to make rules for the safety and health of building workers.
- It provides for the constitution of Expert Committee to advise on matters relating to framing of rules by the appropriate government for registration of establishments, employing construction workers, appointment of registering officers, registration of building workers and issuance of their identity cards, lastly the establishment of welfare boards by the state governments.



- Section 22 of the Act describes the functions of the Board applicable to the beneficiaries. These are: to provide immediate assistance in case of accident, to pay pension to those who have completed the age of sixty years, to sanction loans and advances for construction of a house, to pay some amount in connection with premium for Group Insurance Scheme, to give financial assistance for the education of children of the beneficiaries, to meet medical expenses for treatment of major ailments of beneficiaries or dependents, to pay maternity benefit to the female beneficiaries, and to make provisions and improvement of other welfare measures as may be prescribed. Further, the Board can also grant aid, loans, and subsidies to local authorities and employers in aid of any scheme relating to the welfare of the building workers.
- There are special provisions regarding fixing responsibility of employers to ensure compliance with regard to prevention of accidents, timely payment of wages, and safety provisions, etc.

### TEST YOURSELF

*(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)*

1. Discuss the applicability of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.
2. Write a brief on constitutional validity of the Act.
3. Define (i) Appropriate Government (ii) Beneficiary (iii) Building and other Construction Work (iv) Building Worker
4. Write a brief note on constitution of Central Advisory Committee under the Act.
5. What is the effect of non-registration under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996?
6. Who shall be eligible for registration as a beneficiary under the Act?
7. "Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (BOCW) was enacted to regulate the employment and conditions of service and to provide for safety, health and welfare measures for building and other construction workers in the country". One of the welfare measure to the workers by the builders is "Accommodation". Explain the statutory provisions in this regard as per the Act.

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## SECTION IV: THE MINES ACT, 1952

### KEY CONCEPTS

■ Adult ■ Agent ■ District Magistrate ■ Employed ■ Inspector ■ Mine ■ Minerals ■ Owner ■ Relay ■ Injury

### Learning Objectives

#### To understand:

- Scheme of the Act, Rules and Regulations framed under Mines Act, 1952
- Applicability and Non-applicability of the Act
- When a worker is said to be employed in or in connection with a mine
- Appointment, powers and functions of Inspectors and Certifying surgeons
- Constitution of committees and their powers
- Duties and responsibilities of owners, agents and managers
- Provision pertaining to Health, Safety, leave hours and limitation of employment
- Penalties and procedures for contravention of the various provisions of the Act

### Lesson Outline

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|--|--|
| ➤ Introduction   | ➤ Secrecy Information Obtained                               |
| ➤ Historical Background of mining legislation in India           | ➤ Certifying Surgeons  |
| ➤ Regulations and Rules framed w.r.t. Mines Act, 1952            | ➤ Committees   |
| ➤ Scheme of the Act  | ➤ Functions of the Committee                                 |
| ➤ Applicability of the Act                                       | ➤ Powers, etc. of the Committee                              |
| ➤ Definitions  | ➤ Recovery of expenses                                       |
| ➤ When a worker said to be employed in or connection with a mine | ➤ Notice to be given of mining operations                    |
| ➤ Non-applicability of the Act                                   | ➤ Managers   |
| ➤ Reference to time of day                                       | ➤ Duties and Responsibilities of owners, agents and managers |
| ➤ Appointment of Chief Inspector and Inspectors                  | ➤ Provisions as to Health and Safety                         |
| ➤ Functions of Inspectors  | ➤ Hours and Limitation of Employment                         |
| ➤ Powers of Inspectors of Mines                                  | ➤ Leave with Wages   |
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***An Act to amend and consolidate the law relating to the Regulation of labour and safety in mines.***

## INTRODUCTION

It is accepted that mining is a hazardous profession. Just like in any other industrial accident, unsafe act and unsafe conditions of work lead to accidents in mines. Most of the accidents are preventable - they do not just happen, they are caused. Other than loss of lives or serious injuries due to mining accidents, the aspect of occupational health hazards in mining industry is critical and going to assume serious proportion with the increasing awareness.

The Mines Act, 1952 was legislated with the purpose of regulating the health and safety of laborers working in the mines. The Mines Act, 1952 came into force on 1st July, 1952. The applicability of the Act is extended to the whole of India.

The Mines Act, 1952 is the law that comprehensively and exclusively deals with health, welfare and the safety of the workers employed in mining activity. A mine has been defined as “any excavation where operation for the purpose of searching or obtaining minerals has been or is being carried on.” Hours of all employees both surface workers and underground workers are fixed at 48, and no worker is allowed to work more than 9 hours a day on the surface or eight hours a day below the surface. No person employed in a mine is allowed to work more than six days a week.

The Act has incorporated many sections which were required to ensure that the working conditions of the miners are met with the proper safety and medical guidelines apt to their work environment, whilst setting a minimum benchmark for all the activities falling under the Act.

In the mines the restrictions on employment of women and children and adolescents are even more stringent. Thus, no woman shall be employed in any mine below ground nor in any mine above ground except between the hours of 6 a.m. and 7 p.m. Moreover, every woman employed in a mine above ground shall be allowed an interval of rest of not less than eleven hours between the termination of employment on any one day and the commencement of the next period of employment. An adolescent, who is a person between the ages of fifteen and eighteen years, may, however, be permitted to work in a mine subject to certain restrictions. Thus, no adolescent shall be allowed to work in any part of a mine which is below ground unless he has completed his sixteenth year, and has been certified to be fit for working below ground by the certifying surgeon appointed under the Act.

Under the Constitution of India, safety, welfare and health of persons employed in all mines - coal, oil and metalliferous - all over the country, are the concern of the Central Government. The matter is regulated by the Mines Act, 1952 which is administered by the Directorate General of Mines Safety (DGMS for short), a Scientific and Technological Organisation under the Union Ministry of Labour. In so far as the oil mines are concerned, the jurisdiction of the Mines Act, 1952 extends upto the limits of territorial waters but does not extend to the continental shelf, exclusive economic zones and other maritime zones.

## HISTORICAL BACKGROUND OF MINING LEGISLATION IN INDIA

Mining is not a new phenomenon; neither the need for law regulating mining is new. There has been laws guiding and regulating mining activities since 19th century. The first proposal for regulation of mining in India came in 1890, which was introduced by Lord Cross, who at that time was the Secretary of State of India, later in 1894 for the first time Inspector of Mines was appointed for the purpose of management and supervision.

In the year 1901, first Mine Act enacted in India which was only applicable to the mines situated in British India and it was accompanied with establishment of “Bureau of Mines Inspection” in Kolkata. Since then Mine Act has been re-enacted in 1923, 1928 and 1935. In the year 1952, Mine Act was now applicable throughout India. The Mines Act 1952, come into force on 01 July 1952. Since then the Mine Act has been guiding and regulating the mining activity in India, though the Act is open to necessary amendment and it has been amended from time to time. It has also been witnessed that every state is guided by different state mining laws, as every state differs from one another. The Mines Act, 1952 consolidated the previous laws and bring it into tune with the provisions of the Factories Act, 1948.

### Regulations framed w.r.t. Mines Act,1952 are as under:

The Mines Act is an Act of Parliament. It is a structural frame of law containing the national objectives on the aspects of mines safety, health and welfare of persons employed in mines. The Act empowers the Central Government to make Regulations and Rules elaborating the objectives of the Act under various enabling provisions. A list of the subordinate legislation under the Mines Act administered by DGMS are –

- Coal Mines Regulations, 1957
- Metalliferous Mines Regulations, 1961
- Oil Mines Regulations, 1984
- Mines Rules, 1955
- Mines Vocational Training Rules, 1966
- Mines Rescue Rules, 1985
- Mines Creche Rules, 1966

### Rules framed w.r.t. Mines Act,1952 are as under:

- The Mines Rescue Rules, 1985:
  - (i) *Object of the rules:* To provide for rescue of work persons in the event of explosion, fire etc.
  - (ii) *Applicability of the rules:* These rules apply to coal and metalliferous underground mines.
- **The Mines Vocational Training Rules, 1966**  
*Object of the rules:* To equip the mine workers, in all types of mines, to recognise and deal with hazards.
- **The Mines Rules, 1955**  
*Object of the rules:* Elaboration of Welfare, Health and Medical Surveillance, Worker's Participation in Safety Management in respect of coal, metalliferous and oil mines.
- **The Mines Creche Rules, 1966 and The Coal Mines Pit Head Bath Rules, 1959**  
*Object of the rules:* To provide respectively for shelter to children of female employees in all mines and bathing facilities for workers employed in coal mines.

### Scheme of the Act

Mines Act, 1952 consists of 88 sections divided into 10 chapters as follows:

- (i) Chapter 1- Applicability of the Act and Definitions (Sec 1-4)
- (ii) Chapter 2- Inspectors and Certifying Surgeons (Sec 5-11)
- (iii) Chapter 3-Committees (Sec 12-15)
- (iv) Chapter 4-Mines Management (Sec 16-18)
- (v) Chapter 5- Health and Safety (Sec 19-27)
- (vi) Chapter 6- Employment (Sec 28-48)
- (vii) Chapter 7- Leave and Wages (Sec 49-56)
- (viii) Chapter 8- Regulations, Rules and Bye Laws (Sec 57-62)
- (ix) Chapter 9 –Penalties and Procedures (Sec 63-81)
- (x) Chapter 10- Miscellaneous (Sec. 82-88)

### Applicability of the Act

The Act is applicable to whole of India (Section 1).

This Act shall also apply to mines belonging to the Government (Section 85).

### Definitions

#### “Adult”

Adult means a person who has completed his eighteenth year. {Section 2(1)(b)}

#### “Agent”

Agent when used in relation to a mine, means every person, whether appointed as such or not, who, acting or purporting to act on behalf of the owner, takes part in the management, control, supervision or direction of the mine or of any part thereof. {Section 2(1)(c)}

#### “Day”

Day means a period of twenty-four hours beginning at mid-night; {Section 2(1)(f)}

#### “District Magistrate”

District Magistrate means, in a presidency-town, the person appointed by the Central Government to perform the duties of a district magistrate under this Act in that town; {Section 2(1)(g)}

#### “Employed”

A person is said to be “employed” in a mine who works as the manager or who works under appointment by the owner, agent or manager of the mine or with knowledge of the manager, whether for wages or not:

- (i) in any mining operation (including the concomitant operations of handing and transport of minerals up to the point of despatch and of gathering sand and transport thereof to the mine)
- (ii) in operations or services relating to the development of the mine including construction of plant therein but excluding construction of buildings, roads, wells and any building work not directly connected with any existing or future mining operations:
- (iii) in operating, servicing, maintaining or repairing any part or any machinery used in or about the mine;
- (iv) in operations, within the premises of the mine of loading for despatch of minerals;
- (v) in any office of the mine:
- (vi) in any welfare, health, sanitary or conservancy services required to be provided under this Act, or watch and ward, within the premises of the mine excluding residential area; or
- (vii) in any kind of work whatsoever which is preparatory or incidental to, or connected with mining operations.

{Section 2(1)(h)}

#### “Inspector”

Inspector means an Inspector of Mines appointed under this Act, and includes a district magistrate when exercising any power or performing any duty of an Inspector which is empowered by this Act to exercise or perform.

{Section 2(1)(i)}

**“Mine”**

Mine means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on and includes -

- (i) all borings, bore holes, oil wells and accessory crude conditioning plants, including the pipe conveying mineral oil within the oilfields;
- (ii) all shafts, in or adjacent to and belonging to a mine, where in the course of being sunk or not;
- (iii) all levels and inclined planes in the course of being driven;
- (iv) all opencast workings;
- (v) all conveyors or aerial ropeways provided for the bringing into or removal from a mine of minerals or other articles or for the removal of refuse therefrom;
- (vi) all adits, levels, planes, machinery works, railways, tramways and sidings in or adjacent to and belonging to a mine;
- (vii) all protective works being carried out in or adjacent to a mine;
- (viii) all workshop and store situated within the precincts of a mine and the same management and used primarily for the purposes connected with that mine or a number of mines under the same management;
- (ix) all power stations, transformer sub-stations converter stations : rectifier stations and accumulator storage stations for supplying electricity solely or mainly for the purpose of working the mine or a number of mines under the same management;
- (x) any premises for the time being used for depositing sand or other material for use in a mine or for depositing refuse from a mine or in which any operations in connection with such and refuse or other material is being carried on, being premises exclusively occupied by the owner of the mine:
- (xi) any premises in or adjacent to and belonging to a mine or which any process ancillary to the getting, dressing or operation for sale of minerals or of coke is being carried on.

{Section 2(1)(j)}

All power stations, convertor stations, rectifier stations, etc. used for supplying electricity (**D.L.F. Power Ltd v. UOI, AIR 2002 Jhar.**) are also being covered under the ambit of mining.

Whether any excavation is a mine depends on the mode in which it is worked not on the substance obtained from it. **Certain-teeed Products Cor. v. Comly, 1939 WY 7)**

In **Bandhan Mukti Morcha and others vs. UOI, 1984, SC**. The Supreme Court held that the stone quarries in the instant case were held to be ‘mines’ within the meaning of Section 2 (j) of the Mines Act, 1952, since they are excavations where operations for the purpose of searching for or obtaining stone by quarrying are being carried on but they are not ‘open cast working’ since admittedly excavations in these stone quarries extend below superjacent ground.

The aforesaid definition of mine is very wide. It includes every kind of operation. [**Tarkeshwar a Dar Doss Dey, (1979) 3 SCC 106.**] It also include a quarry. [**Rani Umeshwari v Member Board of Revenue, (1967) 1 SCA 413.**]

The limited nature of the definition of ‘mine’ in the Mines Act was explained in the case of **Serajuddin and Co. v. Workmen (1962) ILLJ 450 SC**, where it was pointed out by the Court that ‘mine’ in Section 2(j) of the Mines Act clearly excluded an office of a mine which was separately defined by Section 2(k) as meaning an office at the surface of the mine concerned. The office of the mine, even though situated on the surface of the mine, did not fall within the definition of ‘mine’.

**“Minerals”**

**Minerals means all substances which can be obtained from the earth**

- (i) by mining, digging, drilling, dredging, hydraulic, quarrying, or
- (ii) by any other operation and
- (iii) includes mineral oils (which in turn include natural gas and petroleum)

{Section 2(1)(jj)}

***Ichchapur Industrial Co-Operative Society Ltd. Vs. The Competent Authority, Oil & Natural Gas Commission & Anr [1996] INSC 1643 (19 December 1996).*** It was held that the definition would indicate that “Minerals” as substances which can be obtained from the earth by employing different technical devices indicate in the definition, namely, “mining, digging, drilling, dredging, hydraulic, quarrying”. These words are followed by the words “by any other operation”. On account of the vicinity of these words with the previous words, namely, mining, digging, drilling etc., they have to be understood in the same sense and, therefore, if “Minerals” are obtained from earth “by any other operation” such operation should be an operation akin to the device or operation involved in mining, digging, drilling etc. Another significant feature of the definition is the use of words “substances which can be obtained from the earth” which indicate that the “Minerals need not necessarily be embodied in the earth or lie deep beneath the surface of the earth. They may be available either on the surface of the earth or down below. If the “Mineral” is available on the surface, the operation which would be obviously employed would be dredging, quarrying or hydraulic or any other similar operation. The definition, therefore, is very wide in terms but in spite of its wide connotation, every substance which can be obtained earth would not be a “Mineral”.

In Mineralogy, water is treated, on account of its chemical composition, a mineral. If, therefore, it falls within the definition of “Mineral” as set out in this Act, it should not surprise anyone, not even the common man, as it is a substance which can also be obtained by a process of drilling and notwithstanding that it is available in plenty and everywhere, it is to be treated more valuable than any other “Mineral.”

**“Office of the Mine”**

Office of the mine means any office at the surface of the mine concerned; {Section 2(1)(k)}

**“Open cast working”**

Open cast working means a quarry, that is to say an excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on, not being a shaft or an excavation which extends below superjacent ground. {Section 2(1)(kk)}

**“Owner”**

Owner when used,

- (i) in relation to a mine, means
  - any person who is the immediate proprietor or lessee or occupier of the mine or of any part thereof and
- (ii) in the case of a mine the business whereof is being carried on by liquidator or receiver, such liquidator or receiver.

***But does not include a person***

- who merely receives a royalty rent or fine from the mine, subject to any lease grant or licence for the working thereof, or
- who is merely the owner of the soil and not interested in the minerals of the mine;

But any contractor or sub-lessee for the working of a mine or any part thereof shall be subject to this Act in like manner as if he were an owner, but not so as to exempt the owner from any liability.

{Section 2(1)(l)}



**Bharat Coking Coal Ltd. Vs. Madanlal Agrawal, 1996 IXAD (SC) 415:** It was observed that the definition of an 'owner' which also includes a lessee or an occupier apart from the immediate proprietor.

**In Industrial Supplies Pvt. Ltd. and anr. Vs. Union of India (Uoi) and ors., AIR 1980 SC 1858,** it was observed by the Court that "From the very collocation of the words 'immediate proprietor, or lessee or occupier of the mine', it is abundantly clear that only a person whose occupation is of the same character, that is, occupation by a proprietor or a lessee-by way of possession on his behalf and not on behalf of somebody else is meant by the word 'occupier' in the definition. Thus, a trespasser in wrongful possession to the exclusion of the rightful Owner would be an occupier of the mine, and so be an 'owner' for the purpose of the Act."

#### **"Relay/ Shift"**

Where work of the same kind is carried out by two or more sets of persons working during different periods of the day each of such sets is called a "relay" (and each of such periods is called a "shift"). **[Section 2(1)(p)]**

#### **"Reportable Injury"**

Reportable Injury means any injury other than a serious bodily injury which involves, or in all probability will involve, the enforced absence of the injured persons from work for a period of seventy-two hours or more.

**{Section 2(1)(pp)}**

#### **"Serious Bodily Injury"**

Serious Bodily Injury means any injury which involves; or in probability will involve

- the permanent loss of any part or section of a body or
- the permanent loss of the use of any part or section of a body, or
- the permanent loss of or injury to the sight or hearing or
- any permanent physical incapacity or the fracture of any bone or one or more joints or bones of any phalanges of hand or foot.

**{Section 2(1)(q)}**

#### **When is a worker said to be employed in or in connection with a mine?**

According to sub-section (2) Section 2, a person working or employed or employed in or in connection with a mine is said to be working or employed –

- (a) "below ground" if he is working or employed –
  - (i) in a shaft which has been or is in the course of being sunk; or
  - (ii) in any excavation which extends below superjacent ground; and
- (b) "above ground"
  - If he is working in open cast working or any other manner not specified in clause (a).

#### **Non-applicability of the Act**

Section 3 of the Act states that the provision of the Act except sections 7,8, 9, 40,45 and 46 shall not apply to the following mines –

- Where any mine or part thereof in which excavation is being made for prospecting purposes only and not for the purpose of obtaining minerals for use or sale provided it satisfies the following conditions:
  - (i) not more than twenty persons are employed on any one day in connection with any such excavation;

- (ii) the depth of the excavation measured from its highest to its lowest point nowhere exceeds six, metres or, in the case of an excavation for coal fifteen metres; and
- (iii) no part of such excavation extends below superjacent ground.

**{Section 3(1)(a)}**

- Where any mine engaged in the extraction of kankar, murrum laterite, boulder, gravel, shingle, ordinary sand (excluding moulding sand, glass sand and other mineral sands), ordinary clay (excluding kaolin, china clay, white clay or fire clay), building stone, slate, road metal, earthy fullers earth, marl chalk and lime stone, such mine is eligible for exemption if it satisfies the following conditions:
  - (i) the working do not extend below superjacent ground: or
  - (ii) where it is an open cast working –
    - (a) the depth of the excavation measured from its highest to its lowest point nowhere exceeds six metres;
    - (b) the number of persons employed on any one day does not exceed fifty; and
    - (c) explosives are not used in connection with the excavation. {Section 3(1)(b)}

According to the plain meaning, the exclusionary clause in sub-section (1) of Section 3 of the Act read with the two provisos beneath clauses (a) and (b) the word “and” at the end of para (b) of sub clause (ii) of the proviso to clause (a) of Section 3 (1) must in which it appears, be construed as “or”, and if so construed, the existence of any one of the three conditions stipulated in paras (a), (b) and (c) would at once attract the proviso to clause (a) and (b) of subsection (1) of Section 3 and thereby make the mine subject to the provisions of the Act. The High Court overlooked the fact that the word “and” used at the end of clause (b) had to be read disjunctively. That construction of ours is in keeping with the legislative intent manifested by the scheme of the Act which is primarily meant for ensuring the safety of workmen employed in the mines.

**Reference to time of day**

Section 4 of the Act states that for the purpose of this Act, reference to time of day are reference to Indian standard time, being five and a half hours ahead of Green which mean time. The Central Government may make rules for any area where Indian standard time is not ordinarily observed,—

- specifying the area;
- defining the local mean time ordinarily observed therein; and
- permitting such time to be observed in all or any of the mines situated in the area.

*Bandhan Mukti Morch and Others vs. UOI*, It was held that since the workings of these stone quarries extend below the superjacent ground and they are not ‘open case workings’ and moreover, explosives are admittedly used in connection with the excavation, the conditions set out in the proviso to Section 3 (1) are not fulfilled and hence, exclusion to the provisions of the Mines Act, 1952 is not attracted and all the provisions of the said Act apply to stone quarries.

**INSPECTORS AND CERTIFYING SURGEONS**

Appointment, powers and functions of Inspectors and Certifying surgeons are governed by Chapter II (Section 5-11) of the Act.

**(i) Appointment of Chief Inspector and Inspector (Section 5)**

**Appointing authority:** Section 5 of the Act empowers the Central Government to appoint the person possessing the prescribed qualifications to be Chief Inspector for all the territories to which this Act extends and such persons as possess the prescribed qualifications to be Inspectors of Mines subordinate to the Chief Inspector.

**Who cannot be appointed or continue as Chief Inspector or Inspector:** Any person, who is or becomes directly or indirectly interested in any mine or mining rights in India, shall not be appointed to be Chief Inspector or an Inspector, or having been appointed shall not continue to hold such office.

**Exercise of powers by the District Magistrate:** The District Magistrate may exercise the powers and perform the duties of an Inspector subject to the general or special orders of the Central Government. But a District Magistrate cannot exercise any of the Powers conferred by section 22 or section 22A or section 61.

**Deemed Public Servant:** The Chief Inspector and all Inspectors shall be deemed to be public servant within the meaning of the Indian Penal Code.

## (ii) Functions of Inspectors

Section 6 of the Act enumerates the following functions of Inspectors:

- (i) **Exercise power of Chief Inspector-** The Chief Inspector may, with the approval of the Central Government and subject to such restrictions or conditions as he may think fit to impose, by order in writing, authorise any Inspector named or any class of Inspectors specified in the order to exercise such of the powers of the Chief Inspector under this Act, as he may specify. But powers relating to appeals, under the Act, can be exercised by the Chief Inspector only.
- (ii) **Curtailement of powers of Inspectors:** The Chief Inspector may by order in writing, prohibit or restrict the exercise by any Inspector named or any class of Inspectors specified in the order of any power conferred on Inspectors under this Act.
- (iii) **Local jurisdiction of Inspectors:** Subject to the other provisions contained in this section, the Chief Inspector shall declare the local area or areas within which or the group or class of mines with respect to which Inspector shall exercise their respective powers.

## Powers of Inspectors of Mines

- (1) **Power of examination and Enquiry:** In order to ascertain whether the provisions of this Act and of the regulations, rules and bye-laws and of any orders made there under are observed in the case of any mine, Section 7 of the Act authorizes Chief Inspectors and Inspectors:
  - (a) make such examination and inquiry as he thinks fit;
  - (b) with such assistants, if any, as he thinks fit, inspect and examine any mine or any part thereof at any time by day or night,
 

This power of conducting examination and enquiry shall not be exercised in such a manner as unreasonably to impede or obstruct the working of mine.
  - (c) examine into, and make inquiry w.r.t.
    - the state and condition of any mine, or any part thereof,
    - the ventilation of the mine,
    - the sufficiency of the bye-laws for the time being in force relating to the mine and
    - all matters and things connected with or relating to the health, safety and welfare of the persons employed in the mine.

The Chief Inspector or Inspector can also take whether on the precincts of the mine or elsewhere statements of any person which he may consider necessary for carrying out the purpose of this Act; But they cannot compel any person to answer any question or make any statement tending to incriminate himself.

- (d) exercise such other powers as may be prescribed by regulation made by the Central Government in this behalf.

- (2) **Power of search and seizure:** The Chief Inspector and any Inspector may, if he has reason to believe as a result of any inspection examination or inquiry under this section, that an offence under this Act has been or is being committed, search any place and take possession of any material or any plane section register other records appertaining to the mine. They shall adhere to the provisions of the Code of Criminal Procedure 1973, so far as may be applicable, while conducting any search or seizure made under this Act as to apply to any search or seizure made under the authority of a warrant issued under section 94 of the code.

### **Powers of special officers to enter, measure, etc.**

Section 8 of the Act empower the Chief Inspector or an Inspector to authorise duly any person in the service of Government in this behalf by a special order in writing, for the purpose of surveying, leveling or measuring any mine; or any output therefrom. Such authorized person shall give at least three days' notice to the manager of such mine and then enter the mine and may survey, level or measure, the mine or any part thereof or any output therefrom at any time by day or night.

Provided that, where in the opinion of the Chief Inspector or of an Inspector an emergency exists, he may by order in writing, authorise any such person to enter the mine for any of the aforesaid purpose without giving any such notice.

### **Facilities to be afforded to inspectors**

Section 9 of the Act provides for that every owner, agent and manager of a mine shall afford the Chief Inspector and every Inspector and every person authorised under section 8 all reasonable facilities for making any entry, Inspection; survey, measurement, examination or inquiry under this Act.

*Section 9A of the Act states provisions for facilities to be provided for occupational health survey as follows:*

The Chief Inspector or an Inspector or other officer authorised by him in writing in this behalf, may undertake safety and occupational health survey in a mine at any time during the normal working hours of the mine or at any time by day or night as may be necessary. He shall give minimum three day's advance notice in writing to the manager of the mines.

The owner, agent or manager of the mine shall afford all necessary facilities (including facilities for the examination and testing of plant and machinery for the collection of samples and other data pertaining to the survey and for the transport and examination of any persons employed in the mine chosen for the survey) to such Inspector or officer.

Every person employed in a mine who is chosen for such examination shall present himself for such examination and at such place as may be necessary and shall furnish all information regarding his work and health in connection with the said survey. The time spent by any person employed in a mine who is chosen for examination in the safety and occupational health survey, shall be counted towards his working time, so however that any overtime shall be paid at the ordinary rate of wages.

**Explanation:** Here "ordinary rate of wages" means the basic wages plus any dearness allowance and underground allowance and compensation in case including such compensation, if any accruing through the free issue of foodgrains and edible oils as persons employed in a mine may, for the time being, be entitled to, but does not include a bonus (other than a bonus given as incentive for production) or any compensation accruing through the provision of amenities such as free housing, free supply of coal, medical and educational facilities, sickness allowance, supply of kerosen oil baskets, tools and uniforms.

If on such examination any person is found medically unfit to discharge the duty which he was discharging in a mine immediately before such presentation, he shall be entitled to undergo medical treatment at the cost of the owner, agent and manager with full wages during the period of such treatment.

If the person, even after such medical treatment, is declared medically unfit to discharge the duty which he was discharging in a mine immediately before absenting himself from the said examination and such unfitness is

directly describable to his employment in the mine before such presentation, the owner, agent and manager shall provide such person with an alternative employment in the mine for which he is medically fit. If no such alternative employment is immediately available, such person shall be paid by the owner, agent and manager disability allowance determined in accordance with the rates prescribed in this behalf. Where such person decides to leave his employment in the mine, he shall be paid by the owner, agent and manager a lump sum amount by way of disability compensation determined in accordance with the rates prescribed in this behalf. The rates for the said purpose shall be determined having regard to the monthly wages of the employees, the nature of disabilities and other related factors.

### Secrecy information obtained

Section 10 provides for the mandatory duty of maintaining confidentiality of any information or records procured during inspection or survey under this Chapter. It states that all copies of, and extracts from registers or other record appertaining to any mine and all other information acquired by the Chief Inspector or an Inspector or by any one assisting him, in the course of the inspection or survey of any mine under this Act or acquired by any person authorised under section 8 or section 9A in the exercise of his duties thereunder, shall be regarded as confidential and shall not be disclosed to any person or authority. However, disclosure can be made only if the Chief Inspector or the Inspector considers disclosure necessary to ensure the health, safety or welfare of any person employed in the mine or any other mine adjacent thereof.

But this clause of maintaining confidentiality is not applicable to the disclosure of any such information (if so required) to –

- (a) any court;
- (b) a Committee or court of inquiry constituted or appointed under section 12 or section 24, as the case may be;
- (c) an official supervisor or the owner, agent or manager of the concerned mine;
- (d) a Commissioner for workmen's compensation appointed under the Workmen's Compensation Act, 1923;
- (e) the Controller Indian Bureau of Mines;
- (f) any registered or recognised trade union;
- (g) such other officer, authority and organisation as may be specified in this behalf by the Central Government.

If the Chief Inspector, or an Inspector or any other person as stated above discloses contrary to the provisions of this section, any such information as aforesaid without the consent of the Central Government, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

No court shall proceed to the trial of any offence under this section except with the previous sanction of the General Government.

### Certifying Surgeons

Section 11 of the Act authorize the Central Government to appoint qualified medical practitioners to be certifying surgeons for the purpose of this Act within such local limits or for such mine or class or description of mines as it may assign to them respectively.

A certifying surgeon can also authorise any qualified medical practitioner to exercise all or any of his powers under this Act for prescribed period subject to the approval and conditions prescribed by the Central Government and references to a certifying surgeon shall be deemed to include references to any qualified medical practitioner when so authorised.

No person shall be appointed to be or authorised to exercise the powers of certifying surgeon, or, having been so appointed or authorised, continue to exercise such powers, who is or becomes the owner, agent or manager

of a mine, or is or becomes directly or indirectly interested therein, or in any process or business carried on therein or in any patent or machinery connected therewith, or is otherwise in the employment of the mine.

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

- the examination of persons engaged in a mine in such dangerous occupations or processes as may be prescribed;
- the exercise of such medical supervision as may be prescribed for any mine or class or description of mines wherecases of illness have occurred which it is reasonable to believe are due to the nature of any process carried on or other conditions of work prevailing in the mine.

In ***Banwarilal Agarwal v. State of Bihar (AIR 1961, S.C. 849)***, the Supreme Court held that the provision under the Mines Act, 1952, before framing regulations was mandatory and failure to consult the Mining Boards (Constituted under Section 12 of the Act) invalidated the regulations.

## COMMITTEES

Constitution of committees, their powers etc. are dealt by Chapter III of the Act containing sections 12-15.

### Committees

Section 12 imposes a duty on the Central Government to constitute a Committee for the purposes of this Act w.e.f. such date as it may specify by notification in the Official Gazette. The Committee shall consist of -

- a person in the service of the Government, not being the Chief Inspector or an Inspector, appointed by the Central Government to as Chairman;
- the Chief Inspector of mines;
- two persons to represent the interests of miners appointed by the Central Government; (at least one person shall be for representing the interests of workers in coal mines);
- two persons to represent the interests of owners of mines appointed by the Central Government;(at least one person so appointed shall be for representing the interests of owners of coal mines);
- two qualified mining engineers not directly employed in the mining industry, appointed by Central Government.

In addition to mandatory constitution of Committee, the Central Government may constitute one or more Committees to deal with specific matters relating to any part of the territories to which this Act extends or to a mine or a group of mines and may appoint members thereof and the provisions w.r.t. composition of Committee as stated above shall apply for the constitution of any Committee. However, the requirement of having at least one person for representing the interests of workers in coal mines and at least one person so appointed among owners to be for representing the interests of owners of coal mines, will not be applicable for such Committees.

Existence of any vacancy among its members or any defect in the constitution of the Committee shall not invalidate any act or proceeding of a Committee.

### Functions of the committee

According to section 13 of the Act, the Committee constituted by the Central Government under the mandatory provisions of section 12 shall perform the following functions:

- (a) consider proposal for making rules and regulations under this Act and make appropriate recommendations to the Central Government;
- (b) enquiry into such accidents or other matters as may be referred to it by the Central Government from time to time and make reports thereon; and

- (c) subject to the provisions of such-section(2), hear and decide any appeals or objections against notices or orders under this Act or the regulations, rules or bye-laws thereunder as are required to be referred to it by this Act or as may be prescribed.

The Chief Inspector shall not take part in the proceedings of the Committee with respect to any appeal or objection against an order on notice made or issued by him or act in relation to any matter pertaining to such appeal or objection as a member of the Committee.

### **Powers, etc. of the Committees**

Section 14 of the Act provides for the following powers of any Committee under section 12 :

- (i) It can exercise such of the powers of an Inspector under this Act as it thinks necessary or expedient to exercise for the purposes of discharging its functions under this Act.
- (ii) For the purposes of discharge its functions, it shall have the same powers as are vested in a court under the Code of Civil Procedure, 1908 when trying a suit in respect of the following matters, namely :-
- (a) discovery and inspections;
  - (b) enforcing the attendance of any person and examining him on oath;
  - (c) compelling the production of documents; and
  - (d) such other matters as may be prescribed.

### **Recovery of expenses**

Section 15 provides for who shall bear the expenses of any inquiry conducted by a committee constituted under section 12. It states that the Central Government may direct that such expenses shall be borne in whole or in part by the owner or agent of the mine concerned. The owner or his agent has to pay the amount within six weeks from the date of receiving the notice from the Central Government or the Chief Inspector of Mines. If the owner or his agent does not pay within such time, then on application by the Chief Inspector or an Inspector to a magistrate having jurisdiction at the place where the mine is situated or where such owner or agent is for the time being resident, the amount so directed to be paid may be recovered by the distress and sale of any movable property within the limits of the magistrates jurisdiction belonging to such owner or agent.

## **MINING OPERATIONS AND MANAGEMENT OF MINES**

Chapter IV containing sections 16-18 makes provisions for notice, appointment of managers etc.

### **Notice to be given of mining operations**

Section 16 provides for mandatory obligation of the owner, agent or manager of a mine to give notice in writing to the following authorities before the commencement of any mining operation to

- the Chief Inspector,
- the Controller,
- Indian Bureau of Mines and
- the District Magistrate of the district in which the mine is situated.

The notice shall be in such form and contain such particulars relating to the mine, as may be prescribed and the notice shall reach the persons concerned at least one month before the commencement of any mining operation.



## Managers

Save as may be otherwise prescribed, section 17 makes it mandatory for the owner or agent of every mine to appoint a person having prescribed qualifications to be the manager of the mine and every mine shall be under a sole manager. The owner or agent may appoint himself as manager if he possesses the prescribed qualifications. The responsibility of the sole manager is subject to any instruction given to him by or on behalf of the owner or agent of the mine. The manager shall be responsible for the overall management, control, supervision and direction of the mine subject to such instructions given by the owner or agent which shall be confirmed in writing forthwith. Except in case of an emergency, the owner or agent of a mine or anyone on his behalf shall not give otherwise than through the manager, instructions affecting the fulfilment of his statutory duties, to a persons, employed in a mine, who is responsible to the manager.

## Duties and responsibilities of owners, agents and managers

Section 18 provides for the duties and responsibilities of owners, agents and managers as follows:

- (1) The owner and agent of every mine shall each be responsible for making financial and other provisions and for taking such other steps as may be necessary for compliance with the provisions of this Act and the regulations, rules, bye-laws and orders made thereunder.
- (2) The responsibility in respect of matters provided for in the rules made under clauses (d), (e) and (p) of section 58 shall be exclusively carried out by the owner and agent of the mine and by such person (other than the manager) whom the owner or agent may appoint for securing compliance with the aforesaid provisions.
- (3) If the carrying out of any instructions given directly or given otherwise than through the manager under section 17 results in the contravention of the provisions of this Act or of the regulations, rules, bye-laws or orders made thereunder, every person giving such instructions shall also be liable for the contravention of the provision concerned.
- (4) Subject to the provisions of sub-sections (1), (2) and (3) the owner, agent and manager of every mine shall each be responsible to see that all operations carried on in connection with the mine are conducted in accordance with the provisions of this Act and of the regulations, rules, bye-laws and orders made thereunder.
- (5) If any person whosoever contravenes any of the provisions of this Act or of the regulations; rules, bye-laws or orders made thereunder except those which specifically require any person to do any act or thing, or prohibit any person from doing an act or thing, besides the person who contravenes, each of the following persons shall also be deemed to be guilty of such contravention unless he proves that he had used due diligence to secure compliance with the provisions and had taken reasonable means to prevent such contravention:
  - (i) the official or officials appointed to perform duties of supervision in respect of the provisions contravened;
  - (ii) the manager of the mine;
  - (iii) the owner and agent of the mine;
  - (iv) the person appointed, if any, to carry out the responsibility under sub-section (2).

It is provided that any of the persons aforesaid may not be proceeded against if it appears on enquiry and investigation that he is not prima facie liable.

- (6) However the owner or agent of a mine cannot take defence in any proceedings brought against them under this section that the manager and other official have been appointed in accordance with the provisions of this Act or that a person to carry the responsibility under sub-section (2) has been appointed.

## PROVISIONS RELATED TO HEALTH AND SAFETY

Chapter V (Section 19 to 27) provides for mandatory provisions w.r.t. drinking water, medical aid, notice of accident etc. There are some other sections which provide penalty for contravention of provisions of this Chapter.

In *Bandhua Mukti Morcha versus Union of India AIR 1984 SC 802*, it was held by Supreme Court that State of Haryana in which the stone quarries are vested by reason of Haryana Minerals (Vesting of Rights) Act, 1973, and which is therefore owners of the mines cannot while giving its mines for stone quarrying operations, permit workmen to be denied benefit of various social welfare and labour laws enacted with a view to enable them to live a life of human dignity.

### Drinking water

In every mine effective arrangement shall be made to provide and maintain at suitable points conveniently situated a sufficient supply of coal and wholesome drinking water for all persons employed therein.

In case of persons employed below ground the Chief Inspector may, in lieu of drinking water being provided and maintained at suitable points, permit any other effective arrangements to be made for such supply.

All such points shall be legibly marked 'DRINKING WATER' in a language understood by a majority of the persons employed in the mine and no such point shall be situated within six metres of any washing place, urinal or latrine, unless a shorter distances is approved in writing by the Chief Inspector.

The Central Government is further empowered to make rules in respect of all mines or any class or description of mines for securing compliance w.r.t. the above provisions of supplying drinking water and for the examination by prescribed authorities of the supply and distribution of drinking water.

### Conservancy

Section 20 makes it mandatory to provide sufficient number of latrines and urinals of prescribed types separately for males and females in every mine, so situated as to be convenient and accessible to persons employed in the mine at all times. All latrines and urinals so provided shall be adequately lighted, ventilated and at all times maintained in a clean and sanitary condition.

The Central Government is further empowered to specify the number of latrines and urinals to be provided in any mine, in proportion to the number of males and females employed in the mine and provide for such other matters in respect of sanitation in mines (including the obligations in this regard of persons employed in the mine) as it may consider necessary in the interests of the health of the persons employed.

### Medical appliance

Section 21 deals with medical facilities to be mandatorily provided and maintained in every mine. It states that there shall be provided and maintained such number of first-aid boxes or cupboards equipped with such contents as may be prescribed in every mine and they shall be readily accessible during all working hours. Such first-aid box or cupboard or room shall not contain anything except the prescribed contents.

Every first-aid box or cupboard shall be kept in the charge of a responsible person who is trained in such first-aid treatment as may be prescribed and who shall always be readily available during the working hours of the mine.

Every mine shall have readily available such arrangements as may be prescribed for the conveyance to hospitals or dispensaries of persons who, while employed in the mine suffer bodily injury or become ill.

In every mine wherein more than one hundred and fifty persons are employed, there shall be provided and maintained a first-aid room of such size with such equipment and in the charge of such medical and nursing staff as may be prescribed.

In ***Bandhua Mukti Morcha versus Union of India AIR 1984 SC 802***, the Apex Court issued directions to the Central government, the government of Haryana and various authorities as:

- The Central Government and State Government will immediately ensure that mine lessees and stone crusher owners start supplying pure drinking water to the workmen on a scale of at least 2 litres for every workmen at conveniently accessible points, in clean and hygienic conditions. In case of default, action to be taken against defaulter.
- The mine owners and stone crusher owners are to obtain water from unpolluted sources and transport it by tankers to the work site with sufficient frequency so as to keep the vessels filled up for supply of clean drinking water for workmen.
- The State Government must ensure that conservancy facilities in the shape of latrines and urinals in accordance with the Section 20 of the Mines Act 1952 and Rules 33 to 36 of the Mines Rules, 1955 were to be provided at the latest by 15th February 1984.
- To ensure that appropriate and adequate medical and first aid facilities are provided to workmen as required by Section 21 of the Mines Act 1952 and Rules 40 to 45-A of the Mines Rules 1955.
- To ensure that every workmen who is required to carry out blasting with explosives is trained under the Mines Vocational Training Rules, 1966 and also holds first aid qualifications and carries a first aid outfit while on duty.
- To ensure that the mine lessees and owners of stone crushers provide proper and adequate medical treatment to the workmen and their families free of cost.

**Powers of Inspectors when causes of danger not expressly provided against exist or when employment of persons is dangerous**

Section 22 of the Act bestows powers upon the Chief Inspector or an Inspector to give notice in writing to the owner, agent or manager of the mine to remedy the matter, thing or practice that appears to be dangerous or defective to them.

If, in respect of any matter for which no express provision is made by or under this Act, it appears to the Chief Inspector or an Inspector that any mine or part thereof or any matter, thing or practice in or connected with the mine, or with the control, supervision, management or defective so as to threaten, or tend to, the bodily injury of any person, he may give notice, in writing thereof to the owner, agent or manager of the mine and shall state in the notice the particulars in respect of which he considers the mine or part thereof or the matter, thing or practice to be dangerous or defective and require the same to be remedied within such time and in such manner as he may specify in the notice.

Where the owner, agent or manager of a mine fails to comply with the terms of the notice so given within the period specified therein, the Chief Inspector or the Inspector, as the case may be, may by order in writing, prohibit the employment in or about the mine or any part thereof any person whose employment is not in his opinion reasonably necessary for securing compliance with the terms of the notice.

In addition to this, the Chief Inspector or the Inspector as the case may be, give an order in writing addressed to the owner, agent or manager of a mine and thereby, prohibit the extraction or reduction of pillars or blocks of minerals in any mine or part thereof, if,

- (i) in his opinion such operation is likely to cause the crushing of pillars or blocks of minerals or the premature collapse of any part of the working or otherwise endanger the mine or the life or safety of persons employed therein or
- (ii) if, in his opinion, adequate provision against the outbreak of fire or flooding has not been made by providing for the sealing off and isolation of the part of the mine in which such operation is contemplated and for restricting the area that might be affected by fire or flooding.

If the Chief Inspector, or an Inspector authorised in this behalf by general or special order in writing by the Chief Inspector, is of opinion that there is urgent and immediate danger to the life or safety of any person employed in any mine or part thereof, he may, by order in writing containing a statement of the grounds of his opinion, prohibit, until he is satisfied that the danger is removed the employment in or about the mine or any part thereof of any person whose employment is not in his opinion reasonably necessary for the purpose of removing the danger.

Every person whose employment is so prohibited shall be entitled to payment of full wages for the period for which he would have been, but for the prohibition in employment and the owner agent or manager shall be liable for payment of such full wages of that person. Instead of paying full wages, the owner, agent or manager may provide such person with an alternative employment at the same wages which such person was receiving in the employment which was prohibited.

**Appeal to the Chief Inspector:** In pursuance of notice so given or an order so made by an Inspector under the above stated provisions, the owner, agent or manager of the mine may appeal against the same to the Chief Inspector within ten days after the receipt of the notice or order. The Chief Inspector may confirm, modify or cancel the notice or order.

**Report to the Central Government:** The Chief Inspector or the Inspector sending a notice or making an order in accordance with the above provisions and the Chief Inspector making an order in appeal (other than an order of cancellation in appeal) shall forthwith report the same to the Central Government.

**Objections to be sent to the Central Government:** If the owner, agent or manager of the mine objects to a notice sent by the Chief Inspector or to an order made by the Chief Inspector as stated above, he may, within twenty days after the receipt of the notice containing the requisition or of the order or after the date of the decision on appeal, as the case may be, send his objection in writing stating the grounds thereof to the Central Government which shall, ordinarily within a period of two months from the date of receipt of the objection, refer the same to a Committee. Every such notice or order to which objection is made to the Central Government shall be complied with, pending the receipt at the mine of the decision of the Committee.

Provided that the Committee may, on the application of the owner, agent or manager, suspend the operation of a notice so given pending its decision on the objection.

Nothing in this section shall affect the powers of a magistrate under section 144 of the Code of Criminal procedure 1896. Act V of 1898).

### Power to prohibit employment in certain cases

According to section 22A of the Act, where in respect of any matter relating to safety for which express provision is made by or under this Act, the owner, agent or manager of mine fails to comply with such provisions, the Chief Inspector may give notice in writing requiring the same to be complied with within such time as he, may specify in the notice or within such extended period of time as he may, from time to time, specify thereafter.

Where the owner, agent or manager fails to comply with the terms of the notice so given) within the period specified in such notice or, as the case may be, within the extended period of time as may be specified, the Chief Inspector may, by order in writing, prohibit the employment in or about the mine or any part thereof of any person whose employment is not, in his opinion reasonably necessary for securing compliance with the terms of the notice.

Every person, whose employment is so prohibited, shall be entitled to payment of full wages for the period for which he would have been, but for the prohibition, in employment, and the owner, agent or manager shall be liable for payment of such full wages of that person. However, the owner, agent or manager may, instead of paying such full wages, provide such person with an alternative employment at the same wages which such person was receiving in the employment which was so prohibited.

The provisions of section 22 relating to report to the Central Government, Objections to be sent to Central Government shall apply as it is to the notice or order given under this section.

### Penalty for contravention of section 22 and section 22A

Whoever continues to work in a mine in contravention of any order issued under section 22 or section 22A shall be punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine which may extend to five thousand rupees.

Provided that in the absence of special and adequate reasons to the contrary to be recorded in writing in the judgment of the court, such fine shall not be less than two thousand rupees.

### Special provision provides for contravention of law with dangerous results

Section 72C of the Act that whoever contravenes any provision of the Act or of regulation, rule or bye-law or of any order made under section 22 or under section 22A shall be punishable -

- (a) If such contravention results in loss of life, with imprisonment which may extend to two years, or with fine which may extend to five thousand rupees, or with both, or
- (b) If such contravention results in serious bodily injury with imprisonment which may extend to one year, or with fine which may extend to three thousand rupees, or with both; or
- (c) If such contravention otherwise causes injury or danger to persons employed in the mine or other persons in or about the mine, with imprisonment which may extend to three months or with fine which may extend to one thousand rupees, or with both.

Provided that in the absence of special and adequate reasons to the contrary to be recorded in writing in the judgement of the court, such fine, in the case of a contravention referred to in clause (a), shall not be less than three thousand rupees.

- (2) Where a person having been convicted under this section is again convicted thereunder, shall be punishable with double the punishment provided by sub-section (1).
- (3) Any court imposing or confirming in appeal, revision or otherwise a sentence of fine passed under this section may, when passing judgement, order the whole or any part of the fine recovered to be paid as compensation to the person injured or, in the case of his death, to his legal representative;

Provided that if the fine is imposed in a case which is subject to appeal no such payment shall be made before the period allowed for presenting the appeal has elapsed of, if an appeal has been presented, before the decision of the appeal.

### Notice to be given of accidents

Section 23 imposes an obligation upon the owner, agent or manager of the mine to give notice to prescribed authority in such form and within such time as may be prescribed, if any of the following event occurs in or about a mine:-

- (a) an accident causing loss of life or serious bodily injury, or
- (b) an explosion, ignition, spontaneous heating, outbreak of fire or irruption or inrush of water or other liquid matter, or
- (c) an influx of inflammable or noxious gases, or
- (d) a breakage of ropes, chains or other gear by which persons or materials are lowered or raised in a shaft or an incline, or
- (e) an overwinding of cages of other means of conveyance in any shaft while persons or materials are being lowered or raised, or
- (f) a premature collapse of any part of the workings, or
- (g) any other accident which may be prescribed,

Upon the occurrence of any of the above accident, the owner, agent or manager of the mine shall also simultaneously paste one copy of the notice on a special notice-board in the prescribed manner at a place where it may be inspected by trade union officials, and shall ensure that the notice is kept on the board for not less than fourteen days from the date of such posting.

Where a notice so given relates to an accident causing loss of life, the authority shall make an inquiry into the occurrence within two months of the receipt of the notice and, if the authority is not the Inspector, he shall cause the Inspector to make an inquiry within the said period.

Sub-section (1) of section 70 of the Act provides that anyone who fails to give notice of any accidental occurrence or to post a copy of the notice on the special notice board referred above and to keep in there for the period specified shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupee or with both.

Whenever there occurs in or about a mine an accident causing loss of life or serious bodily injury to any person, the place of accident shall not be disturbed or altered before the arrival or without the consent of the Chief Inspector or the Inspector to whom notice of the accident is required to be given under this section, unless such disturbances or alteration is necessary

- to prevent any further accident,
- to remove bodies of the deceases; or
- to rescue any person from danger, or
- unless discontinuance of work at the place of accident would seriously impede the working of the mine.

However, work may be resumed at the place of the accident if the Chief Inspector or the said Inspector fails to inspect the place of accident within seventy-two hours of the time of the accident.

Whenever there occurs in about a mine an accident causing reportable injury to any person, the owner, agent or manager of the mine shall enter in a register such occurrence in the prescribed form and copies of such entries shall be furnished to the Chief Inspector once in quarter.

The Central Government may, by notification in the Official Gazette, direct that accidents other than those specified in this section which cause bodily injury resulting in the enforced absence from work of the person injured for a period exceeding twenty-four hours shall be entered in a register in the prescribed form or shall be subject to the provision of this section. A copy of the entries in the register so made shall be sent by the owner, agent or manager of the mine, on or before the 20th day of January in the year following that to which the entries relate to the Chief Inspector.

Sub-section (2) of section 70 of the Act provides that anyone who contravenes the direction made by the Central Government and fails to record in the prescribed register to give notice of any accidental occurrence shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to three months or with fine which may extend to five hundred rupees, or with both.

### **Power of Government to appoint court of enquiry in cases of accidents**

According to section 24, when any accident of the nature referred to in any of the clauses of sub-section(1) of sections 23 occurs in or about a mine, the Central Government may if it is of opinion that a formal inquiry into the causes of and circumstances attending the accident ought to be held, appoint a competent person to hold such inquiry and may also appoint one or more persons possessing legal or special knowledge to act as assessor or assessors in holding the inquiry.

The person appointed to hold such an inquiry shall have all the powers of a civil court under the Code of Civil Procedure 1908 for the purpose of enforcing the attendance of witnesses and compelling the production of documents and material objects.

Any person holding an inquiry under this section may exercise such of the powers of an Inspector under this Act as he may think it necessary or expedient to exercise for the purposes of the inquiry.

The person holding an inquiry under this section shall make a report to the Central Government stating the causes of the accident and its circumstances, and adding any observations which he or any of the assessors may think fit to make.

### Notice of certain diseases

According to section 25, where any person employed in a mine contracts any disease notified by the Central Government in the official Gazette as a disease connected with mining operations the owner, agent or manager of the mine, as the case may be, shall send notice thereof to the Chief Inspector and to such other authorities in such form and within such time as may be prescribed.

If any medical practitioner attends on a person who is or has been employed in a mine and who is or is believed by the medical practitioner to be suffering from any disease so notified, the medical practitioner shall without delay send a report in writing to the Chief Inspector stating --

- (a) the name and address of the patient.
- (b) The disease from which the patient is or is believed to be suffering, and
- (c) The name and address of the mine in which the patient is or was last employed.

Where such report is confirmed to the satisfaction of the Chief Inspector by the certificate of a certifying surgeon or otherwise that the person is suffering from a notified disease, the Chief Inspector shall pay to the medical practitioner such fee as may be prescribed, and the fee so paid shall be recoverable as an arrear of land revenue from the owner, agent or manager of the mine in which the person contracted the disease.

If any medical practitioner fails to comply with the provisions of this section, he shall be punishable with fine which may extend to fifty rupees.

### Power to direct investigation of causes of diseases

Section 26 of the Act provides that the Central Government may, if it considers it expedient to do so, appoint a competent person to inquire into and report it on any case where a disease notified under section 25 has been or suspected to have been contracted in a mine, and may also appoint one or more persons possessing legal or special knowledge to act as assessors in such inquiry.

The provisions of section 24 relating to inquiry shall apply to an inquiry under this section in the same manner as they apply to any inquiry under that section.

### Publication of reports

Section 27 authorise the Central Government to cause any report submitted by a Committee under section 12 or any report or extracts from report submitted to it under section 26, and shall cause every report submitted by a Court of Inquiry under section 14 to be published at such time and in such manner as it may think fit.

## HOURS AND LIMITATION OF EMPLOYMENT

Chapter VI provides for weekly day of rest, compensatory days of rest, maximum hours of work above and below ground, night shift, overtime wages, notice regarding hours of work, special provisions for women etc. in sections 28 to 48.

### Weekly day of rest

Section 28 that any person shall not be allowed to work in a mine for more than six days in any one week.



### Compensatory days of rest

Section 29 (1) states that where in pursuance of action under section 38 or as a result of exempting any mine or the persons employed therein from the provisions of section 28, any person employed therein deprived of any of the weekly days of rest for which provision is made in section 28, he shall be allowed, within the month in which such days of rest was due to him or within the two months immediately following that month, compensatory days of rest equal in number to the days of rest of which he has been deprived.

The Central Government may prescribe the manner in which the days of rest for which provision is made in sub-section (1) shall be allowed.

### Hours of work above ground

According to section 30, no adult employed above ground in a mine shall be required or allowed to work for more than forty-eight hours in any week or for more than nine hours in any day. The daily maximum hours specified to this sub-section may exceed in order to facilitate the change of shifts after obtaining the previous approval of the Chief Inspector.

The periods or work of any such adult shall be so arranged that along with his interval for rest, they shall not in any day spread over more than twelve hours, and that he shall not work for more than five hours continuously before he has had an interval for rest of at least half an hour. However, the Chief Inspector may, for reasons to be recorded in writing and subject to such conditions as he may deem fit to impose, permit the spread over to extend over a period not exceeding fourteen hours in any day.

Persons belonging to two or more shifts shall not be allowed to do work of the same kind above ground at the same time and for this purpose, persons shall not be deemed to belong to separate shifts by reason only of the fact that they receive their intervals for rest at different times.

### Hours of work below grounds

Section 31 stipulates that no person employed below ground in a mine shall be allowed to work for more than forty-eight hours in any week or for more than eight hours in any day. But the daily maximum hours so specified may be exceeded in order to facilitate the change of shifts with the previous approval of the Chief Inspector.

No work shall be carried on below ground in any mine except by a system of Shifts so arranged that the period of work for each shifts is not spread-over more than the daily maximum hours stipulated above.

No person employed in a mine shall be allowed to be present in any part of a mine below ground except during the periods of work shown in respect of him in the register maintained under sub-section (4) of section 48.

### Night shifts

Section 32 makes provisions w.r.t. night shift of the workers employed in a mine or part thereof. Where a person employed in a mine works on a shift which extends beyond midnight –

- (a) for the purposes of sections 28 and 29, a weekly day of rest shall mean in his case a period of twenty-four consecutive hours beginning when his shift ends.
- (b) the following day for him shall be deemed to be the period of twenty four hours beginning when such shifts ends, and the hours he has worked after midnight shall be counted in the previous day.

### Extra wages for overtime

Section 33 states that where in a mine, a person works above ground for more than nine hours in any day or works below ground for more than eight hours in any day or works for more than forty-eight hours in any week whether above ground or below ground, he shall in respect of such overtime work be entitled to wages at the rate of twice his ordinary rate of wages, the period of overtime work being calculated on a daily basis or weekly basis whichever is more favourable to him.

Where any person employed in a mine is paid on piece rate basis, the time-rate shall be taken as equivalent to the daily average of his full-time earning for the days on which he actually worked during the week immediately preceeding the week in which overtime work has been done, exclusive of any overtime, and such time-rate shall be deemed to be the ordinary rate of wages of such person. But if such person has not worked in the preceeding week on the same or identical job, the time rate shall be based on the average for the day he had worked in the same week excluding the overtime or on the daily average of his earnings in any preceding week whichever is higher.

*Explanation* - For the purpose of this section. "ordinary rate of wages" shall have the same meaning as in the Explanation to sub-section (3) of section 8A."

The Central Government may prescribed the register to be maintained in a mine for the purpose of securing compliance with provisions of this section.

### **Prohibition of employment of certain persons**

Section 34 that no person shall be required or allowed to work in a mine if he has already been working in any other mine within the preceding twelve hours.

### **Limitation of daily hours of work including over-time work**

According to section 35, any person employed in a mine shall not be required or allowed to work in the mine for more than ten hours in any day inclusive of overtime except in respect of cases falling within clause (a) and clause (e) of section 39.

### **Notices regarding hours of work**

Pursuant to the provisions of section 36, the manager of every mine shall cause to be posted outside the office of the mine a notice in the prescribed form:

- the time of the commencement and the time of end of work at the mine and,
- if it is proposed to work by a system of relays, the time of the commencement and of the end of work for each relay.

In the case of a mine at which mining operations commence after the commencement of this Act, the said notice shall be posted at least seven days before the commencement of work.

Such notice shall also state the time of the commencement and of the intervals for rest for persons employed above ground and a copy thereof shall be sent to the Chief Inspector, if he so requires.

Where it is proposed to make any alteration in the time fixed for the commencement or for the end of work in the mine generally or for any relay or in the rest intervals fixed for persons employed above ground, an amended notice in the prescribed form shall be posted outside the office of the mine not less than seven days before the change is made, and a copy of such notice shall be sent to the Chief Inspector not less than seven days before such change.

Every person shall work in a mine only in accordance with the notice required by this section.

### **Supervising staff**

Section 37 states that nothing in section 28, section 30, section 31, section 34 or sub-section (5) of section 6 shall apply to persons who may by rules be defined to be persons holding positions of supervision or management or employed in a confidential capacity.

### **Exemption from provisions regarding employment**

According to section 38, in case of an emergency involving serious risk to the safety of the mine or of persons employed therein or in case of an accident, where actual or apprehended, or in case of any act of God or in

case of any urgent work to be done to machinery, plant or equipment of the mine as the result of break-down of such machinery, plant or equipment, the manager may, subject to the provisions of section 22 and section 22A and in accordance with the rules under section 39, permit persons to be employed in contravention of section 28, section 30, section 31, section 34 or sub-section(5) of section 36, work as may be necessary to protect the safety of the mine or of the persons employed therein.

Provided that in case of any urgent work to be done to machinery, plant or equipment under this section, the manager may take the action permitted by this section, although the production of mineral would thereby be incidentally affected, but any action so taken shall not exceed the limits necessary for the purpose of avoiding serious interference with the ordinary working of the mine.

Every case in which action has been taken by the manager as stated above shall be recorded together with the circumstances relating thereto and a report thereof shall also be made to the Chief Inspector or the Inspector.

### Power to make exempting rules

According to section 39, the Central Government may make rules providing for the exemption to such extent, in such circumstances and subject to such conditions as may be specified from (5) the provisions of sections 28, 30, 31, 34 or sub-section 50 of section 36 -

- (a) of all or any of the persons employed in a mine, where an emergency involving serious risk to the safety of the mine or of the persons employed therein is apprehended;
- (b) of all or any of the persons so employed in case of an accident, actual or apprehended.
- (c) of all or any of the persons engaged in work of a preparatory or complementary nature, which must necessarily be carried on for the purpose of avoiding serious interference with the ordinary working of the mine.
- (d) of all or any of the persons engaged in urgent repairs and
- (e) of all or any of the persons employed in any work, which for technical reasons must be carried on continuously.

### Employment of persons below eighteen years of age

The *minimum age of employment has been stipulated to be eighteen years of age in Section 40 of the Mines Act, 1952*. The Mine (Amendment) Act, 1983 prohibits employment of any person below eighteen years of age in any mine or part thereof.

However, Apprentices and other trainees, not below sixteen years of age, may be allowed to work, under proper supervision, in a mine or part thereof by the manager. But prior approval of the Chief Inspector or an Inspector shall be obtained before allowing trainees, other than apprentices, to work.

*Explanation* - In this section and in section 43, "apprentice" means an apprentice as defined in clause (a) of section 2 of the Apprentices Act, 1961.

### Power to require medical examination

According to section 43, where an Inspector is of opinion that any person employed in a mine otherwise than as apprentice or other trainee is not an adult or that any person employed in a mine as an apprentice or other trainee is either below sixteen years of age or is no longer fit to work, the Inspector may serve on the manager of the mine a notice requiring that such person shall be examined by a certifying surgeon and such person shall be examined by a certifying surgeon and such person shall not, if the Inspector so directs, be employed or permitted to work in any mine until this has been so examined and has been certified that he is an adult or, if such person is an apprentice or trainee that he is not below sixteen years of age and is fit to work.

Every certificate granted by a certifying surgeon on a reference under sub-section(1), shall, for the purpose of this Act, be conclusive evidence of the matters referred therein.

### **Prohibition of the presence of persons below eighteen years of age in a mine**

According to section 45, subject to the provisions of sub-section (2) of section 40, after such date as the Central Government may by notification in the official Gazette, appoint in this behalf, no person below eighteen years of age shall be allowed to be present in any part of a mine above ground where any operation connected with or incidental to any mining operation is being carried on.

### **Employment of women**

Section 46 of the Mines Act prohibits women from working in part of the mine which is below the ground and also, further, there is a fixed time range within which women are allowed to be on the premises of the mine for working, which is anytime between 6 A.M. to 7 P.M. for any day. This is an overriding section over any other law for the time being in force. At least an interval of eleven hours shall be given to every woman employed in a mine above ground between the termination of employment on any one day and the commencement of the next period of employment.

However irrespective of above provisions, the Central Government may, by notification in the official Gazette, vary the hours of employment above ground of women in respect of any mine or class or description of mine, so however that no employment of any woman between the hours 10 am and 5 am is permitted thereby.

This particular section is constitutionally protected by virtue of the Article 15(3) and Article 19(6) of the Constitution of India. According to these article of the constitution, the state can make reasonable restrictions and special provisions for women and children, and therefore be keeping in mind that women and children are the most vulnerable and the most exploited sections of the workforce, the work time restrictions imposed upon women by virtue of this section is justified.

### **Register of persons employed**

According to section 48, for every mine there shall be kept in the prescribed form and place register of all persons employed in the mine showing in respect of each such person –

- (a) the name of the employee with the name of his father or, of her husband, as the case may be, and such other particulars may be necessary for purpose of identification,
- (b) the age and sex of the employee;
- (c) the nature of employment (whether above ground or below ground, and if above ground, whether in opencast working or otherwise) and date of commencement thereof;
- (e) Such other particulars as may be prescribed, and the relevant entries shall be authenticated by the signature or the thumb impression of the person concerned,

The entries in the register shall be such that workers working in accordance there with would not be working in contravention of any of the provisions of this Chapter.

A person can be employed in a mine until the particulars required under this section have been recorded in the register in respect of such person and no person shall be employed except during the period of work shown in respect of him in register.

For every mine other than a mine which for any special reason to be recorded, is exempted by the Central Government by general or special order, there shall be kept in the prescribed form and place separate registers showing in respect of each person employed in the mine:-

- (a) below ground
- (b) above ground in opencast workings, and

- (c) above ground in other cases :-
- (i) the name of the employees;
  - (ii) the class or kind of his employment
  - (iii) where work is carried on by a system of relays, the shift to which he belongs and the hours of the shift.

The register of persons employed below ground referred above shall show at any moment the name of every person who is then present below ground in the mine.

No person shall enter any opencast working or any working below ground unless he has been permitted by the manager or is authorised under this Act or any other law to do so.

## LEAVE WITH WAGES

Chapter VII (Section 49 to 56) contains provisions w.r.t. Leave, annual leave wages, wages during leave period, power of Central Government to exempt wages.

### Application of Chapter VII

Section 49 of the Act provides that the provisions of this Chapter shall not operate to the prejudice of any right to which a person employed in a mine may be entitled under any other law or under the terms of any award, agreement or contract of service. But if such award, agreement or contract of service, provides for a longer annual leave with wages than that provided in this Chapter, the quantum of leave, which the person employed shall be entitled to, shall be in accordance with such award, agreement or contract of service but leave shall be regulated in accordance with the provisions of section 50 to 56 (both inclusive) with respect of matters not provided for in such award, agreement or contract of service.”

### Definition of Leave

Section 50 states that for the purposes of this Chapter, leave shall not include weekly days of rest or holidays or festivals or other similar occasions whether occurring during or at either end of the period.

### Calendar year defined

Section 51 defines calendar year for the purpose of this Chapter to mean the period of twelve months beginning with the first day of January in any year.

### Annual leave wages

Section 52 provides for annual leave wages of person employed in a mine.

Every person employed in a mine who has completed a calendar years' service therein shall be allowed, during the subsequent calendar year leave with wages, calculated –

- (a) in the case of a person employed below ground, at the rate of one day for every fifteen days of work performed by him, and
- (b) in any other case, at the rate of one day for every twenty days of work performed by him. {Section 52(1)}

A calendar years' service referred to in this section shall be deemed to have been completed:-

- (a) in the case of a person employed below ground in a mine, if he has during the calendar year put in not less than one hundred and ninety attendances at the mine; and
- (b) in the case of any other person, if he has during the calendar year put in not less than two hundred and forty attendances at the mine.

*Explanation* – For the purpose of completion of calendar's year service, following shall be deemed to be the days on which the employee has worked in mine for the purpose of computation of the attendances but he shall not earn leave for these days:

- (a) any days of lay-off by agreement or contract or as permissible under the standing order:
- (b) in the case of a female employee, maternity leave for any number of days not exceeding twelve weeks; and
- (c) the leave earned in the year prior to that in which the leave is enjoyed.

A person whose service commences otherwise than on the first day of January shall be entitled to leave with wages in the subsequent calendar year at the rates specified above, if –

- (a) in the case of a person employed below ground in a mine, he has put in attendances for not less than one half of the total number of days during the remainder of the calendar year: and
- (b) in any other case, he has put in attendances for not less than two-thirds of the total number of days during the remainder of the calendar year.

Any leave not taken by a person to which he is entitled in any one calendar year under sub-section(1) or sub-section(3) shall be added to the leave to be allowed to him under sub-section(1) during the succeeding calendar year subject to the condition that the total number of days of leave which may be accumulated by any such person shall not at any one time exceed thirty days in all. It is further provided that any such person who has applied for leave with wages but has not been given such leave in accordance with sub-section(6) shall be entitled to carry forward the unavailed leave without any limit. {Section 52(4)}

Any such person may apply in writing to the manager of the mine not less than fifteen days before the day on which he wishes his leave to begin, for all leave or any portion thereof then allowable to him under sub-section (1), (3) and (4). However, the number of times in which leave may be taken during any one calendar year shall not exceed three.

An application for such leave made in accordance with sub-section (5) shall not be refused unless the authority empowered to grant the leave is of opinion that owing to the exigencies of the situation the leave should be refused.

If a person employed in a mine wants to avail himself of the leave with wages due to him to cover a period of illness he shall be granted such leave even if the application for leave is not made within the time specified in sub-section (5).

If the employment of a person employed in a mine is terminated by the owner, agent or manager of the mine before he has taken the entire leave to which he is entitled up to the day of termination of his employment, or if such person having applied for and having not been granted such leave, quits his employment before he has taken the leave, the owner, agent or manager of the mine shall pay him the amount payable under section 53 in respect of the leave not taken and such payment shall be made where the employment of the person is terminated by the owner, agent or manager, before the expiry of the second working day after such termination, and where a person himself quits his employment, on or before the next pay day.

The unavailed leave of a person employed in mine shall not be taken into consideration in computing the period of any notice required to be given before the termination of his employment.

Where the person employed in a mine is discharged or dismissed from service or quits his employment or is superannuated or dies while in service, he or his heirs or wages in lieu of leave due to him calculated at the rate specified in sub-section (1), if-

- (a) in the case of a person employed below ground in a mine, he has put in attendance for not less than one-half of the total number of days from the date of his employment to the date of his discharge or dismissal or quitting of employment or superannuation or death, and

- (b) in any other case, he has put in attendance for not less than two thirds of the total number of days from the date of his employment to the date of his discharge or dismissal or quitting of employment of superannuation or death, and payment of such wages shall be made by the owner, agent or manager of the mine at the rate specified in section 53, where the person is discharged or dismissed from service or quits employment or is superannuated, before the expiry of the second working day after such discharge dismissal, quitting of employment or superannuation, as the case may be and where the person employed dies while in service within a period of two months of his death.”

**Explanation** – For the purpose of sub-section (1), and (10), any fraction of leave of half day or more, half a day shall be omitted.

### Wages during leave period

Section 53 deals with the wages to be paid during leave period.

For the leave allowed to a person employed in a mine under section 52, he shall be paid at a rate equal to the daily average of his total full-time earnings for the days on which he was employed during the month immediately preceding his leave, exclusive of any overtime wages and bonus but inclusive of any dearness allowance and compensation in cash including such compensation, if any accruing through the free issue of foodgrains and other articles as persons employed in the mine may, for the time being, be entitled to.

If no such average earning are available, then the average shall be computed on the basis of the daily average of the total full time earnings of all persons similarly employed for the same months.

### Payment in advance in certain cases

Section 54 allows advance payment to a person employed in a mine who has been allowed leave for not less than four days. Such person shall be paid the wages due for the period of the leave allowed even before his leave begins.

### Mode of recovery of unpaid wages

According to section 55, any sum required to be paid by the owner, agent or manager of a mine under this Chapter but not paid by him shall be recoverable as delayed wages under the provisions of the payment of Wages Act. 1936.

### Power to exempt mines

Section 56 provides that where the Central Government is satisfied that the leave rules applicable to persons employed in any mine provide benefits which in its opinion are not less favourable than those provided for in this Chapter it may, by order in writing and subject to such conditions as may be specified therein exempt the mine from all or any of the provisions of the Chapter.

## REGULATIONS, RULES AND BYE-LAWS

Chapter VIII (Section 57 to 62) contains provisions of power of Central Government to make regulations, rules, posting of abstract from Act and regulations etc.

### Power of Central Government to make regulations

Section 57 of the Act provides that the Central Government may, by notification in the official Gazette make regulations consistent with this Act for all or any of the following purposes, namely:

- (a) for prescribing the qualifications required for appointment as Chief Inspector or Inspector;
- (b) for prescribing and regulating the duties and powers of the Chief Inspector and of Inspectors in regard to the inspection of mines under this Act;



- (c) for prescribing the duties of owners, agents and managers of mines and persons acting under them and for prescribing the qualifications (including age) of agents and managers of mines and of persons acting under them;
- (d) for requiring facilities to be provided for enabling managers of mines and other persons acting under them to efficiently discharge their duties;
- (e) for regulating the manager of ascertaining, by examination or otherwise, the qualification of managers of mines and persons acting under them and the granting and renewal of certificates of competency;
- (f) for fixing the fees, if any, to be paid in respect of such examinations and of the grant and renewal of such certificates;
- (g) For determining the circumstances in which and the conditions in respect to which it shall be lawful for more mines than one to be under a single manager, or for any mine or mines to be under a manager not having the prescribed qualifications;
- (h) For providing for inquiries to be made under this including any inquiry relating to misconduct or incompetence on the part of any person holding a certificate under this Act and for the suspension or cancellation of any such certificate and for providing where ever necessary, that the person appointed to hold an inquiry shall have all the powers of a civil court under the Code of Civil Procedure 1908 for the purpose of enforcing the attendance of witnesses and compelling the production of documents and material objects;
- (i) For regulating, subject to the provisions of the Indian Explosives Act, 1884, and of any rules made thereunder, the storage, conveyance and use of explosive;
- (j) For prohibiting, restricting or regulating the employment of women in mines or in any class of mines of on particular kind of labour which are attended by danger to the life, safety, or health of such persons and for limiting the weight of any single load that may be carried by any such person;
- (k) For providing for the safety of the persons employed in a mine, their means of entrance thereinto and exit therefrom the number of shafts or outlets to be furnished; and the fencing of shafts, pits, outlets, pathway and subsidences;
- (l) For prohibiting the employment in a mine either as manager or in any other specified capacity of any person except persons paid by the owner of the mine and directly answerable to the owner or manager of the mine;
- (m) For providing for the safety of the roads and working places in mines, including the siting; maintenance and extraction or reduction of pillars or blocks of minerals and the maintenance of sufficient barriers between mine and mine;
- (n) For the inspection of workings and sealed off fire-areas in a mine, and for the restriction of workings in the vicinity of the sea or any lake or river or any other body of surface water, whether natural or artificial, or of any public road or building and for requiring due precaution to be taken against the irruption or inrush of water or other matter into, outbreak of fire in or premature collapse of any workings;
- (o) For providing for the ventilation of mines and the action to be taken in respect of dust fire, and inflammable and noxious gases, including precautions against spontaneous combustion, under ground fire and coal dust;
- (p) For regulating subject to the provisions of the Indian Electricity Act, 1910 and of any rules made thereunder, the generation, storage, transformation transmission and use of electricity in mines and for providing for the care and the regulation of the use of all electrical apparatus and electrical cables in mines and of all other machinery and plant therein.

- (q) For regulating the use of machinery in mines, for providing for the safety of persons employed on or near such machinery and on haulage roads and for restricting the use of certain classes of locomotives underground;
- (r) For providing for proper lighting of mines and regulating the use of safety lamps therein and for the search of persons entering a mine in which safety lamps are in use;
- (s) For providing against explosions or ignitions of inflammable gas or dust or irruption or accumulations of water in mines and against danger arising therefrom and for prohibiting restricting or regulating the extraction of minerals in circumstances likely to result in the premature collapse of workings or to result in or to aggravate collapse of workings or irruption of water or ignitions in mines;
- (t) For prescribing under clause(g) of sub-section(1) of section 2, the types of accidents and for prescribing the notices of accidents and dangerous occurrences and the notices reports and returns of mineral output; persons employed and other matters provided for by regulations to be furnished by owners, agents and managers of mines, and for prescribing the forms of such notices, returns and reports, the persons and authorities to whom they are to be furnished the particulars to be contained in them and the time within which they are to be submitted;
- (u) For requiring owners, agents and managers of mines to have fixed boundaries for the mine, for prescribing the plans and sections and field notes connected therewith to be kept by them and the manager and places in which such plans, section and field notes are to be kept for purposes of record for the submission of copies thereof to the Chief Inspector; and for requiring making of fresh surveys and plans by them and in the event of non-compliance, for having the survey made and plans prepared through and other agency and for the recovery of expenses thereof in the same manner as an arrear of land revenue;
- (v) For regulating the procedure on the occurrence of accidents or accidental explosions or ignitions in or about mines for dealing effectively with the situation.
- (w) For prescribing the form of, and the particulars to be contained in the notice to be given by the owner, agent or manager of a mine under section 16;
- (x) For prescribing the notice to be given by the owner, agent or manager of mining before mining operations are commenced at or extended to any point within forty-five metres of any railway subject to the provisions of the Indian Railways Act, 1890, (IX of 1890) of any public roads or other works, as the case may be which are maintained by the Government or any local authority.
- (y) For the protection from injury, in respect of any mine when the workings are discontinued, property vested in the Government or any local authority or railway company as defined in the Indian Railways Act, 1890.
- (yy) for requiring protective works to be constructed by the owner, agent or manager or a mine before the mine is closed, and in the event of non-compliance, for getting such works executed by any other agency, and for recovering the expenses, thereof from such owner in the same manner as an arrear of land revenue;
- (z) for providing for the appointment of Courts of Inquiry under quarry, incline, shaft pit or outlet, whether the same is being worked or not or any dangerous or prohibited area, subsidence haulage, tramline or pathway, where such fencing is necessary for the protection of the public; and
- (zz) any other matter which has to be or may be prescribed Section 72A of the Act provides for that whoever contravenes any provision of any regulation or of any bye-law or of any order made thereunder, relating to matters specified in clauses (d), (i), (m), (n), (o), (p), (r), (s), and (u) of section 57 shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.

### Power of Central Government to make rules

Section 58 lists out the powers of the Central Government to make rules to carry out the provisions of the Act. The Central Government may, by notification in the official Gazette, make rule consistent with this Act for all or any of the following purposes, namely –

- (a) for providing the term of office and other conditions of service of and the manner of filling vacancies among, the members of a Committee and for regulating the procedure to be followed by a Committee for transacting its business;
- (b) For prescribing the form of the register referred to in sub-section (3) of section 23;
- (c) For providing for the appointment of Courts of Inquiry under section 24, for regulating the procedure and powers of such Courts for the payment of travelling allowance to the members, and for the recovery of the expenses of such courts including any other expenses connected with the inquiry in the same manner as an area of land revenue from the manager, owner or agent of the mine concerned;
- (cc) for providing the inspection of mines to be carried out on behalf of the persons employed therein by a technical expert (not less than an overman in status) the facilities therefore, the frequency at which and the manner in which such inspections are to be carried out and the manner in which reports of such inspections are to be made;
- (d) for requiring the maintenance of the mines wherein any women employed or were employed on any day of the preceding twelve months of suitable rooms to be reserved for the use of children under the age of six years belonging to such women, and for prescribing, either generally or with particular reference to the number of women employed in the mine, the number of standards of such rooms, and the nature and extent of the amenities to be provided and the supervision to be exercised therein;
- (e) for requiring the maintenance at or near pitheads of bathing places equipped with shower baths and of locker rooms for the use of men employed in mines and of similar and separate places and rooms for the use of women in mines where women are employed and for prescribing either generally or with particular reference to the numbers of men and women ordinarily employed in a mine, the number and standards of such places and rooms;
- (f) For prescribing the standard of sanitation to be maintained and the scale of latrine and urinal accommodation to be provided at mines, the provision to be made for the supply of drinking water.
- (ff) for providing for the supply and maintenance of medical appliances and comforts and for prescribing the contents and number of first-aid boxes and cupboards, the training in first-aid work, the size and equipment of first-aid rooms and staff in charge thereof and the arrangements for conveyance of injured persons to hospitals or dispensaries;
- (fff) for requiring the imparting of practical instruction to, or the training of, persons employed or to be employed in mines otherwise than in a position of such instruction and training;
- (g) for prohibiting the possession or consumption of intoxicating drinks or drugs in a mine and the entry or presence therein of any person in a drunken state;
- (h) for prescribing the form of notices required under section 36, and for requiring such notices to be posted also in specified languages;
- (i) for defining the person who shall, for the purpose of section 37, be deemed to be persons holding positions of supervision of management employed in a confidential capacity;
- (j) for prohibiting the employment in mines of persons or any class of persons who have not been certified by a qualified medical practitioner to have completed their fifteenth year, and for prescribing the manner and the circumstances in which such certificates may be granted and revoked;

- (kk) for requiring persons employed or seeking employment at mines to submit themselves for medical examination and for prohibiting on medical grounds the employment of any person at a mine either absolutely or in a particular capacity or in particular work;
- (l) for prescribing the form of registers required by section 48 and the maintenance and form or registers for the purposes of Chapter VII;
- (m) for prescribing abstracts of this Act and of the regulations and rules and the language in which the abstracts and bye-laws shall be posted as required by section 61 and 62;
- (n) for requiring notices, returns and reports in connection with any matters dealt with by rules to be furnished by owners; agents and managers of mines and for prescribing the forms of such notices returns and reports, the persons and authorities to whom they are to be furnished, the particulars to be contained in them, and the times within which they are to be submitted;
- (o) for requiring the provision and maintenance in mines; wherein more than fifty persons are ordinarily employed, of adequate and suitable shelters for taking food with provisions for drinking water.
- (p) For requiring the provision and maintenance in any mine specified in this behalf by the Chief Inspector or Inspector wherein more than two hundred and fifty persons are ordinarily employed of a canteen or canteen for the use of such persons;
- (q) For requiring the employment in every mine wherein five hundred or more persons are ordinarily employed of such number of welfare officers as may be specified and for prescribing the qualifications and the terms and conditions of, and the duties to be performed by, such welfare officers;
- (r) For requiring the establishment of rescue stations for specified mines or groups of specified mines or for all mines in a specified area and for prescribing how and by whom such stations shall be established;
- (s) For providing for the management of rescue stations;
- (sa) for providing for the standards of physical fitness and other qualifications of the persons constituting rescue brigades;
- (sb) prescribing the places of residence of the persons constituting rescue brigades;
- (t) for prescribing the position, equipment, control, maintenance and functions of rescue stations;
- (u) for providing for the levy and collection of a duty of excise(at) a rate not exceeding twenty five paise per tonne) on coke and coal produced in and despatched from mines specified under clause(r), the creation of a rescue stations fund for such mines, the crediting to such fund of such sums of money as the Central Government may, after due appropriation made by Parliament by law in this behalf, provide from out of the proceeds of such cess credited to the Consolidated Fund of India, the manner in which the money from such fund shall be utilised and the administration of such fund;
- (v) for providing for the formation, training composition and duties of rescue brigades and generally for the conduct of rescue work in mines;
- (vv) for providing for the constitution of safety Committees for specified mine or groups of specified mines or for all mines in a specified area for promoting safety and for laying down the composition, manner of formation and functions of such safety Committees and
- (w) generally to provide for any matter not provided for by this Act or the regulations, provision for which is required in order to give effect to this Act.

### **Posting of abstracts from Act, regulations etc.**

Section 62 makes it mandatory to keep posting up at or near every mine in English and in such other language or languages as may be prescribed, the prescribed abstracts of the Act and of the regulations and rules.

## PENALTIES AND PROCEDURE

Chapter IX (Sections 63 to 81) details out penalties and procedures for contravention of the various provisions of the Act.

### Obstruction

Section 63 of the Act provides that whoever commits the following offences:

- obstructs the Chief Inspector and inspector or any person authorised under section 8 in the discharge of his duties under this Act or
- refuses or wilfully neglects to afford the Chief Inspector, Inspector or such person any reasonable facility for making any entry, inspection, examination or inquiry authorised by or under this Act in relation to any mine shall be punishable with imprisonment of a term which may extend to three months, or with fine which may extend to five hundred rupees, or both.

A fine up to three hundred rupees shall be imposed as punishment on anyone whoever

- refuses to produce on the demand of the Chief Inspector or any registers or other documents kept in pursuance of this Act or
- prevents or attempts to prevent or does any thing which he has reason to believe to be likely to prevent any person from appearing before or being examined by an inspecting officer acting in pursuance of his duties under this Act.

### Falsification of records

Section 64 provides for imposition of punishment with imprisonment for a term which may extend to three months or with fine which may extend to one thousand rupees or with both on anyone, whoever –

- (a) counterfoils, or knowingly makes a false statement in any certificate, or any official copy of a certificate, granted under this Act, or
- (b) knowingly uses as true any such counterfeit or false certificate, or
- (c) makes or produces or uses any false declaration, statement or evidence knowing the same to be false for the purpose of obtaining for himself or for any other person a certificate or the renewal of a certificate under this Act, or any employment in a mine, or
- (d) falsifies any plan, section, register or record, the maintenance of which is required by or under this Act or produces before any authority such false plan, section, register or record, knowing the same to be false or;
- (e) makes, gives or delivers any plan, return, notice, record or report containing a statement, entry or detail which is not to the best of his knowledge or belief true.

### Use of false certificates of fitness

Section 65 states that whoever knowingly uses or attempts to use as a certificate of fitness granted to himself under section 43; a certificate granted to another person under that section, or having been granted a certificate of fitness to himself under that section, knowingly allows it to be used, or allows an attempt to use it to be made by another person shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

### Omission to furnish plans etc.

Section 66 of the Act provides that any person who, without reasonable excuse the burden of providing which shall lie upon him, omits to make or furnish in the prescribed form or manner or at or within the prescribed time any plan, section return, notice, register; record or report required by or under this Act to be made or furnished shall be punishable with fine which may extend to one thousand rupees.

### **Contravention of provisions regarding employment of labour**

Section 67 states that whoever, save as permitted by section 38, contravenes any provision of this Act or of any regulation rule, bye-law or of any order made thereunder prohibiting restricting or regulating the employment or presence of persons in or about a mine shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

### **Penalty for employment of persons below eighteen years of age**

Section 68 provides for that if a person below eighteen years of age is employed in a mine in contravention of section 40, the owner, agent or manager of such mine shall be punishable with fine which may extend to five hundred rupees.

### **Failure to appoint manager**

Section 69 provides for punishment with imprisonment for a term which may extend to three months or with fine which may extend to two thousand and five hundred rupees, or both for anyone, whoever fails to appoint a manager in contravention of the provisions of section 17 of the Act.

### **Owner etc. to report to Chief Inspector in certain cases**

Section 71 of the Act imposes a duty on the owner, agent or manager of a mine, as the case may be, that if he takes proceeding under this Act against any person employed in or about a mine in respect of an offence under this Act, he shall within twenty-one days from the date of the judgement or order of the court report the result thereof to the Chief Inspector.

### **Obligations of persons employed in a mine**

Section 72 of the Act provides that a person employed in a mine shall not do the following acts:

- (a) willfully interfere with or misuse any appliance convenience of other thing provided in a mine for the purpose of securing the health, safety or welfare of the person employed therein.
- (b) willfully and without reasonable cause do any thing likely to endanger himself or others;
- (c) willfully neglect to make use of any appliance or other thing provided in the mine for the purpose of securing the health or safety of the persons employed therein.

### **General provision of disobedience of others**

Section 73 of the Act provides for penalty for contravention of the Act for which not specific penalty is provided in the Act. It states that whoever contravenes any provision of this Act or of any regulation, rule or bye-laws or of any order made thereunder for the contravention of which no penalty is herein before provided shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

### **Enhanced penalty after previous conviction**

If any person who has been convicted for an offence punishable under any of the foregoing provisions (other than section 72B and 72C) is again convicted for an offence committed within two years of the previous conviction and involving a contravention of the same provision, he shall be punishable for each subsequent conviction with double the punishment to which he would have been liable for the first contravention of such provision.

**{Section 74}**

### **Prosecution of owner, agent or manager**

Section 75 stipulates that owner, agent or manager can be prosecuted for any offence under this Act only at the instance of the Chief Inspector or of the District Magistrate or of an Inspector authorised in this behalf by general or special order in writing by the Chief Inspector.

*Provided that* the Chief Inspector or the District Magistrate or the Inspector as so authorised shall, before instituting such prosecution, satisfy himself that the owner, agent or manager had failed to exercise all due diligence to prevent the commission of such offence.

*Provided further that* in respect of an offence committed in the course of the technical direction and management of a mine, the District Magistrate shall not institute any prosecution against an owner, agent or manager without the approval of the Chief Inspector.

### **Determination of owner in certain cases**

Section 76 states that if any mine is owned by firm, association of individual, company, Government or Local Authority, following shall be treated as owner and may be prosecuted and punished under this Act for any offence for which the owner of a mine is punishable

- (i) Where the owner of a mine is firm or other association of individuals, all, or any of the partners or members thereof or where the owner of a mine is a company;
- (ii) all or any of the directors thereof;
- (iii) where the owner of a mine is a Government or any local authority, as the case may be, to manage the affair of the mine.

Provided that where a firm, association or company has given notice in writing to the Chief Inspector that it has nominated -

- (a) in the case of a firm, any of its partners or managers:
- (b) in the case of an association, any of its members or managers;
- (c) in the case of a company any of its directors or managers.

Who is resident in each case in any place to which this act extends and who is in each case either in fact in charge of the management or holds the largest number of shares in such firm, association or company, to assume the responsibility of the owner or the mine for the purposes of this Act, such partner, member, director or manager, as the case may be, shall, so long as he continues to so reside and be in charge or hold the largest number of shares as aforesaid, be deemed to be the owner of the purposes of this Act unless a notice in writing canceling his nomination or stating that he has ceased to be a partner, member, director or manager as the case may be, is received by the Chief Inspector.

*Explanation:* - Where firm, association or company has different establishment or branches or different units in any establishment or branch, different persons may be nominated under this proviso in relation to different establishment or branches or units and the person so nominated shall, with respect only to the establishment, branch or unit in relation to which he has been nominated, deemed to be the owner of the mine.

### **Exemption of owner, agent or manager in certain cases**

Where the owner, agent or manager of a mine, accused of an offence under this Act, alleges that another person is the actual offender, he shall be entitled, upon complaint made by him in this behalf and on his furnishing the known address of the actual offender and on giving to the prosecutor not less than three clear day's notice in writing of his intention to do so, to have that other persons brought before the court on the date appointed for the hearing of the case; and if after the commission of the offence has been proved, the owner, agent or manager of the mine, as the case may be proves to the satisfaction of the court -

- (a) that he has used due diligence to enforce the execution of the relevant provisions of this act, and
- (b) that the owner person committed the offence in question without his knowledge, consent or connivance, the said other person shall be convicted of the offence and shall be liable to the like punishment as if he were the owner, agent or manager of the mine and the owner, agent or manager, as the case may be, shall be acquitted.



The owner, agent or manager of the mine as the case may be, may be examined on oath and his evidence and that of any witness who he calls in support shall be subject to cross examination by or on behalf of the person he alleges as the actual offender and by the prosecutor.

If in spite of due diligence the person alleged as the, actual offender cannot be brought before the court on the date appointed for the hearing of the case, the court shall adjourn from the hearing thereof from time to time so however that the total period of such adjournments does not exceed three months, and if by the end of the said period the person alleged as the actual offender cannot be brought before the court, the court shall proceed to hear the case against the owner, agent or manager as the case may be. {Section 77}

### Power of court to make orders

Section 78 provides for the powers of the court to make following orders under the Act:

- (1) Where the owner, agent or manager of mine is convicted of an offence punishable under this Act, the court may in addition to awarding him any punishment by order in writing require him within a period specified in the order which may be extended by the court from time to time on application made in this behalf to take such measures as may be so specified for remedying the matters in respect of which the offence was committed.
- (2) Where an order is made under sub-section(1), the owner, agent or manager of the mine, as the case may be, shall not be liable under this Act in respect of the continuance of the offence during the period or extended period, if any but if on the expiry of such period or extended period the order of the court has not been fully complied with the owner, agent or manager, as the case may be, shall be deemed to have committed a further offence and shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one hundred rupees for every day after such expiry on which the order has not been complied with, or with both.

### Limitation of prosecutions

Section 79 sets out time limit for making complaint under the Act.

No court shall take cognizance of any offence under this Act, unless complaint thereof has been made –

- (i) within six months of the date on which the offence is alleged to have been committed, or
- (ii) within six months of the date on which the alleged commission of the offence came to the knowledge of the Inspector, or
- (iia) In any case in which the accused is or was a public servant and previous sanction of the Central Government or of the State Government or of any other authority is necessary for taking cognizance of the offence under any law for the time being in force, within three months of the date on which such sanction is received by the Chief Inspector; or
- (iii) in any case where a Court of inquiry has been appointed by the Central Government under section 24, within one year after the date of the publication of the report referred to in sub-section(4) of that section, whichever is later.

*Explanation* - For the purposes of this section –(a) In the case of continuing offence, the period of limitation shall be computed with reference to every point of time during which the offence continues,(b) Where for the performance of any act time has been extended under this Act, the period of limitation shall be computed from the expiry of the extended period.

In **State of Bihar v. Dev Karan : 1973 Cri. LJ347** Supreme Court held that “Continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arise out of a failure to obey or comply with a rule or its requirement and which involve

a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and recurs there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues and therefore constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all.”

### **Cognizance of offences**

Section 80 provides for which Court shall take cognizance of offences under the Act.

No court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the first class shall try any offence under this Act which is alleged to have been committed by any owner, agent or manager of a mine or any offence which is by this Act made punishable with imprisonment.

### **Reference to Committee in lieu of prosecution in certain cases**

Section 81 states about the Court’s discretionary power to stay the criminal proceedings and report it to the Central Government as follows:

- (1) If the court trying any case instituted at the instance of the Chief Inspector or the District Magistrate or of an Inspector under this Act is of opinion that the case is one which should, in lieu of a prosecution, be referred to a Committee it may stay the criminal proceedings and report the matter to the Central Government with a view to such reference being made.
- (2) On receipt of a report under sub-section(1) the Central Government may refer the case to a Committee or may direct the court to proceed with the trial.

## **MISCELLANEOUS**

Chapter X contains miscellaneous provisions regarding enforcement of the Act.

### **Decision of question whether a mine is under this Act**

Section 82 of the Act provides for that if any question arises as to whether any excavation or working or premises in or adjacent to and belonging to a mine on which any process ancillary to the getting, dressing or preparation for sale or minerals or of coke is being carried on in a mine within the meaning of this Act, the Central Government may decide the question, and a certificate signed by a Secretary to the Central Government shall be conclusive on the point.

### **Power to exempt from operation of Act**

Section 83 of the Act provides for that the Central Government may by notification in the official Gazette, exempt either absolutely or subject to any specified conditions any local area or any mine or group or class of mines or any part of a mine or any class of persons from the operation of all or any of the provisions of this Act or the regulations, rules or bye-laws.

Provided that no local area or mine or group or class of mines shall be exempted from the provisions of section 40 and 45 unless it is also exempted from the operation of all the other provisions of this Act.

The Central Government may, by general or special order and subject to such restrictions as it may think fit to impose authorise the Chief Inspector or any other authority to exempt, subject to any specified conditions, any mine or part thereof from the operation of any of the provisions of the regulations, rules or bye-laws if the Chief Inspector or such authority is of opinion that the conditions in any mine or part thereof are such as to render compliance with such provision unnecessary or impracticable.

### Power to alter or rescind any orders

Section 84 provides for following powers of the Central Government :

- (1) The Central Government may reverse or modify any order passed under this Act.
- (2) The Chief Inspector may for reasons to be recorded in writing, reverse or modify any order passed by him under this Act or under any regulation, rule or bye-law.
- (3) No order prejudicial to the owner, agent or manager of a mine shall be made under this section unless such owner, agent or manager has been given a reasonable opportunity of making representation.

Every person required to give any notice or to furnish any information to any authority under this Act shall be legally bound to do so within the meaning of section 176 of the Indian Penal Code, 1860.

### Signing of returns, notices etc.

All returns and notices required to be furnished or given or communications sent by or on behalf of the owner of a mine in connection with the provisions of this Act or any regulation, rule, bye-law or any order made thereunder shall be signed by the owner, agent or manager of the mine or by any person to whom power in this behalf has been delegated by the owner by a power of attorney (Section 85B).

### No fee or charge to be realised for facilities and conveniences

No fee or charge shall be realised from any person employed in a mine in respect of any protective arrangements or facilities to be provided, or any equipment or appliances to be supplied under the provisions of this Act. (Section 85C)

### Application of certain provision of Act 63 of 1948 to mines

Section 86 states that the Central Government has power to direct that, by notification in the official Gazette, the provisions of Chapter III and IV of the Factories Act, 1948 as specified in the notification shall apply to all mines and the precincts thereof.

### Protection of action taken in good faith

Section 87 protect the persons who take action in good faith under the Act. It provides for that no suit, prosecution or other legal proceeding whatever shall lie against any person for anything which is in good faith done or intended to be done under this Act.

#### LESSON ROUND-UP

- The Act is aimed for the regulation of labour and safety in mines. It seeks to regulate the working conditions in mines by providing for measures required to be taken for the safety and security of workers employed therein and certain amenities for them.
- Mine as per section 2(j) of Mines Act means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried from the earth by means of tunnelling and shafting as well as it includes open working or quarries.
- Owner as per section 2(l) means any person who is the lessee( person who holds the lease of a property), immediate proprietor or occupiers of the mine or any part of the mine.it also includes the contractor and the claimant, but it does not include a person who merely receives a royalty, rent or fine from the mine, or is merely proprietor of the mine, subject to any lease, grant or license or license for the working thereof, or is merely the owner of soil and not interested in the mineral of the mine. Any contractor or sublessee for the working of mine or any part shall be subject to this Act.

- In order to examine the working Central Government has power to appoint Chief Inspectors and Inspectors. Along with it Central Government also is empowered to appoint a committee. The Chief Inspector is a part of the Committee and along with the committee members it look into the issue relating to mining which includes the wages, health care and working hours of the workers.
- The owner, agent or manager of a mine before commencement of mining operation has to provide a notice in writing to the Chief Inspector, the Controller, Indian Bureau of Mines and the District Magistrate in which the mine is situated and the notice should reach the concerned person one month before commencement of any mining operation.
- Minerals have been defined under Section 2(jj) of the Mining Act, which includes all substances which can be obtained from the earth including natural gases and petroleum.
- The provisions of this Act does not applies to mine or a part therefore in which excavation is being made for prospecting purposes and not for the purpose of obtaining minerals for use or for sale.
- The Act provides specifically for women workers in four areas: with respect to the prohibition of underground work (Section 46); prohibition of night work even above ground (Section 46); separate toilet facilities and crèche facilities (Section 58 read with the relevant Rules).
- The Act make provisions as to health and safety of workers employed in mines such as drinking water, conservancy, medical appliances, and responsibility of the owner, agent or manager to give notice of accidents to proper authority. Central Government has also power to appoint certifying surgeons.
- The Act is in the lines of the Factories Act, 1948 and has similar kinds of provisions as to drinking water, Urinals, latrines etc.
- The Act provides for provision relating to hours and limitation of employment such as weekly day of rest, compensatory day of rest, hours of work above ground and below ground night shift, extra wages for overtime work, limitation of daily hours of work, prohibition of the presence of persons below 18 years of age and employment of women.
- It seeks to achieve fair and healthy environment in the mines, through inspecting staff. For the efficient implementation of the Act the Central Government is authorized to appoint Chief Inspector and Inspectors who are assigned various powers and functions under the act.
- The Chapter VI deals with the hours and limitations of employment and provides for weekly one day of rest, compensatory day of rest, hours of work above ground to be not more than 48 hours in any week or for more than nine hours in any day, hours of work below ground to be not more than 48 hours in any week or eight hours in any day.
- The Act also provides for night shift and extra wages for overtime.
- It prohibits employment of persons below eighteen years of age and employment of women below ground and above ground except between the hours of 6 am and 7 pm.
- The Act also provides for penalties for contravention of various provisions of the Act.

### TEST YOURSELF

*(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)*

1. Are the following “mine”
  - i) Quarry
  - ii) Office of the mine
2. What are the functions of the Committee?
3. What are the duties of Certifying Surgeons?
4. How are Inspectors appointed? What are their powers?



## SECTION V: THE WORKING JOURNALISTS AND OTHER NEWSPAPER EMPLOYEES (CONDITIONS OF SERVICE) AND MISCELLANEOUS PROVISIONS ACT, 1955

### KEY CONCEPTS

■ Board ■ Newspaper ■ Newspaper Employee ■ Newspaper Establishment ■ Non-Journalist Newspaper Employee ■ Tribunal, Wages ■ Working Journalist ■ Night shift

### Learning Objectives

#### To understand:

- Various provisions pertaining to Working Journalists including procedure for fixing and revising rates of wages
- Powers and procedure of the Board
- Powers of Central Government to enforce recommendations of the Wage Board
- Constitution of Tribunal for fixing or revising rates of wages in respect of non-journalist newspaper employees
- Certain enactments applicable to the newspaper employees for the purpose of giving protection to them
- Certain important safeguards provided to the newspaper employees
- Penalty provisions in case any employer contravenes any of the provisions of this Act

### Lesson Outline

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|---|--|
| <ul style="list-style-type: none"> <li>➤ Introduction</li> <li>➤ History of the Legislation</li> <li>➤ Applicability of the Act</li> <li>➤ Important Definitions</li> <li>➤ Provisions of Industrial Dispute Act 1947 to apply to working journalists</li> <li>➤ Payment of gratuity for working journalist</li> <li>➤ Nomination by working journalist</li> <li>➤ Hours of work</li> <li>➤ Leave</li> <li>➤ Wages</li> <li>➤ Fixation or revision of rates of wages</li> <li>➤ Procedure for fixing and revising rates of wages</li> <li>➤ Recommendation by Board</li> <li>➤ Powers and procedure of the Board</li> </ul> | <ul style="list-style-type: none"> <li>➤ Powers of Central Government</li> <li>➤ Constitution of Tribunal for fixing or revising rates of wages in respect of working journalists</li> <li>➤ Fixation or revision of rates of wages of non-journalists newspaper employees</li> <li>➤ Constitution of Tribunal for fixing or revising rates of wages in respect of non-journalist newspaper employees</li> <li>➤ Application of Certain Acts to Newspaper Employees</li> <li>➤ Miscellaneous</li> <li>➤ Penalty</li> <li>➤ Non-applicability of the Act</li> <li>➤ Lesson Round-Up</li> <li>➤ Test Yourself</li> </ul> |
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***An Act to regulate certain conditions of service of working journalists and other persons employed in newspaper establishments.***

## INTRODUCTION

On the recommendations of the Press Commission, the Government of India placed on the Statute Book in 1955 an Act to regulate certain conditions of service of working journalists and other persons employed in the newspaper establishments. "This Act, called the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955, mainly deals with the conditions of service and terms of employment including wage rates for working journalists. It provides for the period of notice to be given for retrenchment of a working journalist, prescribes a gratuity scheme, and stipulates working hours, holidays, casual and other kinds of leave. It also provides for the application of the provisions of the Industrial Disputes Act, 1947, for the settlement of disputes, and of the Industrial Employment (Standing Orders) Act, and the Employees Provident Fund Act. Other Acts, applicable to the newspaper industry vis-a-vis employees, are the Payment of Wages Act and the Payment of Bonus Act. The Act provides that for the purpose of fixing or revising rates of wages in respect of working journalists, the Central Government as and when necessary shall constitute Wage Board. The rights and benefits provided to the working journalists under the Act are in addition to the provisions of general labour welfare legislations. The Act mainly provides for certain special safeguards and payment of fixed wages. The Act also requires the management to pay to the workers irrespective of its financial capacity to pay. After receipt of the recommendations of the Board, the Central Government is required to make an order in terms of recommendations and this order becomes applicable on the class of newspaper establishments for which the Board has recommended.

The Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955, inter alia, covers under its ambit conditions of employment and regulation of the service conditions of Working Journalists and also for Non-Journalists Newspaper Employees. The Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act addresses the issues of hours of work, leave fixation and revising rates of wages which includes the constitution of a Wage Board.

The Employees' Provident Funds & Miscellaneous Provisions Act, 1952 is applicable to the class of Newspaper establishments from 31.12.1956 and is extended to electronic media companies in the private sector with effect from December, 2007. The employees of these establishments are eligible for social security benefits of the statutory schemes under the Employees' Provident Funds & Miscellaneous Provisions Act, 1952.

Print and electronic media persons and journalists who are getting salary up to Rs.21,000/- per month employed in the units/ establishments covered under the ESI Act, 1948 are eligible to avail the benefits provided under the Act as per their entitlements.

Further, the Ministry of Information & Broadcasting implements "Journalist Welfare Scheme" to provide one-time ex-gratia relief on urgent basis to journalists or their families under extreme hardship or on account of death of journalists and also to the journalists in case of permanent disability, major ailments and in case of accidents causing serious injuries necessitating hospitalization.

The primary responsibility for implementation of recommendations of the Wage Board lies with the State/UT Governments. The responsibility of the State/UT Governments includes creating special cells, to oversee the progress of implementation of the Wage Board recommendations, to send the Quarterly Progress Report to the Ministry and to gear up the State Labour Enforcement Machinery to ensure speedy and prompt implementation of the recommendations of the Wage Boards. The Ministry has a Central Level Monitoring Committee to oversee the implementation of the Wage Board Recommendations by the States/UTs.

## HISTORY OF THE LEGISLATION

Before independence, the Indian Press in general had a single objective in view, namely the political emancipation of the country. Many journalists, imbued with the nationalist fervour of those days, were prepared to make sacrifices for the country's cause. After independence, newspapers became vehicles for the advancement of political and business interests of newspaper proprietors, who failed to appreciate the status and role of journalists. While the Press came to be known as the Fourth Estate, this grandiloquent term had little meaning for the working journalists of the period, who, the employers felt, had no right to a decent wage and better service conditions. This attitude of the employers literally forced the Government of India to intervene in the



matter. The wages fixed for the journalists were miserably inadequate; there were no regulated hours of work and the working journalists did not have rest day for months. Any journalist who thought of asserting his rights was shown the door by the employer. Such were the conditions which led journalists to organise themselves into the Indian Federation of Working Journalists. When the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act 1955 was placed on the statute book, protests were voiced by the employers that the provisions of the Act, if implemented, would “kill’ the newspaper industry and pose a danger to the freedom of the Press.

Subsequent developments in the newspaper industry established beyond doubt that these fears were totally imaginary. The employers attempted to scuttle the Act by challenging the validity of the Working Journalists (Fixation of Rates of Wages) Act 1958, which empowered the Government to constitute a Committee to fix rates of wages for working journalists.

The first attempt at wage control, as provided for in the Wage Order of the Government of India, did not achieve what the Journalists had hoped for, although working conditions registered some improvement. Every attempt was made by the employers to circumvent the provisions of the Wage Order and journalists were dragged to courts. The litigation however proved beneficial to the working journalists to the extent that it helped plug the loopholes in the laws applicable to them by an amendment of the Act later.

The Industrial Disputes Act, made applicable to working journalists, was a comprehensive Act for settlement and adjudication of industrial disputes. However, the unfettered system of hire and fire, which prevailed in the newspaper industry prior to 1955, no longer obtains in the industry on such a large scale. The Standing Orders helped to maintain discipline in the industry.

While Courts have held that “the power of the management to direct its internal administration, which includes enforcement of the discipline of the personnel, cannot be denied” this power has been subjected to certain restrictions with the emergence of the modern concept of social justice that an employee should be protected against vindictive or capricious action on the part of the management that may affect his security of service.

The Act has extended the benefits of gratuity and provident fund to working journalists.

On the question of constitutional validity of the Act, a Constitution Bench of the Supreme Court *Express Newspaper (Private) Ltd. v. The Union of India, AIR1958 SC 578: [1959] S.C.R.12.* upheld the validity of a legislation, named the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1956 (hereinafter as ‘the Act’) passed by the Parliament, the purpose of which was to ameliorate the conditions of the working journalists and other persons (non journalist) working in the newspaper establishments.

After the amendment in 1974 the Act has been renamed as the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955.

In exercise of the powers conferred by section 29 of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 (45 of 1955), the Central Government made the Rules, namely called the Working Journalists (Conditions of Service) and Miscellaneous Provisions Rules, 1957 hereinafter referred as “Rules”.

### Applicability of the Act

Section 1 of the Act extends its application to the whole of India.

### Important Definitions

Section 2 provides for that in this Act, unless the context otherwise requires,

“Board” means –

- (i) in relation to *working journalists*, the Wage Board constituted under section 9; and
- (ii) in relation to *non-journalist newspaper employees*, the Wage Board constituted under section 13C; {Section 2(a)}

“**Newspaper**” means any printed periodical work containing public news or comments on public news and includes such other class of printed periodical work as may, from time to time, be notified in this behalf by the Central Government in the Official Gazette;

{Section 2(b)}

Whether All India Reporter is a newspaper was a question before Bombay High Court and it was held that All India Reporter was not a newspaper in 1983 (*All India Reporter Ltd. v. State of Maharashtra, 1983 II LLJ 387 (Bom.)*) But the Supreme Court held that All India Reporter as a newspaper in 1988, as law reporter contains news, editorial comments, book reviews, ads etc which makes AIR a newspaper (*AIR Karamchari Sangh v. AIR Ltd, AIR 1988, SC 1325*)

“**Newspaper Employee**” means any working journalist, and includes any other person employed to do any work in, or in relation to, any newspaper establishment;

{Section 2(c)}

Law reports are held to be newspaper and their employees should be extended the benefit of order of Central Government made on the recommendations by Palekar Award, which was constituted under the Working Journalist Act. Palekar Tribunal was the first Wage Tribunal which determined the wage structure for the journalists (*All India Reporter Karamchari Sangh v. All India Reporter Ltd, AIR 1988 SC 1325*)

“**Newspaper Establishment**” means an establishment under the control of any person or body or persons, whether incorporated or not, for the production or publication of one or more newspapers or for conducting any news agency or syndicate; and includes newspaper establishments specified as one establishment under the Schedule.

*Explanation.* –For the purposes of this clause, –

- (a) different departments, branches and centres of newspaper establishments shall be treated as parts thereof;
- (b) a printing press shall be deemed to be a newspaper establishment if the principal business thereof is to print newspaper.

{Section 2(d)}

“**Non-Journalist Newspaper Employee**” means a person employed to do any work in, or in relation to, any newspaper establishment, but does not include any such person who –

- (i) is a working journalist, or
- (ii) is employed mainly in a managerial or administrative capacity, or
- (iii) being employed in a supervisory capacity, performs, either by the nature of the duties attached to his office or by reason of the powers vested in him, functions mainly of a managerial nature.

{Section 2(dd)}

“**Tribunal**” means, –

- (i) in relation to *working journalists*, the Tribunal constituted under section 13AA; and
- (ii) in relation to *non-journalist newspaper employees*, the Tribunal constituted under section 13DD.

{Section 2(ee)}

“**Wages**” means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a newspaper employee in respect of his employment or of work done in such employment, and includes –

- (i) such allowances (including dearness allowance) as the newspaper employee is for the time being entitled to;
- (ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food-grains or other articles;

(iii) any travelling concession,

but does not include –(a) any bonus;(b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the newspaper employee under any law for the time being in force;(c) any gratuity payable on the termination of his service.

*Explanation.* –In this clause, the term “wages” shall also include new allowances, if any, of any description fixed from time to time.

{Section 2(eee)}

“**Working Journalist**” means a person whose principal avocation is that of a journalist and who is employed as such, either whole-time or part-time, in, or in relation to, one or more newspaper establishments], and

**includes** an editor, a leader-writer, news-editor, sub-editor, feature-writer, copy-tester, reporter, correspondent, cartoonist, news photographer and proof-reader,

**but does not include any such person who –**

- (i) is employed mainly in a managerial or administrative capacity, or
- (ii) being employed in a supervisory capacity, performs, either by the nature of the duties attached to his office or by reason of the powers vested in him, functions mainly of a managerial nature;

{Section 2(f)}

Even an ex-employee whose employment has come to an end as a result of his resignation, comes within the ambit of the definition of “working journalist”; ***Bennett Coleman & Co (P.) Ltd. v. Punya Priya Das Gupta, AIR 1970 SC 426.***

***Mangalam Publications (India) vs. Shri. Cherian Zachariah 22 July 1995***

In this case, the petitioner was a registered newspaper establishment that was registered under Companies Act, 1956. The respondent worked under this company. The petitioner dismissed the respondent on the ground of unauthorized leave that too without submitting any due cause under stipulated time and because of the demand for the increment in the wages. The respondent filed a claim of the industrial dispute under Section 10 of the Industrial Dispute Act, 1947 with two subsequent claims regarding it. The labour court ordered that the respondent must be taken back into the service with 50% of the wages to be given to him but found no evidence that his work is supervisory and also the management also failed to produce any additional evidence to prove that the nature of the work is supervisory.

According to the appellant, the respondent was not a working journalist under Section 2(f) of The Working Journalist and Newspaper Establishment Provisions Act, 1955.

According to Section 2(f) of the Act:

Working Journalist includes any part-time or whole-time journalist in any establishment and that includes, editor, leader-writer, news editor, cartoonist, copy tester, proofreader but does not include any person who is:

- (i) is mainly employed in a managerial or administrative capacity
- (ii) discharges function mainly of a managerial nature such as those of a supervisor.

According to the Labour Court, the respondent was a working journalist and no evidence whether oral or documentary by the management to prove that the dismissal of the respondent is sustainable and no domestic inquiry was preceded before giving the dismissal. So, the court and agreed by the Labour court and thus other petitions and dismissal were set aside by the court. And the dismissal of the respondent by the appellant was held arbitrary.

All words and expressions used but not defined in this Act and defined in the Industrial Disputes Act, 1947 shall have the meanings respectively assigned to them in that Act. {Section 2(g)}

**Rule 2(m)**“Shifts”: ‘day shift’ means a shift when any hours of work of the shift do not fall between the hours of 11 P.M. and 5 A.M.

‘**Night shift**’ means a shift when any hours of work fall between the hours of 11 P.M. and 5 A.M.

## WORKING JOURNALISTS

### Provisions of Industrial Dispute Act 1947 to apply to working journalists –

According to section 3, the provisions of the Industrial Disputes Act, 1947, as in force for the time being, shall, subject to the modification specified in sub-section (2), apply to, or in relation to, working journalists as they apply to, or in relation to, workmen within the meaning of that Act. The period of notice to be given to workers for retrenchment under Section 25F of Industrial Dispute Act is not applicable to working journalists. The period of notice of retrenchment for editor is six months and for any other working journalist is three months.

**Bennet Coleman & Co. Ltd v. State Of Bihar, SLP(CRL.) NO.10134/2010** : Supreme Court judgement 2015, as per Section 3 of the Working Journalists Act, the provisions of the I.D. Act have been made applicable to the working journalists, as if they are workmen under the I.D. Act. Thus, being a legislation by reference, provisions of I.D. Act are applicable so far as working journalists are concerned.

The period of notice to be given to workers for retrenchment under Industrial Dispute Act is not applicable to working journalists. The period of notice of retrenchment for editor is six months and for any other working journalist is three months.

### Payment of gratuity

Section 5 deals with payment of gratuity for working journalist with three years of service on termination (other than by punishment) or retirement or voluntary resigns or dies in service. Under these circumstances, the working journalist shall be paid 15 days average pay for every completed year of service or part in excess of six months. In accordance with Rule 3 -Gratuity shall be paid to a working journalist or, in the case of his death, his nominee or nominees or, if there is no nomination in force at the time of the death of the working journalist, his family, as soon as possible after it becomes due and in any case not later than three months. According to rule 4, If no nomination subsists or if that nomination relates only to a part of the gratuity, the amount of the gratuity or the part thereof to which the nomination does not relate, as the case may be, shall be paid to his family. According to rule 6, The gratuity will be subject to deductions on account of overpayments made to a working journalist by the newspaper establishment liable to pay such gratuity and monies borrowed by the working journalist from such newspaper establishment.

According to section 5 (1), the amount of gratuity payable to the working journalist or, in the case of his death, his nominee or nominees or, if there is no nomination in force at the time of the death of the working journalist, his family, as the case may be, shall, be paid, on such termination, retirement, resignation or death, by the employer in relation to that establishment gratuity which shall be equivalent to fifteen days’ average pay for every completed year of service or any part thereof in excess of six months where-

- (a) any working journalist has been in continuous service, whether before or after the commencement of this Act, for not less than three years in any newspaper establishment, and –
  - (i) his services are terminated by the employer in relation to that newspaper establishment for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action; or
  - (ii) he retires from service on reaching the age of superannuation; or
- (b) any working journalist has been in continuous service, whether before or after the commencement of this Act, for not less than ten years in any newspaper establishment, and he voluntarily resigns on or after the 1st day of July, 1961, from service in that newspaper establishment on any ground whatsoever other than on the ground of conscience; or

- (c) any working journalist has been in continuous service, whether before or after the commencement of this Act for not less than three years in any newspaper establishment, and he voluntarily resigns on or after the 1st day of July, 1961, from service in that establishment on the ground of conscience; or
- (d) any working journalist dies while he is in service in any newspaper establishment.

**Note:**

1. This benefit is given without prejudice to any benefits or rights accruing under the Industrial Disputes Act, 1947;
2. It is provided that in the case of a working journalist referred to in clause (b), the total amount of gratuity that shall be payable to him shall not exceed twelve and half month's average pay:
3. It is provided further that where a working journalist is employed in any newspaper establishment wherein not more than six working journalists were employed on any day of the twelve months immediately preceding the commencement of this Act, the gratuity payable to a working journalist employed in any such newspaper establishment for any period of service before such commencement shall not be equivalent to fifteen days' average pay for every completed year of service or any part thereof in excess of six months but shall be equivalent to –
  - (a) three days' average pay for every completed year of service or any part thereof in excess of six months, if the period of such past service does not exceed five years;
  - (b) five days' average pay for every completed year of service or any part thereof in excess of six months, if the period of such past service exceeds five years but does not exceed ten years; and
  - (c) seven days' average pay for every completed year of service or any part thereof in excess of six months, if the period of such past service exceeds ten years.

**Explanation.** –For the purposes of this sub-section and sub-section (f) of section 17, “family” means –

- (i) in the case of a male working journalist, his widow, children, whether married or unmarried, and his dependent parents and the widow and children of his deceased son. Provided that a widow shall not be deemed to be a member of the family of the working journalist if at the time of his death she was not legally entitled to be maintained by him;
- (ii) in the case of a female working journalist, her husband, children, whether married or unmarried, and the dependent parents of the working journalist or of her husband, and the widow and children of her deceased son.

**Note:**

1. If the working journalist has expressed her desire to exclude her husband from the family, the husband and his dependent parents shall not be deemed to be a part of the working journalist's family.
2. In either of the above two cases, if the child of a working journalist or of a deceased son of a working journalist has been adopted by another person and if under the personal law of the adopter, adoption is legally recognised, such a child shall not be considered as a member of the family of the working journalist.

Any dispute whether a working journalist has voluntarily resigned from service in any newspaper establishment on the ground of conscience shall be deemed to be an industrial dispute within the meaning of the Industrial Disputes Act, 1947 or any corresponding law relating to investigation and settlement of industrial disputes in force in any State.

Where a nominee is a minor and the gratuity under sub-section (f) has become payable during his minority, it shall be paid to a person appointed under section 5A. But if there is no such person, payment shall be made to any guardian of the property of the minor appointed by a competent court or where no such guardian has been appointed, to either parent of the minor, or where neither parent is alive, to any other guardian of the minor.

It is provided further that where the gratuity is payable to two or more nominees, and either or any of them dies, the gratuity shall be paid to the surviving nominee or nominees.

### **Nomination by working journalist**

Section 5A empowers the working journalist to nominate a nominee to receive the gratuity and where such a nominee is nominated, the nominee alone shall be entitled to receive the gratuity unless he himself dies before the death of the journalist.

Notwithstanding anything contained in any law for the time being in force, or in any disposition, testamentary or otherwise in respect of any gratuity payable to a working journalist, where a nomination made in the prescribed manner (Form A) purports to confer on any person the right to receive payment of the gratuity for the time being due to the working journalist, the nominee shall, on the death of the working journalist, become entitled to the gratuity and to be paid the sum due in respect thereof to the exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner (Form B.).

Any such nomination shall become void if the nominee predeceases, or where there are two or more nominees, all the nominees predecease, the working journalist making the nomination.

Where the nominee is a minor, it shall be lawful for the working journalist making the nomination to appoint any person in the prescribed manner (Form AA) to receive the gratuity in the event of his death during the minority of the nominee.

### **Hours of work**

According to section 6, a working journalist shall be required or allowed to work in any newspaper establishment for not more than 144 hours during any period of four consecutive weeks. The period of 144 hours of work does not include the time for meals and every such journalist shall be allowed at least 24 hours of rest during any period of seven consecutive days of work, the period between 10 P.M. and 6 A.M. being included therein.

*Explanation.* –For the purposes of this section, “week” means a period of seven days beginning at mid-night on Saturday.

### **Leave**

Section 7 of the Act provides that without prejudice to such holidays, casual leave or other kinds of leave as may be prescribed, every working journalist shall be entitled to earned leave on full wages for not less than one-eleventh of the period spent on duty and also leave on medical certificate on one-half of the wages for not less than one-eighteenth of the period of service.

### **Wages**

The working journalists are entitled to receive wages at a fixed rate and the wages shall be revised also. The function to fix and revise the wages is that of the Central Government under section 8 of the Act which shall be performed through a wage board constituted under section 9 of the Act. The Central Government has been empowered under section 12 of the Act to enforce the recommendations of the wage board. It is the provisions of section 13 which make the working journalists entitled to fixed wages at rates not less than those specified in the order. S. 13A of the Act also empowers the Central Government to fix interim rates of wages in respect of working journalists and any interim rates of wages so fixed shall be binding on all employers in relation to newspaper establishments and every working journalist shall be entitled to be paid wages at a rate which shall, in no case, be less than the interim rates of wages.

### **Fixation or revision of rates of wages**

Section 8 vests the Central Government with the authority to fix rates of wages in respect of working journalists and revise, from time to time, at such intervals as it may think fit, the rates of wages fixed under this section or specified in the order made under section 6 of the Working Journalists (Fixation of Rates of Wages) Act, 1958. The Central

Government may fix or revise the rates of wages in respect of working journalists for time work and for piece work. The Central Government shall follow the procedure prescribed in the Act for fixing and revising rates of wages.

### Procedure for fixing and revising rates of wages

Section 9 stipulates that for the purpose of fixing or revising rates of wages in respect of working journalists under this Act, the Central Government shall, as and when necessary, constitute a Wage Board which shall consist of –

- (a) three persons representing employers in relation to newspaper establishments;
- (b) three persons representing working journalists;
- (c) four independent persons, one of whom shall be a person who is, or has been, a Judge of a High Court or the Supreme Court and who shall be appointed by that Government as the Chairman thereof.

The court in 1958 laid down that the interest, of journalists and other employees of the press industry, in wages can be regulated by the government and this aspect has nothing to do with the right to freedom of speech and expression under article 19 (1) (a) of the Constitution of India and media in this regard is like any other industry. The court has not changed its opinion till date.

### Recommendation by Board

According to section 10, the Board shall, by notice published in such manner as it thinks fit, call upon newspaper establishments and working journalists and other persons interested in the fixation or revision of rates of wages of working journalists to make such representations as they may think fit as respects the rates of wages which may be fixed or revised under this Act in respect of working journalists.

Every such representation shall be in writing and shall be made within such period as the Board may specify in the notice and shall state the rates of wages which, in the opinion of the person making the representation, would be reasonable, having regard to the capacity of the employer to pay the same or to any other circumstance, whichever may seem relevant to the person making the representation in relation to his representation.

The Board shall take into account the representations aforesaid, if any, and after examining the materials placed before it make such recommendations as it thinks fit to the Central Government for the fixation or revision of rates of wages in respect of working journalists; and any such recommendation may specify, whether prospectively or retrospectively, the date from which the rates of wages should take effect.

In making any recommendations to the Central Government, the Board shall have regard to the cost of living, the prevalent rates of wages for comparable employment, the circumstances relating to the newspaper industry in different regions of the country and to any other circumstances which to the Board may seem relevant.

*Explanation.* –For the removal of doubts, it is hereby declared that nothing in this sub-section shall prevent the Board from making recommendations for fixation or revision of rates of wages on all India basis.

### Powers and procedure of the Board

Section 11 lays down powers of the Board and procedure to be followed by it as follows:

- (1) Powers similar to Industrial tribunal under the Industrial Dispute Act, 1947: Subject to the provisions contained in sub-section (2), the Board may exercise all or any of the powers which an Industrial Tribunal constituted under the Industrial Disputes Act, 1947, exercises for the adjudication of an industrial dispute referred to it and shall, subject to the provisions contained in this Act, and the rules, if any, made thereunder, have power to regulate its own procedure.
- (2) *Inspection of representation:* Any representations made to the Board and any documents furnished to it by way of evidence shall be open to inspection on payment of such fee as may be prescribed, by any person interested in the matter.



- (3) *Casual Vacancy*: If, for any reason, a vacancy occurs in the office of Chairman or any other member of the Board, the Central Government shall fill the vacancy by appointing another person thereto in accordance with the provisions of section 9 and any proceeding may be continued before the Board so reconstituted from the stage at which the vacancy occurred.

***Bennet Coleman & Co. Ltd v. State Of Bihar, Supreme Court Judgment, SLP(CRL.) NO.10134/2010 dated 10 February 2015***: A bare reading of the provision would show that the same provides for exercise of the powers of the Tribunal by the Wage Board in the process of making its recommendations in regulating its procedure. The provision does not make Wage Board a Tribunal. The Tribunal under the I.D. Act does not make recommendations, it passes award; whereas the Wage Board under the Working Journalists Act is competent only to make a recommendation in terms of Section 10 and after the notification of the recommendations by the Central Government if there is any dispute regarding any amount due under the notification, a dispute is raised under Section 17(2) of the Working Journalists Act and thereafter an award is passed by the Labour Court.

### **Powers of Central Government to enforce recommendations of the Wage Board**

According to section 12, the Central Government shall, as soon as may be, after the receipt of the recommendations of the Board, make an order in terms of the recommendations or subject to such modifications, if any, as it thinks fit, being modifications which, in the opinion of the Central Government, do not effect important alterations in the character of the recommendations.

The Central Government may, if it thinks fit, –(a) make such modifications in the recommendations, not being modifications of the nature referred to in sub-section (1), as it thinks fit.

It is provided that before making any such modifications, the Central Government shall cause notice to be given to all persons likely to be affected thereby in such manner as may be prescribed, and shall take into account any representations which they may make in this behalf in writing; or it may also refer the recommendations or any part thereof to the Board, in which case, the Central Government shall consider its further recommendations and make an order either in terms of the recommendations or with such modifications of the nature as it thinks fit.

Every order made by the Central Government under this section shall be published in the Official Gazette together with the recommendations of the Board relating to the order and the order shall come into operation on the date of publication or on such date, whether prospectively or retrospectively, as may be specified in the order.

Rule 35 A provides that Notice required to be given under proviso to clause (a) of sub-section (2) of section 12 of the Act shall in Form H and shall be published in the Official Gazette and in leading newspapers.

### **Working journalists entitled to wages at rates not less than those specified in the order**

On the coming into operation of an order of the Central Government under section 12, every working journalist shall be entitled to be paid by his employer wages at the rate which shall in no case be less than the rate of wages specified in the order. (Section 13)

### **Power of Government to fix interim rates of wages**

Section 13 A empowers the Central Government to fix interim rates of wages in respect of working journalists if it is of opinion that it is necessary so to do. The Central Government shall do the same, notwithstanding anything contained in this Act, after consultation with the Board, by notification in the Official Gazette.

Any interim rates of wages so fixed shall be binding on all employers in relation to newspaper establishments and every working journalist shall be entitled to be paid wages at a rate which shall, in no case, be less than the interim rates of wages so fixed.

Any interim rates of wages so fixed shall remain in force until the order of the Central Government under section 12 comes into operation.

### Constitution of Tribunal for fixing or revising rates of wages in respect of working journalists

Section 13AA provides that notwithstanding anything contained in this Act, where the Central Government is of opinion that the Board constituted under section 9 for the purpose of fixing or revising rates of wages in respect of working journalists under this Act has not been able to function (for any reason whatsoever) effectively, and in the circumstances, it is necessary so to do, it may, by notification in the Official Gazette, constitute a Tribunal, which shall consist of a person who is, or has been, a Judge of a High Court or the Supreme Court, for the purpose of fixing or revising rates of wages in respect of working journalists under this Act.

The provisions of sections 10 to 13A shall apply to, and in relation to, the Tribunal so constituted, the Central Government and working journalists, subject to the modifications that –

- (a) the references to the Board therein, wherever they occur, shall be construed as references to the Tribunal;
- (b) in sub-section (3) of section 11, –(i) the reference to the office of Chairman or any other member of the Board shall be construed as a reference to the office of the person constituting the Tribunal; and (ii) the reference to section 9 shall be construed as a reference to sub-section (1) of this section; and
- (c) the references in section 13 and section 13A to section 12 shall be construed as references to section 12 read with this section.

The Tribunal, in discharging its functions under this Act, may act on, the evidence recorded by the Wage Board or partly recorded by the Wage Board and partly recorded by itself. It is provided that if the Tribunal is of opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of justice, it may re-summon any such witness, and after such further examination, cross-examination and re-examination, if any, as it may permit, the witness shall be discharged.

On the constitution of a Tribunal, the Board constituted under section 9 and functioning immediately before such constitution shall cease to exist and the members constituting that Board shall be deemed to have vacated their offices. It is provided that any interim rates of wages fixed by the Central Government under section 13A in respect of working journalists and in force immediately before the constitution of the Tribunal shall remain in force until the order of the Central Government under section 12 read with this section comes into operation.

Since the fixation of interim wages is in no way a final decision as to fixation of rates of wages, the parties concerned can make further and effective representation to the Wage Board which makes, after due consideration, fresh recommendation to the Central Government for acceptance. Hence, the procedure prescribed under section 12 of the Act making it incumbent on the Central Government to give hearing to the parties affected or serve notice before or at the stage of fixation of interim wages, is certainly not applicable to section 13 A; (**Ananda Bazar Patrika Ltd v. Union of India 1989, 74 FJR 401**)

**Fixation or revision of rates of wages of non-journalists newspaper employees:** *The Central Government may also fix and revise rates of wages in respect of non-journalist newspaper employees under section 13 B of the Act after 1974 amendment to the Act. This is to be done through separate wage board to be constituted by the Central Government under section 13 C of the Act. The provisions of sections 10 to 13A shall apply to, and in relation to, the board constituted under section 13C, by virtue of the provisions of section 13D. Further, where the Central Government is of opinion that the Board constituted under section 13C has not been able to function effectively, it may constitute a tribunal under section 13DD for the purpose of fixing or revising rates of wages, in respect of non-journalist newspaper employees under the Act.*

### Fixation or revision of rates of wages of non-journalists newspaper employees

The Central Government may also fix and revise rates of wages in respect of non-journalist newspaper employees under section 13 B of the Act after 1974 amendment to the Act. This is to be done through separate wage board to be constituted by the Central Government under section 13 C of the Act. The provisions of sections 10 to 13A shall apply to, and in relation to, the board constituted under section 13C, by virtue of the provisions of section 13D. Further, where the Central Government is of opinion that

the Board constituted under section 13C has not been able to function effectively, it may constitute a tribunal under section 13DD for the purpose of fixing or revising rates of wages, in respect of non-journalist newspaper employees under the Act.

According to section 13B, the Central Government may, in the manner hereinafter provided-(a) fix rates of wages in respect of non-journalist newspaper employees; and (b) revise, from time to time, at such intervals as it may think fit, the rates of wages fixed under this section.

The rates of wages may be fixed or revised by the Central Government in respect of non-journalist newspaper employees for time work and for piece work.

### **Wage Board for fixing or revising rates of wages in respect of non-journalist newspaper employees**

Section 13C states that for the purpose of fixing or revising rates of wages in respect of non-journalist newspaper employees under this Act, the Central Government shall, as and when necessary, constitute a Wage Board which shall consist of –

- (a) three persons representing employers in relation to newspaper establishments;
- (b) three persons representing non-journalist newspaper employees; and
- (c) four independent persons, one of whom shall be a person who is, or has been, a Judge of a High Court or the Supreme Court and who shall be appointed by that Government as the Chairman thereof.

### **Application of certain provisions**

According to section 13D, The provisions of sections 10 to 13A shall apply to, and in relation to, the Board constituted under section 13C, the Central Government and non-journalist newspaper employees, subject to the modifications that –

- (a) the references to the Board and working journalists therein, wherever they occur, shall be construed respectively as references to the Board constituted under section 13C and to non-journalist newspaper employees;
- (b) the references in sub-section (3) of section 11 to section 9 shall be construed as a reference to section 13C; and
- (c) the references in section 13 and section 13A to section 12 shall be construed as references to section 12 read with this section.

### **Constitution of Tribunal for fixing or revising rates of wages in respect of non-journalist newspaper employees**

The provisions of section 13DD overrides the other provisions of the Act. It states overriding power of the Central Government to constitute a Tribunal if it is of opinion that the Board constituted under section 13C for the purpose of fixing or revising rates of wages in respect of non-journalist newspaper employees under this Act has not been able to function (for any reason whatsoever) effectively, and in the circumstances, it is necessary so to do. It may do so by notification in the Official Gazette. The Tribunal shall consist of a person who is, or has been, a Judge of a High Court or the Supreme Court, for the purpose of fixing or revising rates of wages in respect of non-journalist newspaper employees under this Act.

The provisions of sections 10 to 13A shall apply to, and in relation to, such Tribunal, the Central Government and non-journalist newspaper employees, subject to the modifications that –

- (a) the references to the Board and working journalists therein, wherever they occur, shall be construed respectively as references to the Tribunal and to non-journalist newspaper employees;
- (b) in sub-section (3) of section 11, –
  - (i) the reference to the office of Chairman or any other member of the Board shall be construed as a reference to the office of the person constituting the Tribunal; and

- (ii) the reference to section 9 shall be construed as a reference to sub-section (1) of this section; and
- (c) the references in section 13 and section 13A to section 12 shall be construed as references to section 12 read with this section.

The Tribunal, in discharging its functions under this Act, may act on the evidence recorded by the Wage Board or partly recorded by the Wage Board and partly recorded by itself. If the Tribunal is of opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of justice, it may re-summon any such witness, and after such further examination, cross-examination and re-examination, if any, as it may permit, the witness shall be discharged.

On the constitution of a Tribunal, the Board constituted under section 13C and functioning immediately before such constitution shall cease to exist and the members constituting that Board shall be deemed to have vacated their offices.

It is provided that any interim rates of wages fixed by the Central Government under section 13A read with section 13D in respect of non-journalist newspaper employees and in force immediately before the constitution of the Tribunal shall remain in force until the order of the Central Government under section 12 read with this section comes into operation.

### APPLICATION OF CERTAIN ACTS TO NEWSPAPER EMPLOYEES

Chapter III of the Act makes certain enactments applicable to the newspaper employees for the purpose of giving protection to them. Industrial Employment (Standing Orders) Act, 1946 and The Employees' Provident Funds Act, 1952 shall apply to every newspaper establishment wherein twenty or more newspaper employees or persons are employed respectively.

#### The Industrial Employment (Standing Orders) Act, 1946 to apply to newspaper establishments

According to section 14, the provisions of the Industrial Employment (Standing Orders) Act, 1946, as in force for the time being, shall apply to every newspaper establishment wherein twenty or more newspaper employees are employed or were employed on any day of the preceding twelve months as if such newspaper establishment were an industrial establishment to which the aforesaid Act has been applied by a notification under sub-section (3) of section 1 thereof, and as if a newspaper employee were a workman within the meaning of that Act.

#### The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 to apply to newspaper establishments

Section 15 makes the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, as in force for the time being, mandatory applicable to every newspaper establishment in which twenty or more persons are employed on any day, as if such newspaper establishment were a factory to which the aforesaid Act had been applied by a notification of the Central Government under sub-section (3) of section 1 thereof, and as if a newspaper employee were an employee within the meaning of that Act.

### MISCELLANEOUS

*Chapter IV of the Act provides for certain important safeguards to the newspaper employees.*

#### Effect of laws and agreements inconsistent with this Act

Section 16 nullifies the effect of an agreement made, in disregard of the provisions of the Act, by a newspaper employee. It says that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the commencement of the Act. However, if such an agreement etc., is more favourable to the newspaper employee in respect of a matter, he can receive such benefits in respect of that matter.

### Employer not to dismiss, discharge, etc., newspaper employees

Section 16 A makes it sure that no employer, by reason of his liability for payment of wages to newspaper employees at the rates specified in an order of the Central Government under section 12, or under section 12 read with section 13AA or section 13DD, dismisses, discharges or retrenches any newspaper employee.

### Recovery of money due from an employer

In pursuance to the provisions of section 17, where any amount is due under this Act to a newspaper employee from an employer, the newspaper employee himself, or any person authorised by him in writing in this behalf, or in the case of the death of the employee, any member of his family may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the amount due to him. If the State Government, or such authority, as the State Government may specify in this behalf, is satisfied that any amount is so due, it shall issue a certificate for that amount to the Collector, and the Collector shall proceed to recover that amount in the same manner as an arrear of land revenue.

If any question arises as to the amount due under this Act to a newspaper employee from his employer, the State Government may, on its own motion or upon application made to it, refer the question to any Labour Court constituted by it under the Industrial Disputes Act, 1947 or under any corresponding law relating to investigation and settlement of industrial disputes in force in the State and the said Act or law shall have effect in relation to the Labour Court as if the question so referred were a matter referred to the Labour Court for adjudication under that Act or law.

The Labour Court shall forward its decision to the State Government which made the reference and any amount found due by the Labour Court may be recovered in the manner provided in sub-section (1).

Rule 36 provides that an application under section 17 of the Act shall be made in Form 'C' to the Government of the State, where the Central Office or the Branch Office of the newspaper establishment in which the newspaper employee is employed, is situated

The State Government concerned (before whom the application for recovery is made) will refer the question as to the amount due to a Labour Court, and the latter upon reaching its decision will forward it to the former, which will then direct the Collector to recover such amount (**Samarjit Ghosh v. Bennett Coleman & Co (P) Ltd. 1987, 71 FJR 176**)

Following the provisions of section 17 an amount due to a newspaper employee from an employer may be recovered by him through the government. The amount shall be recovered in the same manner as the arrears of land revenue are recovered. In case there is any dispute regarding the amount, the state government may, on its own motion or upon application made to it, refer the matter to a Labour Court constituted by it under the Industrial Disputes Act, 1947.

#### ***Hitchandra Jha v. The State of Bihar and Ors. 6th March 2019***

In this case, the Petitioner Hitchandra Jha was an employee in the Newspaper and Publications Limited. At the closing of the company, the company was recognized for the payment of overdue and due salaries to the employees who were working under this newspaper establishment. The petitioner approached the government for the direction for the payment of the over dues but did not get any positive response and the government referred this to the labour court for the payment of the dues and the salary under the Section 17(2) of the Working Journalists and the Newspaper Establishment Act, 1955.

According to Section (2) of the Act if any question arises regarding the payment of dues or salary the State Government may refer the matter to the labour court. According to the Section 17 of the Act, if the state government is satisfied then it should refer the matter to the collector and collector will issue a certificate regarding the recovery of the salary or due, but in this Act, no positive response was given by both the government and the labour court.

Therefore the High Court of Patna held that the labour court should take positive action regarding the recovery of the salaries and dues of the employees and working journalists working in the newspaper publication limit.

### Maintenance of registers, records, and muster-rolls

Section 17 A of the Act provides that every employer in relation to a newspaper establishment shall prepare and maintain such registers, records and muster-rolls and in such manner as may be prescribed.

Ministry of Labour & Employment vide Notification dated February 21, 2017 for ease of compliance of Labour Laws reduced the number of Registers to be maintained to 5.

The 5 (five) types of combined registers required to be maintained under the Act now are:

1. Employee Register (Form-A)
2. Wage Register (Form-B)
3. Register of Loans and Recoveries (Form-C)
4. Attendance Register (Form-D)
5. Register of rest/leave/leave wages under The Working Journalists (Condition of Service) and Miscellaneous Provisions Act, 1957: (Form-E).

### Inspectors

In pursuance to section 17B, the State 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 local limits within which they shall exercise their functions.

The Inspector so appointed may for the purpose of ascertaining whether any of the provisions of this Act or of the Working Journalists (Fixation of Rates of Wages) Act, 1958 have been complied with in respect of a newspaper establishment –

- (a) require an employer to furnish such information as he may consider necessary;
- (b) at any reasonable time enter any newspaper 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, his agent or servant or any other person found in charge of the newspaper 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 documents maintained in relation to the newspaper establishment;
- (e) exercise such other powers as may be prescribed.

Every Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code 1860. Any person required to produce any document or thing or to give information by an Inspector shall be legally bound to do so.

### Penalty

According to section 18, If any employer contravenes any of the provisions of this Act or any rule or order made thereunder, he shall be punishable with fine which may extend to two hundred rupees. If anyone has been convicted of any offence under this Act, is again convicted of an offence involving the contravention of the same provision, shall be punishable with fine which may extend to five hundred rupees.

Where an offence has been committed by 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 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. It is provided that if such person proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence then he shall not be liable to any punishment provided in this section.

Where an offence under this section has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to, any gross negligence 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 such offence and shall be liable to be proceeded against and punished accordingly.

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.

No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under this section. No Court shall take cognizance of an offence under this section, unless the complaint thereof is made within six months of the date on which the offence is alleged to have been committed.

### Indemnity

Section 19 contains immunity provisions by providing that no suit, prosecution or other legal proceeding shall lie against the Chairman or any other member of the Board or the person contributing the Tribunal or an Inspector appointed under this Act for anything which is in good faith done or intended to be done.

### Defects in appointments not to invalidate acts

Section 19A rules out the questionability of any act or proceeding of the Board on the ground merely of the existence of any vacancy in, or defect in the constitution of the Board.

### Non-applicability of the Act

Section 19B states that nothing in this Act or the Working Journalists (Fixation of Rates of Wages) Act, 1958 shall apply to any newspaper employee who is an employee of the Government to whom the following applies:

- the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules,
- Civil Services (Temporary Service) Rules, Revised Leave Rules,
- Civil Service Regulations,
- Civilians in Defence Services (Classification, Control and Appeal) Rules, or
- the Indian Railway Establishment Code, or
- any other rules or regulations that may be notified in this behalf by the Central Government in the Official Gazette, apply.

### Power of the Central Government to make rules

According to section 20, the Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

In exercise of the powers conferred by section 20 of the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955, the Central Government makes the following rules, **“The Working Journalists And Other Newspaper Employees Tribunal Rules, 1979”**



## THE SCHEDULE

[See section 2(d)]

1. For the purposes of clause (d) of section 2, –
  - (1) two or more newspaper establishments under common control shall be deemed to be one newspaper establishment;
  - (2) two or more newspaper establishments owned by an individual and his or her spouse shall be deemed to be one newspaper establishment unless it is shown that such spouse is a sole proprietor or partner or a shareholder of a corporate body on the basis of his or her own individual funds;
  - (3) two or more newspaper establishments publishing newspapers bearing the same or similar title and in the same language in any place in India or bearing the same or similar title but in different languages in the same State or Union territory shall be deemed to be one newspaper establishment.
2. For the purposes of paragraph 1 (1), two or more establishments shall be deemed to be under common control –
  - (a) where the newspaper establishments are owned by a common individual or individuals;
    - (i) where the newspaper establishments are owned by firms, if such firms have a substantial number of common partners;
    - (ii) where the newspaper establishments are owned by bodies corporate, if one body corporate is a subsidiary of the other body corporate, or both are subsidiaries of a common holding company or a substantial number of their equity shares are owned by the same person or group of persons, whether incorporated or not;
    - (iii) where one establishment is owned by a body corporate and the other is owned by a firm, if a substantial number of partners of the firm together hold a substantial number of equity shares of the body corporate;
    - (iv) where one is owned by a body corporate and the other is owned by a firm having bodies corporate as its partners if a substantial number of equity shares of such bodies corporate are owned, directly or indirectly, by the same person or group of persons, whether incorporated or not, or
  - (b) where there is functional integrality between concerned newspaper establishments.

## THE WORKING JOURNALISTS (CONDITIONS OF SERVICE) AND MISCELLANEOUS PROVISIONS RULES, 1957

In exercise of the powers conferred by section 29 of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955, the Central Government hereby makes the Rules called “The Working Journalists (Conditions Of Service) And Miscellaneous Provisions Rules, 1957”.

**Definitions (Rule 2):** In these rules, unless the context otherwise requires, -

- a) **“Leave”** means earned leave, leave on medical certificate, maternity leave, extraordinary leave, leave not due, casual leave, study leave or quarantine leave;
- b) **“Earned leave,”** means leave admissible under clause (a) of section 7 of the Act;
- c) **“Leave on medical certificate”** means leave admissible under clause (b) of section 7 of the Act;
- d) **“Leave not due”** means leave which is not due to a working journalist but which may be granted to him in anticipation of its being earned subsequently;
- e) **“Quarantine leave”** means leave of absence from duty by reason of the presence of an infectious disease in the family or household of a working journalist;

- f) **“Study leave”** means leave granted to a working journalist to enable him to undergo any special course of training which may be of use to him in his journalistic career; and
- g) **“Shifts”**: ‘day shift’ means a shift when any hours of work of the shift do not fall between the hours of 11 P.M. and 5 A.M.; ‘night shift’ means a shift when any hours of work fall between the hours of 11 P.M. and 5 A.M.

### Gratuity

1. **Payment of gratuity.** - Gratuity shall be paid to a working journalist or, in the case of his death, his nominee or nominees or, if there is no nomination in force at the time of the death of the working journalist, his family, as soon as possible after it becomes due and in any case not later than three months.
2. **Gratuity due to a deceased working journalist to whom payable.** -On death of a working journalist –
  - (a) If a nomination made by him in accordance with Rule 5 subsists, the gratuity shall be paid to his nominee or nominees in accordance with such nomination; and
  - (b) If no nomination subsists or if that nomination relates only to a part of the gratuity, the amount of the gratuity or the part thereof to which the nomination does not relate, as the case may be, shall be paid to his family.
3. **Nominations.**
  - (1) A working journalist shall, as soon as he completes three years of continuous service, or in the case of those who have completed three years of continuous service at the commencement of the Act, as soon as may be after these rules come into force, make a nomination in form A conferring the right to receive any gratuity payable under the Act, in the event of this death before the amount has become payable of, where the amount has become payable, before the payment has been made.  
  
“Where the nominee is a minor, a working. Journalist shall appoint any person in Form AA to receive the gratuity in the event of working journalist’s death during the minority of the nominee.”
  - (2) A working journalist may, in his nomination distribute the amount that may be come due to him amongst his nominees at his own discretion.
  - (3) A nomination made under sub-rule (1) may at any time be modified by the working journalist after giving a written notice of his intention to do so in Form B. If the nominee predeceases the working journalist, the interest of the nominee shall revert to the working journalist, who may make a fresh nomination in accordance with these rules.
  - (4) A nomination or its modification shall take effect, to the extent it is valid on the date on which it is received by the newspaper establishment.
4. **Deductions from gratuity.** -The gratuity will be subject to deductions on account of overpayments made to a working journalist by the newspaper establishment liable to pay such gratuity and monies borrowed by the working journalist from such newspaper establishment.

### Hours of work

1. **Special provisions regarding editor’s etc.-**
  - (1) The provision of this Chapter shall not apply to editors, or to correspondents, reporters or news-photographers.
  - (2) Notwithstanding anything contained in sub-rule (1), the following provisions shall apply to every correspondent, reporter or news-photographer stationed at the place at which the newspaper (in relation to which any such person is employed) is published, namely:-
    - (a) Subject to such agreement as may be arrived at either collectively or individually between the parties concerned, every such correspondent, reporter or news photographer shall, once he

enters upon duty on any day, be deemed to be on duty throughout that day in he finishes all the work assigned to him during that day:

Provided that if such correspondent, reporter or news-photographer has had at his disposal for rest any interval or intervals for a total period of two hours or less between any two or more assignments of work, he shall not be deemed to be on duty during Such period;

Provided further that where the total period of such interval or intervals exceeds two hours, he shall be deemed to be on duty during the period, which is in excess of the said period of two hours;

- (b) Any period of work in excess of thirty-six hours during any week (which shall be considered as a unit of work for the purposes of this sub-rule) shall be compensated by rest during the succeeding week and shall be given in one or more spells of not less than three hours each.

Provided that where the aggregate of the excess hours worked falls short of three hours, the duration of rest shall be limited only to such excess.

2. **Normal working day.** -The number of hours which shall constitute a normal working day for a working journalist exclusive of the time for meals shall not exceed six hours per day in the case of a day shift and five and half hours per day in the case of a night shift and no working journalist shall ordinarily be required or allowed to work for longer than the number of hours constituting a normal working day.
3. **Interval for rest.** -Subject to such agreement as may be arrived at between a newspaper establishment and working journalists employed in that establishment, the periods of work for working journalists shall be so fixed that no working journalist shall work for more than four hours in the case of day shift and three hours in the case of night shift before he had had an interval of rest, in the case of day shift for one hour, and in the case of night shift for half an hour.
4. **Compensation for overtime work.** -When a working journalist works for more than six hours on any day in the case of a day shift and more than five and-half hours in the case of a night shift he shall, in respect of that overtime work, be compensated in the form of hours of rest equal in number to the hours for which he has worked overtime.
5. **Conditions governing night shifts.** -No working journalist shall be employed on a night shift continuously for more than one week at a time or for more than one week in any period of fourteen days:

Provided that, subject to the previous approval of the State Labour Commissioner or any authority appointed by the State Government in this behalf, the limit prescribed in this rule may be exceeded where special circumstances so require.

6. **Interval preceding change of shift.** -In the case of change of shift from night shift to day shift or vice versa, there shall be an interval of not less than twenty-four consecutive hours between the two shifts and in the case of a change from one day shift to another day shift or from one night shift to another night shift there shall be interval of not less than twelve consecutive hours.

Provided that no such interval may be allowed if such interval either coincides with, or falls within, the interval enjoyed by a working journalist under sub-section (2) of section 6 of the Act.

## Holidays

1. **Number of holidays in a year.** -A working journalist shall be entitled to ten holidays in a calendar year.
2. **Compensatory holidays.** -If a working journalist is required to attend on a holiday, a compensatory holiday shall be given to him, within thirty days immediately following the holiday, on a day mutually agreed upon by him and his employer.

3. **Wages for holidays.** -A working journalist shall be entitled to wages on all holidays as if he was on duty.
4. **Wages for weekly day of rest.** -A working journalist shall be entitled to wages for the weekly day of rest as if he was on duty.

## Leave

1. **Competent Officers.** -Every newspaper establishment may designate one or more officers in that establishment as competent officers for the purposes of this Chapter.
2. **Application for leave. –**
  - (1) A working journalist who desires to obtain leave of absence shall apply in writing to the competent officer.
  - (2) Application for leave, other than casual leave, leave on medical certificate and quarantine leave, shall be made not less than one month before the date of commencement of leave, except in urgent or unforeseen circumstances.
3. **Recording of reason for refusal or postponement of leave.** -If leave is refused or postponed, the competent officer shall record the reasons for such refusal or postponement, as the case may be, and send a copy of the order to the working journalist.
4. **Affixing of holidays to leave.** -Holidays, other than weekly days of rest, shall not be prefixed or suffixed to any leave without the prior sanction of the competent officer.
5. **Holidays intervening, during period of leave.** -A holiday, including a weekly rest day, intervening during any leave granted under these rules shall form part of the period of leave.
6. **Recall before expiry of leave. –**
  - (1) A newspaper establishment may recall a working journalist on leave if that establishment considers it necessary to do so. In the event of such recall such working journalist shall be entitled to travelling allowance if at the time of recall he is spending his leave at a place other than his headquarters.
  - (2) The traveling allowance, which shall be paid to a working journalist under sub-rule (1), shall be determined in accordance with the rules of the newspaper establishment governing traveling allowance for journeys undertaken by working journalists in the course of their duties.
7. **Production of medical certificate of fitness before resumption of duty.** -A working journalist who has availed himself of leave for reasons of health may, before he resumes duty, be required by his employer to produce a medical certificate of fitness from an authorised medical practitioner, any registered medical practitioner or the medical officer who issued the medical certificate under sub-rule (2) of rules 28.
8. **Designation of authorised medical practitioner** -Every newspaper establishment may designate one or more registered medical practitioner as authorised medical practitioners for the purposes of these rules.
9. **Earned leave. –**
  - (1) A working journalist shall be entitled to earned leave on full wages for a period not less than one month for every eleven months spent on duty:  

Provided that he shall cease to earn such leave when the earned leave due amounts to ninety days.
  - (2) The period spent on duty shall include the weekly days of rest, holidays, casual leave and quarantine leave.

10. **Wages during earned leave.** -A working journalist on earned leave shall draw in wages equal to his average monthly wages earned during the period of twelve complete months spent on duty, or if the period is less than twelve complete months, during the entire such period, immediately preceding the month in which the leave commences.

11. **Cash compensation for earned leave not availed of –**

- (1) When a working journalist voluntarily relinquishes his post or retires from service on reaching the age of superannuation, he shall be entitled to cash compensation for earned leave not availed of unto a maximum of thirty days.

Provided that a working journalist who has been refused earned leave due to him shall be entitled to get cash compensation for the earned leave so refused.

Provided further that in the case of a working journalist who the while in service and who has not availed himself of the earned leave due to him immediately preceding the date of his death, his heirs shall be entitled to cash compensation for the leave not so availed of.

- (2) When a working journalist's services are terminated for any reason, whatsoever, other than as punishment inflicted by way of disciplinary action, he shall be entitled to cash compensation for earned leave not availed of unto a maximum of ninety days.
- (3) The cash compensation shall not be less than the amount of wages due to a working journalist for the period of leave not availed of, the relevant wage being that which would have been payable to him had he actually proceeded on leave on the day immediately preceding the occurrence of any of the events specified in sub- rules (1) or (2), as the case may be.

12. **Leave on medical certificate. –**

- (1) A working journalist shall be entitled to leave on medical certificate on one-half of the wages at the rate of not less than one month for every eighteen months of service.

Provided that he shall cease to earn such leave when the leave on medical certificate amounts to ninety days.

- (2) The medical certificate shall be from an authorised medical practitioner.

Provided that when a working journalist has proceeded to a place other than his headquarters with the permission of his employer and falls in, he may produce a medical certificate from any registered medical practitioner.

Provided further that the employer may, when the registered medical practitioner is not in the service of the Government, arrange at his own expense, the medical examination of the working journalist concerned, by any Government Medical Officer not below the rank of a Civil Assistant Surgeon or any other Medical Officer in Charge of a hospital run by a local authority or a public Organisation at that place like the Kasturba Gandhi Trust, Kamiadevi Nehru Trust or Tata Memorial Trust.

- (3) Leave on medical certificate may be taken in continuation with earned leave provided that that the total duration of earned leave and leave on medical certificate taken together shall not exceed a hundred and twenty days at any one time.
- (4) A working journalist shall be entitled at his option to convert leave on medical certificate on one-half of the wages to half the amount of leave on full wages.
- (5) The ceiling laid down in the provisos to sub-rule (1) and sub-rule (3) on the accumulation and total duration of leave may be relaxed by the competent officer in the cases of working- journalists suffering from lingering illness such as tuberculosis.

- (6) Leave on medical certificate or converted leave on medical certificate referred to in sub-rules (1) and (4) may be granted to a working journalist at his request notwithstanding that earned leave is due to him.
13. **Maternity leave.** –
- (1) A female working journalist who has put in not less than one year's service in the news paper establishment in which she for the time being employed shall be granted maternity leave on full wages for a period which he may extend unto three months from the date of its commencement or six weeks from the date of confinement whichever be earlier.
  - (2) Leave of any other kind may also be granted in continuation of maternity leave.
  - (3) Maternity leave shall also be granted in cases of miscarriage, including abortion, subject to the condition that the leave does not exceed six weeks.
14. **Quarantine leave.** –
- Quarantine leave on full wages shall be granted by the news paper establishment on the certificate of the authorised medical practitioner designated as such under rule 24 or where, there is no such authorised medical practitioner by a district public health officer or other Municipal Health Officer of similar status, for a period not exceeding twenty-one days, or, in exceptional circumstances, thirty days. Any leave necessary for quarantine purposes in excess of that period shall be adjusted against any other leave that may be due to the working journalist.
15. **Extraordinary leave.** -A working journalist who has no leave to his credit may be granted extraordinary leave without wages at the discretion of the newspaper establishment in which such working journalist is employed.
16. **Leave not due.** -A working journalist who has no leave to his credit may be granted at the discretion of the newspaper establishment in which such working journalist is employed leave not due.
17. **Study leave.** -A working journalist may be granted study leave with or without wages at the discretion of the newspaper establishment in which such working journalist is employed.
18. **Casual leave.** –
- (1) A working journalist shall be eligible for casual leave at the discretion of the newspaper establishment for fifteen days in a calendar year:  
  
Provided that not more than five days' casual leave shall be taken at any one time and such leave shall not be combined with any other leave.
  - (2) Casual leave not availed of during a calendar year will not be carried forward to the following year.
19. **Wages during casual leave.** –A working journalist on casual leave shall be entitled to wages as if he was on duty.

### LESSON ROUND-UP

- The Working Journalists & other Newspaper Employees (Conditions of service) and Miscellaneous Provisions Act, 1955 extends to the whole of India.
- The Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955, together with the Working Journalists (Conditions of Service) and Miscellaneous Provisions Rules 1975, covers rights of journalists like leave (including maternity) and holidays, payment of gratuity, retrenchment, hours of work, compensation for overtime and the setting-up of a wage board.





## SECTION VI: THE WEEKLY HOLIDAYS ACT, 1942

### KEY CONCEPTS

- Establishment ■ Restaurant ■ Shop ■ Theatre ■ Week

### Learning Objectives

#### To understand:

- The Applicability of the Act
- The provisions on closing of shops and weekly holidays
- The authority of the State Government to appoint Inspectors and Powers of Inspectors
- Penalty provisions in case of offences

### Lesson Outline

- Introduction
- History of the Legislation
- Applicability of the Act
- Definitions
- Closing of Shops
- Weekly holidays in shops, restaurants and theatres
- Additional half day closing or holiday
- No deduction or abatement to be made from wages
- Inspectors
- Powers of Inspectors
- Penalties
- Rules
- Powers of exemptions and suspensions
- Lesson Round-Up
- Test Yourself

*An Act to provide for the grant of weekly holidays to persons employed in shops, restaurants and theatres.*

## INTRODUCTION

This Weekly Holidays Act, 1942 Act provides weekly holidays to persons employed in shops, restaurants and theatres. It comes into force only after State Government notification specifying all State or a specified area for the applicability of this Act.

Employees of these establishments are entitled for one holiday in a week with wages under this Act. State Government can additionally give half day leave in a week under this Act. The Management staff is not entitled under this Act.

The Act provides for closure of every shop for one whole day in a week in shops restaurants and theatres. The Act is not applicable to those employed in management or confidential capacity in shops, restaurants and theatres. Employer shall pay wages like other working days for this one whole day leave. The Act also provides for appointment of Inspectors for the purpose of the Act. The state government has the powers to, make rules and regulation, as it may seem necessary.

## HISTORY OF THE LEGISLATION

As would appear from a study of the growth of labour legislation at the Centre and in our province particularly, though workers in factories and in industrial undertakings had their conditions of work, regulated, shop assistants and commercial employees had no benefit of legislation, until they were granted holidays under the Weekly Holidays Act, 1942. The Weekly Holidays Bill having been passed by the Legislature received its assent on 3rd April, 1942. It came on the Statute Book as the Weekly Holidays Act, 1942.

The Act is repetitive with the Shop and Establishment Acts (of all States), which mandatorily prescribe a close day for all shops and establishments. It also only applies to specific areas notified by state governments. For example in 2008, the coverage of the Act was particular to 7 areas in Karnataka (Murnad, Bhagamandala, Napoklu, Ammathi, Ponnampet and Hudikeri in Kudagu District and Munirabad and Kinnal in Raichur District) in the Port Blair Municipal Areas of Andaman and Nicobar Islands.

The conditions of employment of the persons working in Shops and Commercial Establishments in the country are being largely governed by the Acts passed by the respective State Governments and the rules framed there under. The Weekly Holidays Act, 1942 is a Central Act which facilitates grant of weekly holidays for the employees covered under the respective State Acts. The Weekly Holidays Act, 1942, provides for the grant of weekly holidays to persons employed in Shops and Commercial Establishments, etc., is operative only in those States which notify its application to specified areas within their jurisdiction.

## APPLICABILITY OF THE ACT

The Act applies to persons employed in shops, restaurants and theatres. It extends to the whole of India

It shall come into force in a State or in a specified area within a State only if the State Government by notification in the Official Gazette so directs. {Section 1(3)}.

The Act is not applicable to the persons employed in a confidential capacity or in a position of management in any shop, restaurant or theatre.

***Bhanwar Lal and ors. Vs. State of Rajasthan and anr., Civil Writ Petn. No. 265 of 1956***, Rajasthan High Court held that “The provisions of the Weekly Holidays Act prevail over the provisions of the Ajmer Shops and Commercial Establishments Act, 1956. The provisions of the the Ajmer Shops and Commercial Establishments Act, 1956 are also of no effect in so far as they are repugnant to the provisions of the Weekly Holidays Act. The Provincial Government had been given the power by Section 1(3) of the Weekly Holidays Act to bring it into force by notification in the official Gazette, but it had no power to withdraw its application.”

***Shiravanthe Ananda Rao vs State of Mysore***: It was held that the Weekly Holidays Act is a piece of legislation which Parliament was competent to enact under entry 24 of List III - Concurrent List of the Schedule VII - read with Article 246(2) of the Constitution.

## DEFINITIONS (SECTION 2)

### ‘Establishment’

Establishment means a shop, restaurant and theatre {Section 2(a)}

### ‘Day’

‘Day’ means a period of twenty-four hours beginning at midnight {Section 2(b)}

### ‘Restaurant’

Restaurant means any premises in which business is carried on principally or wholly the business of supplying meals or refreshments to the public or a class of the public for consumption on the premises but does not include a restaurant attached to a theatre {Section 2(c)}

### “Shop”

Shop includes any premises where any retail trade or business is carried on, including the business of a barber or hairdresser, and retail sales by auction, but excluding the sale of programmes, catalogues and other similar sales at theatres {Section 2(d)}

### ‘Theatre’

Theatre includes any premises intended principally or wholly for the presentation of moving pictures, dramatic performances or stage entertainments {Section 2(e)}

### ‘Week’

Week means a period of seven days beginning at midnight on Saturday. {Section 2(f)}

## CLOSING OF SHOPS

Section 3 of the Act provides for that every shop shall remain entirely closed on one day of the week and the day of such weekly closure shall be specified by the shopkeeper in a notice permanently exhibited in a conspicuous place in the shop. The shopkeeper shall not alter the day so specified more often than once in three months.

## WEEKLY HOLIDAYS

Section 4 of the Act states that every person employed otherwise than in a confidential capacity or in a position of management in any shop, restaurant or theatre shall be allowed in each week a holiday of one whole day. But this mandatory provision of weekly holiday is not applicable to

- (i) any person whose total period of employment in the week including any days spent on authorized leave is less than six days or
- (ii) a person who is entitled to an additional holiday or
- (iii) a person employed in a shop who has been allowed a whole holiday on the day on which the shop has remained closed in pursuance of Section 3.

## ADDITIONAL HALF-DAY CLOSING OR HOLIDAY

Section 5 specifies the power of the State Government to notify additional half-day closing or holiday. The State Government may, by notification in the Official Gazette, require in respect of shops or any specified class of shops that they shall be closed at such hour in the afternoon of one week-day in every week in addition to the day provided for by Section 3 as may be specified by the State Government. and, in respect of theatres and restaurants or any specified class of either or both, that every person employed therein otherwise than in a confidential capacity or in a position of management shall be allowed in each week an additional holiday of one half-day commencing at such hour in the afternoon as may be fixed by the State Government.

The State Government may, for the purposes of this section, fix different hours for different shops or different classes of shops or for different areas or for different times of the year.

*Display of notice of such additional closure:* The weekly day on which a shop is closed in pursuance of a requirement under sub-section (1) shall be specified by the shopkeeper in a notice permanently exhibited in a conspicuous place in the shop and such notice shall not be altered by the shop-keeper more often than once in three months.

### NO DEDUCTION OR ABATEMENT TO BE MADE FROM WAGES

Section 6 prohibits any deduction or abatement of the wages of any person employed in an establishment to which this Act applies on account of any day or part of a day on which the establishment has remained closed or a holiday has been allowed in accordance with Sections 3, 4 and 5. This provision is applicable even if such person is employed on the basis that he would not ordinarily receive wages for such day or part of a day. Despite of any such condition of employment, he shall nonetheless be paid for such a day or part of a day the wages he would have drawn had the establishment not remained closed or the holiday not been allowed on that day or part of a day.

The provisions of section 3 are applicable both to shops which have employees as also to shops which have no employees and are managed by the owners themselves. But so far as the provisions of sections 4, 5 and 6 are concerned, they are specifically in respect of shops which have employees. (***State of Bihar v. Gopal Singh, Patna High Court, 20 Nov. 1956***)

### INSPECTORS

Section 7 mentions about the authority of the State Government to appoint Inspectors for the purpose of the Act. According to this section, the State Government may, by notification in the Official Gazette, appoint persons to be inspectors for the purposes of this Act within such local limits as it may assign to such person. Every inspector appointed under this section shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code 1860.

### POWERS OF INSPECTORS

Section 8 of the Act states that subject to any rules made in this behalf by the State Government, an inspector may, within the local limits for which he is appointed,-

- (a) enter and remain in any establishment to which this Act applies with such assistants, if any, being servants of the Government, as he thinks fit;
- (b) make such examination of any such establishment and of any record, register or notice maintained therein in pursuance of rules made under clause (c) of sub-section (2) of Section 10, and take on the spot or otherwise such evidence of any person as he may deem necessary for carrying out the purposes of this Act;
- (c) exercise such other powers as may be necessary for carrying out the purposes of this Act.

Sub-section 2 of section 8 provides for that any person having the custody of any record, register or notice maintained in pursuance of rules made under clause (c) of sub-section (2) of Section 10 shall be bound to produce it when so required by the Inspector, but no person shall be compellable to answer any question if the answer may tend directly or indirectly to incriminate himself.

### PENALTIES

According to section 9 of the Act, the proprietor or other person responsible for the management of the establishment shall be punishable with fine which may extend, in the case of the first offence, to twenty-five rupees, and, in the case of a second or subsequent offence, to two hundred and fifty rupees for the following contraventions in respect of that establishment:

- (i) the provisions of Section 3, or Section 4,

- (ii) requirement imposed by notification under Section 5, or
- (iii) Section 6, or
- (iv) the rules made under clause (c) sub-section (2) of Section 10.

## RULES

Section 10 provides for the power of the State Government to make rules for carrying out the purposes of this Act subject to the condition of previous publication by notification in the Official Gazette,

In particular and without prejudice to the generality of foregoing power, such rules may-

- (a) define the persons who shall be deemed to be employed in a confidential capacity or in a position of management for the purpose of Sections 4 and 5;
- (b) regulate the exercise of their powers and the discharge of their duties by inspectors;
- (c) require registers and records to be maintained and notices to be displayed in establishments to which this Act applies and prescribe the forms and contents thereof.

Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislature.

## POWERS OF EXEMPTION AND SUSPENSION

According to Section 11 of the Act, the Central Government in respect of establishments under its control, and the State Government in respect of all other establishments within the State may, subject to such conditions, if any, as it thinks fit to impose, exempt any establishment to which this Act applies from all or any specified provisions of this Act, and may, on any special occasion in connection with a fair or festival or a succession of public holidays, suspend for a specified period the operation of the Act.

### LESSON ROUND-UP

- The aim of this Act is provide for the grant of weekly holidays to persons employed in shops, restaurants and theatres.
- Every person employed otherwise than in a confidential capacity or in a position of management in any shops, restaurants or theatres shall be allowed in each week a holiday of one whole day (section 4).
- Section 3 of this Act directs the closing of shops.
- As per section 3 of this Act, every shop shall remain entirely closed on one day of the week, which day shall be specified by the shopkeeper in a notice permanently exhibited in a conspicuous place in the shop.
- No deduction or abatement of the wages of any person employed in an establishment to which this Act applies shall be made on account of any day or part of a day on which the establishment has remained closed or a holiday has been allowed in accordance with section 3, 4 & 5.
- In the event of any contravention of the provisions of this Act is punishable with fine up to twenty-five rupees, in the case of first offence and up to two hundred and fifty in the case of second and subsequent offence. Every employee other than the one employed in a confidential capacity or managerial position is entitled to a holiday of one whole day in each week.
- The weekly day off has to be specified by the shop-keeper by a notice permanently exhibited in a conspicuous place in the shop, which is not to be changed by the shop-keeper more than once in three months.
- Contravention of the relevant provisions of the Act is punishable with fine upto twenty-five rupees, in the case of first offence and upto two hundred and fifty rupees in the case of second or subsequent offence.



## SECTION VII: THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

### KEY CONCEPTS

■ Aggrieved Woman ■ Appropriate Government ■ Domestic Worker ■ Employee ■ Employer ■ Complaints Committees ■ Unorganised Sector

### Learning Objectives

#### To understand:

- The Object and History of the Act
- Forms of Workplace Sexual Harassment
- Constitution of Internal Complaints Committee (ICC) and Local Complaints Committee (LCC)
- The procedure for filing and hearing of complaints under the Act
- The procedure for conducting inquiry into the complaint made
- The requirements for the submission of action report by Internal Committee or Local Committee after conducting inquiry
- The provisions on false or malicious complaint and false evidence
- Duties of Employer and District Officer
- The important provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013
- Compliances to be made by the Employer and Disclosure Requirements under the Annual Report of Companies

### Lesson Outline

- |   |   |
|---|---|
| ➤ Introduction                                  | ➤ Inquiry into complaint  |
| ➤ History of the Legislation                    | ➤ Duties of employer  |
| ➤ Object of the Act                             | ➤ Duties and powers of District Officer   |
| ➤ Applicability of the Act                      | ➤ Miscellaneous   |
| ➤ Definitions                                   | ➤ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 |
| ➤ Complaints Committees                         | ➤ Compliances by the Employer   |
| ➤ Constitution of Internal Complaints Committee | ➤ Disclosure Requirements under the Annual Report of Companies                                |
| ➤ Constitution of Local Complaints Committee    | ➤ Other Laws Pertaining to Workplace Sexual Harassment  |
| ➤ Grants and audit                              | ➤ Lesson Round-Up   |
| ➤ Complaint of sexual harassment                | ➤ Test Yourself   |
| ➤ Conciliation                                  |   |

***An Act to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto.***



## INTRODUCTION

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was passed by the Parliament and came into force from 9th December 2013. It was enacted to ensure a safe working environment for women. It provides for protection to women at their workplace from any form of sexual harassment and for redressal of any complaints they may have launched. The Act was formed on the basis of the guidelines laid down by the Supreme Court in its landmark judgement, *Vishakha v. State of Rajasthan* (where sexual harassment was first defined) but is much wider in scope, bringing within its ambit the domestic worker as well. The Ministry Women and Child Development made the rules with regard to the same effective from the same date. These rules are called the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (the “Rules”).

Sexual harassment has been defined as “unwelcome acts of behaviour (whether directly or by implication) namely (a) physical contact and advances or, (b) a demand or request for sexual favours or, (c) making sexually coloured remarks or, (d) showing pornography or, (e) any other unwelcome physical, verbal or non- verbal conduct of sexual nature.”

The Act mandates the constitution of an Internal Complaints Committee (ICC) by the employer in every one of his offices and also mandates that the Presiding Officer shall be a woman.

The Act also mandates for the constitution of a Local Complaints Committee (LCC) which receives complaints from establishments where ICC has not been constituted due to having less than 10 workers or if the complaint is against the employer himself.

Recognising the sensitivity attached to matters pertaining to sexual harassment, the Act attaches significant importance to ensuring that the complaint and connected information are kept confidential. The Act specifically stipulates that information pertaining to workplace sexual harassment shall not be subject to the provisions of the Right to Information Act, 2005.

## HISTORY OF THE LEGISLATION

Sexual harassment of a woman in workplace is of serious concern to humanity on the whole. It cannot be construed to be in a narrow sense, as it may include sexual advances and other verbal or physical harassment of a sexual nature. The victims of sexual harassment face psychological and health effects like stress, depression, anxiety, shame, guilt and so on.

“...the time has come when women must be able to feel liberated and emancipated from what could be fundamentally oppressive conditions against which an autonomous choice of freedom can be exercised and made available by women. This is sexual autonomy in the fullest degree” **Late Chief Justice J.S. Verma, Justice Verma Committee Report, 2013.**

Sexual harassment results in violation of the fundamental rights of a woman to equality under Articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under Article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment;

The principle of gender equality is enshrined in the Constitution, in its Preamble, fundamental rights, fundamental duties and Directive Principles. However, workplace sexual harassment in India, was for the very first time recognized by the Supreme Court of India in its landmark judgment of ***Vishaka v. State of Rajasthan, 1997 6 SCC 241: AIR 1997 SC 3011 (“Vishaka Judgment”)***, wherein the Supreme Court framed certain guidelines and issued directions to the Union of India to enact an appropriate law for combating workplace sexual harassment. In the absence of a specific law in India, the Supreme Court, in the *Vishaka Judgment*, laid down certain guidelines making it mandatory for every employer to provide a mechanism to redress grievances pertaining to workplace sexual harassment (“Vishaka Guidelines”) which were being followed by employers until the enactment of the Act.

The Vishaka Judgement In 1992, Bhanwari Devi, a dalit woman employed with the rural development programme of the Government of Rajasthan, was brutally gang raped on account of her efforts to curb the then prevalent practice of child marriage. This incident revealed the hazards that working women were exposed to on a day to day basis and highlighted the urgency for safeguards to be implemented in this regard. Championing the cause of workingwomen in the country, women's rights activists and lawyers filed a public interest litigation in the Supreme Court of India under the banner of Vishaka. The Supreme Court of India, for the first time, acknowledged the glaring legislative inadequacy and acknowledged workplace sexual harassment as a human rights violation. In framing the Vishaka Guidelines, the Supreme Court of India placed reliance on the Convention on Elimination of All Forms of Discrimination against Women, adopted by the General Assembly of the United Nations, in 1979, which India has both signed and ratified.

As per the Vishaka Judgment, the Vishaka Guidelines issued under Article 32 of the Constitution, until such time a legislative framework on the subject has been drawn-up and enacted, would have the effect of law and would have to be mandatorily followed by organizations, both in the private and government sector.

As per the Vishaka judgment, 'Sexual Harassment' includes such unwelcome sexually determined behavior (whether directly or by implication) as:

- a. Physical contact and advances
- b. A demand or request for sexual favours;
- c. Sexually coloured remarks;
- d. Showing pornography;
- e. Any other unwelcome physical, verbal or nonverbal conduct of sexual nature.

Where any of these acts are committed in circumstances under which the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work (whether she is drawing salary or honorarium or voluntary service, whether in government, public or private enterprise), such conduct can be humiliating and may constitute a health and safety problem, it amounts to sexual harassment in the workplace. It is discriminatory, for instance, when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work (including recruiting and promotion), or when it creates a hostile working environment. Adverse consequences might result if the victim does not consent to the conduct in question or raises any objection thereto.'

The Vishaka judgment initiated a nationwide discourse on workplace sexual harassment and threw out wide open an issue that was swept under the carpet for the longest time. The first case before the Supreme Court after Vishaka in this respect was the case of **Apparel Export Promotion Council v. A.K Chopra,(1999) 1 SCC 759**. In this case, the Supreme Court reiterated the law laid down in the Vishaka Judgment and upheld the dismissal of a superior officer of the Delhi based Apparel Export Promotion Council who was found guilty of sexually harassing a subordinate female employee at the workplace. In this judgment, the Supreme Court enlarged the definition of sexual harassment by ruling that physical contact was not essential for it to amount to an act of sexual harassment. The Supreme Court explained that "sexual harassment is a form of sex discrimination projected through unwelcome sexual advances, request for sexual favours and other verbal or physical conduct with sexual overtones, whether directly or by implication, particularly when submission to or rejection of such conduct by the female employee was capable of being used for affecting the employment of the female employee and unreasonably interfering with her work performance and had the effect of creating an intimidating or hostile work environment for her."

In light of the above judgment, the very first efforts, towards implementing a law for protection of women from sexual harassment at workplace, were taken in 2007 when the Protection of Women against Sexual

Harassment at Workplace Bill, 2007, was introduced in the Parliament. However, this Bill never saw the light of the day. On December 7, 2010, the Protection of Women against Sexual Harassment at Work Place Bill, 2010 (the “Original Bill”) was introduced in Lok Sabha and was referred to a Parliamentary Standing Committee on Human Resource Development, led by Shri Oscar Fernandes (“Standing Committee”), on December 30, 2010 for examination, and the Standing Committee came out with its report in December, 2011.

Further to the report, subsequent changes were made to the Original Bill, including to the title of the Bill, which was changed to Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill, 2013 (the “Bill”). The change of title clearly reflects the objective of the Ministry for passing this legislation i.e. to not just focus on redressal of complaints of sexual harassment but also focus on prevention and prohibition of sexual harassment.

As already stated above, since several bills related to prevention of sexual harassment, one after the other, were always pending in either of the Houses of the Parliament (the Lok Sabha or the Rajya Sabha), Medha Kotwal Lele, coordinator of Aalochana, a centre for documentation and research on women filed a petition in the Supreme Court highlighting a number of individual cases of sexual harassment and arguing that the Vishaka Guidelines were not being effectively implemented. The Supreme Court was specifically required to consider whether individual state governments had made the changes to procedure and policy required by the Vishaka Guidelines or not.

The Supreme Court then, in ***Medha Kotwal Lele v. Union of India, AIR 2013 SC 93*** stated that the Vishaka Guidelines had to be implemented in form, substance and spirit in order to help bring gender parity by ensuring women can work with dignity, decency and due respect. It noted that the Vishaka Guidelines require both employers and other responsible persons or institutions to observe them and to help prevent sexual harassment of women. Further, the Court held that a number of states were falling short in this regard and reiterated that there is an obligation to prevent all forms of violence. It stated that “lip service, hollow statements and inert and inadequate laws with sloppy enforcement are not enough for true and genuine upliftment of our half most precious population – the women”.

This case further stated that States governments must make the necessary amendments to the Central Civil Services (Conduct) Rules, 1964 and Standing Orders within two months of the date of judgment and entrusted a responsibility upon the Bar Council of India to ensure that all bar associations in the country and persons registered with the State Bar Councils follow the Vishaka Guidelines. Similarly, the Medical Council of India, Council of Architecture, Institute of Chartered Accountants, Institute of Company Secretaries and other statutory Institutes were required to ensure that the organisations, bodies, associations, institutions and persons registered/affiliated with them follow the Vishaka Guidelines.

The protection against sexual harassment and the right to work with dignity are universally recognised human rights by international conventions and instruments such as Convention on the Elimination of all forms of Discrimination against Women, which has been ratified on the 25th June, 1993 by the Government of India.

So, it was expedient to make provisions for giving effect to the said Convention for protection of women against sexual harassment at workplace.

India’s first legislation specifically addressing the issue of workplace sexual harassment; the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“POSH Act”) was enacted by the Ministry of Women and Child Development, India in 2013 – after 16 years of the Supreme Court judgment in the case of ***Vishaka & Ors. v. State of Rajasthan & Ors.*** (1997 (7) SCC 323). The Act came into force w.e.f. 9th December, 2013. The Government also subsequently notified the rules under the POSH Act titled the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (“POSH Rules”). The year 2013 also witnessed the promulgation of the Criminal Law (Amendment) Act, 2013 (“Criminal Law Amendment Act”) which has criminalized offences such as sexual harassment, stalking and voyeurism.

#### ***Medha Kotwal Lele & Ors. v. Union of India & Ors.***

A letter written by Medha Kotwal highlighted a number of individual cases of sexual harassment stating that the Vishaka Guidelines were not being effectively implemented.

Converting the letter into a writ petition, the Supreme Court took cognizance and undertook monitoring of implementation of the Vishaka Guidelines across the country by directing State Governments to file affidavits emphasizing on the steps taken by them to implement the Vishaka Guidelines. The result showed a poor performance by a majority of the states.

Thus, SC issued further orders to national organisations such as the Bar Council of India, to respect and implement the Vishakha Guidelines in spirit.

In its judgment, the Supreme Court observed that “the implementation of the Vishaka Guidelines has to be not only in form but also in substance and spirit so as to make available safe and secure environment for women at workplace in every aspect and thereby enabling working women to work with dignity, decency and due respect.”

Not being satisfied with the implementation of the Vishaka Guidelines, it directed States to put in place sufficient mechanisms to ensure effective implementation of the Vishaka Guidelines. Finally, the Supreme Court asserted that in case of a non-compliance or non-adherence of the Vishaka Guidelines, it would be open to the aggrieved persons to approach the respective High Courts.

### Object of the Act

The Act has been enacted with the objective of preventing and protecting women against workplace sexual harassment and to ensure effective redressal of complaints of sexual harassment.

#### The Preamble of the Act reads as under:

“An Act to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto.

WHEREAS sexual harassment results in violation of the fundamental rights of a woman to equality under articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment;

AND WHEREAS the protection against sexual harassment and the right to work with dignity are universally recognised human rights by international conventions and instruments such as Convention on the Elimination of all Forms of Discrimination against Women, which has been ratified on the 25th June, 1993 by the Government of India;

AND WHEREAS it is expedient to make provisions for giving effect to the said Convention for protection of women against sexual harassment at workplace.”

#### **What is Workplace Sexual Harassment?**

Workplace sexual harassment is sexual, unwelcome and the experience is subjective. It is the impact and not intent that matters and it almost always occurs in a matrix of power. The impact of sexual harassment at workplace is far reaching and is an injury to equal right of women. Workplace sexual harassment not only creates an insecure and hostile working environment for women but also impedes their ability to deliver in today's competing world. Apart from interfering with their performance at work, it also adversely affects their social and economic growth and puts them through physical and emotional suffering.

#### ***Apparel Export Promotion Council v. A.K Chopra***

In this case, the Supreme Court upheld the dismissal of a superior officer of the Delhi based Apparel Export Promotion Council who was found guilty of sexually harassing a subordinate female employee at the workplace. Supreme Court enlarged the definition of sexual harassment by ruling that physical contact was not essential for it to amount to an act of sexual harassment.

The Supreme Court explained that “sexual harassment is a form of sex discrimination projected through unwelcome sexual advances, request for sexual favours and other verbal or physical conduct with sexual overtones, whether directly or by implication, particularly when submission to or rejection of such conduct by the female employee was capable of being used for affecting the employment of the female employee and unreasonably interfering with her work performance and had the effect of creating an intimidating or hostile work environment for her.”

## FORMS OF WORKPLACE SEXUAL HARASSMENT

Generally, workplace sexual harassment refers to two common forms of inappropriate behaviour:

- **Quid Pro Quo** (literally 'this for that') - Implied or explicit promise of preferential/detrimental treatment in employment - Implied or express threat about her present or future employment status.
- **Hostile Work Environment** - Creating a hostile, intimidating or an offensive work environment - Humiliating treatment likely to affect her health or safety.

### Applicability of the Act

According to section 1, the Act extends to the whole of India.

As per the Act, an 'aggrieved woman' in relation to a workplace, is a woman of any age, whether employed or not, who alleges to have been subjected to any act of sexual harassment. Given that the definition does not necessitate the woman to be an employee, even a customer/ client who may be sexually harassed at a workplace can claim protection under the Act.

In order for a woman to claim protection under the Act, the incident of sexual harassment should have taken place at the 'workplace'.

The Act applies to both the organized and unorganized sectors (self-employed or having less than 10 workers) in India. It inter alia, applies to government bodies, private and public sector organizations, non-governmental organizations, organizations carrying out commercial, vocational, educational, entertainment, industrial, financial activities, hospitals and nursing homes, educational institutes, sports institutions and stadiums used for training individuals and also applies to a dwelling place or a house.

### Definitions (Section 2)

In this Act, unless the context otherwise requires, some of the important definitions are as follows:—

**“Aggrieved Woman”** means—

- i. in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent;
- ii. in relation to a dwelling place or house, a woman of any age who is employed in such a dwelling place or house. {Section 2(a)}

The Act recognizes the right of every woman to a safe and secure workplace environment irrespective of her age or employment/work status. Hence, the right of all women working or visiting any workplace whether in the capacity of regular, temporary, adhoc, or daily wages basis is protected under the Act. It includes all women whether engaged directly or through an agent including a contractor, with or without the knowledge of the principal employer. They may be working for remuneration, on a voluntary basis or otherwise. Their terms of employment can be express or implied. Further, she could be a co-worker, a contract worker, probationer, trainee, apprentice, or called by any other such name. The Act also covers a woman, who is working in a dwelling place or house.

**“Appropriate Government”** means –

- i. in relation to a workplace which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly –
  - a. by the Central Government or the Union territory administration, the Central Government;
  - b. by the State Government, the State Government;

- ii. in relation to any workplace not covered under sub-clause (i) and falling within its territory, the State Government; i.e. for the private sector, appropriate Government is the concerned State Government. {Section 2(b)}

**“Domestic Worker”** means

- a woman who is employed to do the household work in any household for remuneration whether in cash or kind, either directly or through any agency on a temporary, permanent, part time or full time basis,
- but does not include any member of the family of the employer;

{Section 2(e)}

**“Employee”** means

- a person employed at a workplace for any work on regular, temporary, ad hoc or daily wage basis, either directly or through an agent, including a contractor, with or, without the knowledge of the principal employer, whether for remuneration or not, or working on a voluntary basis or otherwise, whether the terms of employment are express or implied and
- includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name;

{Section 2(f)}

**“Employer”** means:’ –

- i. in relation to any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority, the head of that department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit or such other officer as the appropriate Government or the local authority, as the case may be, may by an order specify in this behalf;
- ii. in any workplace not covered under sub-clause (i), any person responsible for the management, supervision and control of the workplace.  
*Explanation.* – For the purposes of this sub-clause “management” includes the person or board or committee responsible for formulation and administration of policies for such organisation;
- iii. in relation to workplace covered under sub-clauses (i) and (ii), the person discharging contractual obligations with respect to his or her employees;
- iv. in relation to a dwelling place or house, a person or a household who employs or benefits from the employment of domestic worker, irrespective of the number, time period or type of such worker employed, or the nature of the employment or activities performed by the domestic worker;

{Section 2(g)}

The employer is duty bound to initiate disciplinary action against the officer involved in sexual harassment, as it involves human dignity of women enshrined under Articles 14, 15 and 21 of the Constitution and the inquiry must be fair and reasonable.

- vi) “respondent” means a person against whom the aggrieved woman has made a complaint under section 9; {Section 2(m)}
- vii) “sexual harassment” includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely: –
  - i. physical contact and advances; or
  - ii. a demand or request for sexual favours; or



- iii. making sexually coloured remarks; or
- iv. showing pornography; or
- v. any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

**{Section 2(n)}**

The POSH Act defines ‘sexual harassment’ in line with the Supreme Court’s definition of ‘sexual harassment’ in the Vishaka Judgment. The definition of ‘sexual harassment’ under the POSH Act is wide enough to cover both direct or implied sexual conduct which may involve physical, verbal or even written conduct. The key distinguishing feature is that the conduct is unwanted and unwelcome by the recipient. The definition also includes reference to creating an ‘intimidate, offensive or hostile working environment’. An example would be a work environment where an individual is subject to unwelcome comments about her body type resulting in the woman employee feeling embarrassed and unable to work properly.

The Act has defined what constitutes sexual harassment under Section 2 (n) and under Section 3, has further widened the definition of sexual harassment by providing that any of the following circumstances, related to sexual harassment, may also amount to Sexual Harassment:

- (1) implied or explicit promise of preferential treatment in the victim’s employment;
- (2) implied or explicit threat of detrimental treatment in the victim’s employment;
- (3) implied or explicit threat about the victim’s present or future employment status;
- (4) interferes with the victim’s work or creating an intimidating or offensive or hostile work environment for her; and
- (5) humiliating treatment likely to affect the victim’s health or safety.

The definition is very wide, as it provides for direct or implied sexual conduct, which may mean that what is “implied” sexual behaviour for one person, may not be the same for another person. Hence, the implied behaviour will depend only upon the interpretation of a person. The definition also provides that harassment may be a verbal or non-verbal conduct. Hence, a mere statement in a case where the plaintiff requested defendant No. 1 to instruct the attendants to switch off the A. C. Machine, but in reply defendant No. 1 said “... come close to me, you will start feeling hot”, can also be construed to be sexual harassment (**Albert Davit Limited v. Anuradha Chowdhury and Ors., (2004) 2 CALLT 421 (HC)**).

***Shanta Kumar v. Council of Scientific and Industrial Research (CSIR) & Ors, Delhi High Court ((2018) 156 FLR 719)*****Facts:**

The third respondent entered the lab while the petitioner was working there, shut off all of the equipment, forced her out, and locked the door. The respondent allegedly used offensive language, according to the petitioner. After reviewing the complaint, the committee came to the conclusion that it was administrative and managerial in nature rather than sexual. The Disciplinary Authority accepted the contested report, which was then being contested. Shanta Kumar filed a writ suit with the Delhi High Court contesting the Complaint Committee’s actions and the Disciplinary Authority’s ruling clearing the Respondent of the sexual harassment claims brought against him. The petitioner argued that the Complaint Committee’s report lacked critical thought. The third respondent had touched the petitioner’s arm, and it was argued that any unwanted physical contact constituted sexual harassment.

**Held:**

The Court implied that as long as a physical touch or approach is made in the course of sexually suggestive behaviour, it constitutes sexual harassment. Even if unwanted, a simple incidental touch would not constitute sexual harassment. Even if the occurrence in question was derogatory in nature, it would not meet the criteria for sexual harassment in this case.



viii) According to section 2(o) **“workplace” includes –**

- a. any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society;
- b. any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service;
- c. hospitals or nursing homes;
- d. any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;
- e. any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey;
- f. a dwelling place or a house;

Workplace [section 2 (o)] has been defined as private sector organisation / private venture / undertaking / enterprise / institution / establishment / society / trust / non-governmental organisation / unit or service provider and places visited by employee (arising out of or during the course of employment, including transportation provided by employer for undertaking journey). Hence, if harassment takes place even during transportation or during a lunch meeting at a restaurant, the same will be covered under the Act.

As such, a logical meaning should be given to the expression “workplace” so that the purpose for which those guidelines have been framed, is not made unworkable. Workplace cannot be given a restricted meaning so as to restrict the application of the said guidelines within the short and narrow campus of the school compound. Workplace should be given a broader and wider meaning so that the said guidelines can be applied where its application is needed even beyond the compound of the workplace for removal of the obstacle of like nature which prevents a working woman from attending her place of work and also for providing a suitable and congenial atmosphere to her in her place of work where she can continue her service with honour and dignity.

In the case of *Saurabh Kumar Mallick v. Comptroller & Auditor General of India, WP(C) No. 8649/2007*, the respondent who was facing departmental inquiry for allegedly indulging in sexual harassment of his senior woman officer contended that he could not be accused of sexual harassment at workplace as the alleged misconduct took place not at the workplace but at an official mess where the woman officer was residing. It was also argued that the complainant was even senior to the respondent and therefore no ‘favour’ could be extracted by the respondent from the complainant and thus the alleged act would not constitute ‘sexual harassment’. The Delhi Court while considering this matter held this as ‘clearly misconceived’. The Delhi Court observed that ‘the aim and objective of formulating the Vishaka Guidelines was obvious in order to ensure that sexual harassment of working women is prevented and any person guilty of such an act is dealt with sternly. Keeping in view the objective behind the judgment, a narrow and pedantic approach cannot be taken in defining the term ‘workplace’ by confining the meaning to the commonly understood expression “office”. It is imperative to take into consideration the recent trend which has emerged with the advent of computer and internet technology and advancement of information technology. A person can interact or do business conference with another person while sitting in some other country by way of videoconferencing. It has also become a trend that the office is being run by CEOs from their residence. In a case like this, if such an officer indulges in an act of sexual harassment with an employee, say, his private secretary, it would not be open for him to say that he had not committed the act at ‘workplace’ but at his ‘residence’ and get away with the same.

Noting the above, the High Court observed that the following factors would have bearing on determining whether the act has occurred in the 'workplace':

- Proximity from the place of work;
- Control of the management over such a place/residence where the working woman is residing; and
- Such a residence has to be an extension or contiguous part of the working place.

In conclusion, the Delhi High Court held that the official mess where the employee was alleged to have been sexually harassed definitely falls under 'workplace'.

- (ix) "**Unorganised Sector**" in relation to a workplace means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten.

{Section 2(p)}

### Complaints Committees

The Act provides for two kinds of complaints mechanisms:

- (i) Internal Complaints Committee (ICC) and
- (ii) Local Complaints Committee (LCC).

### Constitution of Internal Complaints Committee

According to section 4 the Act requires an employer to set up an 'Internal Complaints Committee' ("ICC") at each office or branch, of an organization employing 10 or more employees, to hear and redress grievances pertaining to sexual harassment. The section provides for the following regarding the ICC:

1. **Mandatory constitution of Internal Complaints Committee by order in writing:**  
Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the "Internal Complaints Committee":  
Provided that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices.
2. **Composition of the ICC:** The Internal Committee shall consist of the following members to be nominated by the employer, namely: –
  - a. a Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees:  
Provided that in case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to in sub-section (l):  
Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organisation;
  - b. **Members:** not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge;
  - c. External member one member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment:  
Provided that at least one-half of the total Members so nominated shall be women.

3. **Tenure of office:**

The Presiding Officer and every Member of the Internal Committee shall hold office for such period, not exceeding three years, from the date of their nomination as may be specified by the employer.

4. **Fees of external members:**

The Member appointed from amongst the non-governmental organisations or associations shall be paid such fees or allowances for holding the proceedings of the Internal Committee, by the employer, as may be prescribed.

5. Casual vacancy in the office of Presiding Officer or any member of Internal Committee: Where the Presiding Officer or any Member of the Internal Committee-

- a. contravenes the provisions of section 16; or
- b. has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or
- c. he has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or
- d. has so abused his position as to render his continuance in office prejudicial to the public interest, such Presiding Officer or Member, as the case may be,

shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.

In Vidya Akhave (“Petitioner”) v. Union of India and Ors, Writ Petition 796 of 2015, The Bombay High Court (“Court”) ruled that it would not interfere with an order of punishment passed by the Internal Complaints Committee (“ICC”) in relation to a sexual harassment complaint, unless the order is shockingly disproportionate.

### Constitution of Local Complaints Committee

At the district level, the Government is required to set up a ‘Local Complaints Committee’ (“LCC”) to investigate and redress complaints of sexual harassment from the unorganized sector or from establishments where the ICC has not been constituted on account of the establishment having less than 10 employees or if the complaint is against the employer. The LCC has special relevance in cases of sexual harassment of domestic workers or where the complaint is against the employer himself or a third party who is not an employee. The provisions of the Act w.r.t. LCC are as follows:

(i) **Notification of District Officer**

According to section 5, the Appropriate Government may notify a District Magistrate or Additional District Magistrate or the Collector or Deputy Collector as a District Officer for every District to exercise powers or discharge functions under this Act.

(ii) **Constitution and jurisdiction of Local Complaints Committee**

According to section 6, every District Officer shall constitute in the district concerned, a committee to be known as the “Local Complaints Committee” to receive complaints of sexual harassment from establishments where the Internal Complaints Committee has not been constituted due to having less than ten workers or if the complaint is against the employer himself. The District Officer shall designate one nodal officer in every block, taluka and tehsil in rural or tribal area and ward or municipality in the urban area, to receive complaints and forward the same to the concerned Local Complaints Committee within a period of seven days. The jurisdiction of the Local Complaints Committee shall extend to the areas of the district where it is constituted.

**(iii) Composition, tenure and other terms and conditions of Local Complaints Committee**

Pursuant to section 7, the Local Complaints Committee shall consist of the following members to be nominated by the District Officer, namely:- –

- a. a Chairperson to be nominated from amongst the eminent women in the field of social work and committed to the cause of women;
- b. one Member to be nominated from amongst the women working in block, taluka or tehsil or ward or municipality in the district;
- c. two Members, of whom at least one shall be a woman, to be nominated from amongst such non- governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment, which may be prescribed:

Provided that at least one of the nominees should, preferably, have a background in law or legal knowledge. It is provided further that at least one of the nominees shall be a woman belonging to the Scheduled Castes or the Scheduled Tribes or the Other Backward Classes or minority community notified by the Central Government, from time to time;

- d. the concerned officer dealing with the social welfare or women and child development in the district, shall be a member ex officio. {Section 7(1)}

The Chairperson and every Member of the Local Committee shall hold office for such period, not exceeding three years, from the date of their appointment as may be specified by the District Officer. Where the Chairperson or any Member of the Local Complaints Committee commits any of the following acts, he shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section:

- a. contravenes the provisions of section 16; or
- b. has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or
- c. has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or
- d. has so abused his position as to render his continuance in office prejudicial to the public interest, such Chairperson or Member, as the case may be.

The Chairperson and Members of the Local Committee other than the Members nominated under clauses (b) and (d) of sub-section (1) shall be entitled to such fees or allowances for holding the proceedings of the Local Committee as may be prescribed.

**Grants and audit**

In accordance with section 8, the Central Government may, after due appropriation made by Parliament by law in this behalf, make to the State Government grants of such sums of money as the Central Government may think fit, for being utilised for the payment of fees or allowances referred to in section 7.

The State Government may set up an agency and transfer the grants so made to that agency. The agency shall pay to the District Officer, such sums as may be required for the payment of fees or allowances referred to section 7. The accounts of such agency shall be maintained and audited in such manner as may, in consultation with the Accountant General of the State, be prescribed and the person holding the custody of the accounts of the agency shall furnish, to the State Government, before such date, as may be prescribed, its audited copy of accounts together with auditors' report thereon.

## COMPLAINT

### Complaint of sexual harassment

Section 9 of the Act provides for the procedure for filing and hearing of complaints under the Act as follows:

1. Any aggrieved woman may make, in writing, a complaint of sexual harassment at work place to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident:

Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing:

Provided further that the Internal Committee or, as the case may be, the Local Committee may, for the reasons to be recorded in writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.

2. Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section.

Prompt reporting of an act of sexual harassment is probably as important as swift action to be taken by the authorities on receiving a complaint. In fact the more prompt the complaint is, the more authentic can it be treated.

In ***Manjeet Singh vs Indraprastha Gas Limited 236 (2017) DLT 396***, the Delhi High Court observed that anonymous complaints under the Act are bound to be rejected.

#### ***Ruchika Singh Chhabra v. Air France India and Anr. (2018 SCC Online Del 9340)***

A survey by the Indian National Bar Association reveals that most companies do not follow the Vishaka Guidelines. Most respondents of the survey, who were victims, said their companies do not adhere to these guidelines. The honorable Delhi High Court has also taken note of the situation. Stanislas Brun, a French national and the current managing director of Air France, testified during the hearing of a petition made by Ruchika Singh Chhabra, a former employee of Air France who had accused another employee of sexual harassment.

The Court further stated that a complainant who displays the courage to speak out against unacceptable behavior, regardless of the perpetrator, is not merely a target of sympathy or pity and that, in one instance, a permissiveness or infraction in implementation suggests that the employer lacks the desire or capacity to ensure such safety and equality at its workplace.

The written complaint should contain a description of each incident(s). It should include relevant dates, timings and locations; name of the respondent(s); and the working relationship between the parties. A person designated to manage the workplace sexual harassment complaint is required to provide assistance in writing of the complaint if the complainant seeks it for any reason.

### Conciliation

According to section 10, the Internal Committee or, as the case may be, the Local Committee, may, before initiating an inquiry under section 11 and at the request of the aggrieved woman, take steps to settle the matter between her and the respondent through conciliation. It is provided that no monetary settlement shall be made as a basis of conciliation.

Where a settlement has been so arrived, the Internal Committee or the Local Committee, as the case may be, shall record the settlement so arrived and forward the same to the employer or the District Officer to take

action as specified in the recommendation. The Internal Committee or the Local Committee, as the case may be, shall provide the copies of the settlement so recorded to the aggrieved woman and the respondent. No further inquiry shall be conducted by the Internal Committee or the Local Committee, as the case may be in case where such settlement is arrived.

### **Inquiry into complaint**

Section 11 of the Act states the procedure for conducting inquiry into the complaint made under the Act. Subject to the provisions of section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if prima facie case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code, and any other relevant provisions of the said Code where applicable.

It is provided that where the aggrieved woman informs the Internal Committee or the Local Committee, as the case may be, that any term or condition of the settlement arrived at under sub-section (2) of section 10 has not been complied with by the respondent, the Internal Committee or the Local Committee shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to the police.

It is provided further that where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.

Notwithstanding anything contained in section 509 of the Indian Penal Code, the court may, when the respondent is convicted of the offence, order payment of such sums as it may consider appropriate, to the aggrieved woman by the respondent, having regard to the provisions of section 15.

The POSH Act stipulates that the ICC and LCC shall, while inquiring into a complaint of workplace sexual harassment, have the same powers as vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit in respect of:-

- a. summoning and enforcing the attendance of any person and examining him on oath;
- b. requiring the discovery and production of documents; and
- c. any other matter which may be prescribed.

Such an inquiry shall be completed within a period of ninety days.

### **Inquiry into Complaint**

Action during pendency of inquiry.

Section 12 provides for the relief that can be given by IC to the aggrieved woman during pendency of inquiry. During the pendency of an inquiry, on a written request made by the aggrieved woman, the Internal Committee or the Local Committee, as the case may be, may recommend to the employer to –

- a. transfer the aggrieved woman or the respondent to any other workplace; or
- b. grant leave to the aggrieved woman up to a period of three months; or
- c. grant such other relief to the aggrieved woman as may be prescribed.

The leave granted to the aggrieved woman under this section shall be in addition to the leave she would be otherwise entitled.

On such recommendation of the Internal Committee or the Local Committee, as the case may be, the employer shall implement the recommendations so made and send the report of such implementation to the Internal Committee or the Local Committee, as the case may be.

### **Inquiry report**

Section 13 of the Act provides for the action report to be submitted by Internal Committee or Local Committee after conducting inquiry under the Act. On the completion of an inquiry under this Act, the Internal Committee or the Local Committee, as the case may be, shall provide a report of its findings to the employer, or as the case may be, the District Officer within a period often days from the date of completion of the inquiry and such report be made available to the concerned parties.

Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer and the District Officer that no action is required to be taken in the matter.

Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be –

- i. to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed;
- ii. to deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine, in accordance with the provisions of section 15.

It is provided that in case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment it may direct to the respondent to pay such sum to the aggrieved woman. It is provided further that in case the respondent fails to pay the sum referred to in clause (ii), the Internal Committee or, as the case may be, the Local Committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

The employer or the District Officer shall act upon the recommendation within sixty days of its receipt by him.

### **Punishment for false or malicious complaint and false evidence**

There are strict provisions under section 14 of the Act for false or malicious complaint and false evidence under the Act. Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer or the District Officer, as the case may be, to take action against the woman or the person who has made the complaint under section 9, as the case may be, in accordance with the provisions of the service rules applicable to her or him or where no such service rules exist, in such manner as may be prescribed.

It is provided that a mere inability to substantiate a complaint or provide adequate proof need not attract action against the complainant under this section. It is provided further that the malicious intent on part of the complainant shall be established after an inquiry in accordance with the procedure prescribed, before any action is recommended.

Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that during the inquiry any witness has given false evidence or produced any forged or misleading document, it may recommend to the employer of the witness or the District Officer, as the case may be, to take action in accordance with the provisions of the service rules applicable to the said witness or where no such service rules exist, in such manner as may be prescribed.

### **Determination of compensation**

Section 15 provides that for the purpose of determining the sums to be paid to the aggrieved woman section 13, the Internal Committee or the Local Committee, as the case may be, shall have regard to



- (a) the mental trauma, pain, suffering and emotional distress caused to the aggrieved woman;
- (b) the loss in the career opportunity due to the incident of sexual harassment;
- (c) medical expenses incurred by the victim for physical or psychiatric treatment;
- (d) the income and financial status of the respondent;
- (e) feasibility of such payment in lump sum or in installments.

### **Prohibition of publication or making known contents of complaint and inquiry proceedings**

According to section 16, Notwithstanding anything contained in the Right to Information Act, 2005, the contents of the complaint made under section 9, the identity and addresses of the aggrieved woman, respondent and witnesses, any information relating to conciliation and inquiry proceedings, recommendations of the Internal Committee or the Local Committee, as the case may be, and the action taken by the employer or the District Officer under the provisions of this Act shall not be published, communicated or made known to the public, press and media in any manner.

It is provided that information may be disseminated regarding the justice secured to any victim of sexual harassment under this Act without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the aggrieved woman and witnesses.

### **Penalty for publication or making known contents of complaint and inquiry proceedings**

According to section 17, where any person entrusted with the duty to handle or deal with the complaint, inquiry or any recommendations or action to be taken under the provisions of this Act, contravenes the provisions of section 16, he shall be liable for penalty in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist, in such manner as may be prescribed.

### **Appeal**

Section 18 provides for the appeal by aggrieved person under the Act. Any person aggrieved from the recommendations made under sub-section (2) of section 13 or under clause (i) or clause (ii) of sub-section (3) of section 13 or subsection (l) or sub-section (2) of section 14 or section 17 or non-implementation of such recommendations may prefer an appeal to the court or tribunal in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed. Such appeal shall be preferred within a period of ninety days of the recommendations.

### **Duties of employer**

The law has provided for several duties of the employer under section 19 of the Act. Such duties begin at the time when an employer has to set up an internal complaints committee to ensure that aggrieved can file their complaints and seek redressal to such complaints and end at the time when the employer has provided certain data, in accordance with the provisions of the law, in relation to sexual harassment in its annual report. According to the section, every employer shall –

- a. provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace;
- b. display at any conspicuous place in the workplace, the penal consequences of sexual harassments; and the order constituting, the Internal Committee under subsection (l) of section 4;
- c. organise workshops and awareness programmes at regular intervals for sensitising the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee in the manner as may be prescribed;

- d. provide necessary facilities to the Internal Committee or the Local Committee, as the case may be, for dealing with the complaint and conducting an inquiry;
- e. assist in securing the attendance of respondent and witnesses before the Internal Committee or the Local Committee, as the case may be;
- f. make available such information to the Internal Committee or the Local Committee, as the case may be, as it may require having regard to the complaint made under sub-section (1) of section 9;
- g. provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code 1860 or any other law for the time being in force;
- h. cause to initiate action, under the Indian Penal Code 1860 or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place;
- i. treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;
- j. monitor the timely submission of reports by the Internal Committee.

### **Duties and powers of District Officer.**

Section 20 cast upon the following mandatory duties on the District Officer who shall, –

- a. monitor the timely submission of reports furnished by the Local Committee;
- b. take such measures as may be necessary for engaging non-governmental organisations for creation of awareness on sexual harassment and the rights of the women.

## **MISCELLANEOUS**

### **Committee to submit annual report**

According to section 21, the Internal Committee or the Local Committee, as the case may be, shall in each calendar year prepare, in such form and at such time as may be prescribed, an annual report and submit the same to the employer and the District Officer.

The District Officer shall forward a brief report on the annual reports so received to the State Government.

### **Employer to include information in annual report**

According to section 22, the employer shall include in its report the number of cases filed, if any, and their disposal under this Act in the annual report of his organisation or where no such report is required to be prepared, intimate such number of cases, if any, to the District Officer.

Appropriate Government to monitor implementation and maintain data.

Pursuant to the provisions of section 23, the appropriate Government shall monitor the implementation of this Act and maintain data on the number of cases filed and disposed of in respect of all cases of sexual harassment at workplace.

### **Appropriate Government to take measures to publicise the Act**

In accordance with section 24, the appropriate Government may, subject to the availability of financial and other resources, –

- (a) develop relevant information, education, communication and training materials, and organise awareness programmes, to advance the understanding of the public of the provisions of this Act providing for protection against sexual harassment of woman at workplace.

- (b) formulate orientation and training programmes for the members of the Local Complaints Committee.

### **Power to call for information and inspection of records**

Section 25 lists out the power of the appropriate Government under the Act. The appropriate Government, on being satisfied that it is necessary in the public interest or in the interest of women employees at a workplace to do so, by order in writing, –

- a. call upon any employer or District Officer to furnish in writing such information relating to sexual harassment as it may require;
- b. authorise any officer to make inspection of the records and workplace in relation to sexual harassment, who shall submit a report of such inspection to it within such period as may be specified in the order.

Every employer and District Officer shall produce on demand before the officer making the inspection all information, records and other documents in his custody having a bearing on the subject matter of such inspection.

### **Penalty for non-compliance with provisions of Act**

Section 26 provides for a penalty with a fine up to rupees fifty thousand where the employer fails to-

- a. constitute an Internal Committee under sub-section (1) of section 4;
- b. take action under sections 13, 14 and 22; and
- c. contravenes or attempts to contravene or abets contravention of other provisions of this Act or any rules made there under.

If any employer, after having been previously convicted of an offence punishable under this Act subsequently commits and is convicted of the same offence, he shall be liable to twice the punishment, which might have been imposed on a first conviction, subject to the punishment being maximum provided for the same offence.

Provided that in case a higher punishment is prescribed under any other law for the time being in force, for the offence for which the accused is being prosecuted, the court shall take due cognizance of the same while awarding the punishment;

In addition to above, he shall be liable for cancellation, of his licence or withdrawal, or non-renewal, or approval, or cancellation of the registration, by the Government or local authority, as the case may be, for carrying on his business or activity.

### **Cognizance of offence by courts**

According to section 27, every offence under this Act are non-cognizable which means one cannot be arrested without a warrant. No court shall take cognizance of any offence punishable under this Act or any rules made there under, save on a complaint made by the aggrieved woman or any person authorised by the Internal Committee or Local Committee in this behalf. No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

### **Act not in derogation of any other law**

Section 28 states that the purpose of the Act is to provide additional safeguard to women at work. According to the section, the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

### Power of appropriate Government to make rules

Section 29 states that the Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act. In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

- a. the fees or allowances to be paid to the Members under sub-section (4) of section 4;
- b. nomination of members under clause (c) of sub-section (l) of section 7;
- c. the fees or allowances to be paid to the Chairperson, and Members under sub-section (4) of section 7;
- d. the person who may make complaint under sub-section (2) of section 9;
- e. the manner of inquiry under sub-section (l) of section 11;
- f. the powers for making an inquiry under clause (c) of sub-section (2) of section 11;
- g. the relief to be recommended under clause (c) of sub-section (l) of section 12;
- h. the manner of action to be taken under clause (i) of sub-section (3) of section 13;
- i. the manner of action to be taken under sub-sections (1) and (2) of section 14;
- j. the manner of action to be taken under section 17;
- k. the manner of appeal under sub-section (1) of section 18;
- l. the manner of organising workshops, awareness programmes for sensitising the employees and orientation programmes for the members of the Internal Committee under clause (c) of section 19; and
- m. The form and time for preparation of annual report by Internal Committee and the Local Committee under sub-section (l) of section 21.

In exercise of the powers conferred by section 29 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, the Central Government made the following rules, namely.

### SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) RULES, 2013

The important provisions of the rules are reproduced below:

#### 2. Definitions- In these rules, unless the context otherwise requires, -

- f. "Special educator" means a person trained in communication with people with special needs in a way that addresses their individual differences and needs.

#### 3. Fees or allowances for Member of Internal Committee

- a. The Member appointed from amongst non-Government organizations shall be entitled to an allowance of two hundred rupees per day for holding the proceedings of the Internal Committee and also the reimbursement of travel cost incurred in travelling by train in three tier air-condition or air-conditioned bus and auto rickshaw or taxi, or the actual amount spent by him on travel, whichever is less.
- b. The employer shall be responsible for the payment of allowances referred to in sub-rule (1).

**4. Person familiar with issues relating to sexual harassment**

Person familiar with the issues relating to sexual harassment for the purpose of clause (c) of sub-section (1) of Section 7 shall be a person who has expertise on issues relating to sexual harassment and may include any of the following-

- a. a social worker with at least five years' experience in the field of social work which leads to creation of societal conditions favourable towards empowerment of women and in particular in addressing workplace sexual harassment;
- b. a person who is familiar with labour, service, civil or criminal law.

**5. Fees or allowances for Chairperson and Members of Local Committee**

- a. The Chairperson of the Local Committee shall be entitled to an allowance of two hundred and fifty rupees per day for holding the proceedings of the said Committee.
- b. The Members of the Local Committee other than the Members nominated under clauses (b) and (d) of sub-section (1) of Section 7 shall be entitled to an allowance of two hundred rupees per day for holding the proceedings of the said Committee and also the reimbursement of travel cost incurred in travelling by train in three tier air-condition or air-conditioned bus and auto rickshaw or taxi, or the actual amount spent by him on travel, whichever is less.
- c. The District Officer shall be responsible for the payment of allowances referred to in sub-rules (1) and (2).

**6. Complaint of sexual harassment**

For the purpose of sub-section (2) of Section 9.-

- a. where the aggrieved woman is unable to make a complaint on account of her physical incapacity, a complaint may be filed by
  - i. her relative or friend; or
  - ii. her co-worker; or
  - iii. an officer of the National Commission for Women or State Women's Commission; or
  - iv. any person who has knowledge of the incident, with the written consent of the aggrieved woman.
- b. where the aggrieved woman is unable to make a complaint on account of her mental incapacity, a complaint may be filed by.-
  - i. her relative or friend; or
  - ii. a special educator; or
  - iii. a qualified psychiatrist or psychologist; or
  - iv. the guardian or authority under whose care she is receiving treatment or care; or
  - v. any person who has knowledge of the incident jointly with her relative or friend or a special educator or qualified psychiatrist or psychologist, or guardian or authority under whose care she is receiving treatment or care.
- c. where the aggrieved woman for any other reason is unable to make a complaint, a complaint may be filed by any person who has knowledge of the incident, with her written consent;

- d. where the aggrieved woman is dead, a complaint may be filed by any person who has knowledge of the incident, with the written consent of her legal heir.

**7. Manner of inquiry into complaint**

- a. Subject to the provisions of Section 11, at the time of filing the complaint, the complainant shall submit to the Complaints Committee, six copies of the complaint along with supporting documents and the names and addresses of the witnesses.
- b. On receipt of the complaint, the Complaints Committee shall send one of the copies received from the aggrieved woman under sub-rule (a) to the respondent within a period of seven working days.
- c. The respondent shall file his reply to the complaint along with his list of documents, and names and addresses of witnesses, within a period not exceeding ten working days from the date of receipt of the documents specified under sub-rule (1).
- d. The Complaints Committee shall make inquiry into the complaint in accordance with the principles of natural justice.
- e. The Complaints Committee shall have the right to terminate the inquiry proceedings or to give an ex-parte decision on the complaint, if the complainant or respondent fails, without sufficient cause, to present herself or himself for three consecutive hearings convened by the Chairperson or Presiding Officer, as the case may be:  
  
Provided that such termination or ex-parte order may not be passed without giving a notice in writing, fifteen days in advance, to the party concerned.
- f. The parties shall not be allowed to bring in any legal practitioner to represent them in their case at any stage of the proceedings before the Complaints Committee.
- g. In conducting the inquiry, a minimum of three Members of the Complaints Committee including the Presiding Officer or the Chairperson, as the case may be, shall be present.

**8. Other relief to complainant during pendency of inquiry –** The Complaints Committee at the written request of the aggrieved woman may recommend to the employer to

- a. restrain the respondent from reporting on the work performance of the aggrieved woman or writing her confidential report, and assign the same to another officer;
- b. restrain the respondent in case of an educational institution from supervising any academic activity of the aggrieved woman.

**9. Manner of taking action for sexual harassment –** Except in cases where service rules exist, where the Complaints Committee arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be, to take any action including a written apology, warning, reprimand or censure, withholding of promotion, withholding of pay rise or increments, terminating the respondent from service or undergoing a counselling session or carrying out community service.

**10. Action for false or malicious complaint or false evidence –** Except in cases where service rules exist, where the Complaints Committee arrives at the conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer or District Officer, as the case may be, to take action in accordance with the provisions of Rule 9.

**11. Appeal**

Subject to the provisions of Section 18, any person aggrieved from the recommendations made under sub-section (2) of Section 13 or under clauses (i) or clause (ii) of sub-section (3) of Section 13 or sub-section (1) or sub-section (2) of Section 14 or Section 17 or non-implementation of such recommendations may prefer an appeal to the appellate authority notified under clause (a) of Section 2 of the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946).

**12. Penalty for contravention of provisions of Section 16**

Subject to the provisions of Section 17, if any person contravenes the provisions of Section 16, the employer shall recover a sum of five thousand rupees as penalty from such person.

**13. Manner to organize workshops, etc**

Subject to the provisions of Section 19, every employer shall

- a. formulate and widely disseminate an internal policy or charter or resolution or declaration for prohibition, prevention and redressal of sexual harassment at the workplace intended to promote gender sensitive safe spaces and remove underlying factors that contribute towards a hostile work environment against women;
- b. carry out orientation programmes and seminars for the Members of the Internal Committee;
- c. carry out employees awareness programmes and create forum for dialogues which may involve Panchayati Raj Institutions, Gram Sabha, women's groups, mothers' committee, adolescent groups, urban local bodies and any other body as use modules developed by the State Governments to conduct workshops and awareness programmes for sensitising the employees with the provisions of the Act.

**14. Preparation of annual report** – The annual report which the Complaints Committee shall prepare under Section 21, shall have the following details.-

- a. number of complaints of sexual harassment received in the year;
- b. number of complaints disposed off during the year;
- c. number of cases pending for more than ninety days;
- d. number of workshops or awareness programme against sexual harassment carried out;
- e. nature of action taken by the employer or District Officer be considered necessary.

<b>Compliances by the Employer</b>
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**1. Constitution of the Internal Complaints Committee**

Every employer, with more than 10 employees, shall constitute an 'Internal Complaints Committee' at the workplace and wherein the offices or administrative units of workplace are located at different places, he will, constitute a committee in all such offices and administrative units.

**2. Preparation of an Annual Report by the employer**

The act casts a duty on employers to include information pertaining to the number of cases filed and disposed of by them in their Annual Report. Organisations which are not under a requirement to prepare an Annual Report have to furnish this information directly to the Local Complaints Committee, which will prepare an Annual Report of its own to be forwarded to the appropriate government.



### Disclosure Requirements under the Annual Report of Companies

The Sexual Harassment of Women at the Workplace (Prevention, Prohibition & Redressal) Act, 2013 mandates that all companies need to make necessary disclosure about compliance with the said law in their Annual Report as per section 22 and 28 of the Act as follows:

- (i) Employer to include information in Annual Report (Section 22): The employer shall include in its report the number of cases filed, if any, and their disposal under this Act in the Annual Report of his organization or where no such report is required to be prepared, intimate such number of cases if any, to the District Officer.
- (ii) Act not in derogation of any other law (Section 28): The provisions of the Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

Accordingly companies would need to incorporate the said information in their Annual Report to be filed with Registrar of Companies for the year ending 31st march, 2015. The disclosure can be made as follows:

Disclosure under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

“The Company has in place an anti -sexual harassment policy in line with the requirements of The Sexual Harassment of Women at the Workplace (Prevention, Prohibition & Redressal) Act, 2013. Internal Complaints Committee (ICC) has been set up to redress complaints received regarding sexual harassment. All employees (permanent, contractual, temporary, trainees) are covered under this policy.

The following is a summary of sexual harassment complaints received and disposed off during each Calendar year:

- No. of complaints received.
- No. of complaints disposed off.”

## OTHER LAWS PERTAINING TO WORKPLACE SEXUAL HARASSMENT

### I. Industrial Employment (Standing Orders) Act, 1946

The Standing Orders Act prescribes Model Standing Orders, serving as guidelines for employers and in the event that an employer has not framed and certified its own standing orders, the provisions of the Model Standing Orders shall be applicable. The Model Standing Orders prescribed under the Industrial Employment (Standing Orders) Central Rules, 1996 (Standing Orders Rules) prescribe a list of acts constituting misconduct and specifically includes sexual harassment. The Model Standing Orders not only defines sexual harassment in line with the definition under the Vishaka Judgment, but also envisages the requirement to set up a complaints committee for redressal of grievances pertaining to workplace sexual harassment. It is interesting to note that sexual harassment is not limited to women under the Standing Orders Rules.

### II. Indian Penal Code, 1860

The following offences are held to be cognizable and punishable with fine/and imprisonment under the Code:

- (i) Outraging the modesty of a woman u/s 354.
- (ii) Sexual harassment by a man u/s 354-A.
- (iii) Assault or use of criminal force to woman with intent to disrobe u/s 354-B.
- (iv) Voyeurism u/s 354-C.
- (v) Stalking u/s 354-D.
- (vi) Insulting the modesty of a woman u/s 509.

**LESSON ROUND-UP**

- The Act has been introduced to curb sexual harassment at workplace – ‘sexual harassment’ is defined as any advances to establish physical contact with a woman, a demand or request for sexual favours, making sexually coloured remarks, showing pornography or any other form of physical, verbal or non-verbal conduct of sexual nature. The following circumstances amongst others constitute may also constitute as forms of sexual harassment, – implied or explicit promise of preferential/detrimental treatment at the workplace, implied or explicit threat about her present or future employment status, interference with her work and/or creating an intimidating or offensive or hostile work environment for her, and humiliating treatment likely to affect her health or safety.
- The Act will ensure that women are protected against sexual harassment at all work places, be it public or private, organised sector or even the unorganised sector, regardless of their age and status of employment. The act also covers students in schools and colleges, patients in hospital as well as a woman working in a dwelling place or a house.
- The Act creates a mechanism for redressal of complaints and safeguards against false or malicious charges. Under the Act, employers who employ 10 employees or more and local authorities will have to set up grievance committees to investigate all complaints. Employers who fail to comply will be punished with a fine that may extend to Rs. 50,000. If, however, they still fail to form a Committee, they can be held liable for a greater fine and may even lead to cancellation of their business license. Every employer with a business or enterprise having more than 10 workers will have to constitute a committee known as ‘Internal Complaints Committee’(ICC) to look into all complaints of sexual harassment at the workplace. Further, in every district, a public official called the District Officer will constitute a committee known as the ‘Local Complaints Committee’ (LCC) to receive complaints against establishments where there is no Internal Complaints Committee or there being a complaint against the employer himself. This committee would further handle all complaints of sexual harassment in the domestic sphere as well as those coming from the unorganised sector.
- An aggrieved woman who intends to file a complaint is required to submit six copies of the written complaint, along with supporting documents and names and addresses of the witnesses to the ICC or LCC, within 3 months from the date of the incident and in case of a series of incidents, within a period of 3 months from the date of the last incident. The law also makes provisions for friends, relatives, co-workers, psychologist & psychiatrists, etc. to file the complaint in situations where the aggrieved woman is unable to make the complaint on account of physical incapacity, mental incapacity or death.
- Before initiating action on a complaint, the ICC on the request of the aggrieved woman, can make efforts to settle the matter between the parties through conciliation by bringing about an amicable settlement.
- Breach of the obligation to maintain confidentiality by a person entrusted with the duty to handle or deal with the complaint or conduct the inquiry, or make recommendations or take actions under the statute, is punishable in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist, a fine of INR 5,000.
- Employers who fail to comply will be punished with a fine that may extend to Rs. 50,000. If any employer who has been convicted earlier of an offence subsequently commits a repeat offence he will be liable for twice the punishment, which may have been imposed on a first conviction. Further, his license for carrying on business may even be cancelled.



## SECTION VIII: THE CHILD AND ADOLESCENT LABOUR (PROHIBITION AND REGULATION) ACT, 1986

### KEY CONCEPTS

- Adolescent ■ Child ■ Day ■ Establishment ■ Occupier ■ Workshop

### Learning Objectives

#### To understand:

- The legal frame work stipulated under the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986
- The provisions on prohibition of employment of children in any occupations and processes
- The provisions on Prohibition of employment of adolescents in certain hazardous occupations and processes
- The conditions for Hours, Period of work and Weekly Holidays
- Requirement for the maintenance of registers
- Penalty provisions in case of the contravention

### Lesson Outline

- |  |  |
|--|--|
| ➤ Introduction   | ➤ Regulation of Conditions of Work of adolescent |
| ➤ Definitions  | ➤ Hours and Period of work                       |
| ➤ Prohibition of employment of children in any occupations                               | ➤ Weekly holidays                                |
| ➤ Prohibition of employment of adolescent in any occupations and processes               | ➤ Maintenance of register                        |
| ➤ Prohibition of employment of adolescent in certain hazardous occupations and processes | ➤ Penalties                                      |
|  | ➤ Lesson Round-Up                                |
|  | ➤ Test Yourself                                  |

***The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 prohibits employment of children below 14 years in hazardous occupations and processes and regulates the working conditions in other employments.***

## INTRODUCTION

The Child and Adolescent Labour (Prohibition & Regulation) Act, 1986 enacted to prohibit the engagement of children in all occupations and to prohibit the engagement of adolescents in hazardous occupations and processes and the matters connected therewith or incidental thereto. It extends to whole of India.

It prohibits employment of children in all occupations and processes to facilitate their enrolment in schools in view of the Right of Children to Free and Compulsory Education Act, 2009 and to prohibits employment of adolescents (persons who have completed fourteenth year of age but have not completed eighteenth year) in hazardous occupations and processes and to regulate the conditions of service of adolescents in line with the ILO Convention 138 and Convention 182, respectively.

Child labour is a concrete manifestation of violations of a range of rights of children and is recognised as a serious social problem in India. Working children are denied their right to survival and development, education, leisure and play, and adequate standard of living, opportunity for developing personality, talents, mental and physical abilities, and protection from abuse and neglect. Even though there is increase in the enrolment of children in elementary schools and increase in literacy rates, child labour continues to be a significant phenomenon in India.

As per Article 24 of the Constitution, no child below the age of 14 years is to be employed in any factory, mine or any hazardous employment. Further, Article 39 requires the States to direct its policy towards ensuring that the tender age of children is not abused and that they are not forced by economic necessity to enter avocations unsuited to their age or strength. Recently, with the insertion of Article 21A, the State has been entrusted with the task of providing free and compulsory education to all the children in the age group of 6-14 years.

Consistent with the Constitutional provisions, Child Labour (Prohibition and Regulation) Act, 1986 was enacted. Further, Government in 2016 amended the Child Labour (Prohibition & Regulation) Act, which came into force w.e.f. 1.9.2016. After the Amendment, the Child Labour (Prohibition & Regulation) Act, 1986 renamed as the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986. The Act regulates employment of adolescent in non-hazardous occupations and processes.

### Definition

Section 2 of the Act defines various terms used in the Act, some of the definitions are given here under: **Appropriate Government** means, in relation to an establishment under the control of the Central Government or a railway administration or a major port or a mine or oilfield, the Central Government, and in all other cases, the State Government.

**Adolescent means** a person who has completed his fourteenth year of age but has not completed his eighteenth year.

**Child means** a person who has not completed his fourteenth year of age or such age as may be specified in the Right of Children to Free and Compulsory Education Act, 2009, whichever is more.

**Day means** a period of twenty-four hours beginning at midnight.

**Establishment** includes a shop, commercial establishment, workshop, farm, residential hotel, restaurant, eating-house, theatre or other place of public amusement or entertainment.

**Occupier** in relation to an establishment or a workshop, means the person who has the ultimate control over the affairs of the establishment or workshop.

**Workshop** means any premises (including the precincts thereof) wherein any industrial process is carried on, but does not include any premises to which the provisions of Sec. 67 of the Factories Act, 1948 (63 of 1948), for the time being, apply.

### Prohibition of employment of children in any occupations and processes

Section 3 of the Act provides that no child shall be employed or permitted to work in any occupations or process except:-

- (a) helps his family or family enterprise, which is other than any hazardous occupations or processes set forth in the Schedule, after his school hours or during vacations;
- (b) works as an artist in an audio-visual entertainment industry, including advertisement, films, television serials or any such other entertainment or sports activities except the circus, subject to such conditions and safety measures, as may be prescribed.

However no such work shall effect the school education of the child.

*It may be noted that the expression:*

- (a) “family” in relation to a child, means his mother, father, brother, sister and father’s sister and brother and mother’s sister and brother;
- (b) “family enterprise” means any work, profession, manufacture or business which is performed by the members of the family with the engagement of other persons;
- (c) “artist” means a child who performs or practices any work as a hobby or profession directly involving him as an actor, singer, sports person or in such other activity as may be prescribed relating to the entertainment or sports activities falling under clause (b) of sub-section (2).”

### Prohibition of employment of adolescents in certain hazardous occupations and processes

Section 3A provides that no adolescent shall be employed or permitted to work in any of the hazardous occupations or processes set forth in the Schedule.

The hazardous occupations or processes set forth in the Schedule are as under:

- (1) Mines.
- (2) Inflammable substances or explosives.
- (3) Hazardous process.

*Explanation.* – For the purposes of this Schedule, “hazardous process” has the meaning assigned to it in clause (cb) of the Factories Act, 1948.

However, the Central Government may, by notification, specify the nature of the non-hazardous work to which an adolescent may be permitted to work under the Act.

### Hours and Period of work

Section 7 provides that no adolescent shall be required or permitted to work in any establishment in excess of such number of hours, as may be prescribed for such establishment or class of establishments.

The period of work on each day shall be so fixed that no period shall exceed three hours and that no adolescent shall work for more than three hours before he has had an interval for rest for at least one hour. The period of work of a child shall be so arranged that inclusive of his interval for rest, it shall not be spread over more than six hours, including the time spent in waiting for work on any day.

This section also stipulates that :

- No adolescent shall be permitted or required to work between 7 p.m. and 8 a.m.
- No adolescent shall be required or permitted to work overtime.
- No adolescent shall be required or permitted to work in, any establishment on any day on which he has already been working in another establishment.

### Weekly holidays

As per section 8 every adolescent employed in an establishment is entitled in each week, a holiday of one whole day, which day shall be specified by the occupier in a notice permanently exhibited in a conspicuous place in the establishment and the day so specified shall not be altered by the occupier more than once in three months.

### Notice to Inspector

Section 9 provides that every occupier in relation to an establishment who employs, or permits to work, any adolescent shall, within a period of thirty days from the date of such employment, send to the Inspector within whose local limits the establishment is situated, a written notice containing the particulars namely:

- The name and situation of the establishment;
- The name of the person in actual management of the establishment;
- The address to which communications relating to the establishment should be sent; and
- The nature of the occupation or process carried on in the establishment.

### Maintenance of register

Every occupier in respect of adolescent employed or permitted to work in any establishment, maintained a register to be available for inspection by an Inspector at all times during working hours or when work is being carried on in any such establishment showing –

- the name and date of birth of every adolescent so employed or permitted to work;
- hours and periods of work of any such adolescent and the intervals of rest to which he is entitled;
- the nature of work of any such adolescent; and
- such other particulars as may be prescribed.

### Display of notice containing abstract of sections 3A and 14

Every railway administration, every port authority and every occupier shall cause to be displayed in a conspicuous and accessible place at every station on its railway or within the limits of a port or at the place of work, as the case may be, a notice in the local language and in the English language containing an abstract of Sections 3A and 14.

### Penalties

Whoever employs any child or permits any child to work in contravention of the provisions of section 3 shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years, or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees, or with both. However; the parents or guardians of such children shall not be punished unless they permit such child for commercial purposes in contravention of the provisions of section 3.

Whoever employs any adolescent or permits any adolescent to work in contravention of the provisions of section 3A shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees, or with both. However; the parents or guardians of such adolescent shall not be punished unless they permit such adolescent to work in contravention of the provisions of section 3A.



The parents or guardians of any child or adolescent shall not be liable for punishment, in case of the first offence. Whoever, having been convicted of an offence under section 3 or section 3A commits a like offence afterwards;

he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years.

The parents or guardians having been convicted of an offence under section 3 or section 3A, commits a like offence afterwards, he shall be punishable with a fine which may extend to ten thousand rupees.

Whoever fails to comply with or contravenes any other provisions of the Act or the rules made thereunder, shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to ten thousand rupees or with both.

### District Magistrate to implement the provisions

Section 17A of the Act provides that the appropriate Government may confer such powers and impose such duties on a District Magistrate as may be necessary, to ensure that the provisions of this Act are properly carried out and the District Magistrate may specify the officer, subordinate to him, who shall exercise all or any of the powers, and perform all or any of the duties, so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer as may be prescribed.

### LESSON ROUND-UP

- The Child and Adolescent Labour (Prohibition & Regulation) Act, 1986 enacted to prohibit the engagement of children in all occupations and to prohibit the engagement of adolescents in hazardous occupations and processes and the matters connected therewith or incidental thereto. It extends to whole of India.
- Adolescent shall not permit to work in any establishment in excess of such number of hours, as may be prescribed for such establishment or class of establishments.
- Every adolescent employed in an establishment is entitled in each week, a holiday of one whole day, which day shall be specified by the occupier in a notice permanently exhibited in a conspicuous place in the establishment and the day so specified shall not be altered by the occupier more than once in three months.
- Every occupier in relation to an establishment who employs, or permits to work, any adolescent shall, within a period of thirty days from the date of such employment, send to the Inspector within whose local limits the establishment is situated, a written notice.
- Every occupier in respect of adolescent employed or permitted to work in any establishment, maintained a register to be available for inspection by an Inspector at all times during working hours or when work is being carried on in any such establishment.
- Contravention of the provisions of Section 3 of the Act shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years, or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees, or with both.
- Contravention of the provisions of Section 3A of the Act shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees, or with both.



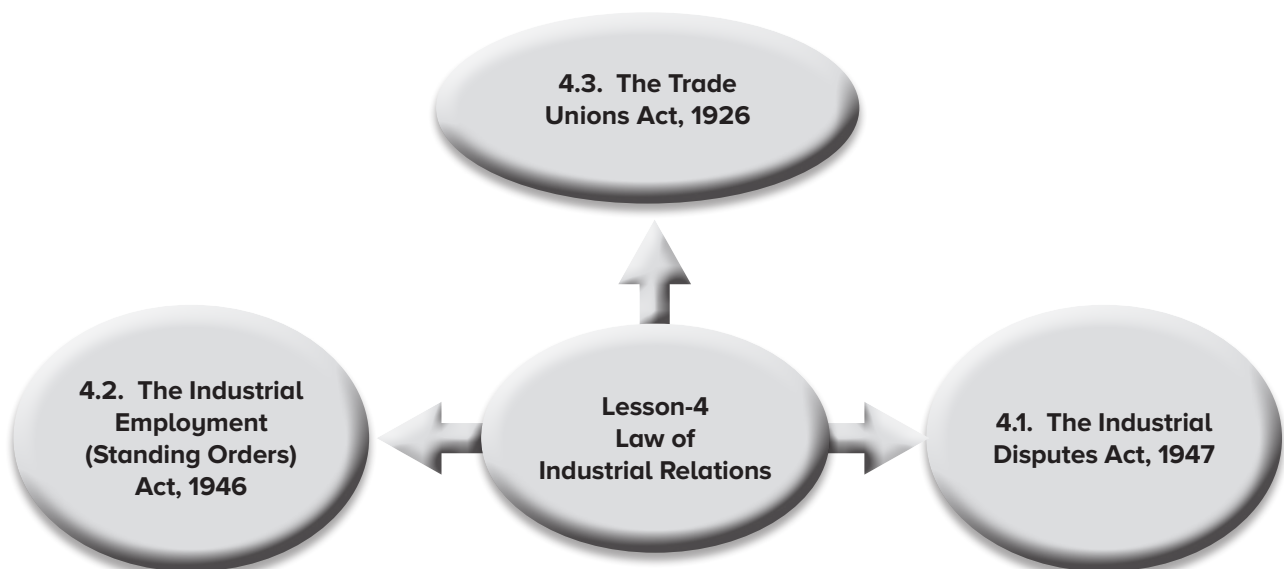
# Law of Industrial Relations

The employer-employee relationship has to be conceived of as a partnership in a constructive endeavour to promote the satisfaction of the economic needs of the community in the best possible manner. The dignity of labour and the vital role of the worker in such a partnership must be recognised. In dealing with the worker it has not only to be borne in mind that his energy and skill are the most precious assets of the nation, but also that his personality is an object of care and respect and of equal significance and worth with that of any other element in the community.

Industrial relations have to be so developed that the worker's fitness to understand and carry out his responsibility grows and he is equipped to take an increasing share in the working of industry. There should be the closest collaboration through consultative committees at all levels between employers and employees for the purpose of increasing production, improving quality, reducing costs and eliminating waste.

The worker's right of association, organisation and collective bargaining as the fundamental basis of the mutual relationship. The attitude to trade unions should not be just a matter of toleration. They should be welcomed and helped to function as part and parcel of the industrial system.

If any differences arise between the parties, they should be examined and settled in a spirit of reasonable adjustment with an eye to the good of industry and the wellbeing of the community. In the last resort differences may be resolved by impartial investigation and arbitration. The intervention of the State and imposed settlements may become necessary at times. The stress of the administration as well as, the efforts of parties should, however, be for avoidance of disputes and securing their internal settlement.



## SECTION I: THE INDUSTRIAL DISPUTES ACT, 1947

### KEY CONCEPTS

■ Industry ■ Industrial Dispute ■ Workman ■ Strike ■ Lock-out ■ Lay-off ■ Retrenchment ■ Award ■ Wages

### Learning Objectives

#### To understand:

- The knowledge of this legislation to develop a proper perspective about the legal frame work stipulated under the Industrial Disputes Act, 1947
- The meaning of Industry, Industrial Dispute, Strike, Lock-out, Retrenchment and Award
- The establishment of Authorities for Investigation and settlement of industrial disputes and its Powers
- Regulatory framework on Strikes and Lock-Outs
- The provisions for change in conditions of service
- Penalty imposed for illegal strikes

### Lesson Outline

- |  |   |
|--|---|
| ➤ Introduction   | ➤ Justified and unjustified strikes                       |
| ➤ Genesis  | ➤ Wages for Strike period                                 |
| ➤ Object and significance of the Act   | ➤ Dismissal of workmen and illegal strike                 |
| ➤ Important Definitions  | ➤ Justification of Lock-out and wages for Lock-out Period |
| ➤ Types of Strike and their Legality   | ➤ Change in Conditions of Service                         |
| ➤ Legality of Strike   | ➤ Unfair Labour Practices                                 |
| ➤ Dismissal etc. of an Individual workman to be deemed to be an Industrial Dispute | ➤ Penalties   |
| ➤ Authorities under the Act and their Duties                                       | ➤ Schedules   |
| ➤ Reference of Disputes  | ➤ Lesson Round-Up   |
| ➤ Procedure and Powers of Authorities  | ➤ Test Yourself   |
| ➤ Strikes and Lock-outs  |   |

*The Industrial Disputes Act, 1947 is the legislation for investigation and settlement of all industrial disputes.*

## INTRODUCTION

Industrial disputes are the disputes which arise due to any disagreement in an industrial relation. Industrial relation involves various aspects of interactions between the employer and the employees. In such relations whenever there is a clash of interest, it may result in dissatisfaction for either of the parties involved and hence lead to industrial disputes or conflicts. These disputes may take various forms such as protests, strikes, demonstrations, lock-outs, retrenchment, dismissal of workers, etc.

Industrial Disputes Act, 1947 provides machinery for peaceful resolution of disputes and to promote harmonious relation between employers and workers. The Act is a benign measure which seeks to pre-empt industrial tensions, provide the mechanics of dispute resolutions and set up the necessary infrastructure so that the energies of partners in production may not be dissipated in counter productive battles and assurance of industrial may create a congenial climate. The Act enumerates the contingencies when a strike or lock-out can be lawfully resorted to, when they can be declared illegal or unlawful, conditions for laying off, retrenching, discharging or dismissing a workman, circumstances under which an industrial unit can be closed down and several other matters related to industrial employees and employers.

Under the Act various Authorities are established for investigation and settlement of industrial disputes. They are Works Committee; Conciliation Officers; Board of Conciliation; Court of Inquiry; Labour Courts; Tribunals and National Tribunals.

## GENESIS

The first enactment dealing with the settlement of industrial disputes was the Employers' and Workmen's Disputes Act, 1860. This Act weighed much against the workers and was therefore replaced by the Trade Disputes Act, 1929. The Act of 1929 contained special provisions regarding strikes in public utility services and general strikes affecting the community as a whole. The main purpose of the Act, however, was to provide a conciliation machinery to bring about peaceful settlement of industrial disputes. The Whitely Commission made in this regard the perceptive observation that the attempt to deal with unrest must begin rather with the creation of an atmosphere unfavourable to disputes than with machinery for their settlement.

The next stage in the development of industrial law in this country was taken under the stress of emergency caused by the Second World War. Rule 81-A of the Defence of India Rules was intended to provide speedy remedies for industrial disputes by referring them compulsorily to conciliation or adjudication, by making the awards legally binding on the parties and by prohibiting strikes or lock-outs during the pendency of conciliation or adjudication proceedings and for two months thereafter. This rule also put a blanket ban on strikes which did not arise out of genuine trade disputes.

With the termination of the Second World War, Rule 81-A was about to lapse on 1st October, 1946, but it was kept alive by issuing an Ordinance in the exercise of the Government's Emergency Powers. Then followed the Industrial Disputes Act, 1947. The provisions of this Act, as amended from time to time, have furnished the basis on which industrial jurisprudence in this country is founded.

## OBJECT AND SIGNIFICANCE OF THE ACT

The Industrial Disputes Act, 1947 makes provision for the investigation and settlement of industrial disputes and for certain other purposes. It ensures progress of industry by bringing about harmony and cordial relationship between the employers and employees. Definitions of the words 'industrial dispute, workmen and industry' carry specific meanings under the Act and provide the framework for the application of the Act.

**In the case of *Workmen of Dimakuchi Tea Estate v. Dimakuchi Tea Estate*, AIR 1958 S.C. 353, the Supreme Court laid down following objectives of the Act:**

- (i) **Promotion of measures of securing and preserving amity and good relations between the employer and workmen.**

- (ii) Investigation and settlement of industrial disputes between employers and employees, employees and workmen, or workmen and workmen with a right of representation by registered trade union or federation of trade unions or an association of employers or a federation of associations of employers.
- (iii) Prevention of illegal strikes and lock-outs.
- (iv) Relief to workmen in the matter of lay-off and retrenchment.
- (v) Promotion of collective bargaining.

This Act extends to whole of India. The Act was designed to provide a self-contained code to compel the parties to resort to industrial arbitration for the resolution of existing or apprehended disputes without prescribing statutory norms for varied and variegated industrial relating norms so that the forums created for resolution of disputes may remain unhampered by any statutory control and devise rational norms keeping pace with improved industrial relations reflecting and imbibing socio-economic justice. This being the object of the Act, the Court by interpretative process must strive to reduce the field of conflict and expand the area of agreement and show its preference for upholding agreements sanctified by mutuality and consensus in larger public interest, namely, to eschew industrial strife, confrontation and consequent wastage (*Workmen, Hindustan Lever Limited v. Hindustan Lever Limited*, (1984) 1 SCC 728).

The Act applies to an existing and not to a dead industry. It is to ensure fair wages and to prevent disputes so that production might not be adversely affected. It applies to all industries irrespective of religion or caste of parties. It applies to the industries owned by Central and State Governments too (*Hospital Employees Union v. Christian Medical College*, (1987) 4 SCC 691).

## IMPORTANT DEFINITIONS

### (i) Industry

“Industry” means any business, trade, undertaking, manufacture or calling of employers and includes any calling service, employment, handicraft, or industrial occupation or avocation of workmen. [Section 2(j)]

The Supreme Court carried out an indepth study of the definition of the term industry in a comprehensive manner in the case of *Bangalore Water Supply and Sewerage Board v. A Rajiappa*, AIR 1978 SC 548 (hereinafter referred to as Bangalore Water Supply case), after considering various previous judicial decisions on the subject and in the process, it rejected some of them, while evolving a new concept of the term “industry”.

### **Tests for determination of “industry”**

After discussing the definition from various angles, in the above case, the Supreme Court, laid down the following tests to determine whether an activity is covered by the definition of “industry” or not. It is also referred to as the triple test.

- I. (a) Where there is (i) systematic activity, (ii) organised by co-operation between employer and employee, (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss e.g., making, on a large scale, prasada or food) prima facie, there is an “industry” in that enterprise.
- (b) Absence of profit motive or gainful objective is irrelevant wherever the undertaking is whether in the public, joint, private or other sector.
- (c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

- (d) If the organisation is a trade or business, it does not cease to be one because of philanthropy animating the undertaking.
- II. Although Section 2(i) uses words of the widest amplitude in its two limbs, their meaning cannot be magnified to over-stretch itself. Undertaking must suffer a contextual and associational shrinkage, so also, service, calling and the like. This yields the inference that all organised activity possessing the triple elements in (i) although not trade or business, may still be “industry”, provided the nature of the activity, viz., the employer - employee basis, bears resemblance to what we find in trade or business. This takes into the fold of “industry”, undertaking, callings and services, adventures analogous to the carrying on of trade or business. All features, other than the methodology of carrying on the activity, viz., in organising the co-operation between employer and employee, may be dissimilar. It does not matter, if on the employment terms, there is analogy.
- III. Application of these guidelines should not stop short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for or resultant of the economic operations. The ideology of the Act being industrial disputes between employer and workmen, the range of this statutory ideology must inform the reach of the statutory definition, nothing less, nothing more.

Hence, the Supreme Court observed that professions, clubs, educational institutions, co-operatives, research institutes, charitable projects and other kindred adventures, if they fulfil the triple tests listed in (1), cannot be exempted from the scope of Section 2(j). A restricted category of professions, clubs, co-operatives and gurukulas and little research labs, may qualify for exemption if, in simple ventures, substantially and going by the dominant nature criterion, substantively, no employees are entertained but in minimal matters, marginal employees are hired without destroying the non-employee character of the unit.

If in a pious or altruistic mission many employ themselves, free or for small honorarium or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the holiness, divinity or like central personality and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then the institution is not an industry even if stray servants, manual or technical, are hired. Such undertakings alone are exempt - not other generosity compassion, developmental compassion or project.

### ***Criteria for determining dominant nature of undertaking***

**The Supreme Court, in *Bangalore Water Supply* case** laid down the following guidelines for deciding the dominant nature of an undertaking:

- (a) Where a complex of activities, some of which qualify for exemption, others not, involves the employees on the total undertaking. Some of whom are not “workmen” or some departments are not productive of goods and services if isolated, nature of the department will be the true test. The whole undertaking will be “industry” although those who are not “workmen” definition may not be benefited by the status.
- (b) Notwithstanding with previous clause, sovereign functions strictly understood alone qualify for exemption and not the welfare activities or economic adventures undertaken by Government or statutory bodies.
- (c) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(j).
- (d) Constitutional and competently enacted legislative provisions may well remove an undertaking from the scope of the Act.

The above decision of the Supreme Court has a wide sweep. The triple test along with dominant nature criteria will cover almost the entire labour force in the country. The charitable or missionary institutions, hospital, educational and other research institutions, municipal corporations, firms of chartered accountants, solicitors' firms, etc., which were not held to be “industry” earlier will now be covered by the definition of “industry”.



**Now let us see whether the following activities would fall under industry or not:**

1. **Sovereign functions:** Sovereign functions strictly understood alone qualify for exemption, not the welfare activities or economic adventures undertaken by Government or statutory bodies. Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable then they can be considered to come within Section 2(j). (*Bangalore Water Supply case*). If a department of a municipality discharged many functions, some pertaining to “industry” and other non-industrial activities, the predominant function of the department shall be the criterion for the purposes of the Act (*Corpn. of City of Nagpur v. Employees*, AIR 1960 SC 675).
2. **Municipalities:** Following Departments of the municipality were held, to be “industry” (i) Tax (ii) Public Conveyance (iii) Fire Brigade (iv) Lighting (v) Water Works (vi) City Engineers (vii) Enforcement (Encroachment) (viii) Sewerage (ix) Health (x) Market (xi) Public Gardens (xii) Education (xiii) Printing Press (xiv) Building and (xv) General administration. If a department of a municipality discharges many functions some pertaining to industry and others non-industrial, the predominant function of the department shall be the criterion for the purpose of the Act.
3. **Hospitals and Charitable institutions:** Exemptions to charitable institutions under Section 32(5) of Payment of Bonus Act is not relevant to the construction of Section 2(j), *FICCI v. Workmen*, (1972) 1 SCC 40, there is an industry in the enterprise, provided the nature of the activity, namely the employer-employee basis bears resemblance to what is found in trade or business. This takes into the fold of industry undertakings, callings, services and adventures ‘analogous to the carrying on of trade or business’. Absence of profit motive or gainful objective is irrelevant for “industry”, be the venture in the public, joint, private or other sector. The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

If the organisation is a trade or business it does not cease to be one because of philanthropy animating the undertaking. Charitable institutions fall into three categories: (a) those that yield profit but the profits are siphoned off for altruistic purposes; (b) those that make no profit but hire the services of employees as in any other business, but the goods and services which are the output, are made available at a low or at no cost to the indigent poor; and (c) those that are oriented on a humane mission fulfilled by men who work, not because they are paid wages, but because they share the passion for the cause and derive job satisfaction from their contribution. The first two are industries but not the third, on the assumption that they all involve co-operation between employers and employees (*Bangalore Water Supply case*). The following institutions are held to be “industry”: (1) State Hospital (*State of Bombay v. Hospital Mazdoor Sabha*, AIR 1960 SC 610); (2) Ayurvedic Pharmacy and Hospital (*Lalit Hari Ayurvedic College Pharmacy v. Workers Union*, AIR 1960 SC 1261); (3) Activities of Panjrapole (*Bombay Panjrapole v. Workmen*, (1971) 3 SCC 349).

4. **Clubs:** A restricted category of professions, clubs, co-operatives and even Gurukulas may qualify for exemption if, in simple ventures, substantially and going by the dominant nature criterion substantively, no employees are entertained, but in minimal matters marginal employees are hired without destroying the non- employee character of the unit. But larger clubs are “industry” (*as per Bangalore Water Supply case*).
5. **Universities, Research Institutions etc.:** As regards institutions, if the triple tests of systematic activity, cooperation between employer and employee and production of goods and services were to be applied, a university, a college, a research institute or teaching institution will be “industry”. The following institutions were held to be “industry”: Ahmedabad Textile Industries Research Association, Tocklai Experimental Station. Indian Standard Institute, and Universities. However Physical Research Laboratory, Ahmedabad was held not to be an Industry by the Supreme Court (1997 Lab. IC 1912 SC). Since it is carrying on research not for the benefit of others and moreover, it is not engaged in commercial or industrial activity.

6. **Professional Firms:** A solicitors establishment can be an “industry” (as per *Bangalore Water Supply case*). Regarding liberal professions like lawyers, doctors, etc., the test of direct cooperation between capital and labour in the production of goods or in the rendering of service or that cooperation between employer and employee is essential for carrying out the work of the enterprise. The personal character of the relationship between a doctor or a lawyer with his professional assistant may be of such a kind that requires complete confidence and harmony in the productive activity in which they may be cooperating.
7. **Voluntary services:** If in a pious or altruistic mission, many employ themselves free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the Holiness, divinity or Central personality and the services are supplied free or at a nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then the institution is not an industry even if stray servants manual or technical are hired. Such eleemosynary or like undertakings alone are exempted. (*Bangalore Water Supply case*)

Following are held to be “industry”: Co-operative Societies, Federation of Indian Chamber of Commerce, Company carrying on agricultural operations, Bihar Khadi Gramodyog Sangh, Indian Navy Sailors Home, Panchayat Samiti, Public Health Department of the State Government, Forest Department of Govt., Zoo; Primary Health Centres, and Indian Institute of Petroleum. Some other instances of 'Industry are: Rajasthan Co-operative Credit Institutions Cadre Authority (1985 Lab IC 1023 (Raj.)), A trust for promoting religious, social and educational life but also undertaking commercial activities (1987) 1 LLJ 81, M.P. Khadi and Village Industries Board, Housing Board, Dock Labour Board, Management of a private educational institution (*R.C.K. Union v. Rajkumar College*, (1987) 2 LLN 573).

But the following are held to be not “Industry”: Posts and Telegraphs Department (*Union of India v. Labour Court*, (1984) 2 LLN 577), Telecom Deptt. (*Bombay Telephones Canteen Employees Association v. Union of India*), Central Institute of Fisheries (*P. Bose v. Director, C.I.F.*, 1986 Lab IC 1564), and Construction and maintenance of National and State Highways (*State of Punjab v. Kuldip Singh and another*, 1983 Lab IC 83), Trade Unions (*RMS v. K.B. Wagh*, 1993(2) CLR 1059).

Section 2(j) shall stand amended by Amendment Act of 1982. [date of effect is yet to be notified]

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

- (i) any capital has been invested for the purpose of carrying on such activity; or
- (ii) such activity is carried on with a motive to make any gain or profit, and includes:
  - (a) any activity of the Dock Labour Board established under Section 5A of the Dock Workers (Regulations of Employment) Act, 1948, (9 of 1948);
  - (b) any activity relating to the promotion of sales or business or both carried on by an establishment, but does not include:
    - (1) any agricultural operation except where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this clause) and such other activity is the predominant one.

**Explanation:** For the purpose of this sub-clause, “agricultural operation” does not include any activity carried on in a plantation as defined in clause (f) of Section 2 of the Plantations Labour Act, 1951; or

- (2) hospitals or dispensaries; or
- (3) educational, scientific, research to training institutions; or
- (4) *institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service; or*
- (5) khadi or village industries; or
- (6) any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defence research atomic energy and space; or
- (7) any domestic service; or
- (8) any activity, being a profession practised by an individual or body of individuals, if the number of persons employed by the individuals or body of individuals in relation to such profession is less than ten; or
- (9) any activity, being an activity carried on by a co-operative society or a club or any other like body of individuals, if the number of persons employed by the co-operative society, club or other like body of individuals in relation to such activity is less than ten.

## (ii) Industrial Dispute

“Industrial Dispute” means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person. [Section 2(k)]

The above definition can be analysed and discussed under the following heads:

- (i) There should exist a dispute or difference;
- (ii) The dispute or difference should be between:
  - (a) employer and employer;
  - (b) employer and workmen; or
  - (c) workmen and workmen.
- (iii) The dispute or difference should be connected with (a) the employment or non-employment, or (b) terms of employment, or (c) the conditions of labour of any person;
- (iv) The dispute should relate to an industry as defined in Section 2(j).

### (a) Existence of a dispute or difference

The existence of a dispute or difference between the parties is central to the definition of industrial dispute. Ordinarily a dispute or difference exists when workmen make demand and the same is rejected by the employer. However, the demand should be such which the employer is in a position to fulfil. The dispute or difference should be fairly defined and of real substance and not a mere personal quarrel or a grumbling or an agitation. The term “industrial dispute” connotes a real and substantial difference having some element of persistency, and likely, and if not adjusted, to endanger the industrial peace of the community. An industrial dispute exists only when the same has been raised by the workmen with the employer. A mere demand to the appropriate Government without a dispute being raised by the workmen with their employer regarding such demand, cannot become an industrial dispute (*Sindhu Resettlement Corporation Ltd. v. Industrial Tribunal 1968-I L.L.J. 834 S.C.*). However, in *Bombay Union of Journalists v. The Hindu*, AIR, 1964 S.C. 1617, the Supreme Court observed that for making reference under Section 10, it is enough if industrial dispute exists or is apprehended on the date of reference. Therefore, even when no formal demands have been made by the employer, industrial

dispute exists if the demands were raised during the conciliation proceedings. When an industrial dispute is referred for adjudication the presumption is that, there is an industrial dispute (*Workmen v. Hindustan Lever Ltd.*, (1984) 4 SCC 392).

Unless there is a demand by the workmen and that demand is not complied with by the management, there cannot be any industrial dispute within the meaning of Section 2(k). Mere participation by the employer in the conciliation proceedings will not be sufficient (*W.S. Insulators of India Ltd. v. Industrial Tribunal, Madras 1977-II Labour Law Journal 225*).

### **(b) Parties to the dispute**

Most of the industrial disputes exist between the employer and the workmen and the remaining combination of persons who can raise the dispute, has been added to widen the scope of the term “industrial dispute”. So the question is who can raise the dispute? The term “industrial dispute” conveys the meaning that the dispute must be such as would affect large groups of workmen and employers ranged on opposite sides. The disputes can be raised by workmen themselves or their union or federation on their behalf. This is based on the fact that workmen have right of collective bargaining. Thus, there should be community of interest in the dispute.

It is not mandatory that the dispute should be raised by a registered Trade Union. Once it is shown that a body of workmen either acting through their union or otherwise had sponsored a workmen’s case, it becomes an industrial dispute (*Newspaper Ltd., Allahabad v. Industrial Tribunal, A.I.R. 1960 S.C. 1328*). The dispute can be raised by minority union also. Even a sectional union or a substantial number of members of the union can raise an industrial dispute. However, the members of a union who are not workmen of the employer against whom the dispute is sought to be raised, cannot by their support convert an individual dispute into an industrial dispute. In other words, persons who seek to support the cause must themselves be directly and substantially interested in the dispute and persons who are not the employees of the same employer cannot be regarded as so interested. But industrial dispute can be raised in respect of non-workmen (*Workmen v. Cotton Greaves & Co. Ltd. 1971 2 SCC 658*). Industrial dispute can be initiated and continued by legal heirs even after the death of a workman (LAB 1C 1999 Kar. 286).

### **Individual dispute whether industrial dispute?**

Till the provisions of Section 2-A were inserted in the Act, it has been held by the Supreme Court that an individual dispute per se is not industrial dispute. But it can develop into an industrial dispute when it is taken up by the union or substantial number of workmen (*Central Province Transport Service v. Raghunath Gopal Patwardhan, AIR 1957 S.C. 104*). This ruling was confirmed later on in the case of *Newspaper Ltd. v. Industrial Tribunal*. In the case of *Workmen of Dimakuchi Tea Estate v. Dimakuchi Tea Estate (1958) 1 L.L.J. 500*, the Supreme Court held that it is not that dispute relating to “any person” can become an industrial dispute. There should be community of interest. A dispute may initially be an individual dispute, but the workmen may make that dispute as their own, they may espouse it on the ground that they have a community of interest and are directly and substantially interested in the employment, non-employment, or conditions of work of the concerned workmen. All workmen need not to join the dispute. Any dispute which affects workmen as a class is an industrial dispute, even though, it might have been raised by a minority group. It may be that at the date of dismissal of the workman there was no union. But that does not mean that the dispute cannot become an industrial dispute because there was no such union in existence on that date. If it is insisted that the concerned workman must be a member of the union on the date of his dismissal, or there was no union in that particular industry, then the dismissal of such a workman can never be an industrial dispute although the other workmen have a community of interest in the matter of his dismissal and the cause for which on the manner in which his dismissal was brought about directly and substantially affects the other workmen. The only condition for an individual dispute turning into an industrial dispute, as laid down in the case of *Dimakuchi Tea Estate* is the necessity of a community of interest and not whether the concerned workman was or was not a member of the union at the time of his dismissal. Further, the community of interest does not depend on whether the concerned workman was a member or not at the date when the cause occurred, for, without his being a member the dispute may be

such that other workmen by having a common interest therein would be justified in taking up the dispute as their own and espousing it. Whether the individual dispute has been espoused by a substantial number of workmen depends upon the facts of each case.

If after supporting the individual dispute by a trade union or substantial number of workmen, the support is withdrawn subsequently, the jurisdiction of the adjudicating authority is not affected. However, at the time of making reference for adjudication, individual dispute must have been espoused, otherwise it will not become an industrial dispute and reference of such dispute will be invalid.

### **(c) Subject matter of dispute**

The dispute should relate to employment or non-employment or terms of employment or conditions of labour of any person.

The meaning of the term “employment or non-employment” was explained by Federal Court in the case of *Western India Automobile Association v. Industrial Tribunal*. If an employer refuses to employ a workman dismissed by him, the dispute relates to non-employment of workman. But the union insists that a particular person should not be employed by the employer, the dispute relates to employment of workman. Thus, the “employment or non-employment” is concerned with the employers failure or refusal to employ a workman. The expression “terms of employment” refers to all terms and conditions stated in the contract of employment. The expression terms of employment would also include those terms which are understood and applied by parties in practice or, habitually or by common consent without ever being incorporated in the Contract (*Workmen v. Hindustan Lever Ltd.*, 1984 1 SCC 392).

The expression “condition of labour” is much wider in its scope and usually it was reference to the amenities to be provided to the workmen and the conditions under which they will be required to work. The matters like safety, health and welfare of workers are also included within this expression.

It was held that the definition of industrial dispute in Section 2(k) is wide enough to embrace within its sweep any dispute or difference between an employer and his workmen connected with the terms of their employment. A settlement between the employer and his workmen affects the terms of their employment. Therefore *prima facie*, the definition of Industrial dispute in Section 2(k) will embrace within its sweep any fraudulent and involuntary character of settlement. Even a demand can be made through the President of Trade Union (1988 1 LLN 202). Dispute between workmen and employer regarding confirmation of workman officiating in a higher grade is an industrial dispute (1984 4 SCC 392).

Employer’s failure to keep his verbal assurance, claim for compensation for loss of business; dispute of workmen who are not employees of the Purchaser who purchased the estate and who were not yet the workmen of the Purchaser’s Estate, although directly interested in their employment, etc. were held to be not the industrial disputes. Payment of pension can be a subject matter of an industrial dispute (*ICI India Ltd. v. Presiding Officer L.C.*, 1993 LLJ II 568).

### **(d) Dispute in an “Industry”**

Lastly, to be an “industrial dispute”, the dispute or difference must relate to an industry. Thus, the existence of an “industry” is a condition precedent to an industrial dispute. No industrial dispute can exist without an industry. The word “industry” has been fully discussed elsewhere. However, in *Pipraich Sugar Mills Ltd. v. P.S.M. Mazdoor Union*, A.I.R. 1957 S.C. 95, it was held that an “industrial dispute” can arise only in an “existing industry” and not in one which is closed altogether.

The mere fact that the dispute comes under the definition of Section 2(k) does not automatically mean that the right sought to be enforced is one created or recognised and enforceable only under the Act (*National and Grindlays Bank Employees’ Union, Madras v. I. Kannan* (Madras), 1978 Lab. I.C. 648). Where the right of the employees is not one which is recognised and enforceable under the Industrial Disputes Act, the jurisdiction of the Civil Court is not ousted.

**(iii) Workman**

“Workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be expressed or implied and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes:

- (a) any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute, or
- (b) any person whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person:
  - (i) who is subject to the Army Act, 1950, or the Air Force Act, 1950 or the Navy Act, 1957; or
  - (ii) who is employed in the police service or as an officer or other employee of a prison; or
  - (iii) who is employed mainly in a managerial or administrative capacity; or
  - (iv) who is employed in a supervisory capacity drawing more than Rs. 10,000 per month as wages; or
  - (v) who is exercising either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature. [Section 2(s)]

Some of the expressions used in the definition of “workman” have been the subject of judicial interpretation and hence they have been discussed below:

**(a) Employed in “any industry”**

To be a workman, a person must have been employed in an activity which is an “industry” as per Section 2(j). Even those employed in operation incidental to such industry are also covered under the definition of workman.

**In the case of *J.K. Cotton Spinning and Weaving Mills Co. Ltd. v. L.A.T.*, AIR 1964 S.C. 737, the Supreme Court held that ‘malis’ looking after the garden attached to bungalows provided by the company to its officers and directors, are engaged in operations incidentally connected with the main industry carried on by the employer. It observed that in this connection it is hardly necessary to emphasise that in the modern world, industrial operations have become complex and complicated and for the efficient and successful functioning of any industry, several incidental operations are called in aid and it is the totality of all these operations that ultimately constitutes the industry as a whole. Wherever it is shown that the industry has employed an employee to assist one or the other operation incidental to the main industrial operation, it would be unreasonable to deny such an employee the status of a workman on the ground that his work is not directly concerned with the main work or operation of the industry.**

**(b) Person employed**

A person cannot be a workman unless he is employed by the employer in any industry. The relationship of employer and workman is usually supported by a contract of employment which may be expressed or implied. This is also a must for regarding an apprentice as a worker (*Achutan v. Babar*, 1996-LLR-824 Ker.). But such a question cannot be derived merely on the basis of apprenticeship contract (*R.D. Paswan v. L.C.*, 1999 LAB 1C Pat 1026). The employee agrees to work under the supervision and control of his employer. Here one must distinguish between contract for employment or service and contract of employment or service. In the former, the employer can require what is to be done but in the latter, he can not only order what is to be done, but also how it shall be done. In the case of contract for employment, the person will not be held as a ‘workman’ but only an ‘independent contractor’. There should be due control and supervision by the employer for a master and servant relationship (*Dharangadhara Chemical Works Ltd. v. State of Saurashtra*, AIR 1957 SC 264). Payment on piece rate by itself does not disprove the relationship of master and servant (1983 4 SCC 464). Even a part time employee is a worker [*P.N. Gulati v. Labour Commissioner* 1977 (35) FLR 35]. Since he is under an obligation



to work for fixed hours every day, jural relationship of master and servant would exist. A casual worker is nonetheless a workman (*G.Yeddi Reddi v. Brooke Bond India Ltd.*, 1994 Lab 1C 186).

**(c) Employed to do skilled or unskilled etc.**

Only those persons who are engaged in the following types of work are covered by the definition of “workman”:

- (i) Skilled or unskilled manual work;
- (ii) Supervisory work;
- (iii) Technical work;
- (iv) Clerical work.

Where a person is doing more than one work, he must be held to be employed to do the work which is the main work he is required to do (*Burma Shell Oil Storage & Distributing Co. of India v. Burma Shell Management Staff Association*, AIR 1971 SC 922). Manual work referred in the definition includes work which involves physical exertion as distinguished from mental or intellectual exertion.

A person engaged in supervisory work will be a workman only if he is drawing more than Rs. 10,000 per month as wages. The designation of a person is not of great importance, it is the nature of his duties which is the essence of the issue. If a person is mainly doing supervisory work, but incidentally or for a fraction of the time, also does some clerical work, it would have to be held that he is employed in supervisory capacity; and conversely, if the main work done is of clerical nature, the mere fact that some supervisory duties are also carried out incidentally, will not convert his employment as a clerk into one in supervisory capacity [*Anand Bazar Patrika (P) Ltd. v. Its Workmen*, (1969) 11 L.L.J. 670]. In other words, the dominant purpose of employment must be taken into account at first and the gloss of additional duties to be rejected, while determining status and character of the job (*AGR Rao v. Ciba Geigy* AIR 1985 SC 985). The work of labour officer in jute mill involving exercise of initiative, tact and independence is a supervisory work. But the work of a teller in a bank does not show any element of supervisory character.

**Whether teachers are workmen or not**

After amendment of Section 2(s) of the Act, the issue whether “teachers are workmen or not” was decided in many cases but all the cases were decided on the basis of definition of workman prior to amendment. The Supreme Court in *Sunderambal v. Government of Goa* [AIR (1988) SC 1700. (1989) LAB 1C 1317] held that the teachers employed by the educational institution cannot be considered as workmen within the meaning of Section 2(s) of the Act, as imparting of education which is the main function of the teachers cannot be considered as skilled or unskilled manual work or supervisory work or technical work or clerical work. The Court in this case also said that manual work comprises of work involving physical exertion as distinct from mental and intellectual exertion. The teacher necessarily performs intellectual duties and the work is mental and intellectual as distinct from manual.

A person doing technical work is also held as a workman. A work which depends upon the special training or scientific or technical knowledge of a person is a technical work. Once a person is employed for his technical qualifications, he will be held to be employed in technical work irrespective of the fact that he does not devote his entire time for technical work. Thus, the person doing technical work such as engineers, foreman, technologist, medical officer, draughtsman, etc., will fall within the definition of “workman”. A medical representative whose main and substantial work is to do canvassing for promotion of sales is not a workman within the meaning of this Section (1990 Lab IC 24 Bom. DB). However, a salesman, whose duties included manual as well as clerical work such as to attend to the customer, prepare cash memos, to assist manager in daily routine is a workman (*Carona Sahu Co. Ltd. v. Labour Court* 1993 1 LLN 300). A temple priest is not a workman (1990 1 LLJ 192 Ker.).

**Person employed mainly in managerial and administrative capacity**

Persons employed mainly in the managerial or administrative capacity have been excluded from the definition of “workman”. Development officer in LIC is a workman (1983 4 SCC 214). In *Standard Vacuum Oil Co. v.*



*Commissioner of Labour*, it was observed that if an individual has officers subordinate to him whose work he is required to oversee, if he has to take decision and also he is responsible for ensuring that the matters entrusted to his charge are efficiently conducted, and an ascertainable area or section of work is assigned to him, an inference of a position of management would be justifiable. Occasional entrustment of supervisory, managerial or administrative work, will not take a person mainly discharging clerical duties, out of purview of Section 2(s).

#### (iv) Strike

“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. [Section 2(q)]

Strike is a weapon of collective bargaining in the armour of workers. The following points may be noted regarding the definition of strike:

- (i) Strike can take place only when there is a cessation of work or refusal to work by the workmen acting in combination or in a concerted manner. Time factor or duration of the strike is immaterial. The purpose behind the cessation of work is irrelevant in determining whether there is a strike or not. It is enough if the cessation of work is in defiance of the employers authority.

Proof of formal consultations is not required. However, mere presence in the striking crowd would not amount to strike unless it can be shown that there was cessation of work.

- (ii) A concerted refusal or a refusal under a common understanding of any number of persons to continue to work or to accept employment will amount to a strike. A general strike is one when there is a concert of combination of workers stopping or refusing to resume work. Going on mass casual leave under a common understanding amounts to a strike. However, the refusal by workmen should be in respect of normal lawful work which the workmen are under an obligation to do. But refusal to do work which the employer has no right to ask for performance, such a refusal does not constitute a strike (*Northbrooke Jute Co. Ltd. v. Their Workmen*, AIR 1960 SC 879). If on the sudden death of a fellow-worker, the workmen acting in concert refuse to resume work, it amounts to a strike [*National Textile Workers’ Union v. Shree Meenakshi Mills*, (1951) II L.L.J. 516].
- (iii) The striking workman, must be employed in an “industry” which has not been closed down.
- (iv) Even when workmen cease to work, the relationship of employer and employee is deemed to continue albeit in a state of belligerent suspension. In *Express Newspaper (P) Ltd. v. Michael Mark*, 1962-II, L.L.J. 220 S.C., the Supreme Court observed that if there is a strike by workmen, it does not indicate, even when strike is illegal, that they have abandoned their employment. However, for illegal strike, the employer can take disciplinary action and dismiss the striking workmen.

#### Types of Strike and their Legality

##### (a) Stay-in, sit-down, pen-down or tool-down strike

In all such cases, the workmen after taking their seats, refuse to do work. Even when asked to leave the premises, they refuse to do so. All such acts on the part of the workmen acting in combination, amount to a strike. Since such strikes are directed against the employer, they are also called primary strikes. In the case of *Punjab National Bank Ltd. v. All India Punjab National Bank Employees’ Federation*, AIR 1960 SC 160, the Supreme Court observed that on a plain and grammatical construction of this definition it would be difficult to exclude a strike where workmen enter the premises of their employment and refuse to take their tools in hand and start their usual work. Refusal under common understanding not to work is a strike. If in pursuance of such common understanding the employees enter the premises of the Bank and refuse to take their pens in their hands that would no doubt be a strike under Section 2(q).

**(b) Go-slow**

Go-slow does not amount to strike, but it is a serious case of misconduct.

In the case of *Bharat Sugar Mills Ltd. v. Jai Singh*, (1961) II LLJ 644 (647) SC, the Supreme Court explained the legality of go-slow in the following words: “Go-slow which is a picturesque description of deliberate delaying of production by workmen pretending to be engaged in the factory, is one of the most pernicious practices that discontented and disgruntled workmen sometimes resort to. Thus, while delaying production and thereby reducing the output, the workmen claim to have remained employed and entitled to full wages. Apart from this, ‘go-slow’ is likely to be much more harmful than total cessation of work by strike. During a go-slow much of the machinery is kept going on at a reduced speed which is often extremely damaging to the machinery parts. For all these reasons, ‘go-slow’ has always been considered a serious type of misconduct.”

In another case, it was observed that slow-down is an insidious method of undermining the stability of a concern and Tribunals certainly will not countenance it. It was held that ‘go slow’ is a serious misconduct being a covert and a more damaging breach of the contract of employment (*SU Motors v. Workman* 1990-II LLJ 39). It is not a legitimate weapon in the armoury of labour. It has been regarded as a misconduct.

**(c) Sympathetic strike**

Cessation of work in the support of the demands of workmen belonging to other employer is called a sympathetic strike. This is an unjustifiable invasion of the right of employer who is not at all involved in the dispute. The management can take disciplinary action for the absence of workmen. However, in *Ramalingam v. Indian Metallurgical Corporation, Madras*, 1964-I L.L.J. 81, it was held that such cessation of work will not amount to a strike since there is no intention to use the strike against the management.

**(d) Hunger strike**

Some workers may resort to fast on or near the place of work or residence of the employer. If it is peaceful and does not result in cessation of work, it will not constitute a strike. But if due to such an act, even those present for work, could not be given work, it will amount to strike (*Pepariach Sugar Mills Ltd. v. Their Workmen*).

**(e) Work-to-rule**

Since there is no cessation of work, it does not constitute a strike.

**Legality of Strike**

The legality of strike is determined with reference to the legal provisions enumerated in the Act and the purpose for which the strike was declared is not relevant in directing the legality. Section 10(3), 10A(4A), 22 and 23 of the Act deals with strike. Sections 22 and 23 impose restrictions on the commencement of strike while Sections 10(3) and 10A(4A) prohibit its continuance.

The justifiability of strike has no direct relation to the question of its legality and illegality. The justification of strike as held by the Punjab & Haryana High Court in the case of *Matchwell Electricals of India v. Chief Commissioner*, (1962) 2 LLJ 289, is entirely unrelated to its legality or illegality. The justification of strikes has to be viewed from the stand point of fairness and reasonableness of demands made by workmen and not merely from stand point of their exhausting all other legitimate means open to them for getting their demands fulfilled.

The Supreme Court in *Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Majdoor Sabha*, AIR 1980 SC 1896 held that justifiability of a strike is purely a question of fact. Therefore, if the strike was resorted to by the workers in support of their reasonable, fair and bona fide demands in peaceful manner, then the strike will be justified. Where it was resorted to by using violence or acts of sabotage or for any ulterior purpose, then the strike will be unjustified.

As regards the wages to the workers strike period are concerned, the Supreme Court in *Charakulam Tea Estate v. Their Workmen*, AIR 1969 SC 998 held that in case of strike which is legal and justified, the workmen will be entitled to full wages for the strike period. Similar view was taken by the Supreme Court in *Crompton Greaves Ltd. case* 1978 Lab 1C 1379 (SC).

The Supreme Court in *Statesman Ltd. v. Their Workman*, AIR 1976 SC 758 held that if the strike is illegal or unjustified, strikers will not be entitled to the wages for the strike period unless considerate circumstances constraint a different cause. Similar view was taken by the Supreme Court in *Madura Coats Ltd. v. The Inspector of Factories, Madurai*, AIR 1981 SC 340.

The Supreme Court has also considered the situation if the strike is followed by lockout and vice versa, and both are unjustified, in *India Marine Service Pvt. Ltd. v. Their Workman*, AIR 1963 SC 528. In this case, the Court evolved the doctrine of “apportionment of blame” to solve the problem. According to this doctrine, when the workmen and the management are equally to be blamed, the Court normally awards half of the wages. This doctrine was followed by the Supreme Court in several cases. Thus, the examination of the above cases reveal that when the blame for situation is apportioned roughly half and half between the management and workmen, the workmen are given half of the wages for the period involved.

A division bench of the Supreme Court in the case of *Bank of India v. TS Kelawala*, (1990) 2 Lab 1C 39 held that the workers are not entitled to wages for the strike period. The Court observed that “the legality of strike does not always exempt the employees from the deduction of their salaries for the period of strike”. The Court, further observed, “whether the strike is legal or illegal, the workers are liable to lose wages does not either make the strike illegal as a weapon or deprive the workers of it”.

#### (v) Lock-out

“Lock-out” 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. [Section 2(l)]

**Lock out is an antithesis to strike. Just as “strike” is a weapon available to the employees for enforcing their industrial demands, a “lock out” is a weapon available to the employer to persuade by a coercive process the employees to see his point of view and to accept his demands [Express Newspapers (P) Ltd. v. Their Workers (1962) 11 L.L.J. 227 S.C.].**

In lock out, the employer refuses to continue to employ the workman employed by him even though there is no intention to close down the unit. The essence of lock out is the refusal of the employer to continue to employ workman. Even if suspension of work is ordered, it would constitute lock out. But mere suspension of work, unless it is accompanied by an intention on the part of employer as a retaliation, will not amount to lock out.

Locking out workmen does not contemplate severance of the relationship of employer and the workmen. In the case *Lord Krishna Sugar Mills Ltd. v. State of U.P.*, (1964) 11 LLJ 76 (All), a closure of a place of business for a short duration of 30 days in retaliation to certain acts of workmen (i.e. to teach them a lesson) was held to be a lock out. But closure is not a lock out.

#### (vi) Lay-off

“Lay-off” (with its grammatical variations and cognate expressions) means the failure, refusal or inability of an employer to give employment due to following reasons, to a workman whose name appears on the muster-rolls of his industrial establishment and who has not been retrenched:

- (a) shortage of coal, power or raw materials, or
- (b) accumulation of stocks, or
- (c) break-down of machinery, or
- (d) natural calamity, or
- (e) for any other connected reason. [Section 2(kkk)]

*Explanation:* Every workman whose name is borne on the muster rolls of the industrial establishment and who presents himself for work at the establishment at the time appointed for the purpose during normal working hours on any day and is not given employment by the employer within two hours of his so presenting himself shall be deemed to have been laid-off for that day within the meaning of this clause.

Provided that if the workman, instead of being given employment at the commencement of any shift for any day is asked to present himself for the purpose during this second half of the shift for the day and is given employment, then, he shall be deemed to have been laid-off only for one-half of that day.

Provided further that if he is not given any such employment even after so presenting himself, he shall not be deemed to have been laid-off for the second half of the shift for the day and shall be entitled to full basic wages and dearness allowance for that part of the day.

From the above provisions, it is clear that lay-off is a temporary stoppage and within a reasonable period of time, the employer expects that his business would continue and his employees who have been laid-off, the contract of employment is not broken but is suspended for the time being. But in the case of *M.A. Veirya v. C.P. Fernandez*, 1956-1, L.L.J. 547 Bomb., it was observed that it is not open to the employer, under the cloak of "lay-off", to keep his employees in a state of suspended animation and not to make up his mind whether the industry or business would ultimately continue or there would be a permanent stoppage and thereby deprive his employees of full wages. In other words, the lay-off should not be *mala fide* in which case it will not be lay-off. Tribunal can adjudicate upon it and find out whether the employer has deliberately and maliciously brought about a situation where lay-off becomes necessary. But, apart from the question of *mala fide*, the Tribunal cannot sit in judgement over the acts of management and investigate whether a more prudent management could have avoided the situation which led to lay-off (*Tatanagar Foundry v. Their Workmen*, A.I.R. 1962 S.C. 1533).

Further, refusal or inability to give employment must be due to (i) shortage of coal, power or raw materials, or (ii) accumulation of stock, or (iii) break-down of machinery, (iv) natural calamity, or (v) for any other connected reason. Financial stringency cannot constitute a ground for lay-off (*Hope Textiles Ltd. v. State of MP*, 1993 1 LLJ 603).

Lastly, the right to lay-off cannot be claimed as an inherent right of the employer. This right must be specifically provided for either by the contract of employment or by the statute (*Workmen of Dewan Tea Estate v. Their Management*). In fact 'lay-off' is an obligation on the part of the employer, i.e., in case of temporary stoppage of work, not to discharge the workmen but to lay-off the workmen till the situation improves. Power to lay-off must be found out from the terms of contract of service or the standing orders governing the establishment (*Workmen v. Firestone Tyre and Rubber Co.*, 1976 3 SCC 819).

There cannot be lay-off in an industrial undertaking which has been closed down. Lay-off and closure cannot stand together.

#### ***Difference between lay-off and lock-out***

- (1) In lay-off, the employer refuses to give employment due to certain specified reasons, but in lock-out, there is deliberate closure of the business and employer locks out the workers not due to any such reasons.
- (2) In lay-off, the business continues, but in lock-out, the place of business is closed down for the time being.
- (3) In a lock-out, there is no question of any wages or compensation being paid unless the lock-out is held to be unjustified.
- (4) Lay-off is the result of trade reasons but lock-out is a weapon of collective bargaining.
- (5) Lock-out is subject to certain restrictions and penalties but it is not so in case of lay-off.

However, both are of temporary nature and in both cases the contract of employment is not terminated but remains in suspended animation.

**Landmark Judgment clarifying the concept of Lockout and Lay-off**

In the case of Management of KAIRBETTA ESTATE, KOTAGIRI vs Rajamanickam And Others on 24 March, 1960, the Hon'ble Supreme Court held that, lay-off generally occurs in a continuing business, whereas a lock-out is the closure of the business. In the case of a lay-off, owing to the reasons specified in section 2(kkk) the employer is unable to give employment to one or more workmen. In the case of a lock-out the employer closes the business and locks out the whole body of workmen for reasons which have no relevance to causes specified in section 2(kkk). Thus, the nature of the two concepts is entirely different and so are their consequences. In the case of a lay-off the employer may be liable to pay compensation as provided by section 25(C), (D) and (E) of the Act; but this liability can-not be invoked in the case of a lock-out. The liability of the employer in cases of lock-out would depend upon whether the lock-out was justified and legal or not; but whatever the liability, the provisions applicable to the payment of lay-off compensation cannot be applied to the cases of lockout.

The appellant's Manager had been violently attacked and the other members of the staff working in the lower division were threatened by the respondents. In such a case if the appellant locked out his workmen no grievance can be made against its conduct by the respondents. Therefore, court held that the lock-out in the present case was not a lay-off, and as such the respondents are not entitled to claim any lay-off compensation from the appellant.

**(vii) Retrenchment**

“Retrenchment” means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include:

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman or 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.
- (c) termination of the service of workman on the ground of continued ill-health.

Thus, the definition contemplates following requirements for retrenchment:

- (i) There should be termination of the service of the workman.
- (ii) The termination should be by the employer.
- (iii) The termination is not the result of punishment inflicted by way of disciplinary action.
- (iv) The definition excludes termination of service on the specified grounds or instances mentioned in it. [Section 2(oo)]

The scope and ambit of Section 2(oo) is explained in the case of *Santosh Gupta v. State Bank of Patiala*, (1980) Lab.I.C.687 SC, wherein it was held that if the definition of retrenchment is looked at unaided and unhampered by precedent, one is at once struck by the remarkably wide language employed and particularly the use of the word ‘termination for any reason whatsoever’. If due weight is given to these words, i.e. they are to be understood as to mean what they plainly say, it is difficult to escape the conclusion that retrenchment must include every termination of service of a workman by an act of the employer. In the case of *Punjab Land Development Corporation Ltd. v. Labour Court, Chandigarh*, (1990) II LLJ 70 SC, the Supreme Court held that expression “retrenchment” means termination by employer of services of workman for any reason whatsoever except those expressly excluded in the Section itself.

The expression “for any reason whatsoever” in Section 2(oo) could not be safely interpreted to include the case of discharge of all workmen on account of *bona fide* closure of business, because for the application of definition, industry should be a working or a continuing or an existing industry, not one which is altogether a

closed one. So the underlying assumption would be of course, that the undertaking is running as an undertaking and the employer continues to be an employer (*Hariprasad Shivshankar Shukla v. A.D.Divakar*, (1957) SCR 121), hereinafter referred to as *Hariprasad case*.

The *Hariprasad case* and some other decisions, lead to the unintended meaning of the term “retrenchment” that it operates only when there is surplus of workman in the industry which should be an existing one. Thus, in effect either on account of transfer of undertaking or an account of the closure of the undertaking, there can be no question of retrenchment within the meaning of the definition contained in Section 2(oo). To overcome this view, the Government introduced new Sections 25FF and 25FFF, providing that compensation shall be payable to workmen in case of transfer of an undertaking or closure of an undertaking to protect the interests of the workmen. Thus, the termination of service of a workman on transfer or closure of an undertaking was treated as ‘deemed retrenchment’, in result enlarging the general scope and ambit of the expression (retrenchment) under the Act.

**The Supreme Court, clearing the misunderstanding created by earlier decisions stated in *Punjab Land Development Corporation Ltd. case* (1990 II LLJ SC 70), that the sole reason for the decision of the Constitution Bench in *Hariprasad case* was that the Act postulated the existence and continuance of an industry and wherein the industry, the undertaking itself was closed down or transferred, the very substratum disappeared and the Act could not regulate industrial employment in the absence of an industry. The true position in that case was that Section 2(oo) and Section 25F could not be invoked since the undertaking itself ceased to exist. In fact, the Constitution Bench in that case was neither called upon to decide, nor did it decide, whether in a continuing business, retrenchment was confined only to discharge of surplus staff and the reference to discharge the surplusage was for the purpose of contrasting the situation in that case (i.e.) workmen were being retrenched because of cessation of business and those observations did not constitute reasons for the decision. What was decided was that if there was no continuing industry, the provision could not apply. In fact, the question whether retrenchment did or did not include other terminations was never required to be decided in *Hariprasad case* and could not therefore have been or be taken to have been decided in that case.**

The Supreme Court in the *Punjab Land Development Corporation Ltd. case* clarified that the expression “retrenchment” does not mean only termination by the employer of service of surplus labour for any reason whatsoever. The expression “retrenchment” is not to be understood in the narrow, natural and contextual meaning but is to be understood in its wider literal meaning to mean termination of service of workman for any reason whatsoever.

The expression “for any reason whatsoever” in Section 2(oo), must necessarily draw within its ambit, the termination of the workers services due to reasons such as economy, rationalisation in industry, installation or improvement of plant or technique and the like. It is in conjunction with such reasons that the words “any reason whatsoever” must be read and construed (*Kamleshkumari Rajanikant Mehta v. Presiding Officer, Central Government, Industrial Tribunal No.1*, (1980) Lab I.C.1116).

A casual labourer is a workman and as such his termination would amount to retrenchment within Section 2(oo); 1981-II Labour Law Journal 82 (DB) (Cal.). Where persons are employed for working on daily wages their disengagement from service or refusal to employ for a particular work cannot be construed to be a retrenchment and that concept of retrenchment cannot be stretched to such an extent as to cover such employees (*U.P. v. Labour Court, Haldwani*, 1999 (81) FLR 319 All.).The Supreme Court observed that if the termination of an employee’s services is a punishment inflicted by way of disciplinary action, such termination would amount to retrenchment (*SBI v. Employees of SBI*, AIR 1990 SC 2034). But where the workmen were engaged on casual basis for doing only a particular urgent work, the termination of their service after the particular work is over, is not a retrenchment (*Tapar Kumar Jana v. The General Manager, Calcutta Telephones*, (1980) Lab.I.C.508).

**In *Parry & Co. Ltd. v. P.C. Pal*, (1970) II L.L.J. 429, the Supreme Court observed that the management has a right to determine the volume of its labour force consistent with its business or anticipated business and its organisation. If for instance a scheme of reorganisation of the business of the employer results in**



**surplusage of employees, no employer is expected to carry the burden of such economic dead weight and retrenchment has to be accepted as inevitable, however, unfortunate it be.**

The fact that the implementation of a reorganisation scheme adopted by an employer for reasons of economy and convenience would lead to the discharge of some of the employees, will have no material bearing on the question as to whether the reorganisation has been adopted by the employer *bona fide* or not. The retrenchment should be *bona fide* and there should be no victimisation or unfair labour practice on the part of the employer. The Supreme Court in the case of *Workmen of Subong Tea Estate v. Subong Tea Estate*, (1964) 1 L.L.J. 333, laid down following principles with regard to retrenchment:

1. The management can retrench its employees only for proper reasons, which means that it must not be actuated by any motive of victimisation or any unfair labour practice.
2. It is for the management to decide the strength of its labour force, and the number of workmen required to carry out efficiently the work in his industrial undertaking must always be left to be determined by the management in its discretion.
3. If the number of employees exceeds the reasonable and legitimate needs of the undertaking, it is open to the management to retrench them.
4. Workmen may become surplus on the ground of rationalisation or on the ground of economy reasonably and bona fide adopted by the management or of other industrial or trade reasons.
5. The right of the employer to effect retrenchment cannot normally be challenged but when there is a dispute in regard to the validity of the retrenchment, it would be necessary for the tribunal to consider whether the impugned retrenchment was justified for proper reasons and it would not be open to the employer either capriciously or without any reason at all to say that it proposes to reduce its labour for no rhyme or reason.

The Section does not make any difference between regular and temporary appointment or an appointment on daily wage basis or appointment of a person not possessing requisite qualification (L.L.J.-II-1996 Mad. 216) or whether the appointment was held to be in accordance with law or not. In *Prabhudayal Jat v. Alwar Sehkari Bhumi Vikas Bank Ltd.*, (1997) Lab IC Raj. 944, where the services of an employee irregularly appointed was terminated, the Court held, it was a fit case of retrenchment.

In *Anand Behari v. RSRTC*, AIR 1991 SC 1003, the services of bus conductors, were terminated on the ground of weak eye sight which was below the standard requirement. Supreme Court held that the termination is due to continued ill-health which has to be construed relatively in its context, and that must have a bearing on the normal discharge of their duties. Ill-health means disease, physical defect, infirmity or unsoundness of mind. Termination on account of lack of confidence is stigmatic and does not amount to retrenchment (*Chandulal v. Pan American Airways*, (1985) 2 SCC 727). Striking of the name of a worker from the rolls on the ground of absence for a specific period, provided under Standing Orders amounts to retrenchment (1993 II LLJ 696). Disengagement of workers of seasonal factories after season is not a retrenchment (LLJ I 98 SC 343).

### **(viii) Award**

“Award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10-A. [Section 2(b)]

This definition was analysed in the case of *Cox & Kings (Agents) Ltd. v. Their Workmen*, AIR 1977 S.C. 1666 as follows: The definition of “award” is in two parts. The first part covers a determination, final or interim, of any industrial dispute. The second part takes in a determination of any question relating to an industrial dispute. However, basic thing to both the parts is the existence of an industrial dispute, actual or apprehended. The ‘determination contemplated is of the industrial dispute or a question relating thereto on merits.

The word ‘determination’ implies that the Labour Court or the Tribunal should adjudicate the dispute upon relevant materials and exercise its own judgement. The definition of ‘award’ also includes the ‘interim award’, but it should



be distinguished from 'interim relief' granted by Tribunal under Section 10(4). (*Hotel Imperial v. Hotel Workers Union*). However, in *Management of Bihar State Electricity Board v. Their Workmen*, it was held that since there is no provision for interim relief in the Act, it will take the form of interim award. It may be noted that if the 'interim relief' does not take the form of 'interim award', the violation of it, will not attract any penalty under the Act.

Further, if an industrial dispute has been permitted to be withdrawn by an order of the adjudication authority, it will not amount to an award because there is no determination of the dispute on merit. However, position would be different if the dispute has been settled by a private agreement and the Tribunal has been asked to make award in terms of the agreement. The Delhi High Court in *Hindustan Housing Factory Employees Union v. Hindustan Housing Factory*, has held that such an award is binding on the parties provided it is not tainted with fraud, coercion, etc. However, it is necessary that the Tribunal brings its own judicial mind with regard to such a compromise so that there is determination of the dispute.

Lastly, if any party to the dispute does not appear before the adjudication authority, the Tribunal can proceed ex-parte but cannot make award unless it has exercised its mind. Thus, the order of dismissal of the reference, for default, does not amount to award.

### (ix) Appropriate Government

"Appropriate Government" means--

- (i) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government, or by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government or in relation to an industrial dispute concerning a Dock Labour Board established under section 5A of the Dock Workers (Regulation of Employment) Act, 1948, or the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956, or the Employees' State Insurance Corporation established under section 3 of the Employees' State Insurance Act, 1948, or the Board of Trustees constituted under section 3A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948, or the Central Board of Trustees and the State Boards of Trustees constituted under section 5A and section 5B, respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, or the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956, or the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956, or the Deposit Insurance and Credit Guarantee Corporation established under section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961, or the Central Warehousing Corporation established under section 3 of the Warehousing Corporations Act, 1962, or the Unit Trust of India established under section 3 of the Unit Trust of India Act, 1963, or the Food Corporation of India established under section 3 or a Board of Management established for two or more contiguous States under section 16 of the Food Corporations Act, 1964, or the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994, or a Regional Rural Bank established under section 3 of the Regional Rural Banks Act, 1976, or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Bank of India the National Housing Bank established under section 3 of the National Housing Bank Act, 1987, or an air transport service, or a banking or an insurance company, a mine, an oilfield, a Cantonment Board, or a major port, any company in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government, or any corporation, not being a corporation referred to in this clause, established by or under any law made by Parliament, or the Central public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the Central Government, the Central Government, and
- (ii) in relation to any other industrial dispute, including the State public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the State Government, the State Government:

Provided that in case of a dispute between a contractor and the contract labour employed through the contractor in any industrial establishment where such dispute first arose, the appropriate Government

shall be the Central Government or the State Government, as the case may be, which has control over such industrial establishment. [Section 2(a)]

**(x) Arbitrator**

An “Arbitrator” includes an umpire. [Section 2(aa)]

**(xi) Average Pay**

“Average pay” means the average of the wages payable to a workman:

- (i) in the case of monthly paid workman, in the three complete calendar months;
- (ii) in the case of weekly paid workman, in the four complete weeks;
- (iii) in the case of daily paid workman, in the twelve full working days preceding the date; on which the average pay becomes payable if the workman had worked for three complete calendar months or four complete weeks or twelve full working days as the case may be, and where such calculation cannot be made, the average pay shall be calculated as the average of the wages payable to a workman during the period he actually worked. [Section 2(aaa)]

**(xii) Closure**

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

**(xiii) Controlled Industry**

“Controlled Industry” means any industry the control of which by the Union has been declared by any Central Act to be expedient in the public interest. [Section 2(ee)]

**(xiv) Employer**

“Employer” means:

- (i) in relation to an industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority. [Section 2(g)]

“Employer includes among others an agent of an employer, general manager, director, occupier of factory etc.

**(xv) Executive**

“Executive” in relation to a Trade Union, means the body, by whatever name called, to which the management of the affairs of the trade union is entrusted. [Section 2(gg)]

**(xvi) Independent**

A person shall be deemed to be “independent” for the purpose of his appointment as the chairman or other member of a Board, Court or Tribunal if he is unconnected with the industrial dispute referred to such Board, Court or Tribunal, or with any industry directly affected by such dispute.

Provided that no person shall cease to be independent by reason only of the fact that he is a shareholder of an incorporated company which is connected with, or likely to be affected by, such industrial dispute; but in such a case, he shall disclose to the appropriate Government, the nature and extent of the shares held by him in such company. [Section 2(i)]

**(xvii) Office Bearer**

“Office Bearer”, in relation to a trade union, includes any member of the executive thereof, but does not include an auditor. [Section 2(III)]

**(xviii) Public Utility Service**

“Public Utility Service” means:

- (i) any railway service or any transport service for the carriage of passengers or goods by air; (ia) any service in, or in connection with the working of, any major port or dock;
- (ii) any section of an industrial establishment, on the working of which the safety of the establishment or the workman employed therein depends;
- (iii) any postal, telegraph or telephone service;
- (iv) any industry which supplies power, light or water to the public;
- (v) any system of public conservancy or sanitation;
- (vi) any industry specified in the First Schedule which the appropriate Government may, if satisfied that public emergency or public interest so requires, by notification in the Official Gazette, declare to be a public utility service for the purposes of this Act, for such period as may be specified in the notification:

Provided that the period so specified shall not, in the first instance, exceed six months but may, by a like notification, be extended from time to time, by any period not exceeding six months at any one time, if in the opinion of the appropriate Government public emergency or public interest requires such extension. [Section 2(n)]

Public utility services may be carried out by private companies or business corporations [*D.N. Banerji v. P.R. Mukharjee (Budge Budge Municipality)*, AIR 1953 SC 58].

**(xix) Settlement**

“Settlement” means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer. [Section 2(p)]

An analysis of Section 2(p) would show that it envisages two categories of settlements (i) a settlement arrived at in the course of conciliation proceedings, and (ii) a written agreement between employer arrived at otherwise in the course of conciliation proceedings. For the validity of the second category of settlement, it is essential that parties thereto should have subscribed to it in the prescribed manner and a copy thereof sent to authorised officer and the conciliation officer (*Tata Chemicals Ltd. v. Workmen*, 1978 Lab. I.C. 637). Moreover, settlement contemplates only written settlement, and no oral agreement can be pleaded to vary or modify or supercede a written settlement (AIR 1997 SC 954).

A settlement cannot be weighed in any golden scale and the question whether it is just and fair has to be answered on the basis of principles different from those which came into play where an industrial dispute is under adjudication. If the settlement has been arrived at by a vast majority of workmen with their eyes open and was also accepted by them in its totality, it must be presumed to be fair and just and not liable to be ignored merely because a small number of workers were not parties to it or refused to accept it (*Tata Engineering and Locomotive Co. Ltd. v. Workmen*, 1981-II Labour Law Journal 429 SC). **A memorandum of settlement signed by office bearers of union without being authorised either by constitution of union or by executive committee of the union or by the workmen to enter into agreement with the management does not amount to settlement** [*Brooke Bond India Pvt. Ltd. v. Workman*, (1981) 3 SCC 493].

**(xx) Trade Union**

“Trade Union” means a trade union registered under the Trade Unions Act, 1926. [Section 2(qq)]

**(xxi) Unfair Labour Practice**

It means any of the practices specified in the Fifth Schedule. [Section 2(ra)]

**(xxii) Wages**

“Wages” means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to workman in respect of his employment or of work done in such employment, and includes:

- (i) such allowance (including dearness allowance) as the workman is for the time being entitled to;
- (ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles;
- (iii) any travelling concession;
- (iv) any commission payable on the promotion of sales or business or both;

but does not include:

- (a) any bonus;
- (b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force;
- (c) any gratuity payable on the termination of his service.
- (d) any commission payable on the promotion of sales or business or both. [Section 2(rr)]

### **DISMISSAL ETC. OF AN INDIVIDUAL WORKMAN TO BE DEEMED TO BE AN INDUSTRIAL**

According to Section 2A, where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between the workman and his employer connected with or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

The ambit of Section 2A is not limited to bare discharge, dismissal, retrenchment or termination of service of an individual workman, but any dispute or difference between the workman and the employer connected with or arising out of discharge, dismissal, retrenchment or termination is to be deemed industrial dispute. It has to be considered whether the claim for gratuity is connected with or arises out of discharge, dismissal, retrenchment or termination of service. The meaning of the phrase “arising out” of is explained in *Mackinnon Mackenzie & Co. Ltd. v. I.M. Isaak*, (1970) 1 LLJ 16. A thing is said to arise out of another when there is a close nexus between the two and one thing flows out of another as a consequence. The workman had claimed gratuity and that right flowed out of the termination of the services. Whether he is entitled to gratuity is a matter for the Tribunal to decide. It cannot be accepted that the claim of gratuity does not arise out of termination (*Joseph Nirajan Kumar Pradhan v. Presiding Officer, Industrial Tribunal, Orissa*, 1976 Lab. I.C. 1396).

High Court of Delhi vide its order dated September 01, 2022 in case of *Kaushal Kishor Singh v. Sita Kuoni World Travel India Ltd.* held that Labour Court committed no error in coming to conclusion that petitioner was not employee of respondent company and was not eligible for any compensation under labour laws for termination of his services by respondent company.

Petitioner was a German Linguistic Guide licenced by Ministry of Tourism & Culture, Govt. of India and rendered services to respondent company on assignment basis and was paid for on that basis - Petitioner was not

paid any fixed regular salary nor was provided any PF/ESI benefits and was not given any promotion or bonus - Petitioner did not apply for employment with management in writing and was not issued any letter of appointment as employee but was issued TDS certificate in Form 16A which clearly mentioned payment as 'Payments to Contractors and sub-contractors'. The respondent management terminated the services of the petitioner workman, without giving any notice, holding any inquiry, or assigning any valid reason. Aggrieved, the petitioner workman sent a demand notice to the management, although no reply was received thereto. However, pursuant to receiving the aforesaid demand notice, the Management immediately released the workman's pending payments, but did not reinstate him back in service. The petitioner had alleged that the management had illegally and arbitrarily terminated his service, flouting the provisions contained in the Industrial Dispute Act, 1947, and without following due process of law. Notice of reference was issued to the workman, who then filed his statement of claim. Respondent management contested the statement of claim by filing their written statement. The management vehemently denied the existence of an employer-employee relationship between the workman and the management. Labour Court passed the impugned award inter alia holding that the workman had failed to establish the existence of employer-employee relationship and therefore the question of illegal or unjustifiable termination did not arise and dismissed the statement of claim of the workman for being devoid of any merits. High Court of Delhi held that Labour Court committed no error in coming to conclusion that petitioner was not employee of respondent company and was not eligible for any compensation under labour laws for termination of his services by respondent company.

### AUTHORITIES UNDER THE ACT AND THEIR DUTIES

The Act provides the following Authorities the Investigation and settlement of industrial disputes:

- |                             |                          |
|-----------------------------|--------------------------|
| (i) Works Committee         | (v) Labour Courts        |
| (ii) Conciliation Officers  | (vi) Tribunals           |
| (iii) Board of Conciliation | (vii) National Tribunals |
| (iv) Courts of Inquiry      |                          |

#### **(i) Works Committee**

Section 3(1) of the Act provides that the appropriate Government may by general or special order require the employer to constitute in the prescribed manner a Works Committee in industrial establishments, where 100 or more workmen are employed or have been employed on any working day in the preceding 12 months. The Works Committee will be comprised of the representatives of employers and workmen engaged in the establishment.

It shall be 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 [Section 3(2)].

#### **(ii) Conciliation Officers**

With the duty of mediating in and promoting the settlement of industrial disputes, the appropriate Government may, by notification in the Official Gazette, appoint such number of Conciliation Officers as it thinks fit. The Conciliation Officer may be appointed for a specified area or for specified industries in a specified area or for one or more specified industries and either permanently or for a limited period. The main objective of appointing the Conciliation Officers, by the appropriate Government, is to create congenial atmosphere within the establishment where workers and employers can reconcile on their disputes through the mediation of the Conciliation Officers. Thus, they help in promoting the settlement of the disputes. (Section 4)

#### **(iii) Boards of Conciliation**

For promoting the settlement of an industrial dispute, the appropriate Government may, as occasion arises, constitute by a notification in the Official Gazette, a Board of Conciliation. A Board shall consist of a Chairman and two or four other members as the appropriate Government thinks fit.

It shall be the duty of Board to endeavour to bring about a settlement of the dispute and for such purpose it shall, without delay, investigate into the dispute and all matters affecting the merits and the right settlement. The Board may also do all such things which may be considered fit by it, for including the parties to come for a fair and amicable settlement of the dispute. In case of settlement of the dispute, the Board shall send a report thereof to the appropriate Government together with a memorandum of settlement signed by all the parties to the dispute. In case no settlement is arrived at, the Board shall forward a report to appropriate Government enlisting therein the steps taken by the Board for ascertaining the facts and circumstances related to the dispute and for bringing about a settlement thereof. The Board will also enlist the reasons on account of which in its opinion a settlement could not be arrived at and its recommendations for determining the disputes. (Section 5)

#### **(iv) Courts of Inquiry**

According to Section 6 of the Act, the appropriate Government may as occasion arises, by notification in the Official Gazette constitute a Court of Inquiry into any matter appearing to be connected with or relevant to an industrial dispute. A Court may consist of one independent person or of such number of independent persons as the appropriate Government may think fit and where a Court consists of two or more members, one of them shall be appointed as the Chairman. It is the duty of such a Court to inquire into matters referred to it and submit its report to the appropriate Government ordinarily within a period of six months from the commencement of the inquiry. The period within which the report is to be submitted is not mandatory and the report may be submitted even beyond the period of six months without affecting the legality of the inquiry.

#### **(v) Labour Courts**

Under Section 7, the appropriate Government is empowered to constitute one or more Labour Courts for 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 under the Act.

A Labour Court shall consist of one person only to be appointed by the appropriate Government.

A person shall not be qualified for appointment as the presiding officer of a Labour Court unless •

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

Provided that no such Deputy Chief Labour Commissioner or Joint Labour Commissioner shall be appointed unless he resigns from the service of the Central Government or State Government, as the case may be, before being appointed as the presiding officer; or

- (f) he is an officer of Indian Legal Service in Grade Ili with three years' experience in the grade.

When an industrial dispute has been referred to a Labour Court for adjudication, it is the duty of the Labour Court to (i) hold its proceedings expeditiously, and (ii) submit its award to the appropriate Government soon after the conclusion of the proceedings. No time period has been laid down for the completion of proceedings but it is expected that such Courts will hold their proceedings without going into the technicalities of a Civil Court. Labour Court has no power to permit *suo motu* the management to avail the opportunity of adducing fresh evidence in support of charges (1998 Lab 1C 540 AP).

Provisions of Article 137 of the Limitation Act do not apply to reference of dispute to the Labour Court. In case of delays, Court can mould relief by refusing back wages or directing payment of past wages (1999 LAB 1C SC 1435).

#### **(vi) Tribunals**

- (1) The appropriate Government may by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter whether specified in the Second Schedule or the Third Schedule and for performing such other functions as may be assigned to them under this Act.
- (2) A Tribunal shall consist of one person only to be appointed by the appropriate Government.
- (3) A person shall not be qualified for appointment as the presiding officer of a Tribunal unless:
  - (a) he is, or has been, a Judge of High Court; or
  - (b) he has, for a period of not less than three years, been a District Judge or an Additional District Judge.
  - (c) 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:  
  
Provided that no such Deputy Chief Labour Commissioner or Joint Labour Commissioner shall be appointed unless he resigns from the service of the Central Government or State Government, as the case may be, before being appointed as the presiding officer; or
  - (d) he is an officer of Indian Legal Service in Grade III with three years' experience in the grade.
- (4) The appropriate Government may, if it so thinks fit, appoint two persons as assessors to advise the Tribunal in the proceedings before it. (Section 7-A)

The Industrial Tribunal gets its jurisdiction on a reference by the appropriate Government under Section 10. The Government can nominate a person to constitute a Tribunal for adjudication of industrial disputes as and when they arise and refer them to it. The Tribunal may be constituted for any limited or for a particular case or area. If appointed for a limited period, it ceases to function after the expiry of the term even when some matters are still pending (*J.B. Mangharam & Co. v. Kher*, A.I.R. 1956 M.B.113).

Further, when a Tribunal concludes its work and submits its award to the appropriate Government, it does not extinguish the authority of the Tribunal nor does it render the Tribunal *functus officio*. The Government can refer to it for clarification on any matter related to a prior award (*G. Claridge & Co. Ltd. v. Industrial Tribunal*, A.I.R. 1950 Bom.100).

The duties of Industrial Tribunal are identical with the duties of Labour Court, i.e., on a reference of any industrial dispute, the Tribunal shall hold its proceedings expeditiously and submit its award to the appropriate Government.

#### **(vii) National Tribunals**

- (1) Under Section 7-B, the Central Government alone has been empowered to constitute one or more National Tribunals for the adjudication of industrial disputes which (a) involve questions of national importance or (b) are of such a nature that industrial establishments situated in more than one State are likely to be interested in or affected by such disputes.
- (2) A National Tribunal shall consist of one person only to be appointed by the Central Government.
- (3) A person shall not be qualified for appointment as the Presiding Officer of a National Tribunal unless he is, or has been, a Judge of a High Court; or



- (4) The Central Government may, if it so thinks fit, appoint two persons as assessors to advise the National Tribunal in the proceeding before it.

Section 7-C further provides that presiding officer of Labour Courts, Tribunals and National Tribunals should be an independent person and must not have attained the age of 65 years.

### ***Duties of Labour Courts, Tribunals and National Tribunals***

Where an industrial dispute has been referred to a Labour Court, Tribunal or National Tribunals 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. (Section 15)

## **REFERENCE OF DISPUTES**

The adjudication of industrial disputes by Conciliation Board, Labour Court, Court of Inquiry, Industrial Tribunal or National Tribunal can take place when a reference to this effect has been made by the appropriate Government under Section 10. The various provisions contained in this lengthy Section are summed up below:

### **(A) Reference of disputes to various Authorities**

Where the appropriate Government is of the opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing make a reference to various authorities in the following ways:

- (a) It may refer the dispute to a Conciliation Board for promoting the settlement of the dispute. As noted earlier, duty of the Board is to promote settlement and not to adjudicate the dispute. A failure report of the Board will help the Government to make up its mind as to whether the dispute can be referred for compulsory adjudication. Further, any matter appearing to be connected with or relevant to the dispute cannot be referred to a Conciliation Board (*Nirma Textile Finishing Mills Ltd. v. Second Tribunal, Punjab 1957 I L.L.J. 460 S.C.*).
- (b) It may refer any matter appearing to be connected with or relevant to the dispute to a Court of Inquiry. The purpose of making such a reference is not conciliatory or adjudicatory but only investigatory.
- (c) It may refer the dispute, or any matter appearing to be connected with, or relevant to, the dispute if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication. However, disputes relating to any matter falling in the Third Schedule can also be referred to a Labour Court, if the appropriate Government so thinks fit provided the dispute is not likely to affect more than 100 workmen.
- (d) It may refer the dispute or any matter appearing to be connected with, or relevant to the dispute specified in the Second or Third Schedule, to an Industrial Tribunal for adjudication. [Section 10(1)]

Under the second proviso to Section 10(1), where the dispute relates to a public utility service and a notice of strike or lock-out under Section 22 has been given, it is mandatory for the appropriate Government or the Central Government as the case may be, to make a reference even when some proceedings under the Act are pending in respect of the dispute. But the Government may refuse to make the reference if it considers that (i) notice of strike/lock-out has been frivolously or vexatiously given, or (ii) it would be inexpedient to make the reference. If the Government comes to a conclusion and forms an opinion which is vitiated by *mala fide* or biased or irrelevant or extraneous considerations, then the decision of the Government will be open to judicial review.

Where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, for a reference of the dispute to a Board, Court (Labour Court, Tribunal or National Tribunal), the appropriate Government, if satisfied that the person applying represent the majority of each party, shall make the reference accordingly.

The Industrial Disputes Act provides for no appeal or revision as against the awards so made nor any such remedy is specifically provided for by any other statute or statutory provision though no doubt the Supreme Court in its discretion may under Article 136 of the Constitution of India, grant special leave to a party aggrieved by such an award to appeal to the Supreme Court against an award so made (1978-II Labour Law Journal, Cal.).

Section 10(1) providing for the powers of appropriate Government to make a reference, has been the favoured subject of judicial interpretation. The various observations made in the course of judicial interpretation of Section 10(1) are summarised below:

- (i) The order making a reference is an administrative act and it is not a judicial or quasi-judicial act [*State of Madras v. C.P. Sarathy*, (1953) 1 L.L.J. 174 SC]. It is because the Government cannot go into the merits of the dispute. Its duty is only to refer the dispute for the adjudication of the authority so that the dispute is settled at an early date.
- (ii) The powers of the appropriate Government to make a reference is discretionary but within narrow limits it is open to judicial review.
- (iii) Ordinarily the Government cannot be compelled to make a reference. But in such a situation the Government must give reasons under Section 12(5) of the Act. If the Court is satisfied that the reasons given by the Government for refusing to the issue, the Government can be compelled to reconsider its decision by a writ of Mandamus (*State of Bombay v. K.P. Krishnan*, A.I.R. 1960 S.C. 1223). The appropriate government is not bound to refer belated claims (1994 1 LLN 538 P&H DB).
- (iv) In the case of *Western India Match Co. Ltd. v. Workmen*, it was held that it is not mandatory for the appropriate Government to wait for the outcome of the conciliation proceedings before making an order of reference. The expression “the appropriate Government at any time may refer” takes effect in such cases where the Government decides to make a reference without waiting for conciliation proceedings to begin or to be completed.
- (v) Refusal of the Government to refer the dispute for adjudication does not debar it from making subsequent reference. It at one stage the appropriate Government had come to the conclusion that no reference was called for in the interest of industrial peace, there is nothing in the Act, which bars it from re-examining the matter, whether in the light of fresh material or otherwise, and from making a reference if it comes to the conclusion that a reference is justified and it is expedient in the interest of industrial peace to make such reference (*Western India Match Co. Ltd. v. Workers Union*).
- (vi) The appropriate Government has no power either expressly or impliedly to cancel, withdraw or supersede any matter referred for adjudication. However, it is empowered to add to or amplify a matter already referred for adjudication (*State of Bihar v. D.N. Ganguli*, 1958-II L.L.J. 634 S.C.). The Government is competent to correct clerical error (*Dabur Ltd. v. Workmen*, A.I.R. 1968 S.C. 17). Even the Government can refer a dispute already pending before a Tribunal, afresh to another Tribunal, if the former Tribunal has ceased to exist. Now under Section 33-B the Government is empowered to transfer any dispute from one Tribunal to another Tribunal.
- (vii) If reference to dispute is made in general terms and disputes are not particularised, the reference will not become bad provided the dispute in question can be gathered by Tribunal from reference and surrounding facts (*State of Madras v. C.P. Sarthy*. Also see *Hotel Imperial, New Delhi. v. The Chief Commissioner, Delhi*).
- (viii) The appropriate Government can decide, before making a reference, the *prima facie* case, but it cannot decide the issue on merits [*Bombay Union of Journalists v. State of Bombay*, (1964) 1 L.L.J., 351 SC].

**(B) Reference of dispute to National Tribunal involving question of importance, etc.**

According to Section 10(1-A), where the Central Government is of opinion that any industrial dispute exists or is apprehended and the dispute involves any question of national importance or is of such a nature that industrial

establishments situated in more than one State are likely to be interested in, or affected by such dispute and that the dispute should be adjudicated by a National Tribunal, then, the Central Government may, whether or not it is the appropriate Government in relation to that dispute, at any time, by order in writing, refer the dispute or any matter appearing to be connected with, or relevant to the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a National Tribunal, for adjudication.

- (a) If the matter under adjudication before the National Tribunal is pending in a proceeding before a Labour Court or Tribunal, the proceeding before the Labour Court or the Tribunal, as the case may be in so far as it relates to such matter, shall be deemed to have been quashed on such reference to the National Tribunal; and
- (b) It shall not be lawful for the appropriate Government to refer the matter under adjudication before the National Tribunal to any Labour Court or Tribunal for adjudication during the pendency of the proceeding in relation to such matter before the National Tribunal. [Section 10(1-A) and 10(5)]

In this sub-section, “Labour Court” or “Tribunal” includes any Court or other authority constituted under any law relating to investigation and settlement of industrial disputes in force in any State.

### **(C) Reference on application of parties**

According to Section 10(2), where the parties to an industrial disputes apply in the prescribed manner, whether jointly or separately, for a reference of the dispute to a Board, Court, Labour Court, Tribunal or National Tribunal, the appropriate Government, if satisfied that the persons applying represent the majority of each party, shall make the reference accordingly and shall specify the time limit (not exceeding three months) to submit the award, such time limit may be extended if required.

Thus, it is mandatory for the Government to make a reference if (i) application to this effect has been made by the parties to the dispute, and (ii) the applicants represent the majority of each party to the satisfaction of the appropriate Government. [*Poona Labour Union v. State of Maharashtra*, (1969) 11 L.L.J.291 Bombay]. The Government cannot, before making reference, go into the question of whether any industrial dispute exists or is apprehended.

### **(D) Time limit for submission of awards**

According to Section 10(2A) an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal shall specify the period within which its award shall be submitted to the appropriate Government. The idea is to expedite the proceedings. Sub-section (2A) reads as follows:

“An order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this Section shall specify the period within which such Labour Court, Tribunal or National Tribunal shall submit its award on such dispute to the appropriate Government.

Provided that where such dispute is connected with an individual workman, no such period shall exceed three months.

Provided further that where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, to the Labour Court, Tribunal or National Tribunal for extension of such period or for any other reason, and the presiding officer of such Labour Court, Tribunal or National Tribunal considers it necessary or expedient to extend such period, he may for reasons to be recorded in writing, extend such period by such further period as he may think fit.

Provided also that in computing any period specified in this sub-section, the period, if any, for which the proceedings before the Labour Court, Tribunal or National Tribunal had been stayed by any injunction or order of a Civil Court shall be excluded.

Provided also that no proceedings before a Labour Court, Tribunal or National Tribunal shall lapse merely on the ground that any period specified under this sub-section had expired without such proceedings being completed”.

**(E) Prohibition of strike or lock-out**

Where an industrial dispute has been referred to a Board, Labour Court, Tribunal or National Tribunal under this Section, the appropriate Government may by order prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference. [Section 10(3)]

It is necessary that the Government makes an order prohibiting strike or lock out. If no order is made, continuance of strike or lock-out is not illegal. Further, once the order prohibiting strike or lock-out is made, the mere fact that strike was on a matter not covered by the reference, is immaterial [*Keventers Karamchari Sangh v. Lt. Governor, Delhi*, (1971) 11 L.L.J. 525 Delhi].

The only requirement for taking action under Section 10(1) is that there must be some material before the Government which will enable the appropriate Government to form an opinion that an industrial dispute exists or is apprehended. This is an administrative function of the Government as the expression is understood in contradiction to judicial or quasi-judicial function. Merely because the Government rejects a request for a reference or declines to make a reference, it cannot be said that the industrial dispute has ceased to exist, nor could it be said to be a review of any judicial or quasi-judicial order or determination. The industrial dispute may nevertheless continue to remain in existence and if at a subsequent stage the appropriate Government is satisfied that in the interest of industrial peace and for promoting industrial harmony it is desirable to make a reference, the appropriate Government does not lack power to do so under Section 10(1) nor is it precluded from making a reference on the only ground that on an earlier occasion, it had declined to make the reference.

**(F) Subject-matter of adjudication**

Where in an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this Section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, the Labour Court or the Tribunal or the National Tribunal, as the case may be, shall confine its adjudication to those points and matters incidental thereto. [Section 10(4)]

**(G) Powers of the Government to add parties**

Where a dispute concerning any establishment of establishments has been, or is to be, referred to a Labour Court, Tribunal or National Tribunal under this Section and the appropriate Government is of opinion, whether on an application made to it in this behalf or otherwise, that the dispute is of such a nature that any other establishment, group or class of establishments of a similar nature is likely to be interested in, or affected by, such dispute, the appropriate Government may, at the time of making the reference or at any time thereafter but before the submission of the award, include in that reference such establishment, group or class of establishments, whether or not at the time of such inclusion any dispute exists or is apprehended in that establishment, group or class of establishments. [Section 10(5)]

**VOLUNTARY REFERENCE OF DISPUTES TO ARBITRATION**

Section 10-A provides for the settlement of industrial disputes by voluntary reference of such dispute to arbitrators. To achieve this purpose, Section 10-A makes the following provisions:

- (i) Where any industrial dispute exists or is apprehended and the same has not yet been referred for adjudication to a Labour Court, Tribunal or National Tribunal, the employer and the workmen may refer the dispute, by a written agreement, to arbitration specifying the arbitrator or arbitrators. The presiding officer of a Labour Court or Tribunal or National Tribunal can also be named by the parties as arbitrator.

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

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

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

According to Section 10-A(3A), where an industrial dispute has been referred to arbitration and the appropriate Government is satisfied that the persons making the reference represent the majority of each party, the appropriate Government may, within the time referred above, issue a notification in such manner as may be prescribed; and when any such notification is issued, the employer and workmen who are not parties to the arbitration agreement but are concerned in the dispute, shall be given an opportunity of presenting their case before the arbitrator or arbitrators.

- (iv) The arbitrator or arbitrators shall investigate the dispute and submit to the appropriate Government the arbitration award signed by the arbitrator or all arbitrators, as the case may be.
- (v) Where an industrial dispute has been referred to arbitration and a notification has been issued, the appropriate Government may, by order, prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference.
- (vi) Nothing in the Arbitration Act, 1940 shall apply to arbitrations under this Section.

## PROCEDURE AND POWERS OF AUTHORITIES

Section 11 provides that

- (1) Subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think fit.
- (2) A Conciliation Officer or a member of a Board or Court or the Presiding Officer of a Labour Court, Tribunal or National Tribunal may for the purpose of inquiry into any existing or apprehended industrial dispute, after giving reasonable notice, enter the premises occupied by any establishment to which the dispute relates.
- (3) Every Board, Court, Labour Court, Tribunal and National Tribunal shall have the same powers as are vested in Civil Court under the Code of Civil Procedure, 1908 when trying a suit, in respect of the following matters, namely:
  - (a) enforcing the attendance of any person and examining him on oath;
  - (b) compelling the production of documents and material objects;
  - (c) issuing commissions for the examination of witnesses;
  - (d) in respect of such other matters as may be prescribed.

Further, every inquiry or investigation by such an authority shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code.

- (4) A Conciliation Officer may enforce the attendance of any person for the purpose of examination of such person or call for and inspect any document which he has ground for considering to be relevant to the industrial dispute or to be necessary for the purpose of verifying the implementation of any award or carrying out any other duty imposed on him under this Act, and for the aforesaid purposes, the Conciliation Officer shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, in respect of enforcing the attendance or compelling the production of documents.
- (5) A Court, Labour Court, Tribunal or National Tribunal may, if it so thinks fit, appoint one or more persons having special knowledge of the matter under consideration, as assessor or assessors to advise it in the proceeding before it.

- (6) All Conciliation Officers, members of a Board or Court and the Presiding Officers of a Labour Court, Tribunal or National Tribunal shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code.
- (7) Subject to any rules made under this Act, the costs of, and incidental to, any proceeding before a Labour Court, Tribunal or National Tribunal shall be in the discretion of that Labour Court, Tribunal or National Tribunal and the Labour Court Tribunal or National Tribunal, as the case may be, shall have full power to determine by and to whom and to what extent and subject to what conditions, if any, such costs are to be paid, and to give all necessary directions for the purposes aforesaid and such costs may, on application made to the appropriate Government by the person entitled, be recovered by that Government in the same manner as an arrear of land revenue.
- (8) Every Labour Court, Tribunal or National Tribunal shall be deemed to be Civil Court for the purposes of Section 345, 346 and 348 of the Code of Criminal Procedure, 1973.

Thus, we see that Section 11(1) gives wide powers to various authorities. However, power to lay-down its own procedure is subject to rules made by the appropriate Government. The Industrial Disputes (Central) Rules, 1957 has prescribed a detailed procedure which these authorities are required to follow. (See Rules 9 to 30). The authorities are not bound to follow the rules laid down in Civil Procedure Code, 1908 or the Indian Evidence Act. However, being quasi-judicial bodies, they should use their discretion in a judicial manner without caprice and act according to the general principles of law and rules of natural justice.

### ***Powers to give appropriate relief in case of discharge or dismissal***

According to Section 11-A, where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require.

According to the proviso to Section 11-A, in any proceeding under this Section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take fresh evidence in relation to the matter.

Before the enactment of Section 11-A, there was no provision circumscribing the perimeter of the jurisdiction of the Tribunal to interfere with the disciplinary action of discharge or dismissal for misconduct taken by an employer against an industrial workman.

**In *Indian Iron and Steel Co. Ltd. v. Their Workmen*, (1958) 1 LLJ. 260, the Supreme Court, while considering the Tribunal's power to interfere with the managements decision to dismiss, discharge or terminate the service of a workman, has observed that in cases of dismissal for misconduct the Tribunal does not act as a Court of appeal and substitute its own judgement for that of the management and that the Tribunal will interfere only when there is want of good faith, victimisation, unfair labour practice, etc., on the part of the management.**

The above Section has no relevance to punishments other than dismissal or discharge (*Rajasthan SRTC v. Labour Court*, (1994) 1 LLJ 542).

## **STRIKES AND LOCK-OUTS**

Strikes and lock-outs are the two weapons in the hands of workers and employers respectively, which they can use to press their viewpoints in the process of collective bargaining. The Industrial Disputes Act, 1947 does not grant an unrestricted right of strike or lock-out. Under Section 10(3) and Section 10A(4A), the Government



is empowered to issue order for prohibiting continuance of strike or lock-out. Sections 22 and 23 make further provisions restricting the commencement of strikes and lock-outs.

**(i) General prohibition of strikes and lock-outs**

No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out:

- (a) during the pendency of conciliation proceedings before a Board and seven days the conclusion of such proceedings;
- (b) during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal and two months after the conclusion of such proceedings;
- (bb) during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under sub-section (3A) of Section 10A; or
- (c) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award. (Section 23)

The purpose of above provisions is to ensure peaceful atmosphere during the pendency of any proceeding before a Conciliation Officer, Labour Court, Tribunal or National Tribunal or Arbitrator under Section 10A.

**(ii) Prohibition of strikes and lock-outs in public utility service**

The abovementioned restrictions on strikes and lock-outs are applicable to both utility services and non-utility services. Section 22 provides for following additional safeguards for the smooth and uninterrupted running of public utility services and to obviate the possibility of inconvenience to the general public and society (*State of Bihar v. Deodar Jha*, AIR 1958 Pat. 51).

- (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, i.e., from the date of the notice to the date of strike a period of six weeks should not have elapsed; or
  - (b) within 14 days of giving of such notice, i.e., a period of 14 days must have elapsed from the date of notice to the date of strike; or
  - (c) before the expiry of the date of strike specified in any such notice as aforesaid, i.e., the date specified in the notice must have expired on the day of striking; or
  - (d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conciliation of such proceedings.
- (2) No employer carrying on any public utility service shall lock-out any of his workmen:
  - (a) without giving them notice of lock-out as hereinafter provided within six weeks before locking-out; or
  - (b) within 14 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 7 days after the conciliation of such proceedings.

Right to Strike is to be exercised after complying with certain conditions regarding service of notice and also after exhausting intermediate and salutary remedy of conciliation proceedings (*Dharam Singh Rajput v. Bank of India, Bombay*, 1979 Lab. I.C. 1079).



The Act nowhere contemplates that a dispute would come into existence in any particular or specified manner. For coming into existence of an industrial dispute, a written demand is not a *sine qua non* unless of course in the case of public utility service because Section 22 forbids going on strike without giving a strike notice (1978-I Labour Law Journal 484 SC).

- (3) The notice of lock-out or strike under this Section shall not be necessary where there is already in existence a strike or, as the case may be, lock-out in the public utility service, but the employer shall send intimation of such lock-out or strike on the day on which 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 Section 22(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 Section 22(2) shall be given in such manner as may be prescribed.
- (6) If on any day an employer receives from any persons 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. (Section 22)

In the matter *Mineral Miners' Union vs Kudremukh Iron Ore Co. Ltd.* on 26 August, 1988, the Hon'ble Supreme Court held that the provisions of Section 22 of the Industrial Dispute Act are mandatory. Date on which the workmen propose to go on strike has to be specified in the notice contemplated by the said provision read with the relevant Rules and the Form prescribed for the notice. If by the time stated in Section 22(1)(d) the date of the strike specified in the notice of strike expires, the workmen have to issue a fresh notice as provided under Section 22 of the Act once again, and all other statutory consequences flowing out of the said statutory notice would follow on issuance of the said notice.

In the matter *Syndicate Bank vs K.Umesh Nayak*, (AIR 1995 SC 319) Justice Sawant opined: The strike as a weapon was evolved by the workers as a form of direct action during their long struggle with the employers. It is essentially a weapon of last resort being an abnormal aspect of the employer-employee relationship and involves withdrawal of labour disrupting production, services and the running of the enterprise. It is abuse by the labour of their economic power to bring the employer to see and meet their viewpoint over the dispute between them. The cessation or stoppage of work whether by the employees or by the employer is detrimental to the production and economy and to the well-being of the society as a whole. It is for this reason that the industrial legislation while not denying the right of workmen to strike, has tried to regulate it along, with the right of the employer to lockout and has also provided a machinery for peaceful investigation, settlement, arbitration and adjudication of the disputes between them. The strike or lockout is not to be resorted to because the party concerned has a superior bargaining power or the requisite economic muscle to compel the other party to accept its demand. Such indiscriminate use of power is nothing but assertion of the rule of "might is right". Thus, initially, employee must resort to dispute settlement by alternative mechanism. Only under extreme situations when the alternative mechanism totally failed to provide any amicable settlement, they can resort to a strike as a last resort.

### (iii) **Illegal strikes and lock-outs**

- (1) A strike or lock-out shall be illegal if:
  - (i) it is commenced or declared in contravention of Section 22 or Section 23; or
  - (ii) It is continued in contravention of an order made under Section 10(3) or Section 10A(4A).
- (2) Where a strike or lock-out in pursuance of an industrial dispute has already commenced and is in existence at the time of reference of the dispute to a Board, an arbitrator, a Labour Court, Tribunal or National Tribunal, the continuance of such strike or lock-out shall not be deemed to be illegal, provided that such strike or lock-out was not at its commencement in contravention of the provisions of this Act or the continuance thereof was not prohibited under Section 10(3) or Section 10A(4A).

- (3) A lock-out declared in consequence of an illegal strike or strike declared in consequence of an illegal lock-out shall not be deemed to be illegal. (Section 24)

No person shall knowingly expend or apply any money in direct furtherance or support of any illegal strike or lock-out (Section 25).

### JUSTIFIED AND UNJUSTIFIED STRIKES

If a strike is in contravention of the above provisions, it is an illegal strike. Since strike is the essence of collective bargaining, if workers resort to strike to press for their legitimate rights, then it is justified. Whether strike is justified or unjustified will depend upon the fairness and reasonableness of the demands of workers.

**In the case of *Chandramalai Estate v. Its Workmen*, (1960) II L.L.J. 243 (S.C.), the Supreme Court observed: "While on the one hand it be remembered that strike is a legitimate and sometimes unavoidable weapon in the hands of labour, it is equally important to remember that indiscriminate and hasty use of this weapon should not be encouraged. It will not be right for labour to think that for any kind of demand a strike can be commenced with impunity without exhausting reasonable avenues for peaceful achievement of their objects. There may be cases where the demand is of such an urgent and serious nature that it would not be reasonable to expect labour to wait till after asking the Government to make a reference. In such cases, strike even before such a request has been made, will be justified".**

Thus, if workmen go on strike without contravening statutory requirements, in support of their demands, the strike will be justified. In the beginning strike was justified but later on workmen indulged in violence, it will become unjustified.

In the case of *Indian General Navigation and Rly. Co. Ltd. v. Their Workmen*, (1960) I L.L.J. 13, the Supreme Court held that the law has made a distinction between a strike which is illegal and one which is not, but it has not made distinction between an illegal strike which may be said to be justifiable and one which is not justifiable. This distinction is not warranted by the Act and is wholly misconceived, specially in the case of employees in a public utility service. Therefore, an illegal strike is always unjustified.

It is well settled that in order to entitle the workmen to wages for the period of strike, strike should be legal as well as justified. A strike is legal if it does not violate any provision of the statute. Again a strike cannot be said to be unjustified unless the reasons for it are entirely perverse or unreasonable. Whether a particular strike is justified or not is a question of fact which has to be judged in the light of the facts and circumstances of each case, it is also well settled that the use of force or violence or acts of sabotage resorted to by the workmen during a strike disentitled them to wages for the strike period (*Crompton Greaves Limited v. Workmen*, 1978 Lab. I.C. 1379).

Where pending an industrial dispute the workers went on strike the strike thus being illegal, the lock-out that followed becomes legal, a defensive measure (1976-I Labour Law Journal, 484 SC).

### WAGES FOR STRIKE PERIOD

The payment of wages for the strike period will depend upon whether the strike is justified or unjustified. This also depends upon several factors such as service conditions of workman, the cause which led to strike, the urgency of cause or demand of workman, the reason for not resorting to dispute settlement machinery under the Act or service rules/regulations etc. (1994-SCC-1197). No wages are payable if the strike is illegal or it is unjustified. Further, if the workers indulge in violence, no wages will be paid even when their strike was legal and justified (*Dum Dum Aluminium Workers Union v. Aluminium Mfg. Co.*). The workmen must not take any hasty steps in resorting to strike. They must, first take steps to settle the dispute through conciliation or adjudication except when the matter is urgent and of serious nature. Thus, in *Chandramalai Estate v. Workmen*, it was observed that when workmen might well have waited for some time, after conciliation efforts had failed, before starting a strike, and in the mean time could have asked the Government to make a reference, the strike would be unjustified and the workmen would not be entitled to wages for the strike period.

**In the case of *Crompton Greaves Ltd. v. The Workmen*, AIR 1978 S.C. 1489, it was observed that for entitlement of wages for the strike period, the strike should be legal and justified. Reiterating this position, the Court held in *Syndicate Bank v. Umesh Nayak* (1994 SCC 1197) that where the strike is legal but at the same time unjustified, the workers are not entitled for wages for the strike period. It cannot be unjustified unless reasons for it are entirely preverse or unreasonable. The use of force, violence or acts of sabotage by workmen during the strike period will not entitle them for wages for the strike period.**

Supreme Court in *Bank of India v. T.S. Kelawala* (1990 II LLJ S.C. 39) decided, that where employees are going on a strike for a portion of the day or for whole day and there was no provision in the contract of employment or service rules or regulations for deducting wages for the period for which the employees refused to work although work was offered to them, and such deduction is not covered by any other provision, employer is entitled to deduct wages proportionately for the period of absence or for the whole day depending upon the circumstances.

## DISMISSAL OF WORKMEN AND ILLEGAL STRIKE

If workers participate in an illegal strike, the employer is within his right to dismiss the striking workmen on ground of misconduct. For this it is necessary that a proper and regular domestic enquiry is held. In the case of *Indian General Navigation and Rly. Co. v. Their Workmen*, the Supreme Court laid down the general rule that mere taking part in an illegal strike without anything further would not necessarily justify the dismissal of all workmen taking part in the strike and that it was necessary to hold a regular inquiry after furnishing charge-sheet to each of the workman sought to be dealt with for his participation in the strike. It was further observed, that because workmen go on strike, it does not justify the management in terminating their services. In any case if allegations of misconduct have been made against them, those allegations have to be enquired into by charging them with specific acts of misconduct and giving them an opportunity to defend themselves at the enquiry. In the case of *Express Newspaper (P) Ltd. v. Michael Mark*, (1962) II L.L.J. 220 (S.C.), the Supreme Court held that where the workmen who had participated in an illegal strike, did not join their duties which resulted in their dismissal under the Standing Orders, participation in strike means that they have abandoned their employment. However, the employer can take disciplinary action against the employees under the Standing Orders and dismiss them.

Further, the quantum of punishment should depend upon the extent of involvement in the strike. Those who are guilty of violence, encourage other workers to join an illegal strike and physically obstruct the loyal workers from joining their duties, they can be dismissed from their service. But dismissal of peaceful strikers who merely acted as dumb-driven cattle cannot be justified. The question of punishment has to be considered by the industrial adjudication keeping in view the overriding consideration of the full and efficient working of the industry as a whole.

**However, the Supreme Court in an unprecedented judgement in *T.K. Rangarajan v. Government of Tamil Nadu and Others*, (2003) 6 SCC 581: 2003-III-LLJ-275 held that the government employees have no fundamental right, statutory or equitable or moral to resort to strike and they can not take the society at ransom by going on strike, even if there is injustice to some extent.**

The Apex Court went to observe that strike as a weapon is mostly used which results in chaos and total mal administration. The judgement has evoked a lively debate for and against the proposition.

The Supreme Court has agreed to hear a petition seeking review of its judgement banning strike by all government employees and it is expected that the inconsistencies in the judgement are likely to be resolved.

## JUSTIFICATION OF LOCK-OUT AND WAGES FOR LOCK-OUT PERIOD

A lock-out in violation of the statutory requirements is illegal and unjustified and workers are entitled to wages for the lock-out period. For legal lock-out, no wages are payable to workmen. But where the lock-out, though legal is declared with the ulterior motive of victimisation of workmen or has been continued for unreasonable period of time, it is unjustified and the workmen are entitled to wages. In *Lord Krishna Sugar Mills Ltd. v. State of U.P.* (1964) II L.L.J. 76 (All), it was observed that locking-out the workmen without any prior notice to them and as a retaliatory measure to terrorise them, is illegal or unjustified. Where illegal or unjustified strike is followed by

an unjustified lock out, the wages for lock-out period will depend upon the extent of blame for each others act [*India Marine Services (P) Ltd. v. Their Workmen*, (1963) 1 L.L.J. 122 S.C.].

### CHANGE IN CONDITIONS OF SERVICE

#### (1) Change in service conditions when no proceedings are pending before Labour Court/Tribunal etc.

**Notice of change:** Section 9A of the Industrial Disputes Act, 1947 lays down that any employer who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in Schedule IV (given in the end of this study) is required to follow the procedure laid down in Section 9A of the Act.

According to Section 9A, the workmen likely to be affected by the proposed changes are to be given a notice in the prescribed manner. No change can be made within 21 days of giving such notice. However, no notice is required for effecting any such change when it is in pursuance of any settlement or award. These provisions are wholly inapplicable to any alleged right to work relief for office bearers of trade unions. No such right is recognised under provisions of the Act (LLJ II 1998 Mad. 26).

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

#### (2) Change in conditions of service during pendency of proceedings

Section 33 prohibits the employer from bringing any change, to the prejudice of any workman, in the conditions of service in respect of any matter connected with the dispute which is pending before a Conciliation Officer, or Conciliation Board or an Arbitrator or Labour Court or Tribunal or National Tribunal. The purpose of such a prohibition is to protect the workmen concerned, during the pendency of proceedings against employers harassment and victimisation on account of their having raised the industrial dispute of their continuing the pending proceedings. This Section also seeks to maintain status quo by prescribing management conduct which may give rise to fresh dispute which further exacerbate the already strained relations between the employer and the workmen (*Automobile Products of India Ltd. v. Rukmaji Bala* AIR 1955 SC 258). Thus ordinary right of the employer to alter the terms of his employees service to their prejudice or to terminate their services under the general law governing the contract of employment, has been banned subject to certain conditions. However, under Section 3, employer is free of deal with employees when the action against the concerned workman is not punitive or *mala fide* or does not amount to victimisation or unfair labour practice (*Air India Corporation v. A. Rebello*, 1972-1 L.L.J. 501 S.C.). A detailed study of Section 33 will further clarify that aspect.

According to Section 33(1), during the pendency of any proceedings before Conciliation Officer or a Board, or an Arbitrator, or a Labour Court or Tribunal or National Tribunal, in respect of an industrial dispute, the employer is prohibited from taking following actions against the workmen, except with the express permission in writing of the authority before which the proceedings are pending.

- (a) to alter in regard to any matter connected with the dispute to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings.
- (b) to discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute for any misconduct connected with the dispute”.

From the above provisions, it is clear that prohibition on the employer is not absolute. He can make changes in the conditions of service provided he has obtained, before effecting any change, permission in writing of the authority before which the proceedings are pending. Further, alterations in the conditions of services should be

to the prejudice of a workman. Transfer of a workman from one department is an ordinary incidence of service and therefore, does not amount to alteration or the prejudice of a workman, even when transfer amounts to reduction in earning due to reduced over-time wages.

In the case of *Bhavanagar Municipality v. Alibhai Karimbhai*, AIR 1977 S.C. 1229, the Supreme Court laid down the following essential features of Section 33(1)(a):

- (i) the proceedings in respect of industrial dispute should be pending before the Tribunal;
- (ii) conditions of service immediately before the commencement of Tribunal proceedings should have been altered;
- (iii) alteration is in regard to a matter connected with the pending industrial dispute;
- (iv) workmen whose conditions of service have been altered are concerned in the industrial dispute;
- (v) alteration is to the prejudice of the workmen.

### ***Change in condition of service – When permissible***

Section 33(1) prohibits the employer from changing, during the pendency of proceedings, the conditions of service relating to matter connected with the dispute. Employers were prevented from taking action even in obvious cases of misconduct and indiscipline unconnected with the dispute. To overcome this difficulty, Section 33(2) makes the following provisions:

- (i) During the pendency of any such proceedings in respect of an industrial dispute, the employer is permitted to take following actions, in accordance with the standing orders applicable to workmen concerned in such disputes or where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman:
  - (a) to alter, in regard to 'any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceedings.
  - (b) to discharge or punish, whether by dismissal or otherwise, that workman for any misconduct not connected with the dispute.
- (ii) According to proviso to Section 33(2), no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceedings are pending for approval of the action taken by the employer.

According to Section 33(5), where an employer makes an application to a Conciliation Officer, Board, an Arbitrator, a Labour Court, Tribunal or National Tribunal under the above proviso for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass within a period of three months from the date of receipt of such application, such order in relation thereto as it deems fit (unless extended on reasonable grounds).

Thus, the stringency of the previous provision is ought to be softened by permitting the employer to take action against the workmen in accordance with the standing orders applicable to them during the pendency of proceedings in regard to any matter unconnected with the dispute by the present Section 33(2).

In cases falling under sub-section (2), the employer is required to satisfy the specified conditions, but he need not necessarily obtain the previous consent in writing before he takes any action. The ban imposed by Section 33(2) is not as rigid or rigorous as that imposed by Section 3(1). The jurisdiction to give or withhold permission is *prima facie* wider than the jurisdiction to give or withhold approval. In dealing with cases falling under Section 32(2) the industrial authority will be entitled to enquire whether the proposed action is in accordance with the standing orders, whether the employer concerned has been paid wages for one month, and whether an application has been made for approval as prescribed by the said sub-section. It is obvious that in case of alteration of conditions of service falling under Section 33(2)(b), no such approval is required and the right of the employer remains unaffected by any ban. Therefore, putting in

negatively, the jurisdiction of the appropriate industrial authority in holding enquiry under Section 33(2)(b) cannot be wider and is, if at all, more limited, than that permitted under Section 33(1), and in exercising its powers under Section 33(2) the appropriate authority must bear in mind the departure deliberately made by the legislature in separating the two classes falling under the two sub-sections, and in providing for express permission in one case and only approval in the other". The crucial date for seeking permission of authorities to dismiss an employee is the date of dismissal and not the date of initial action (LAB IC 1998 Mad. 3422).

### **(3) Protected workmen and change in conditions of service, etc.**

A protected workman in relation to an establishment, means a workman who, being a member of the executive or other officer bearer of a registered Trade Union connected with the establishment, is recognised as such in accordance with rules made in this behalf.

According to Section 33(3), notwithstanding anything contained in Section 33(2), no employer shall, during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute:

- (a) by altering, to the prejudice of such protected workman, the condition of service applicable to him immediately before the commencement of such proceedings; or
- (b) by discharging or punishing, whether by dismissal or otherwise, such protected workman, save with the express permission in writing of the authority before which the proceeding is pending.

In every establishment the number of workmen to be recognised as protected workmen for the purposes of above-stated provisions, shall be one per cent of the total number of workmen employed therein subject to a minimum number of five protected workmen and a maximum number of one hundred protected workmen and for the aforesaid purpose, the appropriate Government may make rules providing for the distribution of such protected workmen among various Trade Unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognised as protected workmen [Section 33(4)]. Bombay High Court in *Blue Star Ltd. v. Workmen*, held that a Trade Union-worker cannot enjoy the luxury of getting salary, for not doing the assigned task in the company and spending away his time in Trade Union activities exclusively. The Trade Union office bearers cannot claim any special privilege over and above ordinary workers.

### **Principles governing domestic enquiry**

Some important principles governing a domestic enquiry are summarised below:

- (1) The enquiry should be conducted by an unbiased person, i.e., who is neither against nor in favour of a particular party. The person should not be an interested party. He should not import his own knowledge (*Associated Cement Co. Ltd. v. Their Workmen*). If he has himself witnessed anything, the enquiry should be held by somebody else. Thus, it should be ensured that justice is not only rendered but appear to be rendered. However, a person holding enquiry will not be held as biased merely on the ground that he receives remuneration from the employer.
- (2) The enquiry officer should conduct the enquiry honestly. It should be seen that enquiry is not mere empty formalities (*Kharah & Co. v. Its Workmen*, AIR 1964 SC 719).
- (3) The employee should be given a fair opportunity to defend himself. He should be clearly informed of the charges levelled against him. Evidence must be examined in the presence of the workman, and he should be given opportunity to cross-examine the witnesses (*Meenaglass Tea Estate v. Its Workmen*, AIR 1963 SC 1719). However, the enquiry officer can proceed with the enquiry if the worker refuses to participate without reasons.
- (4) If any criminal proceedings, e.g., the theft, etc., are pending against any workman, the enquiry officer need not wait for the completion of those proceedings. However, he may wait for the out-come of such proceedings if the case is of grave or serious nature (*D.C.M. v. Kushal Bhum*, AIR 1960 SC 806).



- (5) Holding out of preliminary enquiry is not mandatory or necessary. But it is desirable to find out *prima facie* reasons for the domestic enquiry.
- (6) A proper procedure should be followed in conducting enquiry. If procedure is prescribed by Standing Orders, it must be followed. Normally, a worker should be informed by a notice so that he can prepare his defence. The proceedings may be adjourned at the discretion of the enquiry officer. The pleadings and other rules should not be rigid and technical. Strict rules of the Evidence Act need not be followed.
- (7) The enquiry officer should clearly and precisely record his conclusions giving briefly reasons for reaching the said conclusion.

#### **(4) Recovery of money due from an employer**

Following provisions have been made in this respect:

- (1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A or Chapter V-B, the workman himself or any other person authorised by him in writing in this behalf, or, in the case of death of the workman his assignee or heirs may, without prejudice to any other mode of recovery make an application to the appropriate Government for the recovery of money due to him and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue.
- (2) Every such application shall be made within one year from the date on which the money become due to the workman from the employer. However, any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period. However stale claim cannot be entertained unless delay is satisfactorily explained.
- (3) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within three months unless extended by the Presiding Officer of a Labour Court.
- (4) For the purposes of computing the money value of a benefit, the Labour Court may, if it so thinks fit, appoint a Commissioner who shall, after taking such evidence as may be necessary, submit a report to the Labour Court and the Labour Court shall determine the amount after considering the report of the Commissioner and other circumstances of the case.
- (5) The decision of the Labour Court shall be forwarded by it to the appropriate Government and any amount found due by the Labour Court may be recovered in the manner provided for in point (1) above.
- (6) Where workmen employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money then, subject to such rules as may be made in this behalf, a single application for the recovery of the amount due may be made on behalf of or in respect of any number of such workmen. (Section 33-C)

### **UNFAIR LABOUR PRACTICES**

A new Chapter V-C relating to unfair labour practices has been inserted. Section 25T under this Chapter lays down that no employer or workman or a Trade Union, whether registered under the Trade Unions Act, 1926 or not, shall commit any unfair labour practice. Section 25U provides that any person who commits any unfair labour practice 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.

The unfair labour practices have been listed in Schedule V which is reproduced at the end of the topic of this study lesson.



## PENALTIES

### 1. *Penalty for illegal strikes*

Any workman who commences, continues or otherwise acts in furtherance of a strike which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees or with both. [Section 26(1)]

In the case of *Vijay Kumar Oil Mills v. Their Workmen*, it was held that the act of a workman to participate in an illegal strike gives the employer certain rights against the workman, which are not the creation of the Statute but are based on policy, and the employer has every right to waive such rights. In a dispute before the Tribunal, waiver can be a valid defence by the workman. However, waiver by the employer cannot be a defence against prosecution under Section 26 and something which is illegal by Statute cannot be made legal by waiver (*Punjab National Bank v. Their Workmen*).

### 2. *Penalty for illegal lock-outs*

Any employer who commences, continues, or otherwise, acts in furtherance of a lock-out which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one thousand rupees, or with both. [Section 26(2)]

### 3. *Penalty for instigation etc.*

Any person who instigates or incites others to take part in, or otherwise acts in furtherance of, a strike or lock-out which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. (Section 27)

### 4. *Penalty for giving financial aid to illegal strikes and lock-outs*

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. (Section 28)

### 5. *Penalty for breach of settlement or award*

Any person who commits a breach of any term of any settlement or award which is binding on him under this Act, should be punishable with imprisonment for a term which may extend to six months, or with fine or with both, and where the breach is a continuing one with a further fine which may extend to two hundred rupees for everyday during which the breach continues after the conviction for the first, and the Court trying the offence, if it fines the offender, may direct that the whole or any part of the fine realised from him shall be paid, by way of compensation to any person who, in its opinion has been injured by such breach. (Section 29)

### 6. *Penalty for disclosing confidential information*

Any person who wilfully discloses any such information as is referred to in Section 21 in contravention of the provisions of that section shall, on complaints made by or on behalf of the trade union or individual business affected, be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both. (Section 30)

### 7. *Penalty for closure without notice*

Any employer who closes down any undertaking without complying with the provisions of Section 25-FFA shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five thousand rupees, or with both. (Section 30-A)

### 8. *Penalty for other offences*

Any employer who contravenes the provisions of Section 33 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.

Further, whoever contravenes any of the provisions of this Act or any rules made thereunder shall, if no other penalty is elsewhere provided by or under this Act for such contravention, be punishable with fine which may extend to one hundred rupees. (Section 31)

### **9. Offence by companies, etc.**

Where a person committing an offence under this Act is a company, or other body corporate, or an association of persons (whether incorporated or not) every director, manager, secretary, agent or other officer or person concerned with management thereof shall, unless he proves that the offence was committed without his knowledge or consent, be deemed to be guilty of such offence. (Section 32)

## **SCHEDULES**

### **THE FIRST SCHEDULE**

[See Section 2(n)(vi)]

#### **Industries which may be Declared to be Public Utility Services under sub-clause (vi) of Clause (n) of Section 2**

1. Transport (other than railways) for the carriage of passengers of goods [by land or water];
2. Banking;
3. Cement;
4. Coal;
5. Cotton textiles;
6. Foodstuffs;
7. Iron and steel;
8. Defence establishments;
9. Service in hospitals and dispensaries;
10. Fire brigade service;
11. India Government Mints;
12. India Security Press;
13. Copper Mining;
14. Lead Mining;
15. Zinc Mining;
16. Iron Ore Mining;
17. Service in any oil field;
18. \*(deleted)\*
19. Service in uranium industry;
20. Pyrites mining industry;
21. Security Paper Mill, Hoshangabad;
22. Services in Bank Note Press, Dewas;
23. Phosphorite Mining;
24. Magnesite Mining;

25. Currency Note Press;
26. Manufacture or production of mineral (crude oil), motor and aviation spirit, diesel oil, kerosine oil, fuel oil, diverse hydrocarbon oils and their blend-including synthetic fuels, lubricating oils and the like;
27. Service in the Airports Authority of India;
28. Industrial establishments manufacturing or producing nuclear fuel and components, heavy water and allied chemicals and atomic energy;
29. Processing or production or distribution of fuel gases' (coal gas, natural gas and the like);
30. Manufacturing of Alumina and Aluminium; and
31. Mining of Bauxite;
32. Services in the Bank Note Paper Mill India Private Limited, Mysore, Karnataka.] 7 [33. Chemical Fertilizer industry.

### THE SECOND SCHEDULE

(See Section 7)

#### Matters within the Jurisdiction of Labour Court

1. The propriety or legality of an order passed by an employer under standing orders;
2. The application and interpretation of standing orders;
3. Discharge or dismissal of workmen including reinstatement of or grant of relief to, workmen wrongfully dismissed;
4. Withdrawal of any customary concession or privilege;
5. Illegality or otherwise of a strike or lock-out; and
6. All matters other than those specified in the Third Schedule.

### THE THIRD SCHEDULE

[See Section 7-A)

#### Matters within the Jurisdiction of Industrial Tribunals

1. Wages, including the period and mode of payment;
2. Compensatory and other allowances;
3. Hours of work and rest intervals;
4. Leave with wages and holidays;
5. Bonus, profit sharing, provident fund and gratuity;
6. Shift working otherwise than in accordance with standing orders;
7. Classification by grades;
8. Rules of discipline;
9. Rationalisation;
10. Retrenchment of workmen and closure of establishment; and
11. Any other matter that may be prescribed.

## THE FOURTH SCHEDULE

[See Section 9-A]

### Conditions of Service for Change of which Notice is to be Given

1. Wages, including the period and mode of payment;
2. Contribution paid, or payable, by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force;
3. Compensatory and other allowances;
4. Hours of work and rest intervals;
5. Leave with wages and holidays;
6. Starting, alternating or discontinuance of shift working otherwise than in accordance with standing orders;
7. Classification by grades;
8. Withdrawal of any customary concession or privilege or change in usage;
9. Introduction of new rules of discipline, or alteration of existing rules except insofar as they are provided in standing orders;
10. Rationalisation, standardisation or improvement of plant or technique which is likely to lead to retrenchment of workmen;
11. Any increase or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department of shift (not occasioned by circumstances over which the employer has no control).

## THE FIFTH SCHEDULE

[See Section 2(ra)]

### Unfair Labour Practices

- 1. On the part of employers and trade unions of employers*
1. To interfere with, restrain from, or coerce, workmen in the exercise of their right to organise, form, join or assist a trade union or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection that is to say:
  - (a) threatening workmen with discharge or dismissal, if they join a trade union;
  - (b) threatening a lock-out or closure, if a trade union is organised;
  - (c) granting wage increase to workmen at crucial periods of trade union organisation, with a view to undermining the efforts of the trade union at organisation.
2. To dominate, interfere with or contribute support, financial or otherwise to any trade union, that is to say:
  - (a) an employer taking an active interest in organising a trade union of workmen; and
  - (b) an employer showing partiality or granting favour to one of several trade unions attempting to organise his workmen or to its members, where such a trade union is not a recognised trade union.
3. To establish employer sponsored trade unions of workmen.

4. To encourage or discourage membership in any trade union by discriminating against any workmen, that is to say:
  - (a) discharging or punishing a workman, because he urged other workmen to join or organise a trade union;
  - (b) discharging or dismissing a workman for taking part in any strike (not being a strike which is deemed to be an illegal strike under this Act);
  - (c) changing seniority rating of workmen because of trade union activities;
  - (d) refusing to promote workmen to higher posts on account of their trade union activities;
  - (e) giving unmerited promotions to certain workmen with a view to creating discord amongst other workmen, or to undermine the strength of their trade union;
  - (f) discharging office-bearers or active members of the trade union on account of their trade union activities.
5. To discharge or dismiss workmen:
  - (a) by way of victimisation;
  - (b) not in good faith, but in the colourable exercise of the employers rights;
  - (c) by falsely implicating a workman in a criminal case on false evidence or on concocted evidence;
  - (d) for patently false reasons;
  - (e) on untrue or trumped up allegations of absence without leave;
  - (f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;
  - (g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record of service of the workman, thereby leading to a disproportionate punishment.
6. To abolish the work of a regular nature being done by workmen, and to give such work to contractors as a measure of breaking a strike.
7. To transfer a workman *mala fide* from one place to another under the guise of following management policy.
8. To insist upon individual workmen, who are on a legal strike to sign a good conduct bond, as a pre-condition to allowing them to resume work.
9. To show favouritism or partiality to one set of workers regardless of merit.
10. To employ workmen as “badlis”, casuals or temporaries and to continue them as such for years, with the object of depriving them to the status and privileges of permanent workmen.
11. To discharge or discriminate against any workman for filling charges or testifying against an employer in any enquiry or proceeding relating to any industrial dispute.
12. To recruit workmen during a strike which is not an illegal strike.
13. Failure to implement award, settlement or agreement.
14. To indulge in acts of force or violence.
15. To refuse to bargain collectively, in good faith with the recognised trade unions.
16. Proposing or continuing a lock-out deemed to be illegal under this Act.

*II. On the part of workmen and trade unions of workmen*

1. To advise or actively support or instigate any strike deemed to be illegal under this Act.
2. To coerce workmen in the exercise of their right to self-organisation or to join a trade union or refrain from joining any trade union, that is to say:
  - (a) for a trade union or its members to picketing in such a manner that non-striking workmen are physically debarred from entering the work places;
  - (b) to indulge in acts of force or violence or to hold out threats of intimidation in connection with a strike against non-striking workmen or against managerial staff.
3. For a recognised union to refuse to bargain collectively in good faith with the employer.
4. To indulge in coercive activities against certification of bargaining representative.
5. To stage, encourage or instigate such forms of coercive actions as wilful go slow, squatting on the work premises after working hours or gherao of any of the members of the managerial or other staff.
6. To stage demonstrations at the residences of the employers or the managerial staff members.
7. To incite or indulge in wilful damage to employers property connected with the industry.
8. To indulge in acts of force of violence to hold out threats of intimidation against any workman with a view to prevent him from attending work.

#### LESSON ROUND-UP

- The Industrial Disputes Act, 1947 is an Act to make provision for the investigation and settlement of industrial disputes and for certain other purposes.
- The Industrial Disputes Act applies to all industries. "Industry" for the purpose of Industrial Disputes Act is defined under the Act. The industrial dispute connotes a real and substantial difference between employers and employers or between employers and workmen or between workmen and workmen, having some elements of persistency and continuity till resolved and likely to endanger industrial peace of the undertaking or the community.
- An individual dispute espoused by the union becomes an industrial dispute. The disputes regarding modification of standing orders, contract labour, lock out in disguise of closure have been held to be industrial disputes.
- The Act provides for a special machinery of Conciliation Officers, Work Committees, Courts of Inquiry, Labour Courts, Industrial Tribunals and National Tribunals, defining their powers, functions and duties and also the procedure to be followed by them.
- It also enumerates the contingencies when a strike or lock-out can be lawfully resorted to, when they can be declared illegal or unlawful, conditions for laying off, retrenching, discharging or dismissing a workman, circumstances under which an industrial establishment can be closed down and several other matters related to industrial employees and employers.

#### TEST YOURSELF

*(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)*

1. What is the object and scope of the Industrial Disputes Act, 1947?
2. Define: (a) Industrial Dispute; (b) Workman; (c) Lay off; (d) Retrenchment; (e) Strike; (f) Lock-out.
3. Describe the various steps in settlement of an industrial dispute. Is it incumbent on the appropriate Government to refer every industrial dispute to adjudication?





## SECTION II: THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946

### KEY CONCEPTS

■ Appellate Authority ■ Standing Orders ■ Appropriate Government ■ Certifying Officer ■ Industrial Establishment

### Learning Objectives

#### To understand:

- The terms and conditions of the industrial employment standing orders which the employees must know before they accept the employment
- The meaning of Standing Orders and Certifying Officer
- The procedure for submission of draft Standing Orders by employers to the Certifying Officer and certification of Standing Orders thereof

### Lesson Outline

- Introduction
- Object and Scope of the Act
- Important Definitions
  - Appropriate Government
  - Certifying Officer
  - Industrial Establishment
  - Standing Orders
  - Wages and Workmen
- Submission of draft Standing Orders by employers to the Certifying Officer
- Conditions for Certification of Standing Orders
- Fairness or Reasonableness of Standing orders
- Certification of Standing Orders
- Appeals
- Date of Operation of Standing Orders
- Posting of Standing Orders
- Duration and Modification of Standing Orders
- Payment of Subsistence Allowance
- Interpretation of Standing Orders
- Temporary Application of Model Standing Orders
- Schedules
- Lesson Round-Up
- Test Yourself

***The Industrial Employment (Standing Orders) Act, 1946 requires employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them.***

## INTRODUCTION

'Standing Orders' defines the conditions of recruitment, discharge, disciplinary action, holidays, leave, etc., go a long way towards minimising friction between the management and workers in industrial undertakings. The Industrial Employment (Standing Orders) Act requires employers in industrial establishments to clearly define the conditions of employment by issuing standing orders duly certified. It applies to every industrial establishment wherein 100 or more workmen are employed or were employed on any day during the preceding twelve months.

Model standing orders issued under the Act deal with classification of workmen, holidays, shifts, payment of wages, leaves, termination etc. The text of the Standing Orders as finally certified under this Act shall be prominently posted by the employer in English and in the language understood by the majority of his workmen on special boards to be maintained for the purpose at or near the entrance through which the majority of the workmen enter the industrial establishment and, in all departments, thereof where the workmen are employed.

## OBJECT AND SCOPE OF THE ACT

The objects of the Act are:

Firstly, to enforce uniformity in the conditions of services under different employers in different industrial establishments.

Secondly, the employer, once having made the conditions of employment known to his employed workmen cannot change them to their detriment or to the prejudice of their rights and interests.

Thirdly, with the express or written conditions of employment, it is open for the prospective worker to accept them and join the industrial establishment.

Fourthly, for maintaining industrial peace and continued productivity, the significance of the express written conditions of employment cannot be minimised or exaggerated.

The object of the Act is to have uniform standing orders in respect of matters enumerated in the Schedule to the Act, applicable to all workers irrespective of their time of appointment [*Barauni Refinery Pragati Sheel Parishad v. Indian Oil Corporation Ltd. (1991) 1 SCC 4*].

The Act extends to the whole of India and applies to every industrial establishment wherein 100 or more workmen are employed or were employed on any day during the preceding twelve months. Further, the appropriate Government may, after giving not less than 2 months notice of its intention to do so, by notification in the Official Gazette, extend the provisions of this Act to any industrial establishment employing such number of persons less than 100 as may be specified in the notification.

However, the Act does not apply to any industry to which provisions of Chapter VII of the Bombay Industrial Relations Act, 1946, apply or any industrial establishment to which provisions of Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 apply. Notwithstanding anything contained in the said Act, the provisions of this Act shall apply to all industrial establishments under the control of the Central Government.

Certified standing orders become part of the statutory and not contractual terms and conditions of service and are binding on both the employer and the employees [*Derby Textiles Ltd. v. Karamchari and Shramik Union (1991) 2 LLN 774*].

Apart from the above stated provisions of Section 1 of the Act limiting the scope, extent and application of the Act, the following Sections further limit its application:

Section 13-B of the Act specifically exempt certain industrial establishments from the purview of the Act, viz., the industrial establishment in so far as the workmen employed therein are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Service (Temporary Services) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Service (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette apply.

Further, Section 14 provides that the appropriate Government may by notification in the Official Gazette exempt conditionally or unconditionally any industrial establishment or class of industrial establishments from all or any of the provisions of this Act.

## IMPORTANT DEFINITIONS

### Appellate Authority

It means an authority appointed by the appropriate Government by notification in the Official Gazette, to exercise in such area, as may be specified in the notification the functions of an appellate authority under this Act. [Section 2(a)]

### Appropriate Government

“Appropriate Government” means in respect of industrial establishments under the control of the Central Government or a Railway administration or in a major port, mine or oilfield, the Central Government, and in all other cases the State Government:

Provided that where any question arises as to whether any industrial establishment is under the control of the Central Government, that Government may, either on a reference made to it by the employer or the workman or a trade union or other representative body of the workmen or on its own motion and after giving the parties an opportunity of being heard, decide the question and such decision shall be final and binding on the parties. [Section 2(b)]

### Certifying Officer

“Certifying Officer” means a Labour Commissioner or a Regional Labour Commissioner, and includes any other officer appointed by the appropriate Government by notification in the Official Gazette, to perform all or any of the functions of a Certifying Officer under this Act. [Section 2(c)]

### Employer

“Employer” means the owner of an industrial establishment to which this Act applies and also includes the following persons:

- (i) A manager so named under Section 7(1)(f) of the Factories Act, 1948.
- (ii) The head of the department or any authority appointed by the Government in any industrial establishment under its control.
- (iii) Any person responsible to the owner for the supervision and control of any other industrial establishment which is not under the control of Government. [Section 2(d)]

### Industrial Establishment

It means

- (i) an industrial establishment defined by Section 2(ii) of the Payment of Wages Act, 1936, or
- (ii) a factory as defined by Section 2(m) of the Factories Act, 1948, or
- (iii) a railway as defined by Section 2(4) of the Indian Railways Act, 1890, or
- (iv) the establishment of a person who, for the purpose of fulfilling a contract with the owner of any industrial establishment, employs workmen. [Section 2(e)]

### Standing Orders

“Standing Orders” means rules relating to matters set out in the Schedule to the Act. [Section 2(g)]

### Wages and Workmen

The terms “Wages” and “Workmen” have the meanings respectively assigned to them in clauses (rr) and (s) of Section 2 of the Industrial Disputes Act, 1947. [Section 2(i)]

### SUBMISSION OF DRAFT STANDING ORDERS BY EMPLOYERS TO THE CERTIFYING OFFICER

Section 3 provides that within six months from the date on which this Act becomes applicable to an industrial establishment, the employer of that establishment shall submit to the Certifying Officer five copies of the draft Standing Orders proposed by him for adoption in that establishment.

Such draft Standing Orders shall be in conformity with the Model Standing Orders if any, and, shall contain every matter set out in the Schedule which may be applicable to the industrial establishment.

The draft Standing Orders shall be accompanied by a statement containing prescribed particulars of the workmen employed in the industrial establishment including the name of the trade union, if any, to which they belong.

If the industrial establishment are of similar nature, a group of employers owning those industrial establishment may submit a joint draft of Standing Orders subject to such conditions as may be prescribed.

### CONDITIONS FOR CERTIFICATION OF STANDING ORDERS

According to Section 4 of the Act, Standing Orders shall be certifiable if

- (a) provision is made therein for every matter stated in the Schedule to the Act which is applicable to industrial establishment; and
- (b) the Standing Orders are otherwise in conformity with the provisions of the Act.

### FAIRNESS OR REASONABLENESS OF STANDING ORDERS

It is further provided in Section 4 that it shall be the function of the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of the Standing Orders.

The Act, has imposed a duty on the Certifying Officer, to consider the reasonableness and fairness of the Standing Orders before certifying the same. The Certifying Officer is under a legal duty to consider that the Standing Orders are in conformity with the Act. If the Certifying Officer finds that some provisions, as proposed by the employer relate to matters which are not included in the Schedule, or if he finds some provisions are unreasonable he must refuse to certify the same. Certification of any such Standing Order would be without jurisdiction. The Certifying Officer has a mandatory duty to discharge and he acts in a quasi-judicial manner. Where a matter is not included in the Schedule and the concerned appropriate Government has not added any such item to the Schedule, neither the employer has a right to frame a Standing Order enabling him to transfer his employees nor the Certifying Officer has jurisdiction to certify the same. The consent of the employees to such standing orders would not make any difference (*Air Gases Mazdoor Sangh, Varanasi v. Indian Air Gases Ltd.*, 1977 Lab. I.C. 575).

### CERTIFICATION OF STANDING ORDERS

**Procedure to be followed by the Certifying Officer :** Section 5 of the Act lays down the procedure to be followed by Certifying Officer. On receipt of the draft Standing Order from the employer, the Certifying Officer shall forward a copy thereof to the trade union of the workmen or where there is no trade union, then to the workmen in such manner as may be prescribed, together with a notice requiring objections, if any, which the workmen may desire to make in the draft Standing Orders. These objections are required to be submitted to him within 15 days from the receipt of the notice. On receipt of such objections he shall provide an opportunity of being heard to the workmen or the employer and will make amendments, if any, required to be made therein and this will render the draft Standing Orders certifiable under the Act and he will certify the same. A copy of the

certified Standing Orders will be sent by him to both the employer and the employees association within seven days of the certification.

**Effect of certification:** The Act is a special law in regard to matters enumerated in the Schedule and the regulations made by the employer with respect to any of those matters. These are of no effect unless such regulations are notified by the Government under Section 13B or certified by the Certifying Officer under Section 5 of the Act.

**Register of Standing Orders:** Section 8 empowers the Certifying Officer to file a copy of all the Standing Orders as certified by him in a register maintained for the purpose in the prescribed form. He shall furnish a copy of the same to any person applying therefor on payment of the prescribed fee.

### DATE OF OPERATION OF STANDING ORDERS

Standing Orders shall come into operation on the expiry of 30 days from the date on which the authenticated copies are sent to employer and workers representatives or where an appeal has been preferred, they will become effective on the expiry of 7 days from the date on which copies of the order of the appellate authority are sent to employer and workers representatives. (Section 7)

### POSTING OF STANDING ORDERS

The text of the Standing Orders as finally certified under this Act shall be prominently posted by the employer in English and in the language understood by the majority of his workmen on special boards to be maintained for the purpose at or near the entrance through which the majority of the workmen enter the industrial establishment and in all departments thereof where the workmen are employed. (Section 9)

### DURATION AND MODIFICATION OF STANDING ORDERS

Section 10 prohibits an employer to modify the Standing Orders once they are certified under this Act except on agreement between the employer and the workmen or a trade union or other representative body of the workmen. Such modification will not be affected until the expiry of 6 months from the date on which the Standing Orders were last modified or certified as the case may be. This Section further empowers an employer or the workmen or a trade union or other representative body of the workmen to apply to the Certifying Officer to have the Standing Orders modified by making an application to the Certifying Officer. Such application should be accompanied by 5 copies of the proposed modifications and where such modifications are proposed to be made by agreement between the employer and the workmen or a trade union or other representative body of the workmen, a certified copy of such agreement should be filed along with the application.

Workmen are entitled to apply for modification of the Standing Orders. (1977-II Labour Law Journal 503). Section 10(2) does not contain any time limit for making modification application. It can be made at any time. [*Indian Express Employees Union v. Indian Express (Madurai) Ltd.* (1998) 1 Cur LR 1161 (Ker)]

### PAYMENT OF SUBSISTENCE ALLOWANCE

Statutory provision for payment of subsistence allowance has been made under Section 10A of the Act which was inserted by the amending Act of 1982. Section 10A provides as follows:

Where any workman is suspended by the employer pending investigation or inquiry into complaints or charges of misconduct against him, the employer shall pay to such a workman the subsistence allowance

- (a) at the rate of fifty per cent of the wages which the workman was entitled to immediately preceding the date of such suspension, for the first ninety days of suspension: and
- (b) at the rate of seventy five per cent of such wages for the remaining period of suspension if the delay in the completion of disciplinary proceedings against such workman is not directly attributable to the conduct of such workman.

Any dispute regarding subsistence allowance may be referred by the workman or the employer, to the Labour Court constituted under the Industrial Disputes Act, 1947.

However, if the provisions relating to payment of subsistence allowance under any other law for the time being in force are more beneficial, then the provisions of such other law shall be applicable.

### INTERPRETATION OF STANDING ORDERS

Section 13-A of the Act provides that the question relating to application or interpretation of a Standing Order certified under this Act, can be referred to any Labour Court constituted under the Industrial Disputes Act, 1947 by any employer or workman or a trade union or other representative body of the workmen. The Labour Court to which the question is so referred, shall decide it after giving the parties an opportunity of being heard. Such decision shall be final and binding on the parties.

### TEMPORARY APPLICATION OF MODEL STANDING ORDERS

Section 12-A provides that for the period commencing on the date on which this Act becomes applicable to an industrial establishment and ending with the date on which the Standing Orders as finally certified under this Act come into operation in that establishment, the prescribed model Standing Orders shall be deemed to be adopted in that establishment and the provisions of Sections 9, 13(2) and 13-A shall apply.

Where there are two categories of workers, daily rated and monthly rated but the certified Standing Orders are in respect of daily rated workmen only, then Model Standing Orders can be applied to monthly rated workmen (*Indian Iron and Steel Co. Ltd. v. Ninth Industrial Tribunal*, 1977 Lab. I.C. 607).

In case where there are no certified Standing Orders applicable to an industrial establishment, the prescribed Model Standing Orders shall be deemed to be adopted and applicable (1981-II Labour Law Journal 25).

### APPEALS

According to Section 6 of the Act, the order of the Certifying Officer can be challenged by any employer, workman, trade union or any other prescribed representatives of the workmen, who can file an appeal before the appellate authority within 30 days from the date on which copies are sent to employer and the workers representatives. The appellate authority, whose decision shall be final, has the power to confirm the Standing Orders as certified by the Certifying Officer or to amend them. The appellate authority is required to send copies of the Standing Orders as confirmed or modified by it, to the employer or workers representatives within 7 days of its order.

**The appellate authority has no power to set aside the order of Certifying Officer. It can confirm or amend the Standing Orders (*Khadi Gram Udyog Sangh v. Jit Ram*, 1975-2 L.L. J. 413). The appellate authority can not remand the matter for fresh consideration. [*Kerala Agro Machinery Corporation*, (1998) 1 LLN 229 (Ker)]**

### THE SCHEDULE

[See Sections 2(g) and 3(2)]

#### Matters to be provided in Standing Orders under this Act

1. Classification of workmen, e.g., whether permanent, temporary, apprentices, probationers or badlis.
2. Manner of intimating to workmen periods and hours of work, holidays, pay-days and wage rates.
3. Shift working.
4. Attendance and late coming.
5. Conditions of, procedure in applying for, and the authority which may grant leave and holidays.
6. Requirement to enter premises by certain gates, and liability to search.

7. Closing and reopening of sections of the industrial establishment, and temporary stoppage of work and the rights and liabilities of the employer and workmen arising therefrom.
8. Termination of employment, and the notice thereof to be given by employer and workmen.
9. Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct.
10. Means of redress for workmen against unfair treatment or wrongful exactions by the employer or his agents or servants.
11. Any other matter which may be prescribed.

In a significant judgement on gender justice, the Supreme Court has ordered that employers should include strict prohibitions on sexual harassment of employees and appropriate penalties against the offending employees in Standing Orders.

#### LESSON ROUND-UP

- The Act requires the employers in industrial establishment to define with sufficient precision the conditions of employment under them and make the said conditions known to workmen employed by them.
- It applies to every industrial establishment wherein 100 or more workmen are employed or were employed on any day during the preceding twelve months.
- The appropriate Government may, after giving not less than 2 months notice of its intention to do so, by notification in the Official Gazette, extend the provisions of this Act to any industrial establishment employing such number of persons less than 100 as may be specified in the notification.
- Within six months from the date on which this Act becomes applicable to an industrial establishment, the employer of that establishment shall submit to the Certifying Officer five copies of the draft Standing Orders proposed by him for adoption in that establishment.
- Such draft Standing Orders shall be in conformity with the Model Standing Orders if any, and, shall contain every matter set out in the Schedule which may be applicable to the industrial establishment.
- On receipt of the draft Standing Order from the employer, the Certifying Officer shall forward a copy thereof to the trade union of the workmen or where there is no trade union, then to the workmen in the prescribed manner together with a notice requiring objections, if any, which the workmen may desire to make in the draft Standing Orders. These objections are required to be submitted to him within 15 days from the receipt of the notice.
- On receipt of such objections, Certifying Officer shall provide an opportunity of being heard to the workmen or the employer and will make amendments, if any, required to be made therein and this will render the draft Standing Orders certifiable under the Act and he will certify the same.
- A copy of the certified Standing Orders will be sent by Certifying Officer to both the employer and the employees association within seven days of the certification.
- The Certifying Officer has been empowered to file a copy of all the Standing Orders as certified by him in a register maintained for the purpose in the prescribed form. He shall furnish a copy of the same to any person applying therefor on payment of the prescribed fee.
- Standing Orders shall come into operation on the expiry of 30 days from the date on which the authenticated copies are sent to employer and workers representatives or where an appeal has been preferred, they will become effective on the expiry of 7 days from the date on which copies of the order of the appellate authority are sent to employer and workers representatives.





## SECTION III: THE TRADE UNION ACT, 1926

### KEY CONCEPTS

- Executive ■ Office-bearer ■ Registered Office ■ Registered Trade Union ■ Trade Dispute ■ Trade Union

### Learning Objectives

#### To understand:

- The legal frame work stipulated under the Trade Unions Act, 1926
- The meaning of Trade Union and Trade Dispute
- Mode of registration of Trade Union
- The provisions contained in the rules of a Trade Union

### Lesson Outline

- Introduction
- Definitions
  - Trade Union
  - Executive
  - Office bearer
  - Registered Office of Trade Union
  - Trade Dispute
- Mode of Registration
- Application for Registration
- Rules of Trade Union
- Certificate of Registration
- Incorporation of Registered Trade Union
- Cancellation of Registration
- Return of Trade Union
- Lesson Round-Up
- Test Yourself

*The legislation regulating the trade unions is the Trade Unions Act, 1926.*

## INTRODUCTION

Trade Union means “any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more trade unions”.

Trade union is a voluntary organization of workers pertaining to a particular trade, industry or a company and formed to promote and protect their interests and welfare by collective action. They are the most suitable organisations for balancing and improving the relations between the employer and the employees. They are formed not only to cater to the workers’ demand, but also for inculcating in them the sense of discipline and responsibility.

Every registered Trade Union shall be a body corporate by the name under which it is registered, and shall have perpetual succession and a common seal with power to acquire and hold both movable and immovable property and to contract, and shall by the said name sue and be sued.

Trade Unions Act, 1926 deals with the registration of trade unions, their rights, their liabilities and responsibilities as well as ensures that their funds are utilised properly. It gives legal and corporate status to the registered trade unions. It also seeks to protect them from civil or criminal prosecution so that they could carry on their legitimate activities for the benefit of the working class. The Act is applicable not only to the union of workers but also to the association of employers. It extends to whole of India.

## DEFINITIONS

Section 2 of the Act defines various terms used in the Act, some of the definitions are given here under:

**Executive** means the body, by whatever name called, to which the management of the affairs of a trade union is entrusted. [Section 2 (a)]

**Office-bearer** in the case of a trade union, includes any member of the executive thereof, but does not include an auditor. [Section 2 (b)]

**Registered office** means that office of a trade union which is registered under this Act as the head office thereof. [Section 2 (d)]

**Registered trade union** means a trade union registered under this Act. [Section 2 (e)]

**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 labor, of any person, and “workmen” means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises. [Section 2 (g)]

**Trade union** means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more trade unions. [Section 2 (h)]

## MODE OF REGISTRATION

Section 4 provides that 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.

However, no Trade Union of workmen shall be registered unless at least ten per cent. or one hundred of the workmen, whichever is less, engaged or employed in the establishment or industry with which it is connected are the members of such Trade Union on the date of making of application for registration.

## APPLICATION FOR REGISTRATION

Section 5 stipulates that every application for registration of a Trade Union shall be made to the Registrar and shall be accompanied by a copy of the rules of the Trade Union and a statement of the following particulars, namely:

- the names, occupations and address of the members making application;

- in the case of a Trade Union of workmen, the names, occupations and addresses of the place of work of the members of the Trade Union making the application;
- the name of the Trade Union and the address of its head office; and
- the titles, names, ages, addresses and occupations of the office-bearers of the Trade Union.

Where a Trade Union has been in existence for more than one year before the making of an application for its registration, there shall be delivered to the Registrar, together with the application, a general statement of the assets and liabilities of the Trade Union prepared in such form and containing such particulars as may be prescribed

### PROVISIONS CONTAINED IN THE RULES OF A TRADE UNION

A Trade Union shall not be entitled to registration under the Act, unless the executive thereof is constituted in accordance with the provisions of the Act, and the rules thereof provide for the following matters, namely:—

- the name of the Trade Union;
- the whole of the objects for which the Trade Union has been established;
- 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;
- 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 Trade Union;
- 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-bearers required under section 22 to form the executive of the Trade Union;
- the payment of a minimum subscription by members of the Trade Union
- 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;
- the manner in which the rules shall be amended, varied or rescinded;
- the manner in which the members of the executive and the other office-bearers of the Trade Union shall be elected and removed;
- the duration of period being not more than three years, for which the members of the executive and
- other office-bearers of the Trade Union shall be elected;
- the safe custody of the funds of the Trade Union, an 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
- the manner in which the Trade Union may be dissolved

Whether subscriptions not having been paid as required by the bye-laws can the members who have defaulted payment of their subscription be members of the union? In the case of *M.T. Chandrasenan And Ors. v. N. Sukumaran* on 14 September, 1973, the Hon'ble Supreme Court clarified that, "there is no doubt that if subscriptions are not paid in accordance with the bye-laws, persons who have failed to pay, cannot be considered as members of the union."

### CERTIFICATE OF REGISTRATION

The Registrar, on being satisfied that the Trade Union has complied with all the requirements of the 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. 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 the Act.

### INCORPORATION OF REGISTERED TRADE UNION

Every registered Trade Union shall be a corporate by the name under which it is registered, and shall have perpetual succession and a common seal with power to acquire and hold both movable and immovable property and to contract, and shall by the said name sue and be sued.

## CANCELLATION OF REGISTRATION

A certificate of registration of a Trade Union may be withdrawn or cancelled by the Registrar on the following grounds —

- on the application of the Trade Union to be verified in such manner as may be prescribed;
- if the Registrar is satisfied that the certificate has been obtained by fraud or mistake or that the Trade Union has ceased to exist or has wilfully and after notice from the Registrar contravened any provision of this Act or allowed any rule to continue in force which is inconsistent with any such provision or has rescinded any rule providing for any matter provision for which is required by section 6;
- if the Registrar is satisfied that a registered Trade Union of workmen ceases to have the requisite number of members.

### CASE LAW

#### **In the case of *R.G. D'souza v. Poona Employees' Union 2015 (144) FLR 1***

Mr. R.G. D'souza, President of Poona Employees' Union submitted an application for registration of the Trade Union, which was granted. Due to internal clashes, he was expelled from the Trade Union. There were some disputes between Poona Employees' Union and another Trade Union by name, Bharatiya Kamgar Sangha.

Mr. R.G. D'souza filed an application under Section-10 of the Trade Unions Act before the Addl. Registrar of Trade Unions seeking cancellation of certificate of registration of the Trade Union on the ground that the same was obtained by fraud/mistake and misrepresentation. Another ground taken was non-filing necessary documents as per Rules and Regulations and obtained registration certificate by mistake/fraud. The above plea of Mr. R.G. D'souza was accepted by the Addl. Registrar of Trade Union and Addl. Registrar of Trade Unions cancelled the registration of the Trade Union vide order dated 12.2.2008.

Aggrieved by the said order the Poona Employees Union filed appeal before the Industrial Court, Poona, which is the Appellate Authority. The Industrial Court, Poona, passed Order dated 11.4.2008 recording its reasons and set aside the Order passed by the Addl. Registrar of Trade Union cancelling registration.

Being aggrieved by the order passed by the Industrial Court, the Appellant Mr. R.G. D'souza preferred writ petition No. 4048 of 2008 before the High Court of Bombay under Article 226 of the Constitution of India urging various grounds. The Hon'ble High Court recorded findings on two issues namely, (a) whether the appellant had locus standi to invoke proceedings under Section 10 of the Trade Union Act, 1926? (b) whether the Registration Certificate obtained by fraud by the Trade Union is liable to be cancelled? The High Court rejected the submissions made on behalf of the Appellant and held that the Appellant had no locus to apply for cancellation of the Certificate of Registration of the Trade Union and that the view taken by the Industrial Court on the same is legal and valid. The matter was taken before the Apex Court by Mr. R.G. D'souza. It was contended on behalf of Mr. R.G. D'souza that the Trade Union did not follow provisions under Sections 4 and 6 of the Trade Union Act and did not specifically mention the names of establishment or nature of industry in which the persons employed were members of the Union and that the application was not filled-up properly and the registration was obtained by mistake and fraud by the Trade Union.

The Apex Court observed that though the Registrar of Trade Union has power to cancel the registration either on a complaint or suo motu, if the registration is obtained by fraud or mistake or misrepresentation. However, the authority can cancel the registration if the same is granted by mistake due to incorrect assessment or non-application of mind is mechanical act on the part of the authority.

Further, coming to the case on hand, the Apex Court found that the Registrar of Trade Unions while exercising power under Section 10 of the Trade Unions Act cancelled the Registration Certificate of the Trade Union without enquiry, without show cause notice disclosing grounds for initiation. If such procedure had been adopted the same could have been answered by the Trade Unions effectively. Since the same was not done in the present case, it was held that cancellation of Registration of the Poona Employees' Union was wrong and upheld the decision of Industrial Court, Poona and High Court of Bombay.

The Apex Court further noticed that certain requirements of law not furnished in the application for registration under the Trade Union Act pointed out by Mr. R.G. D'souza, and held that those requirements came into existence after amendment of Trade Union Act with effect from 9.1.2002. Since the Registration of Poona Employees' Union

was prior to the said date, the subsequent requirements did not call for examination. Therefore, the appeal filed by Mr. R.G. D'souza, Ex- President of Poona Employees' Union was dismissed and the registration of Trade Union restored by the Industrial Court, Poona and the Hon'ble High Court of Bombay, was confirmed.

## RETURNS

Section 28 of the Act provides that there shall be sent annually to the Registrar, on or before such date as may be prescribed, **a general statement**, audited in the prescribed manner, of all receipts and expenditure of every registered Trade Union during the year ending on the 31st day of December next preceding such prescribed date, and of the assets and liabilities of the Trade Union existing on such 31st day of December. The statement shall be prepared in such form and shall comprise such particulars as may be prescribed.

Together with the general statement there shall be sent to the Registrar a statement showing changes of office-bearers made by the Trade Union during the year to which the general statement refers together also with a copy of the rules of the Trade Union corrected upto the date of the despatch thereof to the Registrar. A copy of every alteration made in the rules of a registered Trade Union shall be sent to the Registrar within fifteen days of the making of the alteration.

For the purpose of examining the abovementioned documents the Registrar, or any officer authorised 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.

### LESSON ROUND-UP

- Trade union means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more trade unions.
- 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 the Act with respect to registration, apply for registration of the Trade Union.
- Every application for registration of a Trade Union shall be made to the Registrar and shall be accompanied by a copy of the rules of the Trade Union and a statement of the specified particulars.
- The Registrar, on being satisfied that the Trade Union has complied with all the requirements of the Act in regard to registration, shall register the Trade Union and issue a certificate of registration.
- Every registered Trade Union shall be a corporate by the name under which it is registered, and shall have perpetual succession and a common seal with power to acquire and hold both movable and immovable property and to contract, and shall by the said name sue and be sued.
- Trade Union Act provides that there shall be sent annually to the Registrar, on or before such date as may be prescribed, a general statement, audited in the prescribed manner, of all receipts and expenditure of every registered Trade Union during the year ending on the 31st day of December next preceding such prescribed date, and of the assets and liabilities of the Trade Union existing on such 31st day of December.

### TEST YOURSELF

*(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)*

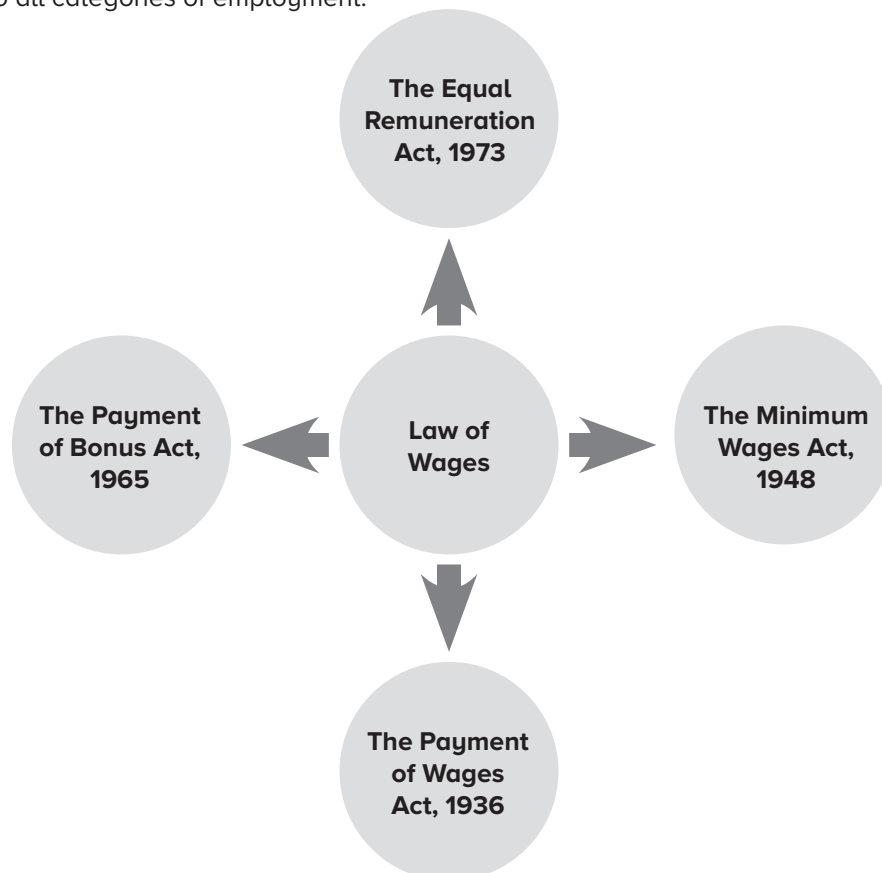
1. Write short notes on Trade Dispute and Trade Union.
2. Briefly explain the scope and object of Trade Union Act, 1926.
3. State the procedure of registration of Trade Union
4. What are the advantages of a registered Trade Union?
5. State the provisions regarding filing of Return by Trade Union under Trade Union Act, 1926.

Wages are among the most important conditions of work and a major subject of collective bargaining. Wages in the organized sector is generally determined through negotiations and settlements between the employer and the employees. The minimum rates of wages are fixed both by Central and State Governments in the scheduled employments falling within their respective jurisdictions under the provisions of the Minimum Wages Act, 1948. The Act binds the employers to pay the workers the minimum wages so fixed from time to time.

The Payment of Wages Act, 1936 was enacted to regulate payment of wages to workers employed in industries and to ensure a speedy and effective remedy to them against illegal deductions and/or unjustified delay caused in paying wages to them.

The Payment of Bonus Act, 1965 provides for the payment of bonus to persons employed in certain establishments, employing 20 or more persons, on the basis of profits or on the basis of production or productivity and for matters connected therewith.

The Equal Remuneration Act, 1976 provides for payment of equal remuneration to men and women workers for same work or work of similar nature without any discrimination and also prevent discrimination against women employees while making recruitment for the same work or work of similar nature, or in any condition of service subsequent to recruitment such as promotions, training or transfer. The provisions of the Act have been extended to all categories of employment.





## SECTION I: THE PAYMENT OF WAGES ACT, 1936

### KEY CONCEPTS

- Wages ■ Employed Person ■ Employer ■ Factory ■ Industrial or other establishment

### Learning Objectives

#### To understand:

- The object and Scope of the Payment of Wages Act
- The meaning of employed person, employer, factory and wages
- The responsibility of the employer for payment of wages
- The prescriptions on the fixation of wage period and time of payment of wages
- The regulatory framework on the deductions from the wages of the employee
- The manner for maintenance of registers and records

### Lesson Outline

- |                                       |   |
|---------------------------------------|---|
| ➤ Introduction                        | ➤ Time of payment of wages  |
| ➤ Object and Scope                    | ➤ Wages to be paid in current coin or currency notes  |
| ➤ Definitions                         | ➤ Deduction from wages  |
| ● Appropriate Government              | ➤ Maintenance of registers and records  |
| ● Employed Person                     | ➤ Claims  |
| ● Employer                            | ➤ Claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims. |
| ● Factory                             | ➤ Lesson Round-Up   |
| ● Wages                               | ➤ Test Yourself   |
| ➤ Industrial or other establishment   |   |
| ➤ Responsibility for payment of wages |   |
| ➤ Fixation of wage period             |   |

The Payment of Wages Act, 1936 regulates the payment of wages of certain classes of employed persons.

## 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 unauthorized deductions and/or unjustified delay caused in paying wages to them. It applies to the persons employed in a factory, industrial or other establishment or in a railway, whether directly or indirectly, through a sub-contractor. In order to bring the law in uniformity with other labour laws and to make it more effective and practicable, the payment of wages Act was last amended in 2005. The amendment enhancing the wage ceiling per Month with a view to covering more employed persons and substitute the expressions “the Central Government” or “a State Government” by the expression “appropriate Government”. Amendment also strengthening compensation and penal provisions made more stringent by enhancing the quantum of penalties by amending of the Act. 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.

## OBJECT AND SCOPE

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.

In order to enlarge its scope and provide for more effective enforcement the Act empowering the Government to enhance the ceiling by notification in future. The Act extends to the whole of India.

## Definitions

**“Appropriate Government”** means, in relation to railways, air transport services, mines and oilfields, the Central Government and, in relation to all other cases, the State Government. {Section 2(i)}

**“Employed person”** includes the legal representative of a deceased employed person. {Section 2(ia)} “Employer” includes the legal representative of a deceased employer. {Section 2(ib)}

**“Factory”** means a factory as defined in clause (m) of section 2 of the Factories Act 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(ic)}

**“Industrial or other establishment”** means any –

- (a) tramway service or motor transport service engaged in carrying passengers or goods or both by road for hire or reward;
- (aa) air transport service other than such service belonging to or exclusively employed in the military naval or air forces of the Union or the Civil Aviation Department of the Government of India;
- (b) dock, wharf or jetty;
- (c) inland vessel, mechanically propelled;
- (d) mine, quarry or oil-field;
- (e) plantation;
- (f) workshop or other establishment in which articles are produced adapted or manufactured with a view to their use transport or sale;
- (g) establishment in which any work relating to the construction, development or maintenance of buildings, roads, bridges or canals, or relating to operation connected with navigation, irrigation, development or maintenance of buildings, roads, bridges or mission and distribution of electricity or any other form of power is being carried on;

- (h) any other establishment or class of establishments which the Appropriate 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(ii)}

**“Wages”** means all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment and includes –

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

but does not include –

- (1) any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a court;
- (2) the value of any house-accommodation or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of Appropriate Government;
- (3) any contribution paid by the employer to any pension or provident fund and the interest which may have accrued thereon;
- (4) any travelling allowance or the value of any travelling concession;
- (5) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or
- (6) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d). {Section 2(vi)}

### Responsibility for payment of wages

Section 3 provides that every employer shall be responsible for the payment to persons employed by him of all wages required to be paid under the Act. However, in the case of persons employed in factories, if a person has been named as the manager of the factory; in the case of persons employed in industrial or other establishments if there is a person responsible to the employer for the supervision and control of the industrial or other establishments; in the case of persons employed upon railways, if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned; in the case of persons employed in the work of contractor, a person designated by such contractor who is directly under his charge; and in any other case, a person designated by the employer as a person responsible for complying with the provisions of the Act.

The person so named, the person responsible to the employer, the person so nominated or the person so designated, as the case may be, shall be responsible for such payment.

It may be noted that as per section 2(ia) “employer” includes the legal representative of a deceased employer.

In the case of P. C. Aggarwala Vs payment of wages inspector dated 26th September 2005, the Hon'ble Supreme Court clarified that the Director of the Company is not personally liable for payment of wages. The liability is cast on a person who has been named as Manager of the Factory and the employer jointly. Therefore, in order to find out whether the Director had a responsibility for making payment, two different things have to be established: (i) he was the employer or (ii) he was a person who has been named as Manager of the factory. In the instant case, there is no such allegation or evidence led.

### Fixation of wage period

As per section 4 of the Act every person responsible for the payment of wages shall fix wage-periods in respect of which such wages shall be payable. No wage-period shall exceed one month.

### Time of payment of wages

Section 5 specifies the time payment of wages. The wages of every person employed upon or in any railway factory or industrial or other establishment upon or in which less than one thousand persons are employed, shall be paid before the expiry of the seventh day.

The wages of every person employed upon or in any other railway, factory or industrial or other establishment shall be paid before the expiry of the tenth day, after the last day of the wage-period in respect of which the wages are payable. However, in the case of persons employed on a dock, wharf or jetty or in a mine, the balance of wages found due on completion of the final tonnage account of the ship or wagons loaded or unloaded as the case may be shall be paid before the expiry of the seventh day from the day of such completion.

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

The Appropriate Government may by general or special order exempt to such extent and subject to such conditions as may be specified in the order, the person responsible for the payment of wages to persons employed upon any railway or to persons employed as daily-rated workers in the Public Works Department of the Appropriate Government from the operation of this section in respect of wages of any such persons or class of such persons.

All payments of wages shall be made on a working day.

### Wages to be paid in current coin or currency notes or by cheque or crediting in bank account

As per section 6 of the Act, all wages shall be paid in current coin or currency notes or by cheque or by crediting the wages in the bank account of the employee.

Provided that the appropriate Government may, by notification in the Official Gazette, specify the industrial or other establishment, the employer of which shall pay to every person employed in such industrial or other establishment, the wages only by cheque or by crediting the wages in his bank account.

### Deductions from the wages of an employee

Section 7 of the Act allows deductions from the wages of an employee on the account of the following:-

(i) fines; (ii) absence from duty; (iii) damage to or loss of goods expressly entrusted to the employee; (iv) housing accommodation and amenities provided by the employer; (v) recovery of advances or adjustment of over-payments of wages; (vi) recovery of loans made from any fund constituted for the welfare of labour in accordance with the rules approved by the Appropriate Government, and the interest due in respect thereof; (vii) subscriptions to and for repayment of advances from any provident fund; (viii) income-tax; (ix) payments to co-operative societies

approved by the Appropriate Government or any officer specified by it in this behalf to a scheme of insurance maintained by the Indian Post Office; (x) deductions made with the written authorisation of the employee for payment of any premium on his life insurance policy or purchase of securities of the Government of India.

### **Fines**

Section 8 deals with fines. It provides that :

- (1) No fine shall be imposed on any employed person save in respect of such acts and omissions on his part as the employer with the previous approval of the Appropriate Government or of the prescribed authority may have specified by notice under sub-section (2).
- (2) A notice specifying such acts and omissions shall be exhibited in the prescribed manner on the premises in which the employment carried on or in the case of persons employed upon a railway (otherwise than in a factory) at the prescribed place or places.
- (3) No fine shall be imposed on any employed person until he has been given an opportunity of showing cause against the fine or otherwise than in accordance with such procedure as may be prescribed for the imposition of fines.
- (4) The total amount of fine which may be imposed in any one wage-period on any employed person shall not exceed an amount equal to three per cent of the wages payable to him in respect of that wage- period.
- (5) No fine shall be imposed on any employed person who is under the age of fifteen years.
- (6) No fine imposed on any employed person shall be recovered from him by installments or after the expiry of ninety days from the day on which it was imposed.
- (7) Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed.
- (8) All fines and all realisations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under section 3 in such form as may be prescribed; and all such realisations shall be applied only to such purposes beneficial to the persons employed in the factory or establishment as are approved by the prescribed authority.

It may be noted that when the persons employed upon or in any railway, factory or industrial or other establishment are part only of a staff employed under the same management all such realisations may be credited to a common fund maintained for the staff as a whole provided that the fund shall be applied only to such purposes as are approved by the prescribed authority.

### **Maintenance of registers and records**

Section 13A provides that 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 in prescribed form. Every register and record required to be maintained shall be preserved for a period of three years after the date of the last entry made therein.

### **Claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims**

Section 15 deals with claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims. It provides that the appropriate Government may, by notification in the Official Gazette, appoint-

- (a) any Commissioner for Workmen's Compensation; or

- (b) any officer of the Central Government exercising functions as,-
  - (i) Regional Labour Commissioner; or
  - (ii) Assistant Labour Commissioner with at least two years' experience; or
- (c) any officer of the State Government not below the rank of Assistant Labour Commissioner with at least two years' experience; or
- (d) a presiding officer of any Labour Court or Industrial Tribunal, constituted under the Industrial Disputes Act, 1947 or under any corresponding law relating to the investigation and settlement of industrial disputes in force in the State; or
- (e) any other officer with experience as a Judge of a Civil Court or a Judicial Magistrate
 

as the authority to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in payment of the wages, of persons employed or paid in that area, including all matters incidental to such claims.

Provided that where the appropriate Government considers it necessary so to do, it may appoint more than one authority for any specified area and may, by general or special order, provide for the distribution or allocation of work to be performed by them under this Act.

Sub-section (2) of section 15 provides that where contrary to the provisions of the Act any deduction has been made from the wages of an employed person or any payment of wages has been delayed such person himself or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf or any Inspector under this Act or any other person acting with the permission of the authority appointed under sub-section (1) may apply to such authority for a direction under sub-section (3) :

However, every such application shall be presented within twelve months from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made as the case may be. Any application may be admitted after the said period of twelve months when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.

As per sub-section (3) when any application under sub-section (2) is entertained, the authority shall hear the applicant and the employer or other person responsible for the payment of wages under section 3, or give them an opportunity of being heard, and, after such further enquiry, if any, as may be necessary, may, without prejudice to any other penalty to which such employer or other person is liable under this Act, direct the refund to the employed person of the amount deducted, or the payment of the delayed wages, together with the payment of such compensation as the authority may think fit, not exceeding ten times the amount deducted in the former case and not exceeding three thousand rupees but not less than one thousand five hundred rupees in the latter, and even if the amount deducted or delayed wages are paid before the disposal of the application, direct the payment of such compensation, as the authority may think fit, not exceeding two thousand rupees.

A claim under the Act shall be disposed of as far as practicable within a period of three months from the date of registration of the claim by the authority. It may be noted that the period of three months may be extended if both parties to the dispute agree for any bona fide reason to be recorded by the authority that the said period of three months may be extended to such period as may be necessary to dispose of the application in a just manner.

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

- (a) a bona fide error or bona fide dispute as to the amount payable to the employed person; or
- (b) the occurrence of an emergency, or the existence of exceptional circumstances, the person responsible for the payment of the wages was unable, in spite of exercising reasonable diligence; or
- (c) the failure of the employed person to apply for or accept payment.

As per sub-section (4) if the authority hearing an application under this section is satisfied that the application was either malicious or vexatious the authority may direct that a penalty not exceeding three hundred seventy five Rupees be paid to the employer or other person responsible for the payment of wages by the person presenting the application; or in any case in which compensation is directed to be paid under sub-section (3) the applicant ought not to have been compelled to seek redress under this section the authority may direct that a penalty not exceeding three hundred seventy five Rupees be paid to the appropriate Government by the employer or other person responsible for the payment of wages.

### LESSON ROUND-UP

- 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. It applies to the persons employed in a factory, industrial or other establishment or in a railway, whether directly or indirectly, through a sub-contractor.
- Every employer shall be responsible for the payment to persons employed by him of all wages required to be paid under the Act and every person responsible for the payment of wages shall fix wage-periods in respect of which such wages shall be payable. No wage-period shall exceed one month.
- The wages of every person employed upon or in any railway factory or industrial or other establishment upon or in which less than one thousand persons are employed, shall be paid before the expiry of the seventh day.
- All wages shall be paid in current coin or currency notes or in both. However, the employer may, after obtaining the written authorisation of the employed person, pay him the wages either by cheque or by crediting the wages in his bank account.

### TEST YOURSELF

*(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)*

1. Define 'factory' and 'industrial or other establishment' under the Payment of wages Act, 1936.
2. Briefly explain the obligations of employer under the Payment of Wages Act, 1936.
3. Discuss the provisions regarding fixation of wage period under the Payment of Wages Act, 1936.
4. Who is liable for payment of wages under the Act?
5. Discuss about maintenance of Register and Record under the Payment of wages Act, 1936.



## SECTION II: THE MINIMUM WAGES ACT, 1948

### KEY CONCEPTS

- Appropriate Government ■ Employee ■ Employer ■ Scheduled Employment ■ Wages

### Learning Objectives

#### To understand:

- The object and Scope of the Minimum Wages Act
- The meaning of employee, employer, scheduled employment and wages
- The prescriptions on the fixation and revision of minimum wages and its manner
- The constitution of Advisory and Central Advisory Board
- The manner for maintenance of register and records
- The regulatory requirements for the appointment of authority

### Lesson Outline

- |  |  |
|--|--|
| ➤ Introduction                                       | ➤ Payment of minimum wages is obligatory on employer |
| ➤ Object and Scope                                   | ➤ Fixing hours for a normal working day              |
| ➤ Important Definitions                              | ➤ Payment of overtime                                |
| ➤ Fixation of minimum rates of wages                 | ➤ Wages of worker who works less than normal working |
| ➤ Revision of minimum wages                          | ➤ Minimum time Rate Wages for piece work             |
| ➤ Manner of fixation/revision of minimum wages       | ➤ Maintenance of Registers and records               |
| ➤ Minimum rate of wages                              | ➤ Authority & claims                                 |
| ➤ Procedure for fixing and revising minimum wages    | ➤ Offences and Penalties                             |
| ➤ Advisory Board                                     | ➤ Compliances under the Act                          |
| ➤ Central Advisory Board                             | ➤ Lesson Round-Up                                    |
| ➤ Minimum Wages - Whether to be paid in cash or kind | ➤ Test Yourself                                      |

**The Minimum Wages Act, 1948, is an Act to provide for fixing minimum rates of wages in certain employments. The employments are those which are included in the schedule and are referred to as 'Scheduled Employments'.**

## INTRODUCTION

The Minimum Wages Act was enacted primarily to safeguard the interests of the workers engaged in the unorganized sector. The Act provides for fixation and revision of minimum wages of the workers engaged in the scheduled employments. Under the Act, both central and State Governments are responsible, in respect of scheduled employments within their jurisdictions to fix and revise the minimum wages and enforce payment of minimum wages. In case of Central sphere, any Scheduled employment carried on by or under the authority of the Central Government or a railway administration, or in relation to a mine, oil-field or major port, or any corporation established by a Central Act, the Central Government is the appropriate Government while in relation to any other Scheduled employment, the State Government is the appropriate Government. The Act is applicable only for those employments, which are notified and included in the schedule of the Act by the appropriate Governments. According to the Act, the appropriate Governments review/ revise the minimum wages in the scheduled employments under their respective jurisdictions at an interval not exceeding five years. However, there is large scale variation of minimum wages both within the country and internationally owing to differences in prices of essential commodities, paying capacity, productivity, local conditions, items of the commodity basket, differences in exchange rates etc.

## OBJECT AND SCOPE OF THE LEGISLATION

The Minimum Wages Act (MWA) was passed in 1948 and it came into force on 15th March, 1948. The National Commission on Labour has described the passing of the Act as landmark in the history of labour legislation in the country. The philosophy of the Minimum Wages Act and its significance in the context of conditions in India, has been explained by the Supreme Court in *Unichoyi v. State of Kerala* (A.I.R. 1962 SC 12), as follows:

*“What the Minimum Wages Act purports to achieve is to prevent exploitation of labour and for that purpose empowers the appropriate Government to take steps to prescribe minimum rates of wages in the scheduled industries. In an underdeveloped country which faces the problem of unemployment on a very large scale, it is not unlikely that labour may offer to work even on starvation wages. The policy of the Act is to prevent the employment of such sweated labour in the interest of general public and so in prescribing the minimum rates, the capacity of the employer need not to be considered. What is being prescribed is minimum wage rates which a welfare State assumes every employer must pay before he employs labour”.*

According to its preamble the Minimum Wages Act, 1948, is an Act to provide for fixing minimum rates of wages in certain employments. The employments are those which are included in the schedule and are referred to as ‘Scheduled Employments’. The Act extends to whole of India.

## IMPORTANT DEFINITIONS

### Appropriate Government [Section 2(b)]

“Appropriate Government” means –

- (i) in relation to any scheduled employment carried on by or under the authority of the Central or a railway administration, or in relation to a mine, oilfield or major part or any corporation established by a Central Act, the Central Government, and
- (ii) in relation to any other scheduled employment, the State Government.

### 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 outworker 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 purpose 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, net being premises under the control and management of that person; and also includes an employee declared to be an employee by the appropriate Government; but does not include any member of Armed Forces of the Union.

### 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 this Act, and includes, except, in sub-section (3) of Section 26 –

- (i) in a factory where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person named under clause (f) of sub-section (1) of Section 7 of the Factories Act, 1948, as manager of the factory;
- (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 of 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 of the supervision and control of the employees or for the payment of wages.

The definitions of “employees” and “employer” are quite wide. Person who engages workers through another like a contractor would also be an employer (1998 LLJ I Bom. 629). It was held in *Nathu Ram Shukla v. State of Madhya Pradesh A.I.R. 1960 M.P. 174* that if minimum wages have not been fixed for any branch of work of any scheduled employment, the person employing workers in such branch is not an employer with the meaning of the Act. Similarly, in case of *Loknath Nathu Lal v. State of Madhya Pradesh A.I.R. 1960 M.P. 181* an out-worker who prepared goods at his residence, and then supplied them to his employer was held as employee for the purpose of this Act.

### Scheduled employment [Section 2(g)]

“Scheduled employment” means an employment specified in the Schedule or any process or branch of work forming part of such employment.

Note: The schedule is divided into two parts namely, Part I and Part II. When originally enacted Part I of Schedule had 12 entries. Part II relates to employment in agriculture. It was realised that it would be necessary to fix minimum wages in many more employments to be identified in course of time. Accordingly, powers were given to appropriate Government to add employments to the Schedule by following the procedure laid down in Section 21 of the Act. As a result, the State Government and Central Government have made several additions to the Schedule and it differs from State to State.

### Wages [Section 2(h)]

“Wages” means all remunerations capable of being expressed in terms of money, which would, if the terms of the contract of employment, express of 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;
  - (b) any other amenity or any service excluded by general or social order of the appropriate Government;

- (ii) contribution by the employer to any Pension Fund or Provides Fund or under any scheme of social insurance;
- (iii) any traveling allowance or the value of any traveling concession;
- (iv) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment;
- (v) any gratuity payable on discharge.

### FIXATION OF MINIMUM RATES OF WAGES [SECTION 3(1)(a)]

Section 3 lays down that the 'appropriate Government' shall fix the minimum rates of wages, payable to employees in an employment specified in Part I and Part II of the Schedule, and in an employment added to either part by notification under Section 27. In case of the employments specified in Part II of the Schedule, the minimum rates of wages may not be fixed for the entire State. Parts of the State may be left out altogether. In the case of an employment specified in Part I, the minimum rates of wages must be fixed for the entire State, no parts of the State being omitted. The rates to be fixed need not be uniform. Different rates can be fixed for different zones or localities: [*Basti Ram v. State of A.P. A.I.R. 1969, (A.P.) 227*].

The constitutional validity of Section 3 was challenged in *Bijoy Cotton Mills v. State of Ajmer, 1955 S.C. 3*. The Supreme Court held that the restrictions imposed upon the freedom of contract by the fixation of minimum rate of wages, though they interfere to some extent with freedom of trade or business guarantee under Article 19(1)(g) of the Constitution, are not unreasonable and being imposed and in the interest of general public and with a view to carrying out one of the Directive Principles of the State Policy as embodied in Article 43 of the Constitution, are protected by the terms of Clause (6) of Article 9.

Notwithstanding the provisions of Section 3(1)(a), the "appropriate Government" may not fix minimum rates of wages in respect of any scheduled employment in which less than 1000 employees in the whole State are engaged. But when it comes to its knowledge after a finding that this number has increased to 1,000 or more in such employment, it shall fix minimum wage rate.

### REVISION OF MINIMUM WAGES [SECTION 3(1)(b)]

According to Section 3(1)(b), the 'appropriate Government' may review at such intervals as it may think fit, such intervals not exceeding five years, and revise the minimum rate of wages, if necessary. This means that minimum wages can be revised earlier than five years also.

### MANNER OF FIXATION/REVISION OF MINIMUM WAGES [SECTION 3(2)]

According to Section 3(2), the 'appropriate Government' may fix minimum rate of wages for:

- (a) time work, known as a Minimum Time Rate;
- (b) piece work, known as a Minimum Piece Rate;
- (c) a "Guaranteed Time Rate" for those employed in piece work for the purpose of securing to such employees a minimum rate of wages on a time work basis; (This is intended to meet a situation where operation of minimum piece rates fixed by the appropriate Government may result in a worker earning less than the minimum wage), and
- (d) a "Over Time Rate" i.e. minimum rate whether a time rate or a piece rate to apply in substitution for the minimum rate which would otherwise be applicable in respect of overtime work done by employee.

Section 3(3) provides that different minimum rates of wages may be fixed for –

- (i) different scheduled employments;

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

Further, minimum rates of wages may be fixed by any one or more of the following wage periods, namely:

- (i) by the hour,
- (ii) by the day,
- (iii) by the month, or
- (iv) by such other large wage periods as may be prescribed; and where such rates are fixed by the day or by the month, the manner of calculating wages for month or for a day as the case may be, may be indicated.

However, where wage period has been fixed in accordance with the Payment of Wages Act, 1936 vide Section 4 thereof, minimum wages shall be fixed in accordance therewith [Section 3(3)].

#### MINIMUM RATE OF WAGES (SECTION 4)

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

- (i) a basic rate of wages and a special allowance at a rate to be adjusted, at such intervals and in such manner as the appropriate Government may direct to accord as nearly as practicable with the variation in the cost of living index number applicable to such worker (hereinafter referred to as the cost of living allowance); or
- (ii) a basic rate of wages 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 concessions, if any.

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

#### CASE LAW

##### Considerations while fixing wages

In the case of *Killick Nixon Ltd. v. Union (1975- II LLJ 53SC)*, the Hon'ble Supreme Court has laid down certain considerations of fixing wages. They are as follows:

- 1) Condition of the wage scales prevalent in the Company.
- 2) Condition of the wage level prevalent in the industry and the region.
- 3) The wage packet as a whole of each earner in the company with all amenities and benefits and its ability and potency to cope with the economic requirements of daily existence consistent with his status in society, responsibilities, efficiency at work and industrial peace.
- 4) The position of the company concerns in relation to other comparable concerns in the industry and the region.
- 5) Pre-emptive necessity for full neutralisation of the cost of living at the rock-bottom of the wage scale if at all just above the subsistence level.

- 6) The rate of neutralisation which is being given to the employees in each salary slab.
- 7) Avoidance of huge distortion of wage differentials taking into reckoning all persons employed in the concern.
- 8) Degree of sacrifice necessary even on the part of workers in general interest.
- 9) The compulsive necessity of securing social and distributive justice to the workmen.
- 10) Capacity of the company to bear the additional burden.
- 11) Interest of the national economy.
- 12) Repercussions in other industries and society as a whole.
- 13) The state of the consumer price index at the time of decision.
- 14) Forebodings and possibilities in the foreseeable future as far as can be envisaged.

Further, in the case of *Workmen v. Reptakos Brett & Co. judgment (1992)*, the Supreme Court ruled that, taking into account the socio-economic aspect of the wage structure, these norms were inadequate. It accordingly instructed that a few additional components be added, namely: children's education, medical requirements, minimum recreation including festivals/ceremonies, and contingencies such as old age and marriage. The Hon'ble Supreme Court also directed that these consumption items should constitute 25 per cent of the total minimum wage. It was further of the opinion that the wage structure corresponding approximately to these components was nothing more than a minimum wage at subsistence level.

## PROCEDURE FOR FIXING AND REVISING MINIMUM WAGES (SECTION 5)

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

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

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

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

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

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

The method is known as the 'Notification Method'. When fixing minimum wages under Section 5(1)(b), the appropriate Government shall by notification, in the Official Gazette publish its proposals for the information of persons likely to be affected thereby and specify a date not less than 2 months from the date of notification, on which the proposals will be taken into consideration.

The representations received will be considered by the appropriate Government. It will also consult the Advisory Board constituted under Section 7 and thereafter fix or revise the minimum rates of wages by notification in the

Official Gazette. The new wage rates shall come into force from such date as may be specified in the notification. However, if no date is specified, the notification shall come into force on expiry of three months from the date of its issue. Minimum wage rates can be revised with retrospective effect. [1996 II LLJ 267 Kar.].

### ADVISORY BOARD [SECTION 7]

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

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

### CENTRAL ADVISORY BOARD [SECTION 8]

Section 8 of the Act provides that the Central Government shall appoint a Central Advisory Board for the purpose of advising the Central Government and State Governments in the matters of fixation and revision of minimum rates of wages and other matters under the Minimum Wages Act and for coordinating work of the advisory boards. The Central Advisory Board shall consist of persons to be nominated by the Central Government representing employers and employees in the scheduled employment who shall be equal in number and independent persons not exceeding 1/3rd of its total number of members, one of such independent persons shall be appointed as the Chairman of the Board by Central Government.

### MINIMUM WAGE – WHETHER TO BE PAID IN CASH OR KIND [SECTION 11]

Section 11 of the Act provides that minimum wages payable under the Act shall be paid in cash. But where it has been the custom to pay wages wholly or partly in kind, the appropriate Government, on being satisfied, may approve and authorize such payments. Such Government can also authorize for supply of essential commodities at concessional rates. Where payment is to be made in kind, the cash value of the wages in kind or in the shape of essential commodities on concessions shall be estimated in the prescribed manner.

### PAYMENT OF MINIMUM WAGES IS OBLIGATORY ON EMPLOYER (SECTION 12)

Payment of less than the minimum rates of wages notified by the appropriate Government is an offence. Section 12 clearly lays down that the employer shall pay to every employee engaged in a scheduled employment under him such wages at a rate not less than the minimum rate of wages fixed by the appropriate Government under Section 5 for that class of employment without deduction except as may be authorized, within such time and subject to such conditions, as may be prescribed.

### FIXING HOURS FOR A NORMAL WORKING DAY (SECTION 13)

Fixing of minimum rates of wages without reference to working hours may not achieve the purpose for which wages are fixed. Thus, by virtue of Section 13 the appropriate Government may –

- (a) fix the number of 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 which shall be allowed to all employees or to any specified class of employees and for the payment of remuneration in respect of such day of rest;
- (c) provide for payment of work on a day of rest at a rate not less than the overtime rate.

The above stated provision shall apply to following classes of employees only to such extent and subject to such conditions as may be prescribed:

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

For the purpose of clause (c) employment of an employee is essentially intermittent when it is declared to be so by the appropriate Government on ground that the daily hours of duty of the employee, or if these be no daily hours of duty as such for the employee, the hours of duty, normally includes period of inaction during which the employee may be on duty but is not called upon to display either physical activity or sustained attention.

There is correlation between minimum rates of wages and hours of work. Minimum wages are to be fixed on basis of standard normal working hours, namely 48 hours a week; *Benode Bihari Shah v. State of W.B. 1976 Lab I.C. 523 (Cal)*.

#### **PAYMENT OF OVERTIME (SECTION 14)**

Section 14 provides that when an employee, whose minimum rate of wages is fixed under this Act by the hours, the day or by such longer wage period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or part of an hour so worked in excess at the overtime rate fixed under this Act or under any other law of the appropriate Government for the time being in force whichever is higher. Payment for overtime work can be claimed only by the employees who are getting minimum rate of wages under the Act and not by those getting better wages. (1998 LLJ I SC 815).

#### **WAGES OF A WORKER WHO WORKS LESS THAN NORMAL WORKING DAY (SECTION 15)**

Where the rate of wages has been fixed under the Act by the day for an employee and if he works on any day on which he employed for a period less than the requisite number of hours constituting a normal working day, he shall be entitled to receive wages for that day as if he had worked for a full working day.

Provided that he shall not receive wages for full normal working day –

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

#### **MINIMUM TIME – RATE WAGES FOR PIECE WORK (SECTION 17)**

Where an employee is engaged in work on piece work for which minimum time rate and not a minimum piece rate has been fixed, wages shall be paid in terms of Section 17 of the Act at minimum time rate.

### MAINTENANCE OF REGISTERS AND RECORDS (SECTION 18)

Apart from the payment of the minimum wages, the employer is required under Section 18 to maintain registers and records giving such particulars of employees under his employment, the work performed by them, the receipts given by them and such other particulars as may be prescribed. Every employee is required also to exhibit notices, in the prescribed form containing particulars in the place of work. He is also required to maintain wage books or wage-slips as may be prescribed by the appropriate Government and the entries made therein will have to be authenticated by the employer or his agent in the manner prescribed by the appropriate Government.

### AUTHORITY AND CLAIMS (SECTION 20)

Under Section 20(1) of the Act, the appropriate Government, may appoint any of the following as an authority to hear and decide for any specified area any claims arising out of payment of less than the minimum rate of wages or in respect of the payment of remuneration for the days of rest or for work done on such days of wages at the rate of overtime work:

- (a) any Commissioner for Workmen's Compensation; or
- (b) any officer of the Central Government exercising functions as Labour Commissioner for any region; or
- (c) any officer of the State Government not below the rank of Labour Commissioner; or
- (d) any other officer with experience as a Judge of a Civil Court or as the Stipendiary Magistrate.

The authority so appointed shall have jurisdiction to hear and decide claim arising out of payment of less than the minimum rates of wages or in respect of the payment remuneration for days of rest or for work done on such days or for payment of overtime.

The provisions of Section 20(1) are attracted only if there exists a disputed between the employer and the employee as to the rates of wages. Where no such dispute exists between the employer and employees and the only question is whether a particular payment at the agreed rate in respect of minimum wages, overtime or work on off days is due to an employee or not, the appropriate remedy is provided by the Payment of Wages Act, 1936.

### OFFENCES AND PENALTIES [SECTION 22]

Section 22 of the Act provides that any employer who (a) pays to any employee less than the minimum rates of wages fixed for that employee's class of work or less than the amount due to him under the provisions of this Act or contravenes any rule or order made under Section 13, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or with both.

While imposing any fine for an offence under this section the court shall take into consideration the amount of any compensation already awarded against the accused in any proceedings taken under section 20.

It is further stipulated under Section 22A of the Act that any employer who contravenes any provision of this Act or of any rule or order made thereunder shall if no other penalty is provided for such contravention by this Act be punishable with fine which may extend to five hundred rupees.

The establishment must ensure following compliances under the Act. These compliances are not exhaustive but illustrative.

1. The Establishment is covered by the definition "Scheduled Employment" with effect from.....
2. The Government revised the minimum wages once/twice/ thrice during the financial year under reference and the Establishment has paid to all its employees minimum wages in accordance with the rates at respective point of time and at the respective rates specified in notification under Section 5 of the MWA.

3. The Establishment has issued wage slips to all its employees in respect of each of the wage period.
4. Where the services of any employee were terminated for any reason whatsoever, the wages were paid within two working days from the date of such termination.
5. The Establishment did not make any unauthorized deduction from the wages of any of its employees. Further, the deductions if any, made were within the limits of fifty percent (or seventy five percent in case of cooperatives) of wages earned by such employees during the period under reference.
6. Where the Establishment was constrained to impose any fine or deduct wages on account of damages caused by any employee, the latter was given an opportunity of being heard in the presence of a neutral person and was also communicated the amount of fine imposed or deduction made from the wages.
7. The Establishment has eight working hours per day, inclusive of half an hour of interval.
8. All claims under Section 20 of the MWA were paid within the time limit specified in the Order.

### LESSON ROUND-UP

- The Minimum Wages Act empowers the Government to fix minimum wages for employees working in specified employments. It provides for review and revision of minimum wages already fixed after suitable intervals not exceeding five years.
- It extends to the whole of India and applies to scheduled employments in respect of which minimum rates of wages have been fixed under this Act.
- The appropriate government shall fix the minimum rates of wages payable to employees employed in a scheduled employment.
- It may review at such intervals not exceeding five years the minimum rates of wages so fixed, and revise the minimum rates if necessary.
- The employer shall pay to every employee in a scheduled employment under him wages at the rate not less than the minimum rates of wages fixed under the Act.
- The Act also provides for regulation or working hours, overtime, weekly holidays and overtime wages. Period and payment of wages, and deductions from wages are also regulated.
- The Act provides for appointment the authorities to hear and decide all claims arising out of payment less than the minimum rates of wages or any other monetary payments due under the Act.

### TEST YOURSELF

*(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)*

1. Discuss the object and scope of the Minimum Wages Act.
2. Who is authorize to fix minimum wages and in what manner?
3. What points should be taken into consideration while fixing minimum wages?
4. Enumerate the procedure for fixing and revising the minimum wages.
5. Discuss briefly the compliance management under the Minimum Wages Act.

## SECTION III: THE PAYMENT OF BONUS ACT, 1965

### KEY CONCEPTS

- Allocable Surplus ■ Available surplus ■ Employee ■ Employer ■ Establishment

### Learning Objectives

#### To understand:

- The object, Scope and Application of the Payment of Bonus Act, 1965
- The meaning of establishment, employee, employer, allocable surplus and available surplus
- The calculation of amount payable as Bonus
- The prescriptions on the eligibility for bonus and its payment
- The penalties and offences by companies

### Lesson Outline

- |   |  |
|---|--|
| ➤ Introduction                                      | ➤ Computation of Available Surplus             |
| ➤ Object and Scope                                  | ➤ Eligibility for Bonus and its Payment        |
| ➤ Application of the Act                            | ➤ Bonus linked with Production or Productivity |
| ➤ Act not to apply to certain classes of employees  | ➤ Power of exemption                           |
| ➤ Allocable Surplus                                 | ➤ Penalties                                    |
| ➤ Available Surplus                                 | ➤ Offences by companies                        |
| ➤ Establishment in Private Sectors                  | ➤ Compliances under the Act                    |
| ➤ Establishment in Public Sectors                   | ➤ Lesson Round-Up                              |
| ➤ Calculation of Amount Payable as Bonus            | ➤ Test Yourself                                |
| ➤ Computation of Gross Profits                      |  |
| ➤ Deductions from Gross Profits                     |  |
| ➤ Calculation of Direct Tax Payable by the Employer |  |

**Payment of Bonus Act, 1965 provides for the payment of bonus to persons employed in certain establishments and for matters connected therewith.**

## INTRODUCTION

The term “bonus” is not defined in the Payment of Bonus Act, 1965. Webster International Dictionary defines bonus as “something given in addition to what is ordinarily received by or strictly due to the recipient”. The Oxford Concise Dictionary defines it as “something to the good into the bargain (and as an example) gratuity to workmen beyond their wages”. The purpose of payment of bonus is to bridge the gap between wages paid and ideal of a living wage. The Payment of Bonus Act, 1965 applies to every factory as defined under the Factories Act, 1948; and every other establishment in which twenty or more persons are employed on any day during an accounting year.

However, the Government may, after giving two months’ notification in the Official Gazette, make the Act applicable to any factory or establishment employing less than twenty but not less than ten persons. An employee is entitled to be paid by his employer a bonus in an accounting year subjected to the condition that he/she has worked for not less than 30 working days of that year. An employer shall pay minimum bonus at the rate of 8.33% of the salary or wages earned by an employee in a year or one hundred rupees, whichever is higher.

## OBJECT AND SCOPE OF THE ACT

The object of the Act is to provide for the payment of bonus to persons employed in certain establishments and for matters connected therewith. Shah J. observed in *Jalan Trading Co. (Pvt.) Ltd. v. Mill Mazdor Sabha*, AIR 1967 S.C. 691, that the “object of the Act being to maintain peace and harmony between labour and capital by allowing the employees to share the prosperity of the establishment and prescribing the maximum and minimum rates of bonus together with the scheme of “set-off” and “set on” not only secures the right of labour to share in the profits but also ensures a reasonable degree of uniformity”.

**On the question whether the Act deals only with profit bonus, it was observed by the Supreme Court in *Mumbai Kamgar Sabha v. Abdulbhai Faizullabhai*, (1976) II LLJ 186, that “bonus” is a word of many generous connotations and, in the Lord’s mansion, there are many houses. There is profit based bonus which is one specific kind of claim and perhaps the most common. There is customary or traditional bonus which has its emergence from long, continued usage leading to a promissory and expectancy situation materialising in a right. There is attendance bonus and what not. The Bonus Act speak and speaks as a whole Code on the sole subject of profit based bonus but is silent and cannot, therefore, annihilate by implication, other distinct and different kinds of bonuses, such as the one oriented on custom. The Bonus Act, 1965 as it then stood does not bar claims to customary bonus or those based on conditions of service. Held, a discerning and concrete analysis of the scheme of the Bonus Act and reasoning of the Court leaves no doubt that the Act leaves untouched customary bonus.**

The provision of the Act have no say on customary bonus and cannot, therefore, be inconsistent therewith. Conceptually, statutory bonus and customary bonus operate in two fields and do not clash with each other (*Hukamchand Jute Mills Limited v. Second Industrial Tribunal, West Bengal*; 1979-I Labour Law Journal 461).

## APPLICATION OF THE ACT

According to Section 1(2), the Act extends to the whole of India, and as per Section 1(3) the Act shall apply to

- (a) every factory; and
- (b) every other establishment in which twenty or more persons are employed on any day during an accounting year.

Provided that the appropriate Government may, after giving not less than two months notice of its intention so to do, by notification in the Official Gazette apply the provisions of this Act with effect from such accounting year as may be specified in the notification to any establishment including an establishment being a factory within

the meaning of sub-clause (ii) of clause (m) of Section 2 of the Factories Act, 1948 employing such number of persons less than twenty as may be specified in the notification; so, however, that the number of persons so specified shall in no case be less than ten.

Save as otherwise provided in this Act, the provisions of this Act shall, in relation to a factory or other establishment to which this Act applies, have effect in respect of the accounting year commencing on any day in the year 1964 and in respect of every subsequent accounting year.

Provided that in relation to the State of Jammu and Kashmir, the reference to the accounting year commencing on any day in the year 1964 and every subsequent accounting year shall be construed as reference to the accounting year commencing on any day in the year 1968 and every subsequent accounting year.

Provided further that when the provisions of this Act have been made applicable to any establishment or class of establishments by the issue of a notification under the proviso to sub-section (3), the reference to the accounting year commencing on any day in the year 1964 and every subsequent accounting year, or, as the case may be, the reference to the accounting year commencing on any day in the year 1968 and every subsequent accounting year, shall, in relation to such establishment or class of establishments, be construed as a reference to the accounting year specified in such notification and every subsequent accounting year [Section 1(4)].

An establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein falls below twenty, or, as the case may be, the number specified in the notification issued under the proviso to sub-section (3).

### **ACT NOT TO APPLY TO CERTAIN CLASSES OF EMPLOYEES**

Section 32 of this Act provides that the Act shall not apply to the following classes of employees:

- employees employed by any insurer carrying on general insurance business and the employees employed by the Life Insurance Corporation of India;
- seamen as defined in clause (42) of Section 3 of the Merchant Shipping Act, 1958;
- employees registered or listed under any scheme made under the Dock Workers (Regulation of Employment) Act, 1948 and employed by registered or listed employers;
- employees employed by an establishment engaged in any industry carried on by or under the authority of any department of Central Government or a State Government or a local authority;
- employees employed by
  - (a) the Indian Red Cross Society or any other institution of a like nature (including its branches);
  - (b) universities and other educational institutions;
  - (c) institutions (including hospitals, chambers of commerce and social welfare institutions) established not for the purpose of profit;
- employees employed by the Reserve Bank of India;
- employees employed by
  - (a) the Industrial Finance Corporation of India;
  - (b) any Financial Corporation established under Section 3, or any Joint Financial Corporation established under Section 3A of the State Financial Corporations Act, 1951;
  - (c) the Deposit Insurance Corporation;
  - (d) the National Bank for Agriculture and Rural Development;
  - (e) the Unit Trust of India;

- (f) the Industrial Development Bank of India;
  - (fa) the Small Industries Development Bank of India established under Section 3 of the Small Industries Development Bank of India Act, 1989;
  - (fb) the National Housing Bank;
  - (g) any other financial Institution (other than Banking Company) being an establishment in public sector, which the Central Government may by notification specify having regard to (i) its capital structure; (ii) its objectives and the nature of its activities; (iii) the nature and extent of financial assistance or any concession given to it by the Government; and (iv) any other relevant factor.
- employees employed by inland water transport establishments operating on routes passing through any other country.

Apart from the above, the appropriate Government has necessary powers under Section 36 to exempt any establishment or class of establishments from all or any of the provisions of the Act for a specified period having regard to its financial position and other relevant circumstances and if it is of the opinion that it will not be in the public interest to apply all or any of the provisions of this Act thereto. It may also impose such conditions while according the exemptions as it may consider fit to impose.

## IMPORTANT DEFINITIONS

### Appropriate Government

“Appropriate Government” means--

- (i) in relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947, is the Central Government, the Central Government;
- (ii) in relation to any other establishment, the Government of the State in which that other establishment is situate. [Section 2(5)]

### Accounting Year

“Accounting Year” means

- (i) in relation to a corporation, the year ending on the day on which the books and accounts of the corporation are to be closed and balanced;
- (ii) in relation to a company, the period in respect of which any profit and loss account of the company laid before it in annual general meeting is made up, whether that period is a year or not;
- (iii) in any other case
  - (a) the year commencing on the 1st day of April; or
  - (b) if the accounts of an establishment maintained by the employer thereof are closed and balanced on any day other than the 31st day of March, then, at the option of the employer, the year ending on the day on which its accounts are so closed and balanced;

Provided that an option once exercised by the employer under paragraph (b) of this sub-clause shall not again be exercised except with the previous permission in writing of the prescribed authority and upon such conditions as that authority may think fit. [Section 2(1)]

### Allocable Surplus

It means –

- (a) 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;

- (b) in any other case sixty per cent of such available surplus. [Section 2(4)]

### Available Surplus

It means the available surplus under Section 5. [Section 2(6)]

### Award

“Award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Tribunal Constituted under the Industrial Disputes Act, 1947 or by any other authority constituted under any corresponding law relating to investigation and settlement of industrial disputes in force in a State and includes an arbitration award made under Section 10A of that Act or under that law. [Section 2(7)]

### Corporation

“Corporation” means anybody corporate established by or under any Central, Provincial or State Act but does not include a company or a co-operative society. [Section 2(11)]

### Employee

“Employee” means any person (other than an apprentice) employed on a salary or wages not exceeding Rs. 21,000/- per mensem in any industry to do any skilled or unskilled, manual, supervisory, managerial, administrative, technical or clerical work of hire or reward, whether the terms of employment be express or implied. [Section 2(13)]

Part time permanent employees working on fixed hours are employees [1971 (22) FLR 98].

### Employer

“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 7(1) 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. [Section 2(14)]

### Establishment in Private Sector

It means any establishment other than an establishment in public sector. [Section 2(15)]

### Establishment in Public Sector

It means an establishment owned, controlled or managed by:

- (a) a Government company as defined in Section 2(45) of Companies Act, 2013 [Section 617 of the Companies Act, 1956];
- (b) a corporation in which not less than forty percent of its capital is held (whether singly or taken together) by:
  - (i) the Government; or

- (ii) the Reserve Bank of India; or
- (iii) a corporation owned by the Government or the Reserve Bank of India. [Section 2(16)]

### Salary or Wage

The “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:

- (i) any other allowance which the employee is for the time being entitled to;
- (ii) the value of any house accommodation or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food grains or other articles;
- (iii) any travelling concession;
- (iv) any bonus (including incentive, production and attendance bonus);
- (v) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the employee under any law for the time being in force;
- (vi) any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex-gratia payment made to him;
- (vii) any commission payable to the employee. [Section 2(21)]

The Explanation appended to the Section states that where an employee is given in lieu of the whole or part of the salary or, wage payable to him, free food allowance or free food by his employer, such food allowance or the value of such food shall, for the purpose of this clause, be deemed to form part of the salary or wage of such employee.

The definition is wide enough to cover the payment of retaining allowance and also dearness allowance paid to the workmen. It is nothing but remuneration (*Chalthan Vibhag Sahakari Khand Udyog v. Government Labour Officer AIR 1981 SC 905*). Subsistence allowance given during suspension is not wages. However, lay-off compensation is wages.

### ESTABLISHMENT – MEANING

Section 3 of the Act provides that the word establishment shall include all its departments, undertakings and branches wherever it has so whether situated in the same place or in different places and the same shall be treated as parts of the same establishment for the purpose of computation of bonus under this Act:

Provided that where for any accounting year, a separate balance-sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking or branch then such department, undertaking or branches shall be treated as a separate establishment for the purpose of computation of bonus under this Act for that year, unless such department, or undertaking or branch was, immediately before the commencement of that accounting year treated as part of establishment for the purpose of computation of bonus.

### CALCULATION OF AMOUNT PAYABLE AS BONUS

The Act has laid down a detailed procedure for calculating the amount of bonus payable to employees. First of all, Gross Profit is calculated as per First or Second Schedule. From this Gross Profit, the sums deductible under Section 6 are deducted. To this figure, we add the sum equal to the difference between the direct tax calculated on gross profit for the previous year and direct tax calculated on gross profit arrived at after deducting the

bonus paid or payable to the employees. The figure so arrived will be the available surplus. Of this surplus, 67% in case of company (other than a banking company) and 60% in other cases, shall be the “allocable surplus” which is the amount available for payment of bonus to employees. The details of such calculations are given below.

### (i) Computation of gross profits

As per Section 4, the gross profits derived by an employer from an establishment in respect of any accounting year shall:

- (a) in the case of banking company be calculated in the manner specified in the First Schedule.
- (b) in any other case, be calculated in the manner specified in the Second Schedule.

### (ii) Deductions from gross profits

According to Section 6, the sums deductible from gross profits include:

- (a) any amount by way of depreciation admissible in accordance with the provisions of Section 32(1) of the Income-tax Act, or in accordance with the provisions of the Agricultural Income-tax Law, as the case may be:

Provided that where an employer has been paying bonus to his employees under a settlement or an award or agreement made before the 29th May, 1965, and subsisting on that date after deducting from the gross profits notional normal depreciation, then, the amount of depreciation to be deducted under this clause shall, at the option of such employer (such option to be exercised once and within one year from that date) continue to be such notional normal depreciation.

What is deductible under Section 6(a), is depreciation admissible in accordance with the provisions of Section 32(1) of the Income- tax Act and not depreciation allowed by the Income-tax Officer in making assessment on the employer.

- (b) any amount by way of development rebate, investment allowance, or development allowance which the employer is entitled to deduct from his income under the Income Tax Act.
- (c) subject to the provisions of Section 7, any direct tax which the employer is liable to pay for the accounting year in respect of his income, profits and gains during the year.
- (d) such further sums as are specified in respect of the employer in the Third Schedule.

### (iii) Calculation of direct tax payable by the employer

Under Section 7, any direct tax payable by the employer for any accounting year shall, subject to the following provisions, be calculated at the rates applicable to the income of the employer for that year, namely:

- (a) in calculating such tax no account shall be taken of
  - (i) any loss incurred by the employer in respect of any previous accounting year and carried forward under any law for the time being in force relating to direct taxes;
  - (ii) any arrears of depreciation which the employer is entitled to add to the amount of the allowance for depreciation for any following accounting year or years under sub-section (2) of Section 32 of the Income-tax Act;
  - (iii) any exemption conferred on the employer under Section 84 of the Income-tax Act or of any deduction to which he is entitled under sub-section (1) of Section 101 of that Act, as in force immediately before the commencement of the Finance Act, 1965.

- (b) where the employer is a religious or a charitable institution to which the provisions of Section 32 do not apply and the whole or any part of its income is exempt from tax under the Income-tax Act, then, with respect to the income so exempted, such institution shall be treated as if it were a company in which the public are substantially interested within the meaning of that Act;
- (c) where the employer is an individual or a Hindu undivided family, the tax payable by such employer under the Income-tax Act shall be calculated on the basis that the income derived by him from the establishment is his only income.

#### (iv) Computation of available surplus

The available surplus in respect of any accounting year shall be the gross profits for that year after deducting therefrom 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. (Section 5)

### ELIGIBILITY FOR BONUS AND ITS PAYMENT

#### (i) Eligibility for bonus

Every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of this Act, provided he has worked in the establishment for not less than thirty working days in that year. (Section 8)

**An employee suspended but subsequently reinstated with full back wages cannot be treated to be ineligible for bonus for the period of suspension. [Project Manager, Ahmedabad Project, ONGC v. Sham Kumar Sahegal (1995) 1 LLJ 863]**

#### (ii) Disqualification for bonus

An employee shall be disqualified from receiving bonus under this Act, if he is dismissed from service for:

- (a) fraud; or
- (b) riotous or violent behaviour while on the premises or the establishment; or
- (c) theft, misappropriation or sabotage of any property of the establishment. (Section 9)

This provision is based on the recommendations of the Bonus Commission which observed "after all bonus can only be shared by those workers who promote the stability and well-being of the industry and not by those who positively display disruptive tendencies. Bonus certainly carries with it obligation of good behaviour".

In *VG Textiles v. Assistant Commissioner of Labour*, some workers were fired from service for participating in acts of violence and riot inside the premises of their factory. As a result, bonus was denied to them. The workmen raised that the bonus was being denied for the year when the act did not take place. The matter went before the High Court. The court accepted the employers' contentions, observing that, "Section 9 of the Act provides for disqualification for receiving bonus for certain types of misconducts irrespective of the year during which bonus was declared."

If an employee is dismissed from service for any act of misconduct enumerated in Section 9, he stands disqualified from receiving any bonus under the Act, and not the bonus only for the accounting year in which the dismissal takes place [*Pandian Roadways Corpn. Ltd. v. Presiding Officer, Principal Labour Court, (1996) 2 LLJ 606*].

### (iii) Payment of minimum bonus

Section 10 states that subject to the other provisions of this Act, every employer shall be bound to pay to every employee in respect of any accounting year a minimum bonus which shall be 8.33 per cent of the salary or wage earned by the employee during the accounting year or one hundred rupees whichever is higher, whether or not the employer has any allocable surplus in the accounting year:

Provided that where an employee has not completed fifteen years of age at the beginning of the accounting year, the provisions of this Section shall have effect in relation to such employee as if for the words one hundred rupees the words sixty rupees were substituted.

Section 10 of the Act is not violative of Articles 19 and 301 of the Constitution. Even if the employer suffers losses during the accounting year, he is bound to pay minimum bonus as prescribed by Section 10 [*State v. Sardar Singh Majithia (1979) Lab. I.C.*].

### (iv) Maximum bonus

- (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. (Section 11)

#### (iv-A) Calculation of bonus with respect to certain employees

Where the salary or wages of an employee exceeds seven thousand rupees or the minimum wage for the scheduled employment, as fixed by the appropriate Government, whichever is higher per mensem, the bonus payable to such employee under Section 10 or, as the case may be, under section 11, shall be calculated as if his salary or wages were seven thousand rupees or the minimum wage for the scheduled employment, as fixed by the appropriate Government. whichever is higher per mensem. (Section 12)

### (v) Proportionate reduction in bonus in certain cases

Where an employee has not worked for all the working days in an accounting year, the minimum bonus of one hundred rupees or, as the case may be, of sixty rupees, if such bonus is higher than 8.33 per cent of his salary or wage for the days he had worked in that accounting year, shall be proportionately reduced. (Section 13)

**(vi) Computation of number of working days**

For the purposes of Section 13, an employee shall be deemed to have worked in an establishment in any accounting year also on the days on which:

- (a) he has been laid off under an agreement or as permitted by standing orders under the Industrial Employment (Standing Orders) Act, 1946 or under the Industrial Disputes Act, 1947 or under any other law applicable to the establishment;
- (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. (Section 14)

**(vii) Set on and set off of allocable surplus**

- (1) Where for any accounting year, the allocable surplus exceeds the amount of maximum bonus payable to the employees in the establishment under Section 11, then, the excess shall, subject to a limit of twenty per cent of the total salary or wage of the employees employed in the establishment in that accounting year, be carried forward for being set on in the succeeding accounting year and so on up to and inclusive of the fourth accounting year to be utilized for the purpose of payment of bonus in the manner illustrated in the Fourth Schedule. (Section 15)
- (2) Where for any 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 or sufficient amount carried forward and set on under sub-section (1) which could be utilized for the purpose of payment of the minimum bonus, then, such minimum amount or the deficiency, as the case may be, shall be carried forward for being set off in the succeeding accounting year and so on up to and inclusive of the fourth accounting year in the manner illustrated in the Fourth Schedule.
- (3) The principle of set on and set off as illustrated in the Fourth Schedule shall apply to all other cases not covered by sub-section (1) or sub-section (2) for the purpose of payment of bonus under this Act.
- (4) Where in any accounting year any amount has been carried forward and set on or set off under this Section, then, in calculating bonus for the succeeding accounting year, the amount of set on or set off carried forward from the earliest accounting year shall first be taken into account.

Apart from the provisions contained in Section 15(1), there is no statutory obligation on an employer to set apart any part of the profits of the previous year for payment of bonus for subsequent years.

**(viii) Adjustment of customary or interim bonus**

Where in any accounting year (a) an employer has paid any puja bonus or other customary bonus to an employee; or (b) an employer has paid a part of the bonus payable under this Act to an employee before the date on which such bonus becomes payable; then, the employer shall be entitled to deduct at the amount of bonus so paid from the amount of bonus payable by him to the employee under this Act in respect of that accounting year and the employee shall be entitled to receive only the balance. (Section 17)

**In *Hukam Chand Jute Mills Ltd. v. Second Industrial Tribunal, West Bengal*, AIR 1979 SC 876, the Supreme Court held that the claim for customary bonus is not affected by 1976 Amendment Act. In fact, it has left Section 17 intact which refers to puja bonus or other customary bonus. Section 31A (see later) speaks about productivity bonus but says nothing about other kinds of bonuses. The contention that all agreements inconsistent with the provisions of the Act become inoperative, has no substance vis-a-vis customary bonus. Conceptually statutory bonus and customary bonus operate in two fields and do not clash with each other.**

**(ix) Deductions of certain amounts from bonus**

Where in any accounting year, an employee is found guilty of misconduct causing financial loss to the employer, then, it shall be lawful for the employer to deduct the amount of loss from the amount of bonus payable by him to the employee under this Act, in respect of that accounting year only and the employee shall be entitled to receive the balance, if any. (Section 18)

**(x) Time limit for payment of bonus**

- (a) Where there is a dispute regarding payment of bonus pending before any authority under Section 22, all amounts payable to an employee by way of bonus under this Act shall be paid in cash by his employer, within a month from the date from which the award becomes enforceable or the settlement comes into operation, in respect of such dispute;
- (b) In any other case, the bonus should be paid within a period of eight months from the close of the accounting year. However, the appropriate Government or such authority as the appropriate Government may specify in this behalf may, upon an application made to it by the employer and for sufficient reasons, by order, extend the said period of 8 months to such further period or periods as it thinks fit, so, however, that the total period so extended shall not in any case exceed two years. (Section 19)

**(xi) Recovery of bonus from an employer**

Where any money is due to an employee by way of bonus from his employer under a settlement or an award or agreement, the employee himself or any other person authorised by him in writing in this behalf, or in the case of the death of the employee, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government or such authority as the appropriate Government may specify in this behalf is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue.

It may be noted that every such application shall be made within one year from the date on which the money become due to the employee from the employer. Any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

*Explanation:* In this Section and in Sections 22, 23, 24 and 25, employee includes a person who is entitled to the payment of bonus under this Act but who is no longer in employment. (Section 21)

Mode of recovery prescribed in Section 21 would be available only if bonus sought to be recovered is under settlement or an award or an agreement. Bonus payable under Bonus Act is not covered by Section 21 (1976-1 Labour Law Journal 511).

**REFERENCE OF DISPUTES UNDER THE ACT**

Where any dispute arises between an employer and his employees with respect to the bonus payable under this Act or with respect to the application of this Act to an establishment in public sector, then, such dispute shall be deemed to be an industrial dispute within the meaning of the Industrial Disputes Act, 1947, or of any corresponding law relating to investigation and settlement of industrial disputes in force in a State and the provisions of that Act or, as the case may be, such law, shall, save as otherwise expressly provided, apply accordingly. (Section 22)

**BONUS LINKED WITH PRODUCTION OR PRODUCTIVITY**

Section 31A enables the employees and employers to evolve and operate a scheme of bonus payment linked to production or productivity in lieu of bonus based on profits under the general formula enshrined in the Act.



However, bonus payments under Section 31A are also subject to the minimum (8.33 per cent) and maximum (20 per cent). In other words, a minimum of 8.33 per cent is payable in any case and the maximum cannot exceed 20 per cent. (Section 31-A)

### POWER OF EXEMPTION

If the appropriate Government, having regard to the financial position and other relevant circumstances of any establishment or class of establishments, is of opinion that it will not be in public interest to apply all or any of the provisions of this Act thereto, it may, by notification in the Official Gazette, exempt for such period as may be specified therein and subject to such conditions as it may think fit to impose, such establishment or class of establishments from all or any of the provisions of this Act. (Section 36)

Government should consider public interest, financial position and whether workers contributed to the loss, before grant of exemption (*J.K.Chemicals v. Maharashtra, 1996 III CLA Bom. 12*).

### PENALTIES

If any person contravenes any of the provisions of this Act or any rule made thereunder; he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. Likewise, if any person, to whom a direction is given or a requisition is made under this Act, fails to comply with the direction or requisition, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. (Section 28)

### OFFENCES BY COMPANIES

If the person committing an offence under this Act is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Further, if an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be liable to be proceeded against and punished accordingly. (Section 29)

For the purpose of Section 29, 'company' means anybody corporate and includes a firm or other association of individuals, and 'director', in relation to a firm, means a partner in the firm.

### COMPLIANCES UNDER THE ACT

The establishment must ensure following compliances under the Act. These compliances are not exhaustive but illustrative.

1. The total number of employees who are entitled to bonus in department/ undertaking (a) are ..... and (b) are .....
2. The total number of employees who are not entitled to bonus in view of their having worked for less than thirty days during the accounting year in case of department (a) are .... and (b) are .....
3. The Establishment did not pay bonus to .... employees in view of their dismissal from service for (a) fraud or (b) riotous behaviour on the premises of Establishment or (c) theft, misappropriation or sabotage of any property of the establishment.
4. The Establishment has made deductions from the amount of bonus payable under PBA in respect of ..... employees in view of their being found guilty of misconduct causing financial loss to the Establishment. The quantum of deduction was only to the extent of amount of loss suffered by the Establishment.

5. The Establishment has computed the gross profit and available surplus in accordance with the provisions of the Act read with the rules made thereunder.
6. In relation to the year ended 31st March 20...., the Establishment paid bonus in cash/cheque(s) or electronic clearance system (ECS) or other electronic mode to its employees at the rate of ..... which is not less than the minimum statutory requirement as specified under PBA on 15th January 20, which is within eight months from the close of the accounting year.
7. During the accounting year, the Establishment opened a separate bank account for transfer of unpaid/unclaimed bonus in respect of employees who have either not been paid bonus for any reason or not collected their bonus for the accounting year ended on 31st March 20.... with ..... Bank (Branch) .... The unpaid/unclaimed bonus has been deposited with the concerned welfare Board.
8. During the year, the Establishment transferred on ..... to Labour Welfare Fund a sum of Rs. being the unpaid/unclaimed bonus of ..... employees, whose entitlement under PBA remained unpaid/unclaimed since ..... being the last date on which the bonus was to be paid to those .... for the year ended 31st March 20....
9. In relation to the year ended 31st March 20...., the Establishment has filed Annual Return with the Inspector appointed under the Act on, which is within thirty days from the date of payment of bonus under Section 19 of the PBA.

#### LESSON ROUND-UP

- The Payment of Bonus Act provides for payment of bonus to persons employed in certain establishments on the basis of profits or on the basis of production or productivity and for matters connected there with.
- 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. The Act does not apply to certain classes of employees specified therein.
- The Act has laid down a detailed procedure for calculating the amount of bonus payable to employees.
- Every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of this Act, provided he has worked in the establishment for not less than thirty working days in that year.
- An employee shall be disqualified from receiving bonus under this Act, if he is dismissed from service for fraud; or riotous or violent behaviour while on the premises of the establishment; or theft, misappropriation or sabotage of any property of the establishment.
- Every employer shall be bound to pay to every employee in respect of any accounting year a minimum bonus which shall be 8.33 per cent of the salary or wage earned by the employee during the accounting year or one hundred rupees whichever is higher, whether or not the employer has any allocable surplus in the accounting year.
- In case of newly set up establishments provisions have been made under Section 16 for the payment of bonus.
- If there is a dispute regarding payment of bonus pending before any authority under Section 22, all amounts payable to an employee by way of bonus under this Act shall be paid in cash by his employer, within a month from the date from which the award becomes enforceable or the settlement comes into operation, in respect of such dispute.
- In any other case, the bonus should be paid within a period of eight months from the close of the accounting year.



## SECTION IV: THE EQUAL REMUNERATION ACT, 1976

### KEY CONCEPTS

- Appropriate Government ■ Same Work or Work of a similar nature ■ Remuneration

### Learning Objectives

#### To understand:

- The object and Scope of the Equal Remuneration Act, 1976
- The meaning of remuneration, same work or work of similar nature
- The duty of the employer to pay equal remuneration
- The authorities for hearing and deciding claims and complaints
- The prescriptions on the maintenance of registers
- The penalties and offences by companies

### Lesson Outline

- |  |                            |
|--|----------------------------|
| ➤ Introduction   | ➤ Maintenance of Registers |
| ➤ Learning Objectives  | ➤ Penalty                  |
| ➤ Object and scope of the Act                                | ➤ Offences by Companies    |
| ➤ Appropriate Government                                     | ➤ Lesson Round-Up          |
| ➤ Remuneration, same work or work of similar nature          | ➤ Test Yourself            |
| ➤ Act having overriding effect                               |                            |
| ➤ Duty of employer   |                            |
| ➤ Non-Discrimination while recruiting men and women          |                            |
| ➤ Authorities for hearing and deciding claims and complaints |                            |

**Article 39 of Constitution of India envisages that the State shall direct its policy, among other things, towards securing that there is equal pay for equal work for both men and women. To give effect to this constitutional provision, the Parliament enacted the Equal Remuneration Act, 1976.**

## INTRODUCTION

In today's globalized and liberalised scenario, women form an integral part of the Indian workforce. In such an environment, the quality of women's employment is very important and depends upon several factors. The foremost being equals access to education and other opportunities for skill development. This requires empowerment of women as well as creation of awareness among them about their legal rights and duties. In order to ensure this, the Government of India has taken several steps for creating a congenial work environment for women workers. A number of protective provisions have been incorporated in the various Labour Laws. To give effect to the Constitutional provisions and also ensure the enforcement of ILO Convention the Equal Remuneration Act, 1976 enacted by the Parliament. The implementation of the Equal Remuneration Act, 1976 is done at two levels. In Central Sphere the Act is being implemented by the Central Government and in State Sphere, the implementation rests with the State Governments.

## OBJECT AND SCOPE

The Equal Remuneration Act, 1976 provides for payment of equal remuneration to men and women workers for same work or work of similar nature without any discrimination and also prevents discrimination against women employees while making recruitment for the same work or work of similar nature, or in any condition of service subsequent to recruitment. The provisions of the Act have been extended to all categories of employment. The Act extends to whole of India.

## DEFINITIONS

**"Appropriate Government"** means –

- (i) in relation to any employment carried on by or under the authority of the Central Government or a railway administration, or in relation to a banking company, a mine, oilfield or major port or any corporation established by or under a Central Act, the Central Government, and
- (ii) in relation to any other employment, the State Government. [section 2(a)]

**"Man"** and **"Woman"** mean male and female human beings, respectively, of any age. [section 2(d)]

**"Remuneration"** means the basic wage or salary, and any additional emoluments whatsoever payable, either in cash or in kind, to a person employed in respect of employment or work done in such employment, if the terms of the contract of employment, express or implied, were fulfilled. [section 2(g)]

**"Same work or Work of a similar nature"** means work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions, by a man or a woman and the differences, if any, between the skill, effort and responsibility required of a man and those required of a woman are not of practical importance in relation to the terms and conditions of employment. [section 2(h)]

## ACT TO HAVE OVERRIDING EFFECT

Section 3 of the Act provides that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the commencement of the Act, or in any instrument having effect under any law for the time being in force.

## DUTY OF EMPLOYER TO PAY EQUAL REMUNERATION TO MEN AND WOMEN WORKERS FOR SAME WORK OR WORK OF A SIMILAR NATURE

Section 4 of the Act provides that no employer shall pay to any worker, employed by him in an establishment or employment, remuneration, whether payable in cash or in kind, at rates less favourable than those at which remuneration is paid by him to the workers of the opposite sex in such establishment or employment for performing the same work or work of a similar nature and employer shall not reduce the rate of remuneration of any worker.

It may be noted that as per Section 2(g) “remuneration” means the basic wage or salary, and any additional emoluments whatsoever payable, either in cash or in kind, to a person employed in respect of employment or work done in such employment, if the terms of the contract of employment, express or implied, were fulfilled and Section 2(h) defines “same work or work of a similar nature” means work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions, by a man or a woman and the differences, if any, between the skill, effort and responsibility required of a man and those required of woman are not of practical importance in relation to the terms and conditions of employment.

### **DISCRIMINATION NOT TO BE MADE WHILE RECRUITING MEN AND WOMEN**

As per section 5 employer while making recruitment for the same work or work of a similar nature, or in any condition of service subsequent to recruitment such as promotions, training or transfer, shall not make any discrimination against women except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force.

However, above mentioned section shall not affect any priority or reservation for Scheduled Castes or Scheduled Tribes, ex-servicemen, retrenched employees or any other class or category of persons in the matter of recruitment to the posts in an establishment or employment.

### **AUTHORITIES FOR HEARING AND DECIDING CLAIMS AND COMPLAINTS**

Section 7 of the Act empower the appropriate Government appoint such officers, not below the rank of a Labour Officer, as it thinks fit to be the authorities for the purpose of hearing and deciding complaints with regard to the contravention of any provision of the Act; claims arising out of non-payment of wages at equal rates to men and women workers for the same work or work of a similar nature; and define the local limits within which each such authority shall exercise its jurisdiction.

### **MAINTENANCE OF REGISTERS**

As per section 8 it is the duty of every employer, to maintain registers and other documents in relation to the workers employed by him in the prescribed manner.

### **PENALTY**

If any employer:- (i) makes any recruitment in contravention of the provisions of this Act; or (ii) makes any payment of remuneration at unequal rates to men and women workers for the same work or work of a similar nature; or (iii) makes any discrimination between men and women workers in contravention of the provisions of this Act; or (iv) omits or fails to carry out any direction made by the appropriate Government, then he/ she shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with imprisonment for a term which shall be not less than three months but which may extend to one year or with both for the first offence, and with imprisonment which may extend to two years for the second and subsequent offences.

### **OFFENCES BY COMPANIES**

- (1) Where an offence under this Act has been committed by 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 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.

However, 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 had exercised all due diligence to prevent the commission of such offence.

- (2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or

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

*Explanation.*-For the purposes of this section,--

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

### LESSON ROUND-UP

- Equal Remuneration Act, 1976 provides for the payment of equal remuneration to men and women workers and for the prevention of discrimination, on the ground of sex, against women in the matter of employment and for matters connected therewith or incidental thereto.
- Same work or Work of a similar nature means work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions, by a man or a woman and the differences, if any, between the skill, effort and responsibility required of a man and those required of a woman are not of practical importance in relation to the terms and conditions of employment.
- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the commencement of this Act, or in any instrument having effect under any law for the time being in force.
- The Act provides that no employer shall pay to any worker, employed by him in an establishment or employment, remuneration, whether payable in cash or in kind, at rates less favourable than those at which remuneration is paid by him to the workers of the opposite sex in such establishment or employment for performing the same work or work of a similar nature and employer shall not reduce the rate of remuneration of any worker.
- Employer while making recruitment for the same work or work of a similar nature, or in any condition of service subsequent to recruitment such as promotions, training or transfer, shall not make any discrimination against women except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force.
- It is the duty of every employer required to maintain registers and other documents in relation to the workers employed by him in the prescribed manner.
- If any employer:- (i) makes any recruitment in contravention of the provisions of this Act; or (ii) makes any payment of remuneration at unequal rates to men and women workers for the same work or work of a similar nature; or (iii) makes any discrimination between men and women workers in contravention of the provisions of this Act; or (iv) omits or fails to carry out any direction made by the appropriate Government, then he/ she shall be punishable with fine or with imprisonment or with both.

### TEST YOURSELF

*(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)*

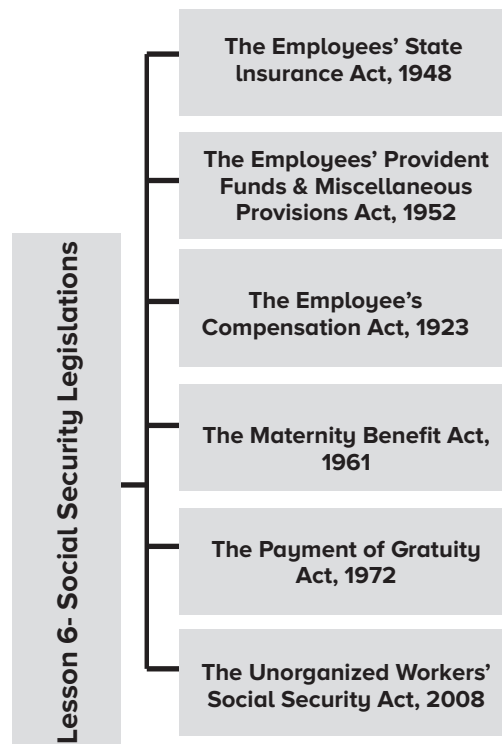
- Briefly explain the object of Equal Remuneration Act, 1976.
- Define the terms "Remuneration" and "Same work or Work of a similar nature".
- Enumerate the duties of employer under Equal Remuneration Act, 1976.
- Write short notes on maintenance of Register and Return under the Act.
- State the provisions regarding offence by companies under Equal Remuneration Act, 1976.



# Social Security Legislations

The social security legislations in India derives their strength and spirit from the Directive Principles of the State Policy as contained in the Constitution of India. These provide for mandatory social security benefits either solely at the cost of the employers or on the basis of joint contribution of the employers and the employees. While protective entitlements accrue to the employees, the responsibilities for compliance largely rest with the employers. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is a welfare legislation enacted for the purpose of instituting provident funds, pension fund and deposit linked insurance fund for employees working in factories and other establishments. The Act aims at providing social security and timely monetary assistance to Industrial employees and their families when they are in distress and/or unable to meet family and social obligations and to protect them in old age, disablement, early death of the bread winner and In some other contingencies. Presently, the following three Schemes are in operation under the Act through the Employees' Provident Fund Organisation (EPFO). They are Employees' Provident Funds Scheme, 1952; Employees' Deposit Linked Insurance Scheme, 1976 and Employees' Pension Scheme, 1995.

The principal social security laws enacted for the organised sector in India are:



## SECTION I: THE EMPLOYEES' COMPENSATION ACT, 1923

### KEY CONCEPTS

- Compensation ■ Dependant ■ Employee ■ Employer ■ Seaman ■ Wages ■ Disablement

### Learning Objectives

#### To understand:

- The object and Scope of the Employees' Compensation Act, 1923
- The meaning of compensation, Employee, Employer and Disablement
- The responsibility of the employer for compensation
- The liability of employer when contractor is engaged
- The amount of compensation to be paid when due
- Obligations and responsibility of employer
- The procedure in the proceedings before the commissioner

### Lesson Outline

- |  |   |
|--|---|
| ➤ Introduction   | ➤ Procedure in the proceedings before the Commissioner                          |
| ➤ Object and Scope   | ➤ Appeals   |
| ➤ Disablement  | ➤ Penalties   |
| ➤ Employer's Liability for Compensation in cases of occupational disease | ➤ Special provisions relating to Masters and Seamen                             |
| ➤ Employer's Liability for Compensation In cases of personal injuries    | ➤ Special provisions relating to captains and crew of aircrafts                 |
| ➤ Employer's liability when Contractor is engaged                        | ➤ Special provisions relating to workmen abroad of companies and motor vehicles |
| ➤ Compensation   | ➤ Compliances under the Act   |
| ➤ Obligations and Responsibility of Employer                             | ➤ Schedules   |
| ➤ Notice and Claim   | ➤ Lesson Round-Up   |
| ➤ Medical Examination  | ➤ Test Yourself   |

**Employees' Compensation Act, 1923 provides for the payment by certain classes of employers to their employees of compensation for injury by accident.**

## INTRODUCTION

The passing of the Workmen's Compensation Act renamed as Employees' Compensation Act, 1923 was the first step towards social security of workmen. It aims at providing financial protection to workmen and their dependants in case of accidental injury by means of payment of compensation by the employers.

The Employees' Compensation Act, 1923 provides for payment of compensation to the employees' and their dependents in the case of injury by industrial accidents including certain occupational diseases arising out of and in the course of employment resulting in death or disablement.

This Act applies to certain railway servants and persons employed in hazardous employments such as factories, mines, plantations mechanically propelled vehicles, construction work etc. The Workmen's Compensation Act, 1923 has been renamed as the Employees' Compensation Act, 1923. For the words "workman" and "employee" and "employees" have been substituted respectively for making the Act gender neutral.

## OBJECT AND SCOPE

The Employees' Compensation Act is social security legislation. It imposes statutory liability upon an employer to discharge his moral obligation towards his employees when they suffer from physical disabilities and diseases during the course of employment in hazardous working conditions. The Act also seeks to help the dependents of the employee rendered destitute by the 'accidents' and from the hardship arising out from such accidents. The Act provides for cheaper and quicker mode of disposal of disputes relating to compensation through special proceedings than possible under the civil law. The Act extends to the whole of India.

## DEFINITIONS

Some important definitions are given below:

### (i) Dependant

Section 2(1)(d) of the Act defines "dependant" as to mean any of the following relatives of a deceased employee, namely:

- (i) a widow, a minor legitimate or adopted son, an unmarried legitimate or adopted daughter, or a widowed mother, and
- (ii) if wholly dependent on the earnings of the employee at the time of his death, a son or a daughter who has attained the age of 18 years and who is infirm; and
- (iii) if wholly or in part dependent on the earnings of the employee at the time of his death:
  - (a) a widower,
  - (b) a parent other than a widowed mother,
  - (c) a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or illegitimate or adopted if married and a minor, or if widowed and a minor,
  - (d) a minor brother or an unmarried sister, or a widowed sister if a minor,
  - (e) a widowed daughter-in-law,
  - (f) a minor child of a pre-deceased son,
  - (g) a minor child of a pre-deceased daughter where no parent of the child is alive or
  - (h) a paternal grandparent, if no parent of the employee is alive.

*Explanation* For the purpose of sub-clause (ii) and items (f) and (g) of sub-clause (iii) references to a son, daughter or child include an adopted son, daughter or child respectively.

**(ii) Employee**

The definition of workmen has been replaced by the definition of employee. The term “employee” has been inserted by the Workmen’s Compensation (Amendment) Act, 2009 under a new clause (dd) in Section 2 of the Act. Clause (n) defining “workman” has been omitted.

Under Section 2(dd) “employee” has been defined as follows:

“Employee” means a person, who is –

- (i) a railway servant as defined in clause (34) of section 2 of the Railways Act, 1989 (24 of 1989), not permanently employed in any administrative district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II; or
- (ii) (a) a master, seaman or other members of the crew of a ship,  
(b) a captain or other member of the crew of an aircraft,  
(c) a person recruited as driver, helper, 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
- (iii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to any employee who has been” injured shall, where the employee is dead, include a reference to his dependants or any of them.

**(iii) Employer**

The following persons are included in the definition of “employer”:

- (a) any body of persons incorporated or not;
- (b) any managing agent of the employer;
- (c) legal representative of a deceased employer. Thus, one who inherits the estate of the deceased, is made liable for the payment of compensation under the Act. However, he is liable only upto the value of the estate inherited by him;
- (d) any person to whom the services of an employee are temporarily lent or let on hire by a person with whom the employee has entered into a contract of service or apprenticeship. [Section 2(1)(e)]

A contractor falls within the above definition of the employer. Similarly, a General Manager of a Railway is an employer (*Bajjnath Singh v. O.T. Railway*, A.I.R. 1960 All 362).

**(iv) Seaman**

“Seaman” under Section 2(1)(k) means any person forming part of the crew of any ship but does not include the master of the ship.

**(v) Wages**

According to Section 2(1)(m), the term “wages” include any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer to an employee towards any pension or provident fund or a sum paid to employee to cover any special expenses entailed on him by the nature of his employment.

Wages include dearness allowance, free accommodation, overtime pay, etc. (*Godawari Sugar Mills Ltd. v. Shakuntala; Chitru Tanti v. TISCO; and Badri Prasad v. Trijugi Sitaram*).

The driver of a bus died in an accident. On a claim for compensation made by widow it was held that line allowance and night out allowance came under the privilege or benefit which is capable of being estimated in money and can be taken into consideration in computing compensation as part of wages (*KSRTC Bangalore v. Smt. Sundari*, 1982 Lab. I.C. 230). The claim of bonus being a right of the workman is a benefit forming part of wages and the same can be included in wages (LLJ-II 536 Ker.).

## DISABLEMENT

The Act does not define the word Disablement. It only defines the partial and total disablement. After reading the partial or total disablement as defined under the Act one may presume that disablement is loss of earning capacity by an injury which depending upon the nature of injury and percentage of loss of earning capacity will be partial or total. The Act has classified disablement into two categories, viz. (i) Partial disablement, and (ii) Total disablement.

### (i) Partial disablement

Partial disablement can be classified as temporary partial disablement and permanent partial disablement.

- (a) *Where the disablement is of a temporary nature:* Such disablement as reduces the earning capacity of an employee in the employment in which he was engaged at the time of the accident resulting in the disablement; and
- (b) *Where the disablement is of a permanent nature:* Such disablement as reduces for all time his earning capacity in every employment which he was capable of undertaking at the time. [Section 2(1)(g)] But every injury specified in Part II of Schedule I shall be deemed to result in permanent partial disablement.

Schedule I contains list of injuries deemed to result in Permanent Total/Partial disablement.

In case of temporary partial disablement, the disablement results in reduction of earning capacity in respect of only that employment in which he was engaged at the time of accident. This means the employee's earning capacity in relation to other employment is not affected. But in case of permanent partial disablement, the disablement results in reduction in his earning capacity in not only the employment in which he was engaged at the time of accident but in all other employments.

Whether the disablement is temporary or permanent and whether it results in reduction of earning capacity, the answer will depend upon the fact of each case, except when the injury is clearly included in Part II of Schedule I.

**In the case of *Sukhai v. Hukam Chand Jute Mills Ltd.*, A.I.R. 1957 Cal. 601, it was observed:**

**"If a workman suffers as a result of an injury from a physical defect which does not in fact reduce his capacity to work but at the same time makes his labour unsaleable in any market reasonably accessible to him, there will be either total incapacity for work when no work is available to him at all or there will be a partial incapacity when such defect makes his labour saleable for less than it would otherwise fetch. The capacity of a workman may remain quite unimpaired, but at the same time his eligibility as an employee may be diminished or lost if such a result ensue by the reason of the results of an accident, although the accident has not really reduced the capacity of the workman to work. He can establish a right to compensation, provided he proves by satisfactory evidence that he has applied to a reasonable number of likely employers for employment, but had been turned away on account of the results of the accident visible on his person."**

If after the accident a worker has become disabled, and cannot do a particular job but the employer offers him another kind of job, the worker is entitled to compensation for partial disablement (*General Manager, G.I.P. Rly. v. Shankar*, A.I.R. 1950 Nag. 307).

*Deemed to be permanent partial disablement:* Part II of Schedule I contains the list of injuries which shall be deemed to result in permanent partial disablement.

Complete and permanent loss of the use of any limb or member referred to in this Schedule shall be deemed to be the equivalent to the loss of that limb or member.

Note to Schedule I On the question whether eye is a member or limb as used in the note to Schedule I it was held that considering the meaning as stated in the Oxford Dictionary as also in the Medical Dictionary, it could be said that the words limb or member include any organ of a person and in any case it includes the eye [*Lipton (India) Ltd. v. Gokul Chandran Mandal*; 1981 Lab. I.C. 1300].

### **(ii) Total disablement**

Total disablement can also be classified as temporary total disablement and permanent total disablement.

“Total disablement” means, such disablement whether of a temporary or permanent nature, which incapacitates an employee for all work which he was capable of performing at the time of accident resulting in such disablement. Provided further that permanent total disablement shall be deemed to result from every injury specified in Part I of Schedule I or similarly total disablement shall result from any combination of injuries specified in Part II of Schedule I, where the aggregate percentage of loss of earning capacity, as specified in the said Part II against these injuries amount to one hundred per cent or more. [Section 2(1)(l)]

**Some judicial interpretations on the subject are as follows:**

**The expression incapacitates a workman for all work does not mean capacity to work or physical incapacity. If due to any physical defect, a workman is unable to get any work which a workman of his class ordinarily performs, and has thus lost the power to earn he is entitled to compensation for total disablement (*Ball v. William Hunt & Sons Ltd.*, 1912 A.C. 496). It is immaterial that the workman is physically fit to perform some work. Thus, where a workman, though physically capable of doing the work cannot get employment in spite of his best efforts, he becomes incapacitated for all work and hence entitled to compensation for total disablement.**

**Loss of physical capacity is co-extensive with loss of earning capacity but loss of earning is not so co-extensive with loss of physical capacity as he may be getting the same wages even though there may be loss of physical capacity. In a case permanent partial disability caused to a workman in accident while working on ship, e.g. getting pain in his left hand and experiencing difficulty in lifting weights, it was held that workman can be said to have lost his earning capacity even though getting same amount of wages as before *Mangru Palji v. Robinsons*, 1978 Lab. I.C. 1567 (Bom.). Where it is not a scheduled injury the loss of earning capacity must be proved by evidence.**

Where the worker lost his vision of one eye permanently in an accident in course of his employment in colliery, the compensation should be assessed in accordance with item 26 Part II in Schedule I (*Katras Jherriah Coal Co. Ltd. v. Kamakhya Paul*, 1976 Lab.I.C.751).

In an injury the workman, had amputated his left arm from elbow, who was a carpenter. It was held by the Supreme Court in *Pratap Narain Singh Deo v. Srinivas Sabata*, 1976 I Lab.L.J.235, that it is a total disablement as the carpenter cannot carry his work with one hand and not a partial permanent disablement.

**Where the workman, a driver of bus belonging to the employer was involved in an accident which resulted in an impairment of the free movement of his left hand disabling him from driving vehicles, it was held that this is not one of the injuries mentioned in the 1st Schedule which are accepted to result in permanent total disablement. In the present case the workman was also capable of performing duties and executing works other than driving vehicles. Nature of injury to be determined not on the basis of the work he was doing at the time of accident (*Divisional Manager KSRTC v. Bhimaiah*, 1977 II L.L.J. 521).**

## EMPLOYER'S LIABILITY FOR COMPENSATION

Section 3 of the Act provides for employers liability for compensation in case of occupational disease or personal injuries and prescribes the manner in which his liability can be ascertained.

### **(a) In cases of occupational disease**

- (i) Where an employee employed in any employment specified in Part A of Schedule III contracts any disease specified therein, as an occupational disease, peculiar to that employment, the contracting of disease shall be deemed to be an injury by accident arising out of and in the course of employment.
- (ii) Where the employee employed in any employment specified in Part B of Schedule III, for a continuous period of not less than six months under the same employer, and whilst in the service contracts any disease specified in the Part B of Schedule III, the contracting of disease shall be deemed to be an injury by accident arising out of and in the course of employment. The employer shall be liable even when the disease was contracted after the employee ceased to be in the service of the employer, if such disease arose out of the employment.
- (iii) If an employee whilst in service of one or more employers (not necessarily the same employer) in any employment specified in Part C of Schedule III for such continuous period as the Central Government may specify, contracts any disease, even after he ceased to be in the service of any employer and disease arose out of such employment, specified in the Schedule, the contracting of disease shall be deemed to be an injury by accident arising out of and in the course of employment.

However, where the employment was under more than one employer, all such employers shall be liable for the payment of the compensation in such proportion as the Commissioner may in circumstances deem just. [Section 3(2A)]

- (iv) If it is proved:
  - (a) that the employee whilst in the service of one or more employers in any employment specified in Part C of Schedule III has contracted a disease specified therein as an occupational disease peculiar to that employment during a continuous period which is less than the period specified under this sub-section for that employment, and
  - (b) that the disease has arisen out of and in the course of the employment;
 

the contracting of such disease shall be deemed to be an injury by accident within the meaning of this section.
- (v) The Central Government or the State Government after giving, by notification in the Official Gazette, not less than three months notice of its intention so to do, may, by a like notification, add any description of employment to the employments specified in Schedule III, and shall specify in the case of employments so added the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively, and thereupon the provisions of Sub-section (2) shall apply in the case of a notification by the Central Government, within the territories to which this Act extends or, in case of a notification by the State Government, within the State as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.
- (vi) Except as mentioned above no compensation shall be payable to an employee in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment.



**(b) In case of personal injury**

As regards personal injury, the employer becomes liable if the injury is caused to an employee by accident arising out of and in the course of his employment.

**(i) Personal injury**

There must be personal injury caused to an employee.

Normally, Injury implies physical or bodily injury caused by an accident. However, such personal injury will also include nervous shock or break-down or mental strain. In the case of *Indian News Chronicle v. Mrs. Lazarus*, A.I.R. 1961, Punj. 102, an electrician who had to go frequently to a heating room from a cooling plant, contracted pneumonia which resulted in his death. It was held that the injury caused by an accident is not confined to physical injury and the injury in the instant case was due to his working and going from a heating room to a cooling plant as it was his indispensable duty.

**(ii) Accident**

The personal injury must be caused by an “accident”.

The term “accident” has not been defined in the Act but its meaning has been sufficiently explained in number of decided cases. The expression accident must be construed to its popular sense. It has been defined as a mishap or an untoward event which is not expected or designed. What the Act intends to cover is what might be expressed as an accidental injury.

**In the case of *Smt. Sunderbai v. The General Manager, Ordinance Factory Khamaria, Jabalpur, 1976 Lac. I.C. 1163 (MP)*, the Madhya Pradesh High Court has clarified the difference between accident and injury. Accident means an untoward mishap which is not expected or designed by workman, ‘Injury’ means physiological injury. Accident and injury are distinct in cases where accident is an event happening externally to a man, e.g., where a workman falls from the ladder and suffers injuries. But accident may be an event happening internally to a man and in such cases accident and injury coincide. Such cases are illustrated by failure of heart and the like, while the workman is doing his normal work. Physiological injury suffered by a workman mainly due to the progress of disease unconnected with employment may amount to an injury arising out of and in the course of employment if the work, that the workman was doing at the time of the occurrence of the injury contributed to its occurrence. The connection between employment must be furnished by ordinary strain of ordinary work if the strain did in fact contribute to accelerate or hasten the injury. The burden of proof is on applicant to prove the connection of employment and injury.**

**(iii) Arising out of employment and in the course of employment**

To make the employer liable, it is necessary that the injury is caused by an accident which must be raised out of and in the course of employment.

*Arising out of employment*

The expression “arising out of employment” suggests some causal connection between the employment and the accidental injury. The cause contemplated is the proximate cause and not any remote cause. Thus, where a workman suffers from heart disease and dies on account of strain of work by keeping continuously standing or working, held that the accident arose out of employment (*Laxmibai Atma Ram v. Bombay Port Trust*, AIR 1954 Bom.180). Generally, if an employee is suffering from a particular disease and as a result of wear and tear of his employment he dies of that disease, employer is not liable. But if the employment is contributory cause or has accelerated the death that the death was due to disease coupled with the employment, then the employer would be liable as arising out of the employment.

In the case of *Mackenzie v. I.M. Issak*, it was observed that the words arising out of employment means that injury has resulted from risk incidental to the duties of the service which unless engaged in the duty owing to the master, it is reasonable to believe that the workman would not otherwise have suffered. There must be a casual relationship between the accident and the employment.

If the accident had occurred on account of a risk which is an incident of the employment, the claim for compensation must succeed unless of course the workman has exposed himself to do an added peril by his own imprudence.

The Supreme Court in *Mackinnon Mackenzie and Co. (P.) Ltd. v. Ibrahim Mohammed Issak*, AIR 1970 S.C. 1906 approving the observation of Lord Summer made in *Lancashire and Yorkshire Railway Co. v. Highley*, 1917 A.C. 352, observed that the test is: was it part of the injured persons employment to hazard, to suffer or to do that which caused his injury? If yes, the accident arose out of his employment, if not it did not.

#### ***Arising in the course of employment***

The expression "in the course of employment" suggests the period of employment and the place of work. In other words, the workman, at the time of accident must have been employed in the performance of his duties and the accident took place at or about the place where he was performing his duties.

The expression "employment" is wider than the actual work or duty which the employee has to do. It is enough if at the time of the accident the employee was in actual employment although he may not be actually turning out the work. Even when the employee is resting, or having food, or taking his tea or coffee, proceeding from the place of employment to his residence, and accident occurs, the accident is regarded as arising out of and in the course of employment.

The word "employment" has a wider meaning than work. A man may be in course of his employment not only when he is actually engaged in doing something in the discharge of his duty but also when he is engaged in acts belonging to and arising out of it [*Union of India v. Mrs. Noorjahan*, 1979 Lab. I.C. 652].

For the expression "accident arising out of and in the course of employment" the basic and indispensable ingredient is unexpectedness. The second ingredient is that the injury must be traceable within reasonable limits, to a definite time, place or occasion or cause. The Act should be broadly and liberally constructed in order to effectuate the real intention and purpose of the Act.

#### **(iv) *Theory of notional extension of employment***

To make the employer liable it is necessary that the injury caused by an accident must have arisen in the course of employment. It means that the accident must take place at a time and place when he was doing his master's job.

It is well settled that the concept of "duty" is not limited to the period of time the workman actually commenced his work and the time he downs his tools. It extends further in point of time as well as place. But there must be nexus between the time and place of the accident and the employment. If the presence of the workman concerned at the particular point was so related to the employment as to lead to the conclusion that he was acting within the scope of employment that would be sufficient to deem the accident as having occurred in the course of employment [*Weaver v. Tradegar Iron and Coal Co. Ltd.*, (1940) 3 All, ER 15].

It is known as doctrine of notional extension of employment; whether employment extends to the extent of accident depends upon each individual case.

A workman while returning home after duty was murdered within the premises of the employer. It was held that there was casual and proximate connection between the accident and the employment. Since the workman was on spot only for his employment and his wife is entitled for compensation

[*Naima Bibi v. Lodhne Colliery (1920) Ltd.*, 1977 Lab. I.C. NOC 14]. If an employee in the course of his employment has to be in a particular place by reason where he has to face a peril which causes the accident then the casual connection is established between the accident and the employment [*TNCS Corporation v. Poonamalai*, 1994 II LLN 950].

**(v) When employer is not liable**

In the following cases, the employer shall not be liable:

- (i) When the injury does not result in total or partial disablement for a period exceeding 3 days.
- (ii) When the injury not resulting in death or permanent total disability is due to any of the following reasons:
  - (a) the employee was at the time of accident, under the influence of drink or drugs, or
  - (b) the employee wilfully disobeyed an order expressly given or a rule expressly framed for the purpose of securing safety of workers, or
  - (c) the employee, wilfully disregards or removes any safety guards or safety devices which he knew to have been provided for the safety of the employee.

Thus, where a employee dies due to an accident arising out of and in the course of employment, it cannot be pleaded that death was due to any of the reasons stated from (a) to (c) [*R.B. Moondra & Co. v. Mst. Bhanwari*, AIR, 1970 Raj. 111].

**(c) Suit for damages in a Court barred**

Under Section 3(5), an employee is not entitled to any compensation under the Workmen's Compensation Act, 1923, if he has instituted, in a Civil Court, a suit for damages against the employer or any other person.

Similarly, an employee is prohibited from instituting a suit for damages in any court of law, (a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or (b) if the employee and the employer have entered into an agreement for the payment of compensation in accordance with the provisions of this Act.

## EMPLOYER'S LIABILITY WHEN CONTRACTOR IS ENGAGED

Section 12 of the Act envisages the employer's liability to pay compensation to a contractor.

- (i) Sometimes, employer may engage a contractor instead of employing his own employee for the purpose of doing any work in respect of his trade or business. Such a contractor then executes the work with the help of the employee engaged by him. If any injury is caused by an accident to any of these employees, the employer cannot be held liable because they are not employed by him and hence are not his employees. But now Section 12(1) makes the employer liable for compensation to such employees hired by the contractor under following circumstances:
  - (a) The contractor is engaged to do a work which is part of the trade or business of the employer (called principal).
  - (b) The employee was engaged in the course of or for the purpose of his trade or business.
  - (c) The accident occurred in or about the premises on which the principal employer has undertaken or undertakes to execute the work concerned.

The amount of compensation shall be calculated with reference to the wages of the employee under the employer by whom he is immediately employed.

- (ii) According to Section 12(2), where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor or any other person from whom the employee could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section, he shall be entitled to be indemnified by any person standing to him in relation of a contractor from whom the employee could have recovered

compensation and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

- (iii) The above provision, however, does not prevent an employee from recovering compensation from the contractor instead of the employer, i.e., the Principal. [Section 12(3)]
- (iv) This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken, or usually undertakes, as the case may be to execute the work or which are otherwise under his control or management. [Section 12(4)]

**Following illustrative cases will further clarify the law laid down in Section 12:**

- (a) A Municipal Board entrusted the electrification work of the town to State employees. An employee received injuries while performing his work. *Held*, it is the State and not the Board, liable to pay compensation because execution of electrical project is not the ordinary business of the Municipal Board (A.I.R. 1960 All 408).
- (b) A contractor was entrusted with the repairs of a defective chimney. An employee engaged by him was injured while carrying out repairs. *Held*, mill was not liable for compensation as the repairing of chimney is not the part of company's trade or business, whether ordinarily or extraordinarily.
- (c) A cartman was engaged by a Rice Mill to carry rice bags from mill to railway station. The cartman met with an accident on a public road while returning back from railway station and this resulted in his death. There was no evidence to show that employee was engaged through a contractor. In a suit for compensation against the mill owner, it was observed that Section 12 is not applicable where the accident arise out of and in the course of employment. Even assuming that the deceased was in the employment of contractor engaged by the employer, the liability of the owner was clear from Section 12(1) and it had not been excluded by reason of Section 12(4).

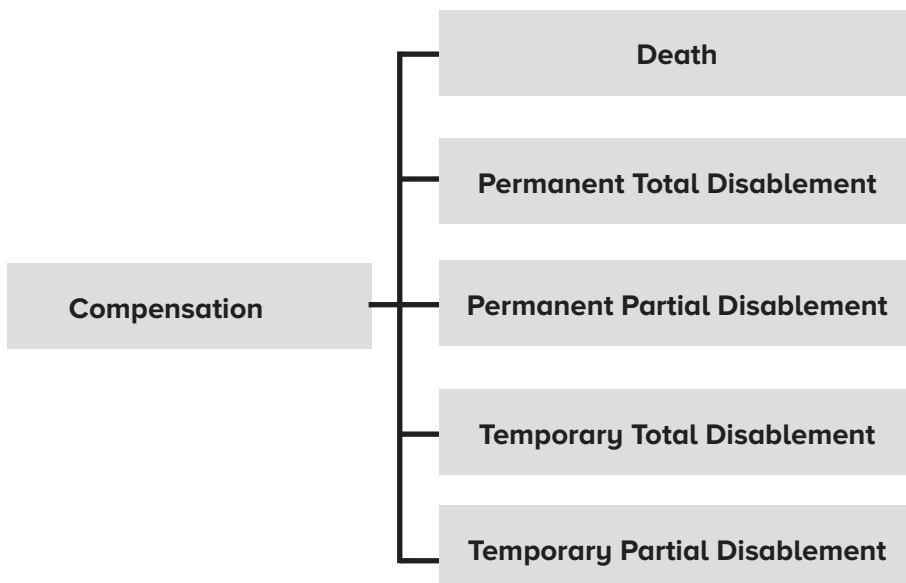
## COMPENSATION

### (i) Meaning of compensation

"Compensation" has been defined under Section 2(1)(c) of the Act to mean compensation as provided for by this Act. The meaning of the term will be more clear in the following paragraphs.

### (ii) Amount of compensation

Section 4 Provides for Compensation for:-



- **Compensation in case of Death**

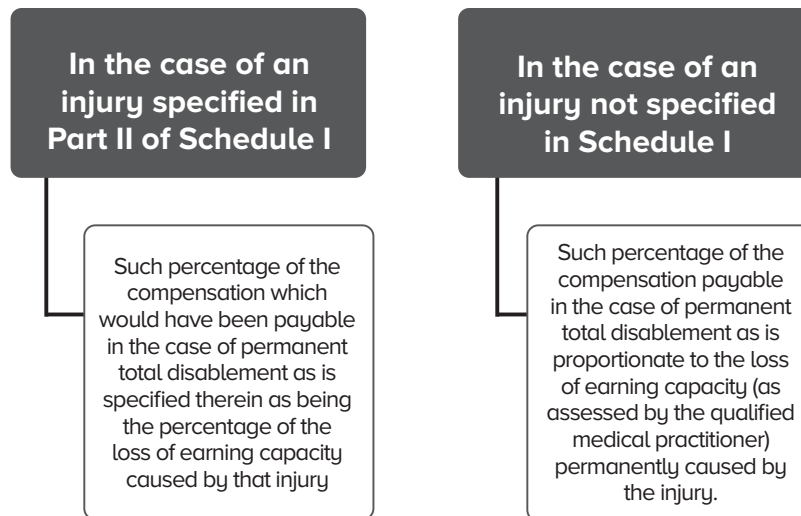
Where death results from the injury an amount equal to fifty per cent. of the monthly wages of the deceased employee multiplied by the relevant factor; or an amount of one lakh and twenty thousand rupees, whichever is more.

- **Compensation in case of Permanent Total Disablement**

Where permanent total disablement results from the injury an amount equal to sixty per cent. of the monthly wages of the injured employee multiplied by the relevant factor; or an amount of one lakh and forty thousand rupees, whichever is more.

- **Compensation in case of Permanent Partial Disablement**

Where permanent partial disablement results from the injury.



- **Compensation in case of Temporary total or Partial Disablement**

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 monthly wages of the employee, to be paid.

The employee shall be reimbursed the actual medical expenditure incurred by him for treatment of injuries caused during the course of employment. If the injury of the employee results his death, the employer shall, in addition to the compensation, 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 employee towards the expenditure of the funeral of such employee or where the employee 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.

**(iii) Compensation to be paid when due and penalty for default**

*Time of payment of compensation:* Section 4A of the Act provides that compensation under Section 4 shall be paid as soon as it falls due. Compensation becomes due on the date of death of employee and not when Commissioner decides it (*Smt. Jayamma v. Executive Engineer, P.W.D. Madhugiri Division, 1982 Lab. I.C. No.61*).

The employer is required to deposit or to make provisional payment based on the extent of liability which he accepts with the Commissioner or hand over to the employee as the case may be even if the employer does not admit the liability for compensation to the extent claimed.

Where an employer is in default in paying compensation, he would be liable to pay interest thereon and also a further sum not exceeding fifty percent of such amount of compensation as penalty. The interest and the penalty stated above is to be paid to the employee or his dependent as the case may be.

**(iv) Method of calculating wages**

Monthly wages mean the amount of wages deemed to be payable for a months service and calculated as follows:

- (a) Where the employee has, during a continuous period of not less than 12 months immediately preceding the accident, been in the service of the employer who is liable to pay compensation, the monthly wages of the employee shall be 1/12th of the total wages which have fallen due for payment to him by the employer in the last 12 months of that period.
- (b) Where the whole of the continuous period of service was less than one month, the monthly wages of the employee shall be the average monthly amount which during the 12 months immediately preceding the accident was being earned by an employee employed on the same work by the same employer, or, if there was no employee so employed, by an employee employed on similar work in the same locality.
- (c) In other cases, including cases in which it is not possible to calculate the monthly wages under clause (b), the monthly wages shall be 30 times the total wages earned in respect of the last continuous period of service, immediately preceding the accident from the employer who is liable to pay compensation, divided by the number of days comprising such period. (Section 5)

A period of service shall be deemed to be continuous which has not been interrupted by a period of absence from work exceeding 14 days.

**(v) Review of half-monthly payment**

Section 6 of the Act provides that any half-monthly payment payable under this Act, either under an agreement between the parties or under the order of a Commissioner may be reviewed by the Commissioner on the application either of the employer or of the employee accompanied by the certificate of a qualified medical practitioner that there has been a change in the condition of the employee or subject to rules made under this Act, an application made without such certificate.

Any half monthly payment, may on review, under the above provisions be continued, increased, decreased or ended, or if the accident is found to have resulted in permanent disablement, be converted to the lump sum to which the employee is entitled less any amount which he has already received by way of half-monthly payments.

**(vi) Commutation of half monthly payments**

Section 7 of the Act provides that any right to receive half-monthly payments may, by agreement between the parties or if the parties cannot agree and the payments have been continued for not less than 6 months on the application of either party to the Commissioner, be redeemed by the payment of a lump sum of such amount as may be agreed to by the parties or determined by the Commissioner as the case may be.

**(vii) Distribution of compensation**

No compensation has to be paid in respect of an employee whose injury has resulted in death and no payment of lump sum compensation to a woman or a person under a legal disability except by deposit with the Commissioner. The employer cannot make payment of compensation directly to the deceased legal heirs. It is the Commissioner who decides on the distribution of compensation to the legal heirs of the deceased employee. (Section 8)

Right to claim compensation passes to heirs of dependant as there is no provision under the Act to this effect (*AIR 1937 Cal. 496*). *Payment of ex-gratia or employment on compassionate grounds will not be employers' liability* (*LAB IC 1998 JK 767*).

**(viii) Compensation not to be assigned etc.**

Save as provided by this Act, no lump sum or half-monthly payment payable under this Act can be assigned, or charged or attached or passed to any person other than the employee by operation of law nor can any claim be set-off against the same. (Section 9)

**(ix) Compensation to be first charge**

The compensation money shall bear the first charge on the assets transferred by the employer. It says that where an employer transfers his assets before any amount due in respect of any compensation, the liability whereof accrued before the date of transfer has been paid, such amount shall, notwithstanding any thing contained in any other law for the time being in force, be a first charge on that part of the assets so transferred as consists of immovable property. (Section 14A)

**(x) Insolvency of employer and the compensation**

Following provisions under Section 14 of the Act have been made in this respect:

- (i) Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any employee, then in the event of the employer becoming insolvent or making a composition or scheme of arrangement with his creditors or, if the employer is a company, in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in any law for the time being in force relating to insolvency or the winding up of companies, be transferred to and vest in the employee, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so, however, that the insurers shall not be under any greater liability to the employee than they would have been under the employer.
- (ii) If the liability of the insurers to the employee is less than the liability of the employer to the employee, the employee may prove for the balance in the insolvency proceedings or liquidation.
- (iii) Where in any case such as is referred to in sub-section (1) the contract of the employer with the insurers is void or voidable by reason of non-compliance on the part of the employer with any terms or conditions of the contract (other than a stipulation for the payment of premia), the provisions of that sub-section shall apply as if the contract were not void or voidable, and the insurers shall be entitled to prove in the insolvency proceedings or liquidation for the amount paid to the employee.

But the employee is required to give notice of accident and resulting disablement therefrom to the insurers as soon as possible after he becomes aware of the insolvency or liquidation proceedings otherwise the above provisions shall not be applied.

- (iv) There shall be deemed to be included among the debts which under Section 49 of the Presidency Towns Insolvency Act, 1909, or under Section 61 of the Provincial Insolvency Act, 1920 or under Section 530 of the Companies Act, 1956, are in the distribution of property of an insolvent or in the distribution of the assets of a company being wound up to be paid in priority to all other debts, the amount due in respect of any compensation the liability whereof accrued before the date of the order of adjudication of the insolvent or the date of the commencement of the winding up, as the case may be, and those Acts shall have effect accordingly.
- (v) Where the compensation is half-monthly payment, the amount due in respect thereof shall, for the purposes of this Section, be taken to be the amount of the lump sum for which the half-monthly, payment could, if redeemable be redeemed if application were made for that purpose under Section 7, and a certificate of the Commissioner as to the amount of such sum shall be conclusive proof thereof.
- (vi) The provisions of sub-section (iv) shall apply in the case of any amount for which an insurer is entitled to prove under sub-section (iii) but otherwise those provisions shall not apply where the insolvent or the company being wound up has entered into such a contract with insurers as if referred to in sub-section (i).
- (vii) This Section shall not apply where a company is wound up voluntarily merely for purpose of reconstruction or of amalgamation with another company.

**(xi) Contracting out of compensation**

Section 17 provides that any contract or agreement whereby an employee relinquishes any right of compensation from the employer for personal injury arising out of or in the course of the employment shall



be null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under this Act. (Section 17)

### **Duty of employer to inform employee of his rights**

Every employer shall immediately at the time of employment of an employee, inform the employee of his rights to compensation under this Act, in writing as well as through electronic means, in English or Hindi or in the official language of the area of employment, as may be understood by the employee.

## **OBLIGATIONS AND RESPONSIBILITY OF AN EMPLOYER**

### **(i) Power of Commissioner to require from employers statements regarding fatal accidents**

- (a) Where a Commissioner receives information from any source that an employee has died as a result of an accident arising out of and in the course of his employment, he may send by registered post a notice to the employee's employer requiring him to submit, within thirty days of the service of the notice, a statement, in the prescribed form giving the circumstances attending the death of the employee, and indicating whether, in the opinion of the employer, he is or is not liable to deposit compensation on account of the death.
- (b) If the employer is of opinion that he is liable to deposit compensation, he shall make the deposit within thirty days of the service of the notice.
- (c) If the employer is of opinion that he is not liable to deposit compensation, he shall in his statement indicate the grounds on which he disclaims liability.
- (d) Where the employer has so disclaimed liability, the Commissioner, after such inquiry as he may think fit, may inform any of the dependents of the deceased employee, that it is open to the dependents to prefer a claim for compensation and may give them such other further information as he may think fit. (Section 10A)

### **(ii) To submit reports of fatal accidents and serious bodily injuries**

- (i) Where by any law for the time being in force, notice is required to be given to any authority, by or on behalf of an employer, of any accident occurring in his premises which results in death or serious bodily injury, the person required to give the notice shall, within seven days of the death or serious bodily injury, send a report to the Commissioner giving the circumstances attending the death or serious bodily injury in the prescribed form (Form EE of the Workmen's Compensation Rules: Rule 17).

"Serious bodily injury" means an injury which involves, or in all probability will involve, the permanent loss of the use of, or permanent injury to, any limb, or the permanent loss of or injury to the sight or hearing, or the fracture of any limb, or the enforced absence of the injured person from work for a period exceeding twenty days. [Explanation to Section 10B(1)]

- (ii) The State Government may, by notification in the Official Gazette, extend the provisions of sub-section (i) to any class of premises other than those coming within the scope of that sub-section, and may, by such notification, specify the persons who shall send the report to the Commissioner.
- (iii) Nothing in this section shall apply to the factories to which the Employees' State Insurance Act, 1948, applies. (Section 10B)

## **NOTICE AND CLAIM**

- (a) No claim for compensation shall be entertained by a Commissioner unless the notice of the accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof

and unless the claim is preferred before him within two years of the occurrence of the accident or, in case of death, within two years from the date of death. (Section 10)

Provided that:

- (i) where the accident is the contracting of a disease the accident shall be deemed to have occurred on the first of the days during which the employee was continuously absent from work in consequence of the disablement caused by the disease;
- (ii) in case of partial disablement due to the contracting of any such disease and which does not force the employee to absent himself from work, the period of two years shall be counted from the day the employee gives notice of the disablement to his employer;
- (iii) if an employee who, having been employed in an employment for a continuous period specified under sub-section 3(2) in respect of that employment ceases to be so employed and develops symptoms of an occupational disease peculiar to that employment within two years of the cessation of employment, the accident shall be deemed to have occurred on the day on which the symptoms were first detected.
- (iv) The want of or any defect or irregularity in a notice shall not be a bar to the entertainment of a claim:
  - (a) if the claim is preferred in respect of the death of an employee resulting from an accident which occurred in the premises of the employer, or at any place where the employee at the time of the accident was working under the control of the employer or of any person employed by him, and the employee died on such premises, or at such place, or on any premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurred, or
  - (b) if the employer or any one of several employers or any persons responsible to the employer for the management of any branch of the trade or business in which the injured employee was employed had knowledge of the accident from any other source at or about the time when it occurred.
- (v) The Commissioner may entertain and decide any claim to compensation in any case notwithstanding that the notice has not been given, or the claim has not been preferred, in due time as provided in this sub-section, if he is satisfied that the failure to give the notice or prefer the claim, as the case may be, was due to sufficient cause.
  - (a) Every such notice shall give the name and address of the person injured and shall state in ordinary language the cause of the injury and the date on which the accident happened, and shall be served on the employer or upon any one of several employers, or upon any person responsible to the employer for the management of any branch of the trade or business in which the injured employee was employed.
  - (b) The State Government may require that any prescribed class of employers shall maintain at their premises at which employees are employed a notice-book, in the prescribed form, which shall be readily accessible at all reasonable times to any injured employee employed on the premises and to any person acting bona fide on his behalf.
  - (c) A notice under this section may be served by delivering it at, or sending it by registered post addressed to the residence or any office or place of business of the person on whom it is to be served or, where a notice-book is maintained, by entry in the notice-book.

The Commissioner can initiate *suo motu* proceedings and can waive the period of limitation under this Section (1997-II-LLJ 292 All.).

## MEDICAL EXAMINATION

According to Section 11 of the Act:

- (i) Where an employee has given notice of an accident, he shall, if the employer, before the expiry of 3 days from the time at which service of the notice has been effected, offers to have him examined free

- of charge by a qualified medical practitioner, submit himself for such examination, and any employee who is in receipt of half-monthly payment under this Act shall, if so required, submit himself for such examination from time to time as per the rules under the Act.
- (ii) If an employee refuses to submit himself for examination by a qualified medical practitioner or in any way obstructs the same, his right to compensation shall be suspended during the continuance of such refusal, or obstruction unless, in the case of refusal, he was prevented by any sufficient cause from so submitting himself.
  - (iii) If an employee, voluntarily leaves without having been so examined the vicinity of the place in which he was employed, his right to compensation shall be suspended until he returns and officers himself for such examination.
  - (iv) Where an employee, whose right to compensation has been suspended under sub-section (ii) or sub-section (iii), dies without having submitted himself for medical examination as required by either of those sub-sections, the Commissioner may, if he thinks fit, direct the payment of compensation to the dependants of the deceased employee.
  - (v) Where under sub-section (ii) or sub-section (iii) a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension, and, if the period of suspension commences before the expiry of the waiting period referred to in clause (d) of sub-section (i) of Section 4, the waiting period shall be increased by the period during which the suspension continues.
  - (vi) Where an injured employee has refused to be attended by a qualified medical practitioner whose services have been offered to him by the employer free of charge or having accepted such offer has deliberately disregarded the instructions of such medical practitioner, then, if it is proved that the employee has not thereafter been regularly attended by a qualified medical practitioner or having been so attended had deliberately failed to follow his instructions and that such refusal, disregard or failure was unreasonable in the circumstances of the case and that the injury has been aggravated thereby, the injury and resulting disablement shall be deemed to be of the same nature and duration as they might reasonably have been expected to be if the employee had been regularly attended by a qualified medical practitioner, whose instructions he had followed, and compensation, if any, shall be payable accordingly.

The Allahabad High Court in *Burhwal Sugar Mills Ltd. v. Ramjan*, observed that Section 11 confers a right and not an obligation on employer to have workmen medically examined. If he does not do so it will not debar employer from challenging medical certificate produced by employee. The court held that where the award of compensation was passed on basis of medical certificate without examination of doctor on oath, the award was liable to be quashed since there was no evidence on oath on which compensation could be awarded.

## PROCEDURE IN THE PROCEEDINGS BEFORE THE COMMISSIONER

### (i) Appointment of Commissioners

Section 20 as amended by the Workmen's Compensation (Amendment) Act, 2009 provides that the State Government may, by notification in the Official Gazette, appoint any person who is or has been a member of a State Judicial Service for a period of not less than five years or is or has been for not less than five years an advocate or a pleader or is or has been a Gazetted Officer for not less than five years having educational qualifications and experience in personal management, human resource development and industrial relations to be a Commissioner for Workmen's Compensation for such area as may be specified in the notification. Where more than one Commissioner has been appointed for any area, the Government may by general or special order regulate the distribution of business between them.

Every Commissioner shall be deemed to be a public servant within the meaning of the Indian Penal Code. Section 20(3) empowers the Commissioner to appoint or choose any person, possessing special knowledge of any matter relevant to the matter under inquiry, to assist him in holding the inquiry.

**(ii) Reference to Commissioner and his jurisdiction**

Section 19(1) lays down jurisdiction of a Commissioner to entertain a claim in respect of payment of compensation to an employee. The Commissioner is empowered in default of an agreement to settle any question which may arise in any proceeding under this Act as to the liability of any person to pay compensation, and in particular, the Commissioner has jurisdiction over following matters:

- (a) Liability of any person to pay compensation.
- (b) Whether a person injured is or is not an employee?
- (c) The nature and extent of disablement.
- (d) The amount or duration of compensation.

If an application is made under the Employee's Compensation Act to the Commissioner, he has, by virtue of Section 19(1) of the Act, jurisdiction to decide any question as to the liability of any person including an insurer to pay compensation. Section 19(2) further provides that the enforcement of that liability can only be made by him. The Commissioner's jurisdiction is wide enough to decide the tenability of the objections; the consequential direction of the Commissioner to the insurer to pay is also covered under Section 19(1). In any event in execution of the order against the insured, namely, the employer, the Commissioner can enforce his liability against the insurer under Section 31. In the light of Section 19 read along with Section 31, the order of the Commissioner can never be challenged as being without jurisdiction [*United India Fire & General Insurance Co. Ltd. v. Kamalalshi*, (1980) 2 LLJ 408].

**(iii) Jurisdiction of Civil Court barred**

No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by a Commissioner or to enforce any liability incurred under this Act. [Section 19(2)] However, where the Commissioner has no jurisdiction to decide any matter and even fails to decide when raised, thereby leaving a party without any defence the Civil Court will have jurisdiction to entertain such suits (*Madina Saheb v. Province of Madras*, AIR1946 Mad. 113).

**(iv) Venue of proceedings and transfer**

Section 21 dealing with venue of proceedings and transfer of cases under the Act provides that:

- (1) Where any matter under this Act is to be done by or before a Commissioner, the same shall, subject to the provisions of this Act and to any rules made hereunder, be done by or before the Commissioner for the area in which:
  - (a) the accident took place which resulted in the injury; or
  - (b) the employee or in case of his death, the dependent claiming the compensation ordinarily resides; or
  - (c) the employer has his registered office.

Provided that no matter shall be processed before or by a Commissioner, other than the Commissioner having jurisdiction over the area in which the accident took place, without his giving notice in the manner prescribed by the Central Government to the Commissioner having jurisdiction over the area and the State Government concerned.

Provided further that, where the employee, being the master of a ship or a seaman or the captain or a member of the crew of an aircraft or an employee in a motor vehicle or a company, meets with the accident outside India any such matter may be done by or before a Commissioner for the area in which the owner of agent of the ship, aircraft or motor vehicle resides or carries on business or the registered office of the company is situate, as the case may be.

- (1A) If a Commissioner, other than the Commissioner with whom any money has been deposited under Section 8, proceeds with a matter under this Act, the former may for the proper disposal of the matter call for transfer of any records or money remaining with the latter and on receipt of such a request, he shall comply with the same.

- (2) If a Commissioner is satisfied that any matter arising out of any proceedings pending before him can be more conveniently dealt with by any other Commissioner, whether in the same State or not, he may, subject to rules made under this Act, order such matter to be transferred to such other Commissioner either for report or for disposal, and, if he does so, shall forthwith transmit to such other Commissioner all documents relevant for the decision of such matter and, where the matter is transferred for disposal, shall also transmit in the prescribed manner any money remaining in his hands or invested by him for the benefit of any party to the proceedings.

Provided that the Commissioner shall not, where any party to the proceedings has appeared before him, make any order of transfer relating to the distribution among dependants of a lump sum without giving such party an opportunity of being heard.

- (3) The Commissioner to whom any matter is so transferred shall, subject to rules made under this Act, inquire thereto and, if the matter was transferred for report, return his report thereon or, if the matter was transferred for disposal, continue the proceedings as if they had originally commenced before him.
- (4) On receipt of a report from a Commissioner to whom any matter has been transferred for report under Sub-section (2), the Commissioner by whom it was referred shall decide the matter referred in conformity with such report.
- (5) The State Government may transfer any matter from any Commissioner appointed by it to any other Commissioner appointed by it.

The section deals with territorial jurisdiction of Commissioner under the Act. Further, for the first time the procedure for deciding case under the Act regarding accident having place outside India [second proviso to Sub-section (1) of Section 21] has been provided for. This is further clear from the fact that a Commissioner can transfer the matter to another Commissioner under Section 21(2) of the Act under specified circumstances.

#### **(v) Form of application**

All claims for compensation subject to the provision of the Act shall be made to the Commissioner. But such applications other than the applications made by dependant or dependants can only be submitted when the parties have failed to settle the matter by agreement.

An Application to a Commissioner may be made in such form and shall be accompanied by such fee, if any, as may be prescribed and shall contain, in addition to any particulars which may be prescribed, the following particulars namely:

- (a) a concise statement of the circumstances in which the application is made and the relief of order which the applicant claims;
- (b) in the case of a claim for compensation against an employer, date of service of notice of the accident on the employer and, if such notice has not been served or has not been served in due time, the reason for such omission;
- (c) the names and addresses of the parties; and
- (d) except in the case of an application by dependents for compensation, a concise statement of the matters on which agreement has and of those on which agreement has not been come to. If the applicant is illiterate or for any other reason is unable to furnish the required information in writing, the application shall, if the applicant so desires, be prepared under the direction of the Commissioner. (Section 22)

However, any defect in the application, e.g., when it is not in the prescribed form cannot be fatal to the claim. Any such irregularity can be rectified with the permission of the Commissioner at any stage (*M.B. & G. Engineering Factory v. Bahadur Singh*, AIR 1955 All 182).

**(vi) Power of the Commissioner to require further deposit in case of fatal accident**

Where the Commissioner is of the opinion that any sum deposited by the employer as compensation payable on the death of an employee, is insufficient, he is empowered to call upon, by a notice in writing stating his reasons, the employer to show cause why he should not make a further deposit within a stipulated period. If the employer fails to show cause to the satisfaction of the Commissioner, the Commissioner may make an award determining the total amount payable and requiring him to deposit the deficiency. (Section 22A)

**(vii) Powers and procedure of Commissioners**

The Commissioner shall have for the following purposes, all the powers of a Civil Court under the Code of Civil Procedure, 1908 for the purpose of:

- (a) taking evidence on oath;
- (b) enforcing the attendance of witnesses; and
- (c) compelling the production of documents and material objects.

Further, for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973, he shall be deemed to be a Civil Court. (Section 23)

**(viii) Appearance of parties**

Any appearance, application or act required to be made or done by any person before or to a Commissioner other than an appearance of a party which is required for the purpose of his examination as a witness, may be made or done on behalf of such person, by a legal practitioner or by an official of an Insurance Company or registered Trade Union or by an Inspector appointed under Section 8(1) of the Factories Act, 1948, or under Section 5(1) of the Mines Act, 1952 or by any other officer specified by the State Government in this behalf, authorised in writing by such person, or, with the permission of the Commissioner by any other person so authorised. (Section 24)

**(ix) Method of recording evidence**

The Commissioner shall make a brief memorandum of the substance of the evidence of every witness as the examination of the witness proceeds, and such memorandum shall be written and signed by the Commissioner with his own hand and shall form a part of the record.

Provided that:

If the Commissioner is prevented from making such memorandum, he shall record the reason of his inability to do so and shall cause such memorandum to be made in writing from his dictation and shall sign the same and such memorandum shall form a part of the record.

Further, the evidence of any medical witness shall be taken down as nearly as may be word for word. (Section 25)

In the case of *M.S.N. Co. Ltd. v. Mohd. Kunju*, AIR 1956 Trav. Co. 935, it was held that the Commissioner should not make a medical certificate the basis of his award unless he has examined the concerned medical officer.

**Time Limit for disposal of cases relating to compensation**

A new Section 25A has been inserted by the Workmen's Compensation (Amendment) Act, 2009 providing for the time Limit for disposal of cases relating to compensation. As per Section 25A, the Commissioner shall dispose of the matter relating to compensation within a period of three months from the date of reference and intimate the decision in respect thereof within the said period to the employee.

**(x) Costs**

All costs, incidental to any proceedings before a Commissioner, shall subject to rules made under this Act, be in the discretion of the Commissioner. (Section 26)

However, the Commissioner must use his discretion judiciously.

**(xi) Power to submit cases**

A Commissioner may, if he thinks fit, submit any question of law for the decision of the High Court and, if he does so, shall decide the question in conformity with such decision. (Section 27)

**(xii) Registration of agreements**

Section 28 makes it obligatory for the employer to send a memorandum to the Commissioner where amount of any lump sum payable as compensation has been settled by agreement:

- (a) whether by way of redemption of a half-monthly payment or otherwise, or
- (b) where compensation has been settled as being payable to a woman or a person under a legal disability.

The Commissioner shall record the memorandum in a register in the prescribed manner, after he has satisfied himself as to its genuineness provided that the Commissioner has given at least 7 days notice to the parties concerned before recording such memorandum. The Commissioner may at any time rectify the register.

The Commissioner may refuse to register the memorandum on the following grounds:

- (a) Inadequacy of the sum or amount settled; or
- (b) Agreement obtained by fraud or undue influence or other improper means.

The Commissioner may in such a situation make such order including an order as to any sum already paid under the agreement, as he thinks just in the circumstances.

An agreement which has been registered as aforesaid shall be enforceable under this Act notwithstanding anything contained in the Indian Contract Act, 1872, or in any other law for the time being in force.

**(xiii) Effect of failure to register agreement**

Where a memorandum of any agreement, the registration of which is required by Section 28 is not sent to the Commissioner as required by that Section, the employer shall be liable to pay the full amount of compensation which he is liable to pay under the provisions of this Act, and notwithstanding anything contained in the proviso to sub-section (1) of Section 4, shall not unless the Commissioner otherwise directs, be entitled to deduct more than half of any amount paid to the employees by way of compensation whether under the agreement or otherwise. (Section 29)

**APPEALS**

An appeal shall lie to the High Court from the following orders of a Commissioner, namely:

- (a) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum;
- (aa) an order awarding interest or penalty under Section 4A;
- (b) an order refusing to allow redemption of a half-monthly payment;
- (c) an order providing for the distribution of compensation among the dependants of a deceased employee or disallowing any claim of a person alleging himself to be such dependant;
- (d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of Sub-section (2) of Section 12; or
- (e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions. (Section 30)

Such appeal should be filed within 60 days of order. The section empowers appellate Court to infer with findings recorded by commissioner only in case of substantial error of law (*LLJ II 1998 Kar. 764*). The provisions of Section 5 of Limitation Act, 1963 shall be applicable to appeals under the Section.



No appeal shall lie unless the following requirements are fulfilled:

- (i) A substantial question of law is involved in the appeal.
- (ii) In case of order, other than order refusing to allow redemption of a half-monthly payment, unless the amount in dispute in the appeal is not less than ten thousand rupees or such higher amount as the Central Government may, by notification in the Official Gazette, specify.
- (iii) The memorandum of appeal should be accompanied by a certificate by the Commissioner to the effect that the applicant has deposited with him the amount payable under the order appealed against. Deposit of compensation amount is alone contemplated: deposit of penalty or interest is not condition precedent for filing appeal (*LLJ I 1999 Kar. 60*).
- (iv) The appeal does not relate to any case in which the parties have agreed to abide by the decision of the Commissioner, or in which the order of the Commissioner gives effect to an agreement come to by the parties.

Jurisdiction conferred on High Court being special any further appeal against the judgement is barred. No. leave petition was therefore held maintainable (*LLJ I 1998 1122 Pat.*). Finding whether the claimant was an employee arrived by commissioner on material on record is a fact hence no further appeal is allowed (*LAB IC 1998 Ori. 3254*).

### **Recovery**

The Commissioner may recover, as an arrear of land revenue, any amount payable by any person under this Act, whether under an agreement for the payment of compensation or otherwise, and the Commissioner shall be deemed to be a public officer within the meaning of Section 5 of the Revenue Recovery Act, 1890. (Section 31)

## **PENALTIES**

Section 18A of the Act prescribes penalties for the contravention of the provisions of the Act which include fine Which shall not be less than Rs. 50,000/- but which may extend to Rs. 1,00,000/-. The following omissions attract this punishment under the Act:

- (a) Whosoever fails to maintain a notice book which he is required to maintain under Section 10(3); or
- (b) Whosoever fails to send to the Commissioner a statement of fatal accidents which he is required to send under Section 10A(1); or
- (c) Whosoever fails to send a report of fatal accidents and serious bodily injuries which he is required to send under Section 10B; or
- (d) Whosoever fails to make a return of injuries and compensation which he is required to make under Section 16.
- (e) Fails to inform the employee of his rights to compensation as required under Section 17 A.

No prosecution under Section 18A shall be instituted except by or with the previous sanction of the Commissioner and no court shall take cognizance of any offence under this section unless complaint is made within 6 months of the date on which the alleged commission of offence comes to the knowledge of the Commissioner.

## **SPECIAL PROVISIONS RELATING TO MASTERS AND SEAMEN**

According to Section 15, the Act shall apply in the case of employees who are masters of ships or seamen subject to the following modifications, namely:

- (a) The notice of the accident and the claim for compensation may, except where the person injured is the master of the ship, be served on the master of the ship as if he were the employer, but where the

accident happened and the disablement commenced on board the ship, it shall not be necessary for any seaman to give any notice of the accident.

- (b) In the case of the death of a master or seaman, the claim for compensation shall be made within one year after the news of the death has been received by the claimant or, where the ship has been or is deemed to have been lost with all hands, within eighteen months of the date on which the ship was, or is deemed to have been, so lost:

Provided that the Commissioner may entertain any claim to compensation in any case notwithstanding that the claim has not been preferred in due time as provided in this sub-section, if he is satisfied that the failure so to prefer the claim was due to sufficient cause.

- (c) Where an injured seaman or master is discharged or left behind in any part of India or in any other foreign country, any depositions taken by any Judge or Magistrate in that part or by any Consular Officer in the foreign country and transmitted by the person by whom they are taken to the Central Government or any State Government shall, in any proceedings for enforcing the claim, be admissible in evidence:
- (i) if the deposition is authenticated by the signature of the Judge, Magistrate or Consular Officer before whom it is made;
  - (ii) if the defendant or the person accused, as the case may be, had an opportunity by himself or his agent to cross-examine the witness; and
  - (iii) if the deposition was made in the course of a criminal proceedings, on proof that the deposition was made in the presence of the person accused;

and it shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition and a certificate by such person that the defendant or the person accused had an opportunity of cross-examining the witness and that the deposition if made in a criminal proceedings was made in the presence of the person accused shall, unless the contrary is proved, be sufficient evidence that he had that opportunity and that it was so made.

- (d) No half-monthly payment shall be payable in respect of the period during which the owner of the ship is, under any law in force for the time being relating to merchant shipping liable to defray the expenses of maintenance of the injured master or seaman.
- (e) No compensation shall be payable under this Act in respect of any injury in respect of which provisions are made for payment of a gratuity, allowance or pension under the War Pensions and Detention Allowances (Mercantile Marine, etc.) Scheme, 1939, or the War Pensions and Detention (Navy, Army, Air Force and Mercantile Marine) Act, 1939, or under War Pensions and Detention Allowances (Indian Seamen) Scheme, 1942, made by the Central Government.
- (f) Failure to give a notice to make a claim or commence proceedings within the time required by this Act shall not be a bar to the maintenance of proceedings under this Act in respect of any personal injury, if:
- (i) an application has been made for payment in respect of that injury under any of the schemes referred to in the preceding clause, and
  - (ii) the State Government certifies that the said application was made in the reasonable belief that the injury was one in respect of which the scheme under which the application was made makes provisions for payments, and that the application was rejected or that payments made in pursuance of the application were discontinued on the ground that the injury was not such an injury, and

- (iii) the proceedings under this Act are commenced within one month from the date on which the said certificate of the State Government was furnished to the person commencing the proceedings.

### **SPECIAL PROVISIONS RELATING TO CAPTAINS AND OTHER MEMBERS OF CREW OF AIRCRAFTS**

These provisions have been stipulated under Section 15A of the Act. As per Section 15A, this Act shall apply in the case of employees who are captains or other members of the crew of aircrafts subject to the following modifications, namely:

- (1) The notice of the accident and the claim for compensation may, except where the person injured is the captain of the aircraft, be served on the captain of the aircraft as if he were the employer, but where the accident happened and the disablement commenced on board the aircraft it shall not be necessary for any member of the crew to give notice of the accident.
- (2) In the case of the death of the captain or other member of the crew, the claim for compensation shall be made within one year after the news of the death has been received by the claimant or, where the aircraft has been or is deemed to have been lost with all hands, within eighteen months of the date on which the aircraft was, or is deemed to have been so lost:

Provided that the Commissioner may entertain any claim for compensation in any case notwithstanding that the claim has not been preferred in due time as provided in this sub-section, if he is satisfied that the failure so to prefer the claim was due to sufficient cause.

- (3) Where an injured captain or other member of the crew of the aircraft is discharged or left behind in any part of India or in any other country, any depositions taken by any Judge or Magistrate in that part or by any Consular Officer in the foreign country and transmitted by the person by whom they are taken to the Central Government or any State Government shall, in any proceedings for enforcing the claims, be admissible in evidence:
  - (a) if the deposition is authenticated by the signature of the Judge, Magistrate or Consular Officer before whom it is made;
  - (b) if the defendant or the person accused, as the case may be, had an opportunity by himself or his agent to cross-examine the witness;
  - (c) if the deposition was made in the course of a criminal proceeding, on proof that the deposition was made in the presence of the person accused,

and it shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition and a certificate by such person that the defendant or the person accused had an opportunity of cross-examining the witness and that the deposition if made in a criminal proceeding was made in the presence of the person accused shall, unless the contrary is proved, be sufficient evidence that he had that opportunity and that it was so made.

### **SPECIAL PROVISIONS RELATING TO EMPLOYEES ABOARD OF COMPANIES AND MOTOR VEHICLES**

This Act according to Section 15B shall apply:

- (i) in the case of employee who are persons recruited by companies registered in India and working as such abroad, and
- (ii) persons sent for work abroad along with motor vehicles registered under the Motor Vehicles Act, 1988 (59 of 1988) as drivers, helpers, mechanics, cleaners or other employees:

- (1) The notice of the accident and the claim for compensation may be served on the local agent of the company, or the local agent of the owner of the motor vehicle, in the country of accident, as the case may be.
- (2) In the case of death of the employee in respect of whom the provisions of this section shall apply, the claim for compensation shall be made within one year after the news of the death has been received by the claimant:

Provided that the Commissioner may entertain any claim for compensation in any case notwithstanding that the claim has not been preferred in due time as provided in this sub-section, if he is satisfied that the failure so to prefer the claim was due to sufficient cause.

- (3) Where an injured employee is discharged or left behind in any part of India or in any other country any depositions taken by any Judge or Magistrate in that part or by any Consular Officer in the foreign country and transmitted by the person by whom they are taken to the Central Government or any State Government shall, in any proceedings for enforcing the claims, be admissible in evidence:
  - (a) if the deposition is authenticated by the signature of the Judge, Magistrate or Consular Officer before whom it is made;
  - (b) if the defendant or the person accused, as the case may be, had an opportunity by himself or his agent to cross-examine the witness;
  - (c) if the deposition was made in the course of a criminal proceeding, or proof that the deposition was made in the presence of the person accused,

and it shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition and a certificate by such person that the defendant or the person accused had an opportunity of cross-examining the witness and that the deposition if made in a criminal proceeding was made in the presence of the person accused shall, unless the contrary is proved, be sufficient evidence that he had that opportunity and that it was so made.

### COMPLIANCES UNDER THE ACT

The establishment must ensure following compliances under the Act. These compliances are not exhaustive but illustrative.

1. There are ..... workers and contractors, employed by the establishment who are covered under the provisions of this Act.
2. The factory/establishment has submitted to the ESI Corporation returns in the prescribed form containing the particulars relating to the persons employed as per the provisions of the Act, regulation and rules made in this behalf.
3. The establishment has paid compensation to the employee for the personal injury caused to him by an accident arising out of and in the course of his employment as per the provisions contained in the Act during the financial year.
4. During the year under review, there was no dispute in respect of any bonafide claims of the employees.
5. During the year under review, every bonafide claim was duly settled by the establishment.
6. There was no prosecution initiated against or show cause notices received by the Company and no fines or penalties or any other punishment was imposed on the Company during the financial year, for offences under the Act

**SCHEDULE I**

[See Section 2(1) and (4)]

**PART I****List of Injuries Deemed to Result in Permanent Total Disablement**

<b>Serial No.</b>	<b>Description of injury</b>	<b>Percentage of loss of earning capacity</b>
(1)	(2)	(3)
1.	Loss of both hands or amputation at higher sites	100
2.	Loss of a hand and 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
5.	Very severe facial disfigurement	100
6.	Absolute deafness	100

**PART II****List of Injuries Deemed to Result in Permanent Partial Disablement*****Amputation Cases Upper limbs Either arm***

1.	Amputation through shoulder joint	90
2.	Amputation below shoulder with stump less than 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 metatarso phalangeal 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 inter phalangeal 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 trenchanter	80
18. Amputation below hip with stump exceeding 12.70 cms. in length measured from tip of great trenchanter 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 metatarso-phalangeal joint	50
24. Loss of all toes of one foot through the metatarso- phalangeal joint	20
<i>Other injuries</i>	
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
<i>Loss of A. Fingers of right or left hand Index finger</i>	
27. Whole	14
28. Two phalanges	11
29. One phalanx	9
30. Guillotine amputation of tip without loss of bone	5
<i>Middle finger</i>	
31. Whole	12
32. Two phalanges	9
33. One phalanx	7
34. Guillotine amputation of tip without loss of bone	4
<i>Ring or little finger</i>	
35. Whole	7
36. Two phalanges	6
37. One phalanx	5
38. Guillotine amputation of tip without loss of bone	2
<i>B. Toes of right or left foot great toe</i>	
39. Through metatarso-phalangeal joint	14
40. Part, with some loss of bone	3

*Any other toe*

- |  |   |
|--|---|
| 41. Through metatarso-phalangeal joint | 3 |
| 42. Part, with some loss of bone       | 1 |

*Two toes of one foot, excluding great toe*

- |  |   |
|--|---|
| 43. Through metatarso-phalangeal joint | 5 |
| 44. Part, with some loss of bone       | 2 |

*Three toes of one foot, excluding great toe*

- |  |   |
|--|---|
| 45. Through metatarso-phalangeal joint | 6 |
| 46. Part, with some loss of bone       | 6 |

*Four toes of one foot, excluding great toe*

- |  |   |
|--|---|
| 47. Through metatarso-phalangeal joint | 9 |
| 48. Part, with some loss of bone       | 3 |

*Note: Complete and permanent loss of the use of any limb or member referred to in this Schedule shall be deemed to be equivalent to the loss of that limb or member.*

### LESSON ROUND-UP

- The Employee's Compensation Act, 1923 is one of the important social security legislations. It imposes statutory liability upon an employer to discharge his moral obligation towards his employees when they suffer from physical disabilities and diseases during the course of employment in hazardous working conditions.
- The Act provides for cheaper and quicker mode of disposal of disputes relating to compensation through special proceedings than possible under the civil law.
- The Act provides for employers liability for compensation in case of occupational disease or personal injuries and prescribes the manner in which his liability can be ascertained.
- Amount of compensation is payable in the event of an employee meeting with an accident resulting into temporary or permanent disability or disease as stated in Schedule II and III in terms of Section 4 of the Act, read with Schedule IV. Compensation shall be paid as soon as it falls due.
- Where an employer is in default in paying compensation, he would be liable to pay interest thereon and also a further sum not exceeding fifty percent of such amount of compensation as penalty. The interest and the penalty stated above is to be paid to the employee or his dependent as the case may be.
- Under the Act, the State Governments are empowered to appoint Commissioners for Employee's Compensation for (i) settlement of disputed claims, (ii) disposal of cases of injuries involving death, and (iii) revision of periodical payments.
- The Act prescribes penalties for the contravention of the provisions of the Act which include fine which shall not be less than Rs. 50,000 but which may extend to Rs. 1,00,000/-

### TEST YOURSELF

*(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)*

1. Explain the following terms under the Employees' Compensation Act, 1923: (i) Employer; (ii) Dependent; (iii) Disablement and (iv) Wages.
2. Explain employers liability to pay compensation to an employee.





## SECTION II: THE EMPLOYEES' STATE INSURANCE ACT, 1948

### KEY CONCEPTS

- Appropriate Government ■ Confinement ■ Contribution ■ Dependent ■ Employment Injury ■ Employee
- Employment Injury ■ Employer ■ Family ■ Factory ■ Insured Person ■ Disablement ■ Wages ■ Sickness

### Learning Objectives

#### To understand:

- The extent and application of the Employees State Insurance Act
- The meaning of employee, employment injury, disablement and sickness
- The administration of Employees' state Insurance Scheme
- Constitution of Employees' state Insurance Corporation
- The creation of Fund and purposes for which the fund may be expended
- Method of payment of contribution

### Lesson Outline

- |   |   |
|---|---|
| ➤ Introduction  | ➤ Benefits                                |
| ➤ Extent and Application                                      | ➤ Employees' Insurance Court (E.I. Court) |
| ➤ Important Definitions                                       | ➤ Exemptions                              |
| ➤ Registration of Factories and Establishments under this Act | ➤ Compliances under the Act               |
| ➤ Employees' State Insurance                                  | ➤ Lesson Round-Up                         |
| ➤ Administration of Employees' State Insurance Scheme         | ➤ Test Yourself                           |
| ➤ Employees' State Insurance Corporation                      |   |
| ➤ Wings of the Corporation                                    |   |
| ➤ Employees State Insurance Fund                              |   |
| ➤ Contributions   |   |

*The Employees' State Insurance Act, 1948 provides 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, 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.*

## INTRODUCTION

The Employees' State Insurance Act, 1948 provides for certain benefits to employees in case of sickness, maternity and employment injury and also makes provisions for certain other matters in relation thereto. The Act has been amended by the Employees' State Insurance (Amendment) Act, 2010 for enhancing the Social Security Coverage, streamlining the procedure for assessment of dues and for providing better services to the beneficiaries.

Parliament has enacted a number of legislations in the area of social security for the workers. The Employees' State Insurance Act was promulgated by the Parliament of India in the year 1948. It was the first major legislation on Social Security in independent India to provide certain benefits to the employees in the organized sector in case of sickness, maternity and employment injury.

The Central Government established a Corporation to be known as the 'Employees' State Insurance Corporation is the premier social security organization in the country. It is the highest policy making and decision taking authority under the ESI Act and oversees the functioning of the ESI Scheme under the ESI Act.

For the administration of the of Employees' State Insurance scheme, the Employees' State Insurance Corporation Standing Committee and Medical Benefit Council have been constituted. Further, ESI Fund has been created which is held and administered by ESI Corporation through its executive committee called Standing Committee with the assistance, advice and expertise of Medical Council and Regional and Local Boards and Committees.

## EXTENT AND APPLICATION OF ACT

The Act extends to the whole of India. The Central Government is empowered to enforce the provisions of the Act by notification in the Official Gazette, to enforce different provisions of the Act on different dates and for different States or for different parts thereof [Section 1(3)]. The Act applies in the first instance to all factories (including factories belonging to the Government) other than seasonal factories [Section 1(4)]. According to the proviso to Section 1(4) of the Act, nothing contained in sub-section (4) of Section 1 shall apply to a factory or establishment belonging to or under the control of the Government whose employees are otherwise in receipt of benefits substantially similar or superior to the benefits provided under the Act. Section 1(5) of the Act empowers the appropriate Government to extend any of the provisions of the Act to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise after giving one month's notice in the Official Gazette. However, this can be done by the appropriate Government, only in consultation with the Employees' State Insurance Corporation set up under the Act and, where the appropriate Government is a State Government, it can extend the provisions of the Act with the approval of the Central Government.

Under these enacting provisions, the Act has been extended by many State Governments to shops, hotels, restaurants, cinemas, including preview theatres, newspaper establishments, road transport undertakings, etc., employing 20 or more persons. It is not sufficient that 20 persons are employed in the shop. They should be employee as per Section 2(9) of the Act, getting the wages prescribed therein (*ESIC v. M.M. Suri & Associates Pvt. Ltd., 1999 LAB IC SC 956*). According to the proviso to sub-section (5) of Section 1 where the provisions of the Act have been brought into force in any part of a State, the said provisions shall stand extended to any such establishment or class of establishment within that part, if the provisions have already been extended to similar establishment or class of establishments in another part of that State.

It may be noted that a factory or an establishment to which the Act applies shall continue to be governed by this Act even if the number of persons employed therein at any time falls below the limit specified by or under the Act or the manufacturing process therein ceases to be carried on with the aid of power. [Section 1(6)]

## IMPORTANT DEFINITIONS

### (i) Appropriate Government

“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. [Section 2(1)]

### (ii) Confinement

“Confinement” means labour resulting in the issue of a living child or labour after 26 weeks of pregnancy resulting in the issue of child whether alive or dead. [Section 2(3)]

### (iii) Contribution

“Contribution” means the sum of money payable to the Corporation by the principal employer in respect of an employees and includes any amount payable by or on behalf of the employee in accordance with the provisions of this Act. [Section 2(4)]

### (iv) Dependent

“Dependent” under Section 2(6A) of the Act (as amended by the Employees’ State Insurance (Amendment) Act, 2010) 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 25 years and is infirm;
- (iii) if wholly or in part dependent on the earnings of the insured person at the time 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 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.

### (v) Employment Injury

It 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. [Section 2(8)]

It is well settled that an employment injury need not necessarily be confined to any injury sustained by a person within the premises or the concern where a person works. Whether in a particular case the theory of notional extension of employment would take in the time and place of accident so as to bring it within an employment injury, will have to depend on the assessment of several factors. There should be a nexus between the circumstances of the accident and the employment. On facts no case could be an authority for another case, since there would necessarily be some differences between the two cases. Therefore, each case has to be decided on its own facts. It is sufficient if it is proved, that the injury to the employee was caused by an

accident arising out of and in the course of employment no matter when and where it occurred. There is not even a geographical limitation.

**The accident may occur within or outside the territorial limits of India. However, there should be a nexus or casual connection between the accident and employment. The place or time of accident should not be totally unrelated to the employment (*Regional Director, E.S.I. Corpn. v. L. Ranga Rao, 1982 I-L.L.J. 29*). Where an employee who is on his way to factory meets with an accident, one K.M. from the place of employment, the Court held that the injury cannot be said to be caused by accident arising out of and in the course of his employment. Mere road accident on a public road while employee was on his way to place of employment cannot be said to have its origin in his employment in the factory (*Regional Director ESI v. Francis de Costa, 1997 LLJ I 34 SC*).**

In *E.S.I. Corpn. Indore v. Babulal*, 1982 Lab. I.C. 468, the M.P. High Court held that injury arose out of employment where a workman attending duty in spite of threats by persons giving call for strike and was assaulted by them while returning after his duty was over. A worker was injured while knocking the belt of the moving pulley, though the injury caused was to his negligence, yet such an injury amounts to an employment injury (*Jayanthilal Dhanji Co. v. E.S.I.C., AIR AP 210*).

The word injury does not mean only visible injury in the form of some wound. Such a narrow interpretation would be inconsistent with the purposes of the Act which provides certain benefits in case of sickness, maternity and employment injury (*Shyam Devi v. E.S.I.C., AIR 1964 All. 42*).

#### (vi) Employee

“Employee” according to Section 2(9) as amended by the Employees' State Insurance (Amendment) Act, 2010 means any person employed for wages 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 employee in the factory or establishment; or elsewhere, or
- (ii) who is employed by or through a 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;

and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof, or with the purchase of raw materials of, or the distribution or sale of the product of the factory or establishment; or any person engaged as an apprentice, not being an apprentice engaged under Apprentices Act, 1961 and includes such person engaged as apprentice whose training period is extended to any length of time, but does not include:

- (a) any member of the Indian Naval, Military or Air Forces; or
- (b) any person so employed whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government.

Provided that an employee whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government at any time after (and not before) the beginning of the contribution period shall continue to be an employee until the end of that period. The Central Government has since prescribed the wage limit for coverage of an employee under Section 2(9) of the Act as Rs. 21,000 per month. Further, it is provided that an employee whose wages (excluding remuneration for overtime work) exceed Rs. 21,000 a month at any time after and not before the beginning of the contribution period, shall continue to be an employee until the end of the period.

**In the case of *Royal Talkies Hyderabad v. E.S.I.C.*, AIR 1978 SC 1476, there was a canteen and cycle stand run by private contractors in a theatre premises. On the question of whether the theatre owner will be liable as principal employer for the payment of E.S.I. contributions, the Supreme Court held that the two operations namely keeping a cycle stand and running a canteen are incidental or adjuncts to the primary purpose of the theatre and the workers engaged therein are covered by the definition of employee as given in E.S.I. Act. The Supreme Court observed that the reach and range of Section 2(9) is apparently wide and deliberately transcends pure contractual relationship.**

**In the case *Saraswath Films vs. Regional Director*, E.S.I. dated 1st May, 2002, the security guards engaged on the premises of cinema hall discharge the duty of checking tickets of persons seeking entry into the hall, which work is directly and intrinsically a part of the work of the establishment.**

**The Hon'ble Supreme Court Stated that "a person 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 services is also brought within the purview of the statute."**

Section 2(9) contains two substantive parts. Unless the person employed qualifies under both, he is not an employee. First, he must be employed in or in connection with the work of an establishment. The expression in connection with the work of an establishment ropes in a wide variety of workmen who may not be employed in the establishment but may be engaged only in connection with the work of establishment. Some nexus must exist between the establishment and the work of employee but it may be a loose connection. The test of payment of salary or wages is not a relevant consideration. It is enough if the employee does some work which is ancillary, incidental or has relevance to or link with the object of the establishment.

The word employee would include not only persons employed in a factory but also persons connected with the work of the factory. It is not possible to accept the restricted interpretation of the words "employees in factories". The persons employed in zonal offices and branch offices of a factory and concerned with the administrative work or the work of canvassing sale would be covered by the provisions of the Act, even though the offices are located in different towns (*Hyderabad Asbestos Cement Products, etc. v. ESIC*, AIR 1978 S.C. 356). The Act is a beneficial piece of legislation to protect interest of the workers. The employer cannot be allowed to circumvent the Act in the disguise of ambiguous designations such as 'trainees, 'apprentices etc. who are paid regular wages, basic wages plus allowances. Such workers also fall under the Act (LLJ-II-1996 389 AP). Managing director could be an employee of the company. There could be dual capacity i.e. as managing director as well as a servant of the company (*ESIC v. Apex Engg. Pvt. Ltd., Scale (1997) 6 652*).

#### **(vii) Exempted Employee**

"Exempted Employee" means an employee who is not liable under this Act to pay the employees contribution. [Section 2(10)]

#### **(viii) Principal Employer**

"Principal Employer" means the following:

- (i) in a factory, owner or occupier of the factory and includes the managing agent of such owner or occupier, the legal representative of a deceased owner or occupier and where a person has been named as the manager of the factory under the Factories Act, 1948, 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. [Section 2(17)]

**(ix) Family**

“Family” under Section 2(11) as amended by the Employees' State Insurance (Amendment) Act, 2010 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) dependent 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.

**(x) Factory**

The definition of the factory as amended by the Employees' State Insurance (Amendment) Act, 2010 is as follows:

“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 including a mine subject to the operation of the Mines Act, 1952 or a railway running shed.

It may be noted that the terms manufacturing process, occupier and power, shall have the meaning assigned to them in the Factories Act, 1948. [Section 2(12)]

**(xi) Immediate Employer**

“Immediate Employer” means a person, in relation to employees employed by or through him, who has undertaken the execution on the premises of a factory or an establishment to which this Act applies or under the supervision of 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. [Section 2(13)] It would not be necessary that the work undertaken by immediate employer should be in the premises where the factory of principal employer is situated (1997-II LLJ 31 Pat.).

**(xii) Insurable Employment**

It means an employment in factory or establishment to which the Act applies. [Section 2(13A)]

**(xiii) Insured person**

It means a person who is or was an employee in respect of whom contributions are, or were payable under the Act and who is by reason thereof entitled to any of the benefits provided under the Act. [Section 2(14)]



**(xiv) Permanent Partial Disablement**

It means such disablement of a permanent nature, as reduced 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 to the Act shall be deemed to result in permanent partial disablement. [Section 2(15A)]

**(xv) Permanent Total Disablement**

It 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 to the Act 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 per cent or more. [Section 2(15B)]

**(xvi) Seasonal Factory**

It means a factory which is exclusively engaged in one or more of the following manufacturing processes namely, cotton ginning, cotton or jute pressing, decortication of groundnuts, the manufacture of coffee, indigo, lac, rubber, sugar (including gur) or tea or any manufacturing process which is incidental to or connected with any of the aforesaid processes and includes a factory which is engaged for a period not exceeding seven months in a year:

- (a) in any process of blending, packing or repacking of tea or coffee; or
- (b) in such other manufacturing process as the Central Government may by notification in the Official Gazette, specify. [Section 2(19A)]

**(xvii) Sickness**

It means a condition which requires medical treatment and attendance and necessitates, abstention from work on medical grounds. [Section 2(20)]

**(xviii) Temporary Disablement**

It means a condition resulting from an employment injury which requires medical treatment and renders an employee as a result of such injury, temporarily incapable of doing the work which he was doing prior to or at the time of injury. [Section 2(21)]

**(xix) Wages**

“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 authorised leave, lock-out, strike which is not illegal or lay-off 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. [Section 2(22)]

Wages include other additional remuneration paid at intervals not exceeding two months wages. It is question of fact in each case whether sales commission and incentive are payable at intervals not exceeding two months (*Handloom House Ernakulam v. Reg. Director, ESIC*, 1999 CLA 34 SC 10). Travelling allowance paid to employees is to defray special expenses entitled on him by nature of his employment. It does not form part of wages as defined under Section 2(22) of the E.S.I. Act. Therefore, employer is not liable to pay contribution on travelling allowance. [*S. Ganesan v. The Regional Director, ESI Corporation, Madras*, 2004 Lab.I.C 1147]

### REGISTRATION OF FACTORIES AND ESTABLISHMENTS UNDER THIS ACT

Section 2A of the Act lays down that every factory or establishment to which this Act applies shall be registered within such time and in such manner as may be specified in the regulations made in this behalf.

### EMPLOYEES' STATE INSURANCE

Section 38 of the Act makes compulsory that subject to the provisions of the Act all the employees in factories or establishments to which this Act applies shall be insured in the manner provided by this Act. Such insured persons shall pay contributions towards Insurance Fund through their employers who will also pay their own contribution. Such insured persons are entitled to get certain benefits from that fund which shall be administered by the Corporation. Any dispute will be settled by the Employees' Insurance Court.

### ADMINISTRATION OF EMPLOYEES' STATE INSURANCE SCHEME

For the administration of the scheme of Employees' State Insurance in accordance with the provisions of this Act, the Employees' State Insurance Corporation Standing Committee and Medical Benefit Council have been constituted. Further, ESI Fund has been created which is held and administered by ESI Corporation through its executive committee called Standing Committee with the assistance, advice and expertise of Medical Council, etc. and Regional and Local Boards and Committees.

### EMPLOYEES' STATE INSURANCE CORPORATION

Section 3 of this Act provides for the establishment of Employees' State Insurance Corporation by the Central Government for administration of the Employees' State Insurance Scheme in accordance with the provisions of Act. Such Corporation shall be body corporate having perpetual succession and a common seal and shall sue and be sued by the said name.

#### Constitution

The Central Government appoints a chairman, a vice-chairman and other members representing interests of employers, employees, state governments/union territories and medical profession. Three members of the Parliament and the Director General of the Corporation are its ex-officio members. [Section 4]

#### Powers and duties of the Corporation

Section 19 empowers the Corporation, to promote (in addition to the scheme of benefits specified in the Act), measures for the improvement of the health and welfare of insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured and incur in respect of such measures expenditure from the funds of the Corporation within such limits as may be prescribed by the Central Government.

Section 29 empowers the Corporation (a) to acquire and hold property both movable and immovable, sell or otherwise transfer the said property; (b) it can invest and reinvest any moneys which are not immediately required for expenses and or realise such investments; (c) it can raise loans and discharge such loans with the previous sanction of Central Government; (d) it may constitute for the benefit of its staff or any class of them such provident or other benefit fund as it may think fit. However, the powers under Section 29 can be exercised subject to such conditions as may be prescribed by the Central Government.

### Appointment of Regional Boards etc.

The Corporation may appoint Regional Boards, Local Committees and Regional and Local Medical Benefit Councils in such areas and in such manner, and delegate to them such powers and functions, as may be provided by the regulations. (Section 25)

## WINGS OF THE CORPORATION

The Corporation to discharge its functions efficiently, has been provided with two wings:

### Standing Committee

The Act provides for the constitution of a Standing Committee under Section 8 from amongst its members.

### Power of the Standing Committee

The Standing Committee has to administer affairs of the Corporation and may exercise any of the powers and perform any of the functions of the Corporation subject to the general superintendence and control of the Corporation. The standing Committee acts as an executive body for administration of Employees State Insurance Corporation.

### Medical Benefit Council

Section 10 empowers the Central Government to constitute a Medical Benefit Council. Section 22 determines the duties of the Medical Benefit Council stating that the Council shall:

- (a) advise the Corporation and the Standing Committee on matters relating to administration of medical benefit, the certification for purposes of the grant of benefit and other connected matters;
- (b) have such powers and duties of investigation as may be prescribed in relation to complaints against medical practitioners in connection with medical treatment and attendance; and
- (c) perform such other duties in connection with medical treatment and attendance as may be specified in the regulations.

## EMPLOYEES' STATE INSURANCE FUND

### Creation of Fund

Section 26 of the Act provides that 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. The Corporation may accept grants, gifts, donations from the Central or State Governments, local authority, or any individual or body whether incorporated or not, for all, or any of the purposes of this Act. A Bank account in the name of Employees' State Insurance Fund shall be opened with the Reserve Bank of India or any other Bank approved by the Central Government. Such account shall be operated on by such officers who are authorised by the Standing Committee with the approval of the Corporation.

### Purposes for which the Fund may be expended

Section 28 provides that Fund shall be expended only for the following purposes:

- (i) payment of benefits and provisions of medical treatment and attendance to insured persons and, where the medical benefit is extended to their families, in accordance with the provisions of this Act and defraying the charge, and costs in connection therewith;
- (ii) payment of fees and allowances to members of the Corporation, the Standing Committee and Medical Benefit Council, the Regional Boards, Local Committees and Regional and Local Medical Benefit Councils;

- (iii) payment of salaries, leave and joining time allowances, travelling and compensatory allowances, gratuities and compassionate allowances, pensions, contributions to provident or other benefit fund of officers and servants of the Corporation and meeting the expenditure in respect of officers and other services set up for the purpose of giving effect to the provisions of this Act;
- (iv) establishment and maintenance of hospitals, dispensaries and other institutions and the provisions of medical and other ancillary services for the benefit of insured persons and where the medical benefit is extended to their families, their families;
- (v) payment of contribution to any State Government, local authority or any private body or individual towards the cost of medical treatment and attendance provided to insured persons and where the medical benefit is extended to their families, their families including the cost of any building and equipment, in accordance with any agreement entered into by the Corporation;
- (vi) defraying the cost (including all expenses) of auditing the accounts of the Corporation and of the valuation of the assets and liabilities;
- (vii) defraying the cost (including all expenses) of Employees Insurance Courts set up under this Act;
- (viii) payment of any sums under any contract entered into for the purposes of this Act by the Corporation or the Standing Committee or by any officer duly authorised by the Corporation or the Standing Committee in that behalf;
- (ix) payment of sums under any decree, order or award, of any court or tribunal against the Corporation or any of its officers or servants for any act done in execution of his duty or under a compromise or settlement of any suit or any other legal proceedings or claims instituted or made against the Corporation;
- (x) defraying the cost and other charges of instituting or defending any civil or criminal proceedings arising out of any action taken under this Act;
- (xi) defraying expenditure within the limits prescribed, on measure for the improvement of the health and welfare of insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured; and
- (xii) such other purposes as may be authorised by the Corporation with the previous approval of the Central Government.

## CONTRIBUTIONS

The contributions have to be paid at such rates as may be prescribed by the Central Government. The wage period in relation to an employee shall be the unit in respect of which all contributions shall be payable. The contributions payable in respect of each wage period shall ordinarily fall due on the last day of the wage period and where an employee is employed for part of the wage period, or is employed under two or more employers during the same wage period, the contributions shall fall due on such days as may be specified in the regulations.

### Principal employer to pay contributions in the first instance

According to Section 40 of the Act, it is incumbent upon the principal employer to pay in respect of every employee whether directly employed by him or by or through an immediate employer, both the employers contributions and the employees contribution. However, he can recover from the employee (not being an exempted employee) the employees contribution by deduction from his wages and not otherwise. Further Section 40 provides that the principal employer has to bear the expenses of remitting the contributions to that Corporation.

According to Section 39(5) of the Act, if any contribution payable is not paid by the principal employer on the date on which such contribution has become due, he shall be liable to pay simple interest at the rate of 12 per

cent per annum or at such higher rate as may be specified in the regulations, till the date of its actual payment. However, according to proviso to sub-section (5) of Section 39, higher interest specified in the regulations should not exceed the lending rate of interest charged by any scheduled bank. It may be noted that any interest recoverable as stated above may be recovered as an arrear of land revenue or under newly introduced Sections 45-C to 45-I of the Act.

### Recovery of contribution from immediate employer

According to Section 41, principal employer who has paid contribution in respect of an employee employed by or through an immediate employer is entitled to recover the amount of contribution so paid (both employers and employees contribution) from the immediate employer either by deduction from any amount payable to him by the principal employer under any contract or as a debt payable by the immediate employer. However, the immediate employer is entitled to recover the employees contribution from the employee employed by or through him by deduction from wages and not otherwise. The immediate employer is required to maintain a register of employees employed by or through him as provided in the Regulations and submit the same to the principal employer before the settlement of any amount payable. He is not required to have separate account with ESI (LAB IC 1999 Kar 1369).

### Method of payment of contribution

Section 43 provides for the Corporation to make regulations for payment and collection of contribution payable under this Act and such regulations may provide for:

- (a) the manner and time for payment of contribution;
- (b) the payment of contributions by means of adhesive or other stamps affixed to or impressed upon books, cards or otherwise and regulating the manner, times and conditions in, at and under which, such stamps are to be affixed or impressed;
- (c) the date by which evidence of contributions having been paid is to be received by the Corporation;
- (d) the entry in or upon books or cards or particulars of contribution paid and benefits distributed in the case of the insured persons to whom such books or card relate; and
- (e) the issue, sale, custody, production, inspection and delivery of books or cards and the replacement of books or cards which have been, lost, destroyed or defaced.

## BENEFITS

Under Section 46 of the Act, the insured persons, their dependents are entitled to the following benefits on prescribed scale:

- (a) periodical payments in case of sickness certified by 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 workman in case of confinement or miscarriage or sickness arising out of pregnancy, confinement;
- (c) periodical payment to an insured person suffering from disablement as a result of employment injury;
- (d) periodical payment to dependents of insured person;
- (e) medical treatment and attendance on insured person;
- (f) payment of funeral expenses on the death of insured person at the prescribed rate of.

### General provisions relating to Benefits

Right to receive benefits is not transferable or assignable. When a person receives benefits under this Act, he is not entitled to receive benefits under any other enactment.

An insured person is not entitled to receive for the same period more than one benefit, e.g. benefit of sickness cannot be combined with benefit of maternity or disablement, etc.

## EMPLOYEES' INSURANCE COURT (E.I. COURT)

### Constitution

Section 74 of the Act provides that the State Government shall by notification in the Official Gazette constitute an Employees' Insurance Court for such local area as may be specified in the notification. The Court shall consist of such number of judges as the State Government may think fit. Any person who is or has been judicial officer or is a legal practitioner of 5 years standing shall be qualified to be a judge of E.I. Court. The State Government may appoint the same Court for two or more local areas or two or more Courts for the same local area and may regulate the distribution of business between them.

### Matters to be decided by E.I. Court

#### (i) Adjudication of disputes

The Employees' Insurance Court has jurisdiction to adjudicate disputes, namely, whether any person is an employee under the Act, rate of wages/contribution, as to who is or was the principal employer, right of a person to any benefit under the Act.

#### (ii) Adjudication of claims

The E.I. Court also has jurisdiction to decide claims for recovery of contribution from principal employer or immediate employer, action for failure or negligence to pay contribution, claim for recovery of any benefit admissible under the Act.

Proceedings in both the above cases can be initiated by filing application in the prescribed form by the employee or his dependent or employer or the corporation depending who has cause of action.

No Civil Court has power to decide the matters falling within the purview/ jurisdiction of E.I. Court.

### Exemptions

The appropriate Government may exempt any factory/establishment from the purview of this Act, as well as any person or class of persons employed in any factory/establishment, provided the employees employed therein are in receipt of benefits superior to the benefits under the Act. Such exemption is initially given for one year and may be extended from time to time. The applicant has to submit application justifying exemption with full details and satisfy the concerned Government.

### Compliances under the Act

The establishment must ensure following compliances under the Act. These compliances are not exhaustive but illustrative.

1. The factory/establishment is covered by the provisions of this Act with effect from .....
2. During the year under review, the provisions of this Act continued to have effect notwithstanding any reduction in the employees below the Statutory Minimum.
3. The factory/establishment had made an application to the regional office within 15 days from the date on which this Act became applicable and the Employer's code number is .....
4. The factory/establishment/class of factory/class of establishment is exempted from complying with the provisions of the Act/any specified area from the operation of this Act vide notification issued by the appropriate government in the official gazette, during the financial year.

5. The factory/establishment has number of employees as defined under section 2 (9) of the Act during the said financial year.
6. All the employees in the factory/establishment to which this Act applies have been insured in the manner provided by the Act.
7. The total contribution (both employer and employee share) at the rates prescribed by the central government was deposited in with the designated branches of... Bank on or before 21st of the month following the calendar month in which the wages fall due during the financial year.
8. There was no prosecution initiated against or show cause notices received by the Company and no fines or penalties or any other punishment was imposed on the Company during the financial year, for offences under the Act.

### LESSON ROUND-UP

- The law relating to employees' State Insurance is governed by the Employees' State Insurance Act, 1948.
- The objective of the act is to provide for certain benefits to employees in case of sickness, maternity and employment injury and to provide for certain other matters in relation there to.
- The Act is applicable to all factories including factories belonging to the Government other than seasonal factories. The appropriate Government may after giving a notice of not less than one month and by notification in the official Gazette, extend the application of the Act or any of them, to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise. Once the Act becomes applicable, the Act shall continue to apply irrespective of the reduction in number of employees or cessation of manufacturing process with the aid of power.
- Every factory or establishment to which this Act applies has to be registered within the specified time and the regulations made in this behalf.
- All the employees in factories or establishments to which this Act applies shall be insured in prescribed manner. Such insured persons shall pay contributions towards Insurance Fund through their employers who will also pay their own contribution.
- The ESI Act authorises Central Government to establish Employees State Insurance Corporation for administration of the Employees State Insurance Scheme. Such Corporation shall be body corporate having perpetual succession and a common seal and shall sue and be sued by the said name.
- 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.
- The insured persons, their dependents are entitled to various benefits on prescribed scale. Right to receive benefits is not transferable or assignable. When a person receives benefits under this Act, he is not entitled to receive benefits under any other enactment.
- The Act empowers State Government to constitute an Employees Insurance Court. The Employees Insurance Court has jurisdiction to adjudicate disputes, namely, whether any person is an employee under the Act, rate of wages/contribution, as to who is or was the principal employer, right of a person to any benefit under the Act.
- The EI Court also has jurisdiction to decide claims for recovery of contribution from principal employer or immediate employer, action for failure or negligence to pay contribution, claim for recovery of any benefit admissible under the Act.





## SECTION III: THE EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952

### KEY CONCEPTS

- Appropriate Government ■ Basic Wage ■ Contribution ■ Employee ■ Employer ■ Controlled Industry
- Funds ■ Schemes ■ Establishment

### Learning Objectives

#### To understand:

- The applicability and non-applicability of the Act
- Schemes under the Act and contribution to be paid
- Mode and measures for recovery of moneys due from employers
- Various compliance under the Act

### Lesson Outline

- Introduction
- Application of the Act
- Appropriate Government
- Basic Wages
- Contribution
- Exempted Employee
- Pension Fund
- Pension Scheme
- Schemes under the Act
- Employees' Provident Fund Scheme
- Class of Employees entitled and required to join provident fund
- Employees' Pension Scheme
- Employees' Deposit-Linked Insurance Scheme
- Determination and Recovery of Moneys due from and by Employers
- Employer not to reduce Wages
- Transfer of Accounts
- Protection against Attachment
- Power to Exempt
- Compliances under the Act
- Lesson Round-Up
- Test Yourself

*The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 provides for the institution of provident funds, pension fund and deposit-linked insurance fund for employees in factories and other establishments. It extends to the whole of India.*

## INTRODUCTION

Provident Fund schemes for the benefit of the employees had been introduced by some organisations even when there was no legislation requiring them to do so. Such schemes were, however, very few in number and they covered only limited classes/groups of employees. In 1952, the Employees Provident Funds Act was enacted to provide a kind of social security to industrial workers in six specified industries with provision for gradual extension of the Act to other industries/classes of establishments. The Act extends to whole of India. The term pay includes basic wages with dearness allowance, retaining allowance (if any), and cash value of food concession.

### The following three schemes have been framed under the Act by the Central Government:

- (a) The Employees' Provident Fund Schemes, 1952;
- (b) The Employees' Pension Scheme, 1995; and
- (c) The Employees' Deposit-Linked Insurance Scheme; 1976.

The three schemes mentioned above confer significant social security benefits on workers and their dependents.

## APPLICATION OF THE ACT

According to Section 1(3), the Act, subject to the provisions of Section 16, applies:

- (a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed; and
- (b) to any other establishment employing twenty or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf:

However, the Central Government may, after giving not less than two months notice of its intention to do so by notification in the Official Gazette, apply the provisions of this Act to any establishment employing such number of persons less than twenty as may be specified in the notification.

The Central Government can extend the provisions of the Act to any establishment [including the co-operative society to which under Section 16(1) the provisions of the Act are not applicable by notification in Official Gazette when the employer and the majority of employees in relation to any establishment have agreed that the provisions of this Act should be made applicable to them [Section 1(4)]. However, before notification is made, parties can opt out of such an agreement (1996 20 CLA 25 Bom.). Once an establishment falls within the purview of the Act, it shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below twenty. [Section 1(5)] Where an establishment to which this Act applied was divided among the partners, the Act would continue to apply to the part of each ex-partner even if the number of persons employed in each part is less than twenty (1986 2 LLJ 137). Where as a result of real and bona fide partition among the owners, an establishment was disrupted and separate and distinct establishments come into existence, allottees with no regular employee, cannot be saddled with liability to pay minimum administrative charges as before (1993 1 LLN 698). For compliance with the Act and the scheme, for an establishment there should be an employer and one or more employees are required to be in existence atleast. When there is not even one employee, it would be difficult to contend that the Act continues to apply to the establishment (1998 LLJ 1 Kar. 780).

The constitutional validity of this Act was challenged on the ground of discrimination and excessive delegation. It was held that the law lays down a rule which is applicable to all the factories or establishments similarly placed. It makes a reasonable classification without making any discrimination between factories placed in the same class or group (*Delhi Cloth and General Mills v. R.P.F. Commissioner* A.I.R. 1961 All. 309).

The liability to contribute to the provident fund is created the moment the Scheme is applied to a particular establishment.

**On the question whether casual or temporary workmen should be included for the purpose of ascertaining the strength of workmen in terms of Section 1(3) it was held by the Rajasthan High Court in *Bikaner Cold Storage Co. Ltd. v. Regional P.F. Commissioner, Rajasthan, 1979 Lab. I.C. 1017*, that persons employed in the normal course of the business of the establishment should be considered as the persons employed for the purposes of Section 1(3)(a) and persons employed for a short duration or on account of some urgent necessity or abnormal contingency, which was not a regular feature of the business of the establishment cannot be considered as employees for the purpose of determining the employment strength in relation to the applicability of Section 1(3)(a). In the case of *P.F. Inspector v. Hariharan, AIR 1971 S.C. 1519*, the Supreme Court held that casual workers are not covered under Section 1(3).**

Section 1(3)(b) empowers the Central Government to apply the Act to trading or commercial establishments whether, such establishments are factories or not.

### Non-applicability of the Act to certain establishments

Section 16(1) of the Act provides that the Act shall not apply to certain establishments include

- (a) establishments registered under the Co-operative Societies Act, 1912, or under any other law for the time being in force in any State relating to co-operative societies, employing less than 50 persons and working without the aid of power; or
- (b) to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits; or
- (c) to any other establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits.

According to Section 16(2), if the Central Government is of opinion that having regard to the financial position of any class of establishments or other circumstances of the case, it is necessary or expedient so to do, it may, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification, exempt whether prospectively or retrospectively that class of establishments from the operation of this Act for such period as may be specified in the notification.

The date of establishment of a factory is the date when the factory starts its manufacturing process. A change in the ownership does not shift the date of establishment. A mere change in the partnership deed, does not mean that a new business has come into existence for the purpose of Section 16(1) (*P.G. Textile Mills v. Union of India* (1976) 1 LLJ 312).

## DEFINITIONS

To understand the meaning of different Sections and provisions thereto, it is necessary to know the meaning of important expressions used therein. Section 2 of the Act explains such expressions which are given below:

### (i) Appropriate Government [Section 2(a)]

“Appropriate Government” means:

- (i) in relation to those establishments belonging to or under the control of the Central Government or in relation to an establishment connected with a railway company, a major port, a mine or an oil field or a controlled industry, or in relation to an establishment having departments or branches in more than one State, the Central Government; and

- (ii) in relation to any other establishment, the State Government.

### **(ii) Basic Wages [Section 2(b)]**

“Basic Wages” means all emoluments which are earned by an employee while on duty or on leave or on holiday with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include:

- (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.

In addition to basic wages and dearness allowance payable by petitioner it has introduced two Production bonus schemes. In the case *Bridge & Roof Co. (India) Ltd (Petitioner) vs Union of India* dated 11 September, 1962, the Hon'ble Supreme Court held that the production bonus in the present case is a typical production bonus scheme of this kind and whatever therefore is earned as production bonus is payable beyond a base or standard and it cannot form part of the definition of “basic wages” in section 2 (b).

### **(iii) Contribution [Section 2(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.

### **(iv) Controlled Industry [Section 2(d)]**

“Controlled Industry” means any industry the control of which by the Union has been declared by the Central Act to be expedient in the public interest.

### **(v) Employer [Section 2(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.

### **(vi) Employee [Section 2(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 and includes any person

- (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 Apprentices Act, 1961 or under the standing orders of the establishment.

The definition is very wide in its scope and covers persons employed for clerical work or other office work in connection with the factory or establishment. The inclusive part of the definition makes it clear that even if a

person has been employed through a contract in or in connection with the work of the establishment, he would yet fall within the description of employee within the meaning of the Act.

The dominant factor in the definition of 'employee in Section 2(f) of the Act is that a person should be employed in or in connection with the work of the establishment. Sons being paid wages are employees (*Goverdhanlal v. REPC* 1994 II LLN 1354). In case of doubt whether a particular person is an employee or not, both the parties should be heard by the Commissioner before deciding the issue (1976-II Labour Law Journal, 309).

The definition of employee in Section 2(f) of the Act is comprehensive enough to cover the workers employed directly or indirectly and therefore, wherever the word employee is used in this Act, it should be understood to be within the meaning of this definition (*Malwa Vanaspati and Chemical Co. Ltd. v. Regional Provident Fund Commissioner, M.P. Region, Indore*, 1976-I Labour Law Journal 307).

The definition of "employee", includes a part-time employee, who is engaged for any work in the establishment, a sweeper working twice or thrice in a week, a night watchman keeping watch on the shops in the locality, a gardener working for ten days in a month, etc. (*Railway Employees Co-operative Banking Society Ltd. v. The Union of India*, 1980 Lab. IC 1212). The Government of India, by certain notification extended the application of Act and EPF scheme to beedi industry. It was held that the workers engaged by beedi manufacturers directly or through contractors for rolling beedi at home subject to rejection of defective beedies by manufacturers, were employees (1986 1 SCC 32). But working partners drawing salaries or other allowances are not employees. When members of cooperative society do work in connection with that of society and when wages are paid to them, there would be employer-employee relationship and such member-workers would be covered under the definition (1998 LLJ I Mad. 827).

#### **(vii) Exempted Employee [Section 2(ff)]**

It means an employee to whom a Scheme or the Insurance Scheme as the case may be would, but for the exemption granted under Section 17, have applied.

#### **(viii) Exempted Establishment [Section 2(fff)]**

It means an establishment in respect of which an exemption has been granted under Section 17 from the operation of all or any of the provisions of any Scheme or the Insurance Scheme as the case may be whether such exemption has been granted to the establishment as such or to any person or class of persons employed therein.

#### **(ix) Factory [Section 2(g)]**

It means any premises including the precincts thereof, in any part of which a manufacturing process is being carried on or ordinarily so carried on, whether with the aid of power or without the aid of power.

#### **(x) Fund [Section 2(h)]**

It means Provident Fund established under the Scheme.

#### **(xi) Industry [Section 2(i)]**

It means any industry specified in Schedule I, and includes any other industry added to the Schedule by notification under Section 4.

#### **(xii) Insurance Fund [Section 2(i-a)]**

It means the Deposit-Linked Insurance Fund established under sub-section (2) of Section 6-C.

#### **(xiii) Insurance Scheme [Section 2(i-b)]**

It means the Employees Deposit-Linked Insurance Scheme framed under sub-section (1) of Section 6-C.

**(xiv) Manufacture or Manufacturing Process [Section 2(i-c)]**

It means any process for making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal.

**(xv) Member [Section 2(j)]**

"Member" means a member of the Fund.

**(xvi) Occupier of a Factory [Section 2(k)]**

It means the person, who has ultimate control over the affairs of the factory, and where the said affairs are entrusted to a managing agent, such agent shall be deemed to be the occupier of the factory.

**(xvii) Pension Fund [Section 2(kA)]**

"Pension Fund" means the Employees Pension Fund established under sub-section (2) of Section 6A.

**(xviii) Pension Scheme [Section 2(kB)]**

"Pension Scheme" means the Employees Pension Scheme framed under sub-section (1) of Section 6A.

**(xix) Scheme [Section 2(l)]**

It means the Employees' Provident Fund Scheme framed under Section 5.

**(xx) Superannuation [Section 2(ll)]**

"Superannuation", in relation to an employee, who is the member of the Pension Scheme, means the attainment, by the said employee, of the age of fifty-eight years.

***Different departments or branches of an establishment***

Where an establishment consists of different departments or branches situated in the same place or in different places, all such departments or branches shall be treated as parts of the same establishment. (Section 2A)

**SCHEMES UNDER THE ACT**

In exercise of the powers conferred under the Act, the Central Government has framed the following three schemes:

**(A) Employees Provident Fund Scheme**

The Central Government has framed a Scheme called Employees Provident Fund Scheme. The Fund vests in and is administered by the Central Board constituted under Section 5A.

***Administration of the Fund***

- (a) Board of Trustees or Central Board: Section 5A provides for the administration of the Fund. The Central Government may by notification in the Official Gazette constitute with effect from such date as may be specified therein, a Board of Trustees, for the territories to which this Act extends.

The Employees Provident Fund Scheme contains provisions regarding the terms and conditions subject to which a member of the Central Board may be appointed and of procedure of the meetings of the Central Board. The Scheme also lays down the manner in which the Board shall administer the funds vested in it however subject to the provisions of Section 6AA and 6C of the Act. The Board also performs functions under the Family Pension Scheme and the Insurance Scheme.



### **Class of employees entitled and required to join Provident Fund**

Every employee employed in or in connection with the work of a factory or other establishment to which this scheme applies, other than an excluded employee, shall be entitled and required to become a member of the fund from the date of joining the factory or establishment.

The term “excluded employee” has been defined in para 2(f) of the Employees’ Provident Fund Scheme, 1952 as follows:

‘Excluded employee’ means:

- (i) an employee who, having been a member of the Fund, withdrew the full amount of his accumulations in the Fund under clause (a) or (c) of sub-paragraph 69;
- (ii) an employee whose pay at the time he is otherwise entitled to become a member of the Fund, exceeds fifteen thousand rupees per month.

*Explanation:* “Pay” includes basic wages with dearness allowance retaining allowance (if any) and cash value of food concession admissible thereon.

- (iii) An apprentice.

*Explanation:* An apprentice means a person who, according to the certified standing orders applicable to the factory or establishment is an apprentice, or who is declared to be an apprentice by the authority specified in this behalf by the appropriate Government.

### **Contributions**

As per Section 6, the contribution which shall be paid by the employer to the Fund shall be 10%, of the basic wages, dearness allowance and retaining allowance, if any, for the time being payable to each of the employees whether employed by him directly or through a contractor and the employees contribution shall be equal to the contribution payable by the employer. Employees, if they desire, may make contribution exceeding the prescribed rate but subject to the condition that employer shall not be under any obligation to contribute over and above the contribution payable as prescribed by the Government from time to time under the Act.

Each contribution shall be calculated to the nearest rupee, fifty paise or more to be counted as the next higher rupee and fraction of a rupee less than fifty paise to be ignored.

Dearness allowance shall include the cash value of any food concession allowed to an employee. Retaining allowance is the allowance payable to an employee for retaining his services, when the establishment is not working.

The Provident Fund Scheme has made the payment of contribution mandatory and the Act provides for no exception under which a specified employer can avoid his mandatory liability (*State v. S.P. Chandani, AIR 1959 Pat. 9*).

**Investment:** The amount received by way of Provident Fund contributions is invested by the Board of Trustees in accordance with the investment pattern approved by the Government of India. The members of the Provident Fund get interest on the money standing to their credit in their Provident Fund Accounts. The rate of interest for each financial year is recommended by the Board of Trustees and is subject to final decision by the Government of India.

**Advances/Withdrawals:** Advances from the Provident Fund can be taken for the following purposes subject to conditions laid down in the relevant paras of the Employees Provident Fund Scheme:

- (1) Non-refundable advance for payment of premia towards a policy or policies of Life Insurance of a member;
- (2) Withdrawal for purchasing a dwelling house or flat or for construction of a dwelling house including the acquisition of a suitable site for the purpose, or for completing/continuing the construction of a dwelling house, already commenced by the member or the spouse and an additional advance for additions, alteration or substantial improvement necessary to the dwelling house;

- (3) Non-refundable advance to members due to temporary closure of any factory or establishment for more than fifteen days, for reasons other than a strike or due to non-receipt of wages for 2 months or more, and refundable advance due to closure of the factory or establishment for more than six months;
- (4) (i) Non-refundable in case of:
  - (a) hospitalisation lasting one month or more, or
  - (b) major surgical operation in a hospital, or
  - (c) suffering from T.B., Leprosy, Paralysis, Cancer, Mental derangement or heart ailment, for the treatment of which leave has been granted by the employer;
- (ii) Non-refundable advance for the treatment of a member of his family, who has been hospitalised or requires hospitalisation, for one month or more:
  - (a) for a major surgical operation; or
  - (b) for the treatment of T.B., Leprosy, Paralysis, Cancer, mental derangement or heart ailment;
- (5) Non-refundable advance for daughter/sons marriage, self-marriage, the marriage of sister/brother or for the post matriculation education of son or daughter;
- (6) Non-refundable advance to members affected by cut in the supply of electricity;
- (7) Non-refundable advance in case property is damaged by a calamity of exceptional nature such as floods, earthquakes or riots;
- (8) Withdrawals for repayment of loans in special cases; and
- (9) Non-refundable advance to physically handicapped members for purchasing an equipment required to minimise the hardship on account of handicap.

**Final withdrawal:** Full accumulations with interest thereon are refunded in the event of death, permanent disability, superannuation, retrenchment or migration from India for permanent settlement abroad/taking employment abroad, voluntary retirement, certain discharges from employment under Industrial Disputes Act, 1947, transfer to an establishment/factory not covered under the Act.

In other cases, with permission of commissioner or any subordinate officer to him, a member is allowed to draw full amount when he ceases to be in employment and has not been employed in any establishment to which the Act applies for a continuous period of at least 2 months. This requirement of 2 months waiting period shall not apply in cases of female members resigning from service for the purpose of getting married.

## (B) Employees' Pension Scheme

Under Section 6A, Government has introduced a new pension scheme styled Employees' Pension Scheme, 1995 w.e.f. 16.11.1995, in place of Family Pension Scheme, 1971.

The Employees' Pension Scheme is compulsory for all the persons who were members of the Family Pension Scheme, 1971. It is also compulsory for the persons who become members of the Provident Fund from 16.11.1995 i.e. the date of introduction of the Scheme. The PF subscribers who were not members of the Family Pension Scheme, have an option to join this Pension Scheme. The Scheme came into operation w.e.f. 16.11.1995, but the employees, including those covered under the Voluntary Retirement Scheme have an option to join the scheme w.e.f. 1.4.1993.

Minimum 10 years contributory service is required for entitlement to pension. Normal superannuation pension is payable on attaining the age of 58 years. Pension on a discounted rate is also payable on attaining the age of 50 years. Where pensionable service is less than 10 years, the member has an option to remain covered for pensionary benefits till 58 years of age or claim return of contribution/ withdrawal benefits.

The Scheme provides for payment of monthly pension in the following contingencies (a) Superannuation on attaining the age of 58 years; (b) Retirement; (c) Permanent total disablement; (d) Death during service; (e) Death after retirement/ superannuation/permanent total disablement; (f) Children Pension; and (g) Orphan pension.

The amount of monthly pension will vary from member to member depending upon his pensionable salary and pensionable service.

### (C) Employees' Deposit-Linked Insurance Scheme

The Act was amended in 1976 and a new Section 6C was inserted empowering the Central Government to frame a Scheme to be called the Employees' Deposit-Linked Insurance Scheme for the purpose of providing life insurance benefit to the employees of any establishment or class of establishments to which the Act applies.

The Central Government has accordingly framed the Employees' Deposits-Linked Insurance Scheme, 1976. It came into force on the 1st August, 1976.

1. *Application of the Scheme:* The Employees Deposit-Linked Insurance Scheme, 1976 is applicable to all factories/establishments to which the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 applies.

All the employees who are members of the Provident Funds in both the exempted and the unexempted establishments are covered under the scheme.

2. *Contributions to the Insurance Fund:* The employees are not required to contribute to the Insurance Fund. The employers are required to pay contributions to the Insurance Fund at the rate of 1% of the total emoluments, i.e., basic wages, dearness allowance including, cash value of any food concession and retaining allowance, if any.
3. *Administrative expenses:* The employers of all covered establishments are required to pay charges to the Insurance Fund.
4. *Nomination:* The nomination made by a member under the Employee Provident Fund Scheme 1952 or in the exempted provident fund is treated as nomination under this scheme. Provisions of Section 5 have overriding effect and will override the personal laws of the subscriber in the matters of nominations (LLJ I 1996 All. 236).
5. *Payment of assurance benefit:* In case of death of a member, an amount equal to the average balance in the account of the deceased during the preceding 12 months or period of membership, whichever is less shall be paid to the persons eligible to receive the amount or the Provident Fund accumulations.
6. *Exemption from the Scheme:* Factories/establishments, which have an Insurance Scheme conferring more benefits than those provided under the statutory Scheme, may be granted exemption, subject to certain conditions, if majority of the employees are in favour of such exemption.

## DETERMINATION OF MONEYS DUE FROM EMPLOYERS

### (i) Determination of money due

Section 7A vests the powers of determining the amount due from any employer under the provisions of this Act and deciding the dispute regarding applicability of this Act in the Central Provident Fund Commissioner, Additional Provident Fund Commissioner, Deputy Provident Fund Commissioner, Regional Provident Fund Commissioner or Assistant Provident Fund Commissioner. For this purpose, he may conduct such inquiry as he may deem necessary.

Central Government has already constituted Employees Provident Fund Appellate Tribunal, consisting of a presiding officer who is qualified to be a High Court Judge or a District Judge with effect from 1st July, 1997 in accordance with provisions of Section 7D. Any person aggrieved by order/notification issued by Central

Government/ authority under Sections 1(3), 1(4), 3, 7A(1), 7C, 14B or 7B (except an order rejecting an application for review) may prefer an appeal. The tribunal shall prescribe its own procedure and have all powers vested in officers under Section 7A.

The proceedings before the tribunal shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 and for Section 196 of Indian Penal Code and Civil, 1908, it shall be deemed to be a Civil Court for all purposes of Section 195 and Chapter XXVI of Code of Procedure. The appellant can take assistance of legal practitioner and the Government shall appoint a presenting officer to represent it. Any order made by the Tribunal finally disposing of the appeal cannot be questioned in any Court.

### **(ii) Mode of recovery of moneys due from employers**

Section 8 prescribes the mode of recovery of moneys due from employers by the Central Provident Fund Commissioner or such officer as may be authorised by him by notification in the Official Gazette in this behalf in the same manner as an arrear of land revenue. Recovery of arrears of Provident Fund cannot be effected from unutilised part of cash-credit of an industrial establishment (1998 LAB IC Kar 3044).

### **(iii) Recovery of moneys by employers and contractors**

Section 8A lays down that the amount of contribution that is to say the employer's contribution as well as the employee's contribution and any charges for meeting the cost of administering the Fund paid or payable by an employer in respect of an employee employed by or through a contractor, may be recovered by such employer from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

A contractor from whom the amounts mentioned above, may be recovered in respect of any employee employed by or through him, may recover from such employee, the employee's contribution under any scheme by deduction from the basic wages, dearness allowance and retaining allowance, if any, payable to such employee. However, notwithstanding any contract to the contrary, no contractor shall be entitled to deduct the employer's contribution or the charges referred to above from the basic wages, dearness allowance and retaining allowance payable to an employee employed by or through him or otherwise to recover such contribution or charges from such employee.

### **(iv) Measures for recovery of amount due from employer**

The authorised officer under this Act shall issue a certificate for recovery of amount due from employer to the Recovery Officer. The Recovery Officer has got the powers to attach/sell the property of employer, call for arrest and detention of employer, etc. for effecting recovery. The employer cannot challenge the validity of the certificate. The authorised officer can grant time to the employer to make the payment of dues.

The Central Provident Fund Commissioner may require any person, from whom amount is due to the employer, to pay directly to the Central Provident Fund Commissioner/Officer so authorised and the same will be treated as discharge of his liability to the employer to the extent of amount so paid. (Sections 8B to 8G)

### **(v) Priority of payment of contributions over other debts**

Section 11 of the Act provides that the contribution towards Provident Fund shall rank prior to other payments in the event of employer being adjudicated insolvent or where it is a company on which order of winding up has been made. The amount shall include:

- (a) the amount due from the employer in relation to an establishment to which any Scheme or Insurance Scheme applies in respect of any contribution payable to the Fund, or the Insurance, damages recoverable under Section 14B, accumulations required to be transferred under sub-section (2) of Section 15 or any charges payable by him under any other provisions of this Act or of any provision of the Scheme or the Insurance Scheme; or

- (b) the amount due from employer in relation to an exempted establishment in respect of any contribution to the Provident Fund or any Insurance Fund in so far as it relates to exempted employees under the rules of the Provident Fund, or any Insurance Fund or any contribution payable by him towards the Pension Fund under Sub-section (6) of Section 17, damages recoverable under Section 13B or any charges payable by him to the appropriate Government under any provisions of this Act or any of the conditions specified under Section 17.

### **EMPLOYER NOT TO REDUCE WAGES**

Section 12 prohibits an employer not to reduce directly or indirectly the wages of any employee to whom the Scheme or the Insurance Scheme applies or the total quantum of benefits in the nature of old age pension, gratuity or provident fund or life insurance to which the employee is entitled under the terms of employment, express or implied, simply by reason of his liability for the payment of any contribution to the Fund or the Insurance Fund or any charges under this Act or the Scheme or the Insurance Scheme.

### **TRANSFER OF ACCOUNTS**

Section 17A(1) of the Act provides that where an employee employed in an establishment to which this Act applies leaves his employment and obtain re-employment in another establishment to which this Act does not apply, the amount of accumulations to the credit of such employee in the Fund, or as the case may be, in the Provident Fund of the establishment left by him shall be transferred within such time as may be specified by Central Government in this behalf to the credit of his account in the Provident Fund of the establishment in which he is re-employed, if the employee so desires and the rules in relation to that Provident Fund permit such transfer.

Sub-section (2) further provides that where as employee employed in an establishment to which this Act does not apply, leaves his employment and obtain re-employment in another establishment to which this Act applies, the amount of accumulations to the credit of such employee in the Provident Fund of the establishment left by him, may, if the employee so desires and also rules in relation to such Provident Fund permit, be transferred to the credit of his account in the Fund or as the case may be, in the Provident Fund of the establishment in which he is re-employed.

### **PROTECTION AGAINST ATTACHMENT**

Statutory protection is provided to the amount of contribution to Provident Fund under Section 10 from attachment to any Court decree. Sub-section (1) of Section 10 provides that the amount standing to the credit of any member in the Fund or any exempted employee in a Provident fund shall not in any way, be capable of being assigned or charged and shall not be liable to attachment under any decree or order or any Court in respect of any debt or liability incurred by the member or the exempted employee and neither the official assignee appointed under the Presidency Towns Insolvency Act, 1909 nor any receiver appointed under the Provincial Insolvency Act, 1920 shall be entitled to or have any claim on any such amount.

It is further provided in sub-section (2) that any amount standing to the credit of a member in the Fund or of an exempted employee in a Provident Fund at the time of his death and payable to his nominee under the Scheme or the rules of the Provident Fund shall, subject to any deduction authorised by the said scheme or rules, vest in the nominee and shall be free from any debt or other liability incurred by the deceased or the nominee before the death of the member or of the exempted employee and shall also not be liable to attachment under any decree or order of any Court. There is a statutory vesting of the fund on dependents after the death of the subscriber which on such vesting becomes absolute property of dependent and cannot be held to have inherited by dependent.

The above provision shall apply in relation to the Employees' Pension Scheme or any other amount payable under the Insurance Scheme as they apply in relation to any amount payable out of the fund.

### **POWER TO EXEMPT**

Section 17 authorises the appropriate Government to grant exemptions to certain establishments or persons from the operation of all or any of the provisions of the Scheme. Such exemption shall be granted by notification in the Official Gazette subject to such conditions as may be specified therein.

### COMPLIANCES UNDER THE ACT

The establishment must ensure following compliances under the Act. These compliances are not exhaustive but illustrative.

1. The factory/establishment is covered by the provisions of this Act with effect from.....  
Or  
The factory/establishment is covered under the provisions of this Act by a notification dated ..... given by the government in the official gazette.
2. The establishment has duly paid its contribution to Employees' Provident Fund, Employees' Family Pension Scheme, Employees' Deposit Linked Insurance Scheme set up under the Act during the financial year.
3. The establishment has set up a separate Provident Fund Trust and has complied with the provisions of the Act during the financial year.
4. The establishment has sent a consolidated return within fifteen days of the commencement of the Employees' Provident Fund Scheme to the commissioner during the financial year.  
Or  
The establishment has no employees entitled to become members of the Employees' Provident Fund during the financial year. Therefore, the establishment has duly filed the 'NIL' return to the Commissioner.
5. During the year under review, the establishment has duly filed returns with the Commissioner in respect of employees qualifying to become members of the Employees' Provident Fund and employees leaving the service during the financial year.
6. The establishment has sent a consolidated return within three months of the commencement of the Employees' Pension Scheme to the commissioner.  
Or  
The establishment has no employees entitled to become members of the Employees' Family Pension Fund during the financial year. Therefore the establishment has duly filed the 'NIL' return to the Commissioner.
7. The establishment has also duly sent to the commissioner, the consolidated annual contribution statement showing the total amount of recoveries made during the year from the wages of each member and the total amount contributed by the employer in respect of each such member during the financial year.
8. There was no prosecution initiated against or show cause notices received by the Company and no fines or penalties or any other punishment was imposed on the Company during the financial year, for offences under the Act.

#### LESSON ROUND-UP

- The Employee's Provident Funds and Miscellaneous Provisions Act, 1952 is a welfare legislation enacted for the purpose of instituting a Provident Fund for employees working in factories and other establishments.
- The Act aims at providing social security and timely monetary assistance to industrial employees and their families when they are in distress and/or unable to meet family and social obligations and to protect them in old age, disablement, early death of the bread winner and in some other contingencies.





## SECTION IV: THE PAYMENT OF GRATUITY ACT, 1972

### Key Concepts

- Appropriate Government ■ Continuous Service ■ Family ■ Retirement ■ Superannuation

### Learning Objectives

#### To understand:

- The applicability of Payment of Gratuity Act
- When and to whom the payment of the gratuity payable
- The amount of gratuity payable
- The rights and obligations of employees and employer

### Lesson Outline

- Introduction
- Application of the Act
- Establishments to which the Act applies
- Who is an 'employee'?
- Continuous Service
- Retirement
- Superannuation
- Wages
- Payment of Gratuity
- To whom is gratuity payable
- Payment of Gratuity
- Nomination
- Forfeiture of gratuity
- Exemptions
- The Controlling Authority and the Appellate Authority
- Rights and obligations of employees
- Rights and obligations of the employer
- Recovery of gratuity
- Protection of gratuity
- Compliances under the Act
- Lesson Round-Up
- Test Yourself

**The Payment of Gratuity Act, 1972 provides 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. It extends to the whole of India.**

## INTRODUCTION

Gratuity is a lump sum payment made by the employer as a mark of recognition of the service rendered by the employee when he retires or leaves service. The Payment of Gratuity Act provides for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments.

The Payment of Gratuity Act has been amended from time to time to bring it in tune with the prevailing situation. The Act has been amended to enhance the ceiling on amount of gratuity from Rs.10 lakh to Rs.20 lakh as well as to widen the scope of the definition of “employee” under section 2 (e) of the Act.

## APPLICATION OF THE ACT

Application of the Act to an employed person depends on two factors. Firstly, he should be employed in an establishment to which the Act applies. Secondly, he should be an “employee” as defined in Section 2(e).

According to Section 1(3), the Act applies to:

- (a) every factory, mine, oilfield, plantation, port and railway company;
- (b) every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months;
- (c) such other establishments or class of establishments in which ten or more employees are employed, or were employed, on any day of the preceding twelve months as the Central Government may, by notification specify in this behalf.

In exercise of the powers conferred by clause (c), the Central Government has specified Motor transport undertakings, Clubs, Chambers of Commerce and Industry, Inland Water Transport establishments, Solicitors offices, Local bodies, Educational Institutions, Societies, Trusts and Circus industry, in which 10 or more persons are employed or were employed on any day of the preceding 12 months, as classes of establishments to which the Act shall apply.

A shop or establishment to which the Act has become applicable once, continues to be governed by it, even if the number of persons employed therein at any time after it has become so applicable falls below ten. (Section 3A)

## WHO IS AN EMPLOYEE?

The definition of “employee” under section 2 (e) of the Act has been amended by the Payment of Gratuity (Amendment) Act, 2009 to cover the teachers in educational institutions retrospectively with effect from 3rd April, 1997. The amendment to the definition of “employee” has been introduced in pursuance to the judgment of Supreme Court in *Ahmedabad Private Primary Teachers’ Association v. Administrative Officer*, AIR 2004 SC 1426.

According to Section 2(e) as amended by the Payment of Gratuity (Amendment) Act, 2009 “employee” means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.

In case of *Maniben Maganbhai Bhariya vs. District Development Officer, Dahod and Ors.* supreme court in its order dated 25th April 2022 held Anganwadi Workers and Anganwadi Helpers to work in Anganwadi centres set up under Integrated Child Development Scheme (ICDS) are entitled to gratuity under the provisions of Payment of Gratuity Act, 1972.

**The Court inter-alia observed as under:**

“The role of Anganwadi workers (AWW) and Anganwadi helpers (AWH) is not only at war against malnutrition but have played a pivotal and significant role during the Covid-19 pandemic which was the unprecedented health war faced by the nation in responding to the various challenges posed ICDS scheme is not just a welfare scheme but a means of protecting the rights of children under six- including their right to nutrition, health and joyful learning and rights of pregnant and lactating mothers. The survival, well-being and rights of children become social issues of interest to the whole community and not just to the mothers of the families concerned.

It is not the case of the State Government that every Anganwadi centre is a separate entity. Anganwadi centres and Mini Anganwadi centres are a part of the Anganwadi establishment of the State Government. The Anganwadi centres have been employing ten or more AWWs and AWHs in the State. Therefore, Anganwadi centres are establishments contemplated by Clause (b) of Sub-section (3) of Section 1 of the 1972 Act.

The definition of ‘wages’ is very wide. It means all emoluments which are earned by an employee on duty. Thus, the honorarium paid to AWWs and AWHs will also be covered by the definition of wages. As AWWs and AWHs are employed by the State Government for wages in the establishments to which the 1972 Act applies, the AWWs and AWHs are employees within the meaning of the 1972 Act”

**DEFINITIONS****Appropriate Government [Section 2(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.

It may be noted that many large establishments have branches in more than one State. In such cases the ‘appropriate Government’ is the Central Government and any dispute connected with the payment or non-payment of gratuity falls within the jurisdiction of the ‘Controlling Authority’ and the ‘Appellate Authority’ appointed by the Central Government under Sections 3 and 7.

A Company Secretary should know whether the ‘appropriate Government’ in relation to his establishment is the Central Government or the State Government. He should also find out who has been notified as the ‘Controlling Authority’ and also who is the ‘Appellate Authority’. It may be noted that any request for exemption under Section 5 of the Act is also to be addressed to the ‘appropriate Government’. It is, therefore, necessary to be clear on this point.

**Continuous Service**

According to Section 2A, for the purposes of this Act:

- (1) An employee shall be said to be in ‘continuous service’ for a period if he has, for that period been in un-interrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order treating the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment), layoff, strike or a lock-out or cessation of work not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act;

- (2) Where an employee (not being an employee employed in a seasonal establishment) is not in continuous service within the meaning of clause (1) for any period of one year or six months, he shall be deemed to be in continuous service under the employer:
- (a) for the said period of one year, if the employee during the period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than:
    - (i) one hundred and ninety days in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and
    - (ii) two hundred and forty days in any other case.
  - (b) for the said period of six months, if the employee during the period of six calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than:
    - (i) ninety five days, in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and
    - (ii) one hundred and twenty days in any other case;

*Explanation:* For the purpose of clause (2), the number of days on which an employee has actually worked under an employer shall include the days on which:

- (i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946, or under the Industrial Disputes Act, 1947, or under any other law applicable to the establishment;
  - (ii) he has been on leave with full wages, earned in the previous year;
  - (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
  - (iv) in the case of a female, she has been on maternity leave; so however, that the total period of such maternity leave does not exceed such period as may be notified by central government from time to time.
- (3) Where an employee, employed in a seasonal establishment, is not in continuous service within the meaning of clause (1) for any period of one year or six months, he shall be deemed to be in continuous service under the employer for such period if he has actually worked for not less than seventy-five per cent, of the number of days on which the establishment was in operation during such period.

Service is not continuous, in case of legal termination of service and subsequent re-employment.

Gratuity cannot be claimed on the basis of continuous service on being taken back in service after break in service of one and a half year on account of termination of service for taking part in an illegal strike, where the employee had accepted gratuity for previous service and later withdrawn from the industrial dispute (*Balaram v. Phoenix Mills Ltd., 1999 CLA Bom.19*).

### Family [Section 2(h)]

Family, in relation to an employee, shall be deemed to consist of:

- (i) in case of a male employee, himself, his wife, his children, whether married or unmarried, his dependent parents and the dependent parents of his wife and the widow and children of his predeceased son, if any,
- (ii) in the case of a female employee, herself, her husband, her children, whether married or unmarried, her dependent parents and the dependent parents of her husband and the widow and children of her predeceased son, if any.

*Explanation:* Where the personal law of an employee permits the adoption by him of a child, any child lawfully adopted by him shall be deemed to be included in his family, and where a child of an employee has been adopted by another person and such adoption is, under the personal law of the person making such adoption lawful, such child shall be deemed to be excluded from the family of the employee.

### Retirement [Section 2(q)]

“Retirement” means termination of the service of an employee otherwise than on superannuation.

### Superannuation [Section 2(r)]

“Superannuation” in relation to an employee, means 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.

### Wages [Section 2(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.

## PAYMENT OF GRATUITY [SECTION 4]

According to Section 4(1) of the Payment of Gratuity Act, 1972, 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.

**Note:** The completion of continuous service of five years is not necessary where the termination of the employment of any employee is due to death or disablement.

However, the period of continuous service is to be reckoned from the date of employment and not from the date of commencement of this Act (CLA-1996-III-13 Mad.). Mere absence from duty without leave can not be said to result in breach of continuity of service for the purpose of this Act. [*Kothari Industrial Corporation v. Appellate Authority*, 1998 Lab IC, 1149 (AP)]

**In case of *Balbeer Singh Pokhariya and Ors.(Appellant/Petitioner/Plaintiff) vs. State of Uttarakhand and Ors.(Respondents)* dated 13.01.2021, HIGH COURT OF UTTARAKHAND AT NAINITAL**

**Employees would be eligible to be considered for payment of gratuity from date of his induction as daily wager till regularization of his services**

**Facts of the Case:**

**Contention of Petitioners:**

Petitioners are appointed on contractual basis on different posts. Thereafter, services of the petitioners were regularized by the respondent department. The respondent department after considering the past satisfactory services of the petitioners regularized the services of the petitioner. The petitioners continued to serve the department till they attained the age of superannuation. The grievance of the petitioners is that after retirement, respondent department is not paying retiral benefits to the petitioners.

**Contention of Respondents:**

The respondent contended that the appellant could not be held eligible to claim the gratuity amount because out of the total period of 25 years of his service, he worked 22 years as daily wager and only 3 years as regular employee. It is for this reason, the learned counsel urged that the appellant could not be said to have worked continuously for a period of 5 years as provided under the Act so as to make him eligible to claim gratuity.

**The Court observed as under:**

“.....In our considered opinion, once the State regularized the services while he was in State services, he became entitled to count his total period of service for claiming the gratuity amount subject to his proving continuous service of 5 years as specified under Section 2A of the Act which, in this case, he has duly proved.

It was indeed the State who took 22 years to regularize the service of the appellant and went on taking work from the appellant on payment of a meagre salary of Rs. 2776/- per month for 22 long years uninterruptedly and only in the last three years, the State started paying a salary of Rs. 11,107/- per month to the appellant. Having regularized the services of the appellant, the State had no justifiable reason to deny the benefit of gratuity to the appellant which was his statutory right under the Act. It being a welfare legislation meant for the benefit of the employees, who serve their employer for a long time, it is the duty of the State to voluntarily pay the gratuity amount to the appellant rather than to force the employee to approach the Court to get his genuine claim.”

**TO WHOM IS GRATUITY PAYABLE?**

It is payable normally to the employee himself. However, in the case of death of the employee, it shall be paid to his nominee and if no nomination has been made, to his heirs and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.

**Amount of Gratuity Payable**

Gratuity is calculated on the basis of continuous service as defined above i.e. for every completed year of service or part in excess of six months, at the rate of fifteen days wages last drawn. The maximum amount of gratuity allowed under the Act is Rs. 20 lakh. The ceiling on the amount of gratuity from Rs. 10 lakh to Rs.20 lakh has been enhanced by the Payment of Gratuity (Amendment) Act, 2018.

**Nomination**

An employee covered by the Act is required to make nomination in accordance with the Rules under the Act for the purpose of payment of gratuity in the event of his death. The rules also provide for change in nomination.

**Forfeiture of Gratuity**

The Act deals with this issue in two parts. Section 4(6)(a) provides that the gratuity of an employee whose services have been terminated for any act of willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, gratuity shall be forfeited to the extent of the damage or loss or caused. The right of forfeiture is limited to the extent of damage. In absence of proof of the extent of damage, the right of forfeiture is not available (LLJ- II-1996-515 MP).

Section 4(6)(b) deals with a case where the services of an employee have been terminated:

- (a) for riotous and disorderly conduct or any other act of violence on his part, or
- (b) for any act which constitutes an offence involving moral turpitude provided that such offence is committed by him in the course of his employment.

In such cases the gratuity payable to the employee may be wholly or partially forfeited. Where the service has not been terminated on any of the above grounds, the employer cannot withhold gratuity due to the employee. Where the land of the employer is not vacated by the employee, gratuity cannot be withheld (*Travancore Plywood Ind. v. Regional JLC, Kerala, 1996 LLJ-II-14 Ker.*). Assignment of gratuity is prohibited, it cannot be withheld for non vacation of service quarters by retiring employees (*Air India v. Authority under the Act, 1999 CLA 34 Bom. 66*).

## EXEMPTIONS

The appropriate Government may exempt any factory or establishment covered by the Act or any employee or class of employees if the gratuity or pensionary benefits for the employees are not less favourable than conferred under the Act.

### The Controlling Authority and the Appellate Authority

The controlling authority and the Appellate Authority are two important functionaries in the operation of the Act. Section 3 of the Act says that the appropriate Government may by notification appoint any officer to be a Controlling Authority who shall be responsible for the administration of the Act. Different controlling authorities may be appointed for different areas.

Section 7(7) provides for an appeal being preferred against an order of the Controlling Authority to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf.

## RIGHTS AND OBLIGATIONS OF EMPLOYEES

### Application for Payment of Gratuity

Section 7(1) lays down that a person who is eligible for payment of gratuity under the Act or any person authorised, in writing, to act on his behalf shall send a written application to the employer. Rule 7 of the Payment of Gratuity (Central) Rules, 1972, provides that the application shall be made ordinarily within 30 days from the date gratuity becomes payable. The rules also provides that where the date of superannuation or retirement of an employee is known, the employee may apply to the employer before 30 days of the date of superannuation or retirement.

A nominee of an employee who is eligible for payment of gratuity in the case of death of the employee shall apply to the employee ordinarily within 30 days from the date of the gratuity becomes payable to him. [Rule 7(2)]

Although the forms in which the applications are to be made have been laid down, an application on plain paper with relevant particulars is also accepted.

The application may be presented to the employer either by personal service or be registered post with acknowledgment due. An application for payment of gratuity filed after the period of 30 days mentioned above shall also be entertained by the employer if the application adduces sufficient cause for the delay in preferring him claim. Any dispute in this regard shall be referred to the Controlling Authority for his decision.

## RIGHTS AND OBLIGATIONS OF THE EMPLOYER

### Employers Duty to Determine and Pay Gratuity

Section 7(2) lays down that as soon as gratuity becomes payable the employer shall, whether the application 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.

Section 7(3) of the Act says that the employer shall arrange to pay the amount of gratuity within thirty days from the date of its becoming payable to the person to whom it is payable.



Section 7(3A): If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at the rate notified the central government time to time.

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.

### **Dispute as to the Amount of Gratuity or Admissibility of the Claim**

If the claim for gratuity is not found admissible, the employer shall issue a notice in the prescribed form to the applicant employee, nominee or legal heir, as the case may be, specifying reasons why the claim for gratuity is not considered admissible. A copy of the notice shall be endorsed to the Controlling Authority.

If the disputes relates as to the amount of gratuity payable, the employer shall deposit with the Controlling Authority such amount as he admits to be payable by him. According to Section 7(4)(e), the Controlling Authority shall pay the amount of deposit as soon as may be after a deposit is made

- (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.

### **Recovery of Gratuity**

Section 8 provides that if the gratuity payable under the Act is not paid by the employer within the prescribed time, the Controlling Authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector, who shall recover the same together with the compound interest thereon at such rate as the Central Government may be notification, specify, from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto:

“However, the controlling authority shall, before issuing a certificate under this section, give the employer a reasonable opportunity of showing cause against the issue of such certificate:

Further, the amount of interest payable under this section shall, in no case, exceed the amount of gratuity payable under this Act”.

### **Protection of Gratuity**

Gratuity has been exempted from attachment in execution of any decree or order of any Civil, Revenue or Criminal Court. This relief is aimed at providing payment of gratuity to the person or persons entitled there to without being affected by any order of attachment by a decree of any Court.

## **COMPLIANCES UNDER THE ACT**

The establishment must ensure following compliances under the Act. These compliances are not exhaustive but illustrative.

1. The Establishment has observed the following while paying the gratuity to the persons who are entitled to it:
  - (a) It has paid gratuity at the rate of fifteen days wages for every completed year of service or part thereof in excess of six months, calculated on the rates of wages last drawn by the employee concerned. Since the employees of the establishment are monthly rated employees, the fifteen days wages were calculated by dividing the monthly rates of wages drawn by him by twenty-six and multiplying the quotient by fifteen.

OR

Since the employees were employed on piece rate basis, the gratuity was paid at the rate of fifteen days wages for every completed year of service calculated at an average total wages during a period of three months immediately preceding the termination of employment.

OR

Since the Registered Establishment is a seasonal establishment, gratuity was paid at the rate of seven days for each season.

- (b) In the event of death or disablement of any employee due to accident or disease, the gratuity was paid without the requirement of five years of continuous service.
  - (c) In the event of death, the gratuity was paid to nominees or legal heir(s) or where the person entitled was a minor, the gratuity was deposited with the Controlling Authority.
  - (d) The maximum amount of gratuity paid to any employee did not exceed Rs. 20,00,000/-.
2. The Establishment made deductions from the gratuity in respect of those employees who were liable for any act, wilful omission or negligence, which caused damages or loss to, or destruction of, property of the Registered Establishment. The total deductions were only to the extent of loss or damages so caused.
  3. The Establishment also made deductions from the gratuity in respect of an employee whose services were terminated for an offence involving moral turpitude.
  4. The Establishment has paid its liability under PGA within thirty days from the date it became payable.
  5. The Establishment has deposited with the Controlling Authority the liability under PGA to the extent admitted by it, which was disputed by the person entitled to it. The Establishment has, accordingly, made application to the Controlling Authority for the settlement of dispute.
  6. (a) The Establishment sent Notice to the person entitled to gratuity under the PGA within fifteen days from the date of receipt of application for gratuity from such person with the directions to collect the gratuity within thirty days from the date of receipt of application.
    - (a) Where the Establishment did not admit its liability under the PGA, it has specified the reasons for the same
    - (b) Copies of Notices under clause (a) and (b) were also endorsed to the Controlling Authority.
  7. The liability of gratuity was settled in cash or at the request of the person claiming by Demand Draft or Banker's Cheque. Where the amount of gratuity was less than Rs. 1,000/-, the same was sent by Postal Money Order. The Controlling Authority was given details of all payments made.

#### LESSON ROUND-UP

- The Act is applicable to every factory, shop or an establishment, in which ten or more persons are employed, or were employed on any day of the proceeding twelve months.
- A shop or establishment to which the Act has become applicable shall continue to be governed by the Act even if the number of persons employed falls below 10 at any subsequent stage.
- An employee is eligible for receiving gratuity payment only after he has completed five years of continuous service. This condition of five years is not necessary if the termination of the employment of an employee is due to death or disablement. The maximum amount of Gratuity payable is Rs. 20 lakhs.
- Each employee is required to nominate one or more member of his family, as defined in the Act, who will receive the gratuity in the event of the death of the employee.

- Any person to whom the gratuity amount is payable shall make a written application to the employer. The employer is required to determine the amount of gratuity payable and give notice in writing to the person to whom the same is payable and to the controlling authority thereby specifying the amount of gratuity payable.
- The employer is under obligation to pay the gratuity amount within 30 days from the date it becomes payable. Simple interest at the rate of 10% p.a. is payable on the expiry of the said period.
- Gratuity can be forfeited for any employee whose services have been terminated for any act, willful omission or negligence causing damage or destruction to the property belonging to the employer. It can also be forfeited for any act which constitutes an offence involving moral turpitude.
- If any person makes a false statement for the purpose of avoiding any payment to be made by him under this Act, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees or with both. If an employer contravenes any provision of the Act, he shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to one year or with a fine, which may vary from ten thousand rupees to twenty thousand rupees.

**TEST YOURSELF**

*(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)*

1. State the scope and object of the Payment of Gratuity Act?
2. Define the following terms:
  - (i) Continuous service
  - (ii) Employee
  - (iii) Wages.
3. When gratuity becomes payable? To whom gratuity is payable?
4. Who are entitled for payment of gratuity?
5. Whether gratuity is liable to be forfeited? If so, under what circumstances?
6. Suresh was a godown keeper in a textile factory and in the course of his employment he committed theft of cotton bales worth Rs. 1.50 lakh and sold them in the market. This act of Suresh was caught red handed through the CCTV footage and physical inspection of the godown. Suresh was dismissed from his services immediately without paying gratuity to him. Whether the act of the employer is justified in forfeiting the amount of gratuity ? Narrate your answer as per the appropriate provisions of the Law.

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## SECTION V: THE MATERNITY BENEFIT ACT, 1961

### KEY CONCEPTS

- Appropriate Government ■ Child ■ Commissioning Mother ■ Employer ■ Establishment ■ Maternity Benefit
- Wages

### Learning Objectives

#### To understand:

- The meaning of Maternity Benefit, establishment and commissioning mother
- Right of women for payment of maternity benefits
- The regulatory framework on notice of claim for maternity benefit, nursing breaks and creche facility

### Lesson Outline

- Introduction
- Appropriate Government
- Establishment
- Wages
- Maternity benefit
- Employment of, or work by, women prohibited during certain period
- Right to payment of maternity benefits
- Notice of claim for maternity benefit
- Nursing breaks
- Creche Facility
- Abstract of Act and Rules there under to be exhibited
- Maintenance of Register and Record
- Penalty
- Lesson Round-Up
- Test Yourself

**The Maternity Benefit Act, 1961 regulates employment of women in certain establishments for a certain period before and after childbirth and provides for maternity and other benefits. It extends to the whole of India.**

## INTRODUCTION

Article 39(e) &(f) of the Constitution of India provides that the State shall, in particular, direct its policy towards securing that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength; and that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Maternity Benefits are aimed to protect the dignity of motherhood by providing for the full and healthy maintenance of women and her child when she is not working. The Maternity Benefit Act, 1961 is applicable to mines, factories, circus industry, plantations, shops and establishments employing ten or more persons. It can be extended to other establishments by the State Governments.

## DEFINITIONS

### Appropriate Government {Section 3(a)}

“**Appropriate Government**” means in relation to an establishment being a mine or an establishment wherein 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.

### Child {Section 3(b)}

“**Child**” includes a still-born child.

### Commissioning Mother {Section 3(ba)}

“**Commissioning Mother**” means a biological mother who uses her egg to create an embryo implanted in any other woman.

### Employer{Section 3(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.

### Establishment{ Section 3(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;

- (iva) a shop or establishment; or
- (v) an establishment to which the provisions of this Act have been declared under sub-section (1) of section 2 to be applicable.

### **Maternity Benefit {Section 3(h)}**

“**Maternity benefit**” means the payment referred to in sub-section (1) of section 5 {Section 3(h)}.

### **Wages {Section 3(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.

## **EMPLOYMENT OF OR WORK BY WOMEN PROHIBITED DURING CERTAIN PERIODS (SECTION 4)**

Section 4 of the Act provides that no employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy. It also specifies that no women shall work in any establishment during the six weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy.

It may be noted that if a pregnant women makes request to her employer, she shall not be given to do during the period of one month immediately preceding the period of six weeks, before the date of her expected delivery, any work which is of an arduous nature or which involves long hours of standing, or which in any way is likely to interfere with her pregnancy or the normal development of the foetus, or is likely to cause her miscarriage or otherwise to adversely affect her health.

## **RIGHT TO PAYMENT OF MATERNITY BENEFITS (SECTION 5)**

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.

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, the minimum rate of wage fixed or revised under the Minimum Wages Act, 1948 or ten rupees, whichever is the highest.

A woman shall be entitled to maternity benefit if she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than eighty days in the twelve months immediately preceding the date of her expected delivery.

The maximum period for which any woman shall be entitled to maternity benefit shall be twenty-six weeks of which not more than eight weeks shall precede the date of her expected delivery. However the maximum period entitled to maternity benefit by a woman having two or more than two surviving children shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery. If 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. 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. If the child also dies during the said period, then, for the days up to and including the date of the death of the child.

A woman who legally adopts a child below the age of three months or a commissioning mother shall be entitled to maternity benefit for a period of twelve weeks from the date the child is handed over to the adopting mother or the commissioning mother, as the case may be.

In case where the nature of work assigned to a woman is of such nature that she may work from home, the employer may allow her to do so after availing of the maternity benefit for such period and on such conditions as the employer and the woman may mutually agree.

In the case of *Municipal Corporation of Delhi v. Female Workers (Muster Roll) and Amr.* dated 8th March, 2000, the Hon'ble Supreme Court clearly stated that the benefits under the Act shall be provided to the women (muster roll) employees of the Corporation who have been working with them on daily wages.

Municipal Corporation of Delhi employs a large number of persons including female workers on muster roll and they are made to work in that capacity for years together though they are recruited against the work of perennial nature. It was further stated that the nature of duties and responsibilities performed and undertaken by the muster roll employees are the same as those of the regular employees. The women employed on muster roll, which have been working with the Municipal Corporation of Delhi for years together, have to work very hard in construction projects and maintenance of roads including the work of digging trenches etc. but the Corporation does not grant any maternity benefit to female workers who are required to work even during the period of mature pregnancy or soon after the delivery of child.

#### **NOTICE OF CLAIM FOR MATERNITY BENEFIT AND PAYMENT THEREOF (SECTION 6)**

As per this section any woman employed in an establishment and entitled to maternity benefit under the provisions of this Act may give notice in writing in prescribed form, to her employer, stating that her maternity benefit and any other amount to which she may be entitled under this Act may be paid to her or to such person as she may nominate in the notice and that she will not work in any establishment during the period for which she receives maternity benefit.

In the case of a woman who is pregnant, such notice shall state the date from which she will be absent from work, not being a date earlier than six weeks from the date of her expected delivery. Any woman who has not given the notice when she was pregnant may give such notice as soon as possible after the delivery.

On receipt of the notice, the employer shall permit such woman to absent herself from the establishment during the period for which she receives the maternity benefit. The amount of maternity benefit for the period preceding the date of her expected delivery shall be paid in advance by the employer to the woman on production of such proof, that the woman is pregnant, and the amount due for the subsequent period shall be paid by the employer to the woman within forty-eight hours of production of such proof as may be prescribed that the woman has been delivered of a child.



**NURSING BREAKS(SECTION 11)**

Every woman delivered of a child who returns to duty after such delivery shall, in addition to the interval for rest allowed to her, be allowed in the course of her daily work two breaks of the prescribed duration for nursing the child until the child attains the age of fifteen months.

**CRECHE FACILITY (SECTION 11A)**

Every establishment having fifty or more employees shall have the facility of creche within such distance as may be prescribed, either separately or along with common facilities. The employer shall allow four visits a day to the creche by the woman, which shall also include the interval for rest allowed to her.

Every establishment shall intimate in writing and electronically to every woman at the time of her initial appointment regarding every benefit available under the Act.

**ABSTRACT OF ACT AND RULES THERE UNDER TO BE EXHIBITED (SECTION 19)**

As per section 19, an abstract of the provisions of this Act and the rules made thereunder in the language or languages of the locality shall be exhibited in a conspicuous place by the employer in every part of the establishment in which women are employed.

**REGISTERS (SECTION 20)**

Every employer shall prepare and maintain such registers, records and muster-rolls in prescribed manner.

**PENALTY FOR CONTRAVENTION OF ACT BY EMPLOYER (SECTION 21)**

Section 21 provides that if any employer fails to pay any amount of maternity benefit to a woman entitled under this Act or discharges or dismisses such woman during or on account of her absence from work in accordance with the provisions of the Act, he shall be punishable with imprisonment which shall not be less than three months but which may extend to one year and with fine which shall not be less than two thousand rupees but which may extend to five thousand rupees. However, the court may, for sufficient reasons to be recorded in writing, impose a sentence of imprisonment for a lesser term or fine only in lieu of imprisonment.

If any employer contravenes the provisions of the Act or the rules made thereunder, he shall, if no other penalty is elsewhere provided by or under the Act for such contravention, be punishable with imprisonment which may extend to one year, or with fine which may extend to five thousand rupees, or with both. Where the contravention is of any provision regarding maternity benefit or regarding payment of any other amount and such maternity benefit or amount has not already been recovered, the court shall, in addition, recover such maternity benefit or amount as if it were a fine and pay the same to the person entitled thereto.

**LESSON ROUND-UP**

- The Maternity Benefit Act, 1961 regulates employment of women in certain establishments for a certain period before and after childbirth and provides for maternity and other benefits. Such benefits are aimed to protect the dignity of motherhood by providing for the full and healthy maintenance of women and her child when she is not working.
- Employer shall not knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy.
- 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.



## SECTION VI: THE UNORGANISED WORKERS' SOCIAL SECURITY ACT, 2008

### KEY CONCEPTS

- Employer ■ Workers ■ National Board ■ State Board ■ Organised sector ■ Unorganised sector

### Learning Objectives

- The unorganised sectors in India
- The meaning of Employer, Workers, Organised sector and Unorganised sector
- Suitable welfare schemes for unorganised worker
- The constitution of National and State Social Security Board
- The eligibility for registration and social security benefits

### Lesson Outline

- |  |   |
|--|---|
| ➤ Introduction                                       | ➤ Record keeping by District Administration                 |
| ➤ Background   | ➤ Workers facilitation centres.                             |
| ➤ Unorganised sectors in India                       | ➤ Eligibility for registration and social security benefits |
| ➤ Introduction                                       | ➤ Power of Central Government to give directions            |
| ➤ Constitutional provisions                          | ➤ Vacancies, etc., not to invalidate proceedings.           |
| ➤ The Unorganised Workers' Social Security Act, 2008 | ➤ Power to make rules by Central Government                 |
| ➤ Short title, extent and commencement               | ➤ Power to make rules by State Government                   |
| ➤ Definitions  | ➤ Saving of certain laws                                    |
| ➤ Framing of scheme                                  | ➤ Power to remove difficulties                              |
| ➤ Funding of Central Government Schemes              | ➤ Lesson Round-Up   |
| ➤ National Social Security Board.                    | ➤ Test Yourself   |
| ➤ State Social Security Board                        |   |
| ➤ Funding of State Government Schemes                |   |

**An Act to provide for the social security and welfare of unorganised workers and for other matters connected therewith or incidental thereto.**

## INTRODUCTION

**The Unorganised Workers' Social Security Act, 2008** was enacted in India for providing social security to the Unorganised Sector. The Act has come into force w.e.f. 16th May, 2009. It extends to the whole of India.

'The Unorganised Workers' Social Security Act, 2008' providing for the social security and welfare of norganized workers. The quest for social security and freedom from want and distress has been the consistent urge of man through ages. This urge has assumed a several forms, according to the needs of people and their level of social consciousness, the advance of technology and the pace of economic development. These measures have introduced an element of stability and protection in the midst of stress and strains of life. It is a major aspect of public policy and the extent of its prevalence is a measure of the progress made by a country towards the ideal of a welfare state. There are nine components of the social security which configure its scope. It envisages that the members of a community shall be protected by a collective action against social risks causing undue hardships and privation to individuals whose prime resources can seldom be adequate to meet them. It covers through an appropriate organisations, certain risks are such than an individual of small means cannot effectively provide for them by his own ability or foresight alone or even in private combination with his colleagues. The crux of the labour problem is the mutual conflict between the employer and the employee over the question of adequacy of which the collective bargaining and the industrial conflict are two main aspects.

The directive principles of our constitution reflect the concern of the state to protect and promote the interests of weaker sections of our population. The constitution of India was enshrined with the provisions in a way to ensure social security to the human beings, in particular the workmen. The constitution guarantees the promotion of welfare of the people and eradication of the inequalities and it provides for the state to direct its policy towards securing livelihood, common hood etc., By the constitution the operation of a legal system shall be secured and effective provisions were made by the state for the participation of workers in undertakings and for securing just and humane conditions of work and a decent standard of life.

## BACKGROUND

The Unorganized Sector Workers are those who have not been able to pursue their common interests due to constraints like casual nature of employment, absence of definite employer-employee relationship, ignorance, illiteracy, etc. The unorganized workers are also generally low paid and a majority of them are devoid of any of the social security benefits like life and medical insurance, health care, maternity benefits, old age pension etc. which are available to the workers in the organized sector under the Employees State Insurance Act, 1948; the Employees Provident Fund and Other Miscellaneous Provisions Act, 1952 and the Factories Act, 1948, etc.

The unorganized sector workers can be categorized broadly into four categories, viz.

- (i) Occupation: Small and marginal farmers, landless agricultural labourers, share croppers, fishermen, those engaged in animal husbandry, in beedi rolling, beedi labeling and beedi packing, workers in building and construction, etc.
- (ii) Nature of Employment: self employed, attached agricultural labourers, bonded labourers migrant workers, contract and casual labourers come under this category.
- (iii) Specially distressed categories: Toddy tappers, scavengers, carriers of head loads, drivers of animal driven vehicles, loaders and unloaders belong to this category; and
- (iv) Service categories: Midwives, domestic workers, fishermen and women, barbers, vegetable and fruit vendors, newspaper vendors, etc., come under this category.

## Unorganised sectors in India

The working force in industries is considered as a weaker section. But the growth and economy has led to two contradictory demands for labour, on one hand organised labour seem to have grown into strong and to

impeding the progress of liberalization. This has led to moves to curb labour such as through amendments to the industrial disputes act and trade unions act, or through some sort of exist policy.

On the other hand, manual labour is seen as weak and exploited and there are demands for protection of such organised labour, such as child labour, garment workers, construction workers, agricultural labour and even home workers. This anomalous situation has arisen because, labour is now divided into two classes-

- (a) organised labour which is strongly protected by law and has their owns auriferous trade unions and
- (b) unorganised labour which is unprotected and more often than not, exploited before liberalization in economy, unorganised sector workers constituted 89 percent of the work force. Now they constitute 93 percent and yet they remain uncovered by protective legislations. This is a dangerous situation where a large section of population doesn't receive the benefits of liberalization and consequently social inequality widens.

The distinguishing feature of the unorganised sector is non applicability of most of the labour laws and other regulations providing for decent working conditions, job security and social security to the workers. The unorganised workers lack collective bargaining power and are therefore susceptible to excessive exploitation. They work under poor working conditions and receive far lower wages/remuneration as compared to the organised sector, even for comparable jobs. Most of the employment in this sector is seasonal and the workers therefore have no job guarantee. This also leads to large scale migration of workers from one place to another leading to un-stability of work and residence which further often leads to discontinuity of the education of their children. In cities, they live in slums without proper housing and sanitation. Health care and maternity benefits which are statutorily available in the organised sector are not available for them. The legislations providing for social securities for old-age, health-care and assistance in the event of death, marriage and accidents etc., like the Workmen's Compensation Act, 1923; Employees State Insurance Act, 1948; Maternity Benefits Act, 1961;

Industrial Disputes Act, 1974; Payment of Gratuity Act, 1972; Employee Provident Fund and Miscellaneous Provisions Act, 1952 etc., do not apply to them. The combined effect of the above factors is that many of them are generally, forced to lead an undignified and servile life.

There are some special sectoral laws applicable to particular sectors of the unorganised. Under this category are laws like the Building and Construction Workers Act 1996, the Bonded Labour System (Abolition) Act 1976, The Interstate Migrant Workers Act 1979, The Dock Workers Act 1986, The Plantation Labour Act 1951, The Transport Workers Act, The Beedi and Cigar Workers Act 1966, The Child Labour (Prohibition and Regulation) Act 1986, and The Mine Act 1952.

### **Constitutional provisions**

India being a socialistic democratic state, has a commitment of providing social and economic justice to its citizens for the survival of democracy. The directive principles of our constitution reflect the concern of the state to protect and promote the interests of weaker sections of our population.

1. *Article 38:* the state shall strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social, economic and political shall inform all the institutions of the national life.
2. *Article 39-A:* The operation of a legal system shall be secured by the state which promotes justice, on a basis of equal opportunity and shall in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are denied to any citizen by reason of economic or other disabilities.
3. *Article 42:* The state shall make provisions for securing just and humane conditions of work and for maternity relief.
4. *Article 43:* The state shall endeavour to secure, by suitable legislation or economic organization or in any other way to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social opportunities and

in particular, the state shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

## DEFINITIONS (SECTION 2)

In this Act, unless the context otherwise requires,-	
<b>Employer</b>	“employer” means a person or an association of persons, who has engaged or employed an unorganised worker either directly or otherwise for remuneration.
<b>Home-based Worker</b>	“home-based worker” means a person engaged in the production of goods or services for an employer in his or her home or other premises of his or her choice other than the workplace of the employer, for remuneration, irrespective of whether or not the employer provides the equipment, materials or other inputs;
<b>Identity Card</b>	“identity card” means a card, document or certificate issued to an unorganised worker by the District Administration under sub-section (3) of section 10;
<b>National Board</b>	“National Board” means the National Social Security Board for unorganised workers constituted under sub-section (1) of section 5;
<b>Organised Sector</b>	“organised sector” means an enterprise which is not an unorganised sector;
<b>Registered Worker</b>	“registered worker” means an unorganised worker registered under sub-section (3) of section 10;
<b>Schedule</b>	“Schedule” means the Schedule annexed to the Act;
<b>State Board</b>	“State Board” means the (name of the State) State Social Security Board for unorganised workers constituted under sub-section (1) of section 6;
<b>Self-employed worker</b>	“self-employed worker” means any person who is not employed by an employer, but engages himself or herself in any occupation in the unorganised sector subject to a monthly earning of an amount as may be notified by the Central Government or the State Government from time to time or holds cultivable land subject to such ceiling as may be notified by the State Government;
<b>Unorganised Sector</b>	“unorganised sector” means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten;
<b>Unorganised Worker</b>	“unorganised worker” means a home-based worker, self-employed worker or a wage worker in the unorganised sector and includes a worker in the organised sector who is not covered by any of the Acts mentioned in Schedule II to this Act; and
<b>Wage Worker</b>	“wage worker” means a person employed for remuneration in the unorganised sector, directly by an employer or through any contractor, irrespective of place of work, whether exclusively for one employer or for one or more employers, whether in cash or in kind, whether as a home-based worker, or as a temporary or casual worker, or as a migrant worker, or workers employed by households including domestic workers, with a monthly wage of an amount as may be notified by the Central Government and State Government, as the case may be.

## FRAMING OF SCHEME (SECTION 3)

1. The Central Government shall formulate and notify, from time to time, suitable welfare schemes for unorganised workers on matters relating to-
  - a. life and disability cover;

- b. health and maternity benefits;
  - c. old age protection; and
  - d. any other benefit as may be determined by the Central Government.
2. The schemes included in the Schedule 1 to this Act shall be deemed to be the welfare schemes under sub-section (1).
  3. The Central Government may, by notification, amend the Schedules annexed to this Act.
  4. The State Government may formulate and notify, from time to time, suitable welfare schemes for unorganised workers, including schemes relating to-
    - a. provident fund;
    - b. employment injury benefit;
    - c. housing;
    - d. educational schemes for children;
    - e. skill upgradation of workers;
    - f. funeral assistance; and
    - g. old age homes.

#### **Funding of Central Government Schemes (Section 4)**

1. Any scheme notified by the Central Government may be-
  - i. wholly funded by the Central Government; or
  - ii. partly funded by the Central Government and partly funded by the State Government; or
  - iii. partly funded by the Central Government, partly funded by the State Government and partly funded through contributions collected from the beneficiaries of the scheme or the employers as may be prescribed in the scheme by the Central Government.
2. Every scheme notified by the Central Government shall provide for such matters that are necessary for the efficient implementation of the scheme including the matters relating to,-
  - i. scope of the scheme;
  - ii. beneficiaries of the scheme;
  - iii. resources of the scheme;
  - iv. agency or agencies that will implement the scheme;
  - v. redressal of grievances; and
  - vi. any other relevant matter.

#### **NATIONAL SOCIAL SECURITY BOARD (SECTION 5)**

1. The Central Government shall, by notification, constitute a National Board to be known as the National Social Security Board to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.



2. The National Board shall consist of the following members, namely: -
  - a. Union Minister for Labour and Employment-Chairperson, ex officio;
  - b. the Director General (Labour Welfare)-Member-Secretary, ex officio; and
  - c. thirty-four members to be nominated by the Central Government, out of whom-
    - i. seven representing unorganised sector workers;
    - ii. seven representing employers of unorganised sector;
    - iii. seven representing eminent persons from civil society;
    - iv. two representing members from Lok Sabha and one from Rajya Sabha;
    - v. five representing Central Government Ministries and Departments concerned; and
    - vi. five representing State Governments.
3. The Chairperson and other members of the Board shall be from amongst persons of eminence in the fields of labour welfare, management, finance, law and administration.
4. The number of persons to be nominated as members from each of the categories specified in clause (c) of sub-section (2), the term of office and other conditions of service of members, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among the members of, the National Board shall be such as may be prescribed. However, the adequate representation shall be given to persons belonging to the Scheduled Castes, the Scheduled Tribes, the Minorities and Women.
5. The term of the National Board shall be three years.
6. The National Board shall meet at least thrice a year, at such time and place and shall observe such rules of procedure relating to the transaction of business at its meetings, as may be prescribed.
7. The members may receive such allowances as may be prescribed for attending the meetings of the National Board.
8. The National Board shall perform the following functions, namely:-
  - a. recommend to the Central Government suitable schemes for different sections of unorganised workers;
  - b. advise the Central Government on such matters arising out of the administration of this Act as may be referred to it;
  - c. monitor such social welfare schemes for unorganised workers as are administered by the Central Government;
  - d. review the progress of registration and issue of identity cards to the unorganised workers;
  - e. review the record keeping functions performed at the State level;
  - f. review the expenditure from the funds under various schemes; and
  - g. undertake such other functions as are assigned to it by the Central Government from time to time.

#### **STATE SOCIAL SECURITY BOARD (SECTION 6)**

1. Every State Government shall, by notification, constitute a State Board to be known as (name of the State) State Social Security Board to exercise the powers conferred on, and to perform the functions assigned to it, under this Act.

2. The State Board shall consist of the following members, namely: -
  - a. Minister of Labour and Employment of the concerned State-Chairperson, *ex officio*;
  - b. the Principal Secretary or Secretary (Labour)-Member-Secretary, *ex officio*; and
  - c. twenty-eight members to be nominated by the State Government, out of whom-
    - i. seven representing the unorganised workers;
    - ii. seven representing employers of unorganised workers;
    - iii. two representing members of Legislative Assembly of the concerned State;
    - iv. five representing eminent persons from civil society; and
    - v. seven representing State Government Departments concerned.
3. The Chairperson and other members of the Board shall be from amongst persons of eminence in the fields of labour welfare, management, finance, law and administration.
4. The number of persons to be nominated as members from each of the categories specified in clause (c) of sub-section (2), the term of office and other conditions of service of members, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among the members of, the State Board shall be such as may be prescribed: Provided that adequate representation shall be given to persons belonging to the Scheduled Castes, the Scheduled Tribes, the Minorities and Women.
5. The term of the State Board shall be three years.
6. The State Board shall meet atleast once in a quarter at such time and place and shall observe such rules of procedure relating to the transaction of business at its meetings, as may be prescribed.
7. The members may receive such allowances as may be prescribed for attending the meetings of the State Board.
8. The State Board shall perform the following functions, namely:-
  - a. recommend the State Government in formulating suitable schemes for different sections of the unorganised sector workers;
  - b. advise the State Government on such matters arising out of the administration of this Act as may be referred to it;
  - c. monitor such social welfare schemes for unorganised workers as are administered by the State Government;
  - d. review the record keeping functions performed at the District level;
  - e. review the progress of registration and issue of cards to unorganised sector workers;
  - f. review the expenditure from the funds under various schemes; and
  - g. undertake such other functions as are assigned to it by the State Government from time to time.

### **FUNDING OF STATE GOVERNMENT SCHEMES (SECTION 7)**

1. Any scheme notified by the State Government may be-
  - i. wholly funded by the State Government; or
  - ii. partly funded by the State Government, partly funded through contributions collected from the beneficiaries of the scheme or the employers as may be prescribed in the scheme by the State Government.

2. The State Government may seek financial assistance from the Central Government for the schemes formulated by it.
3. The Central Government may provide such financial assistance to the State Governments for the purpose of schemes for such period and on such terms and conditions as it may deem fit.

### **RECORD KEEPING BY DISTRICT ADMINISTRATION (SECTION 8)**

The record keeping functions for the purpose of this Act shall be performed by the District Administration. However, the State Government may direct that the record keeping function shall be performed by-

- a. the District Panchayat in rural areas; and
- b. the Urban Local Bodies in urban areas.

### **WORKERS FACILITATION CENTRES (SECTION 9)**

The State Government may set up such Workers' facilitation centres as may be considered necessary from time to time to perform the following functions, namely:-

- a. disseminate information on available social security schemes for the unorganised workers;
- b. facilitate the filling, processing and forwarding of application forms for registration of unorganised workers;
- c. assist unorganised worker to obtain registration from the District Administration;
- d. facilitate the enrollment of the registered unorganised workers in social security schemes.

### **ELIGIBILITY FOR REGISTRATION AND SOCIAL SECURITY BENEFITS (SECTION 10)**

1. Every unorganised worker shall be eligible for registration subject to the fulfilment of the following conditions, namely:-
  - a. he or she shall have completed fourteen years of age; and
  - b. a self-declaration by him or her confirming that he or she is an unorganised worker.
2. Every eligible unorganised worker shall make an application in the prescribed form to the District Administration for registration. (*The Unorganised Worker's Social Security Rules, 2009:R12. The application shall be made in Form 1 to the District Administration.*)
3. Every unorganised worker shall be registered and issued an identity card by the District Administration which shall be a smart card carrying a unique identification number and shall be portable.
4. If a scheme requires a registered unorganised worker to make a contribution, he or she shall be eligible for social security benefits under the scheme only upon payment of such contribution.
5. Where a scheme requires the Central or State Government to make a contribution, the Central or State Government, as the case may be, shall make the contribution regularly in terms of the scheme.

### **POWER OF CENTRAL GOVERNMENT TO GIVE DIRECTIONS (SECTION 11)**

The Central Government may give directions to -

- i. the National Board; or
  - ii. the Government of a State or the State Board of that State
- in respect of matters relating to the implementation of the provisions of this Act.

**VACANCIES, ETC., NOT TO INVALIDATE PROCEEDINGS (SECTION 12)**

No proceedings of the National Board or any State Board shall be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the National Board or, as the case may be, the State Board.

**POWER TO MAKE RULES BY CENTRAL GOVERNMENT ( SECTION 13)**

1. The Central Government may, by notification, make rules to carry out the provisions of this Act.
2. In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-
  - a. the contributions to be collected from the beneficiaries of the scheme or the employers under sub- section (1) of section 4;
  - b. the number of persons to be nominated, the term of office and other conditions of service of members, the procedure to be followed in the discharge of functions by, and the manner of filling vacancies of, the National Board under sub- section (4) of section 5;
  - c. the rules of procedure relating to the transaction of the business at the meeting of the National Board under sub-section (6) of section 5;
  - d. the allowances for attending the meetings of the National Board under sub-section (7) of section 5;
  - e. the form for making an application for registration under sub-section (2) of section 10; and
  - f. any other matter which is required to be, or may be, prescribed.

Pursuant to these powers, the Central Government has made the rules called “The Unorganised Worker’s Social Security Rules, 2009.”

**POWER TO MAKE RULES BY STATE GOVERNMENT (SECTION 14)**

1. The State Government may, by notification, make rules to carry out the provisions of this Act.
2. In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-
  - a. the number of persons to be nominated, the term of office and other conditions of service of members, the procedure to be followed in the discharge of functions by, and the manner of filling vacancies of, the State Board under sub-section (4) of section 6;
  - b. the rules of procedure relating to the transaction of business at the meetings of the State Board under sub-section (6) of section 6;
  - c. the allowances for attending the meetings of the State Board under sub-section (7) of section 6;
  - d. the contributions to be collected from the beneficiaries of the scheme or the employers under sub- section (1) of section 7;
  - e. the form in which the application for registration shall be made under sub-section (2) of section 10; and
  - f. any other matter which is required to be, or may be, prescribed.

**SAVING OF CERTAIN LAWS (SECTION 16)**

Nothing contained in this Act shall affect the operation of any corresponding law in a State providing welfare schemes which are more beneficial to the unorganised workers than those provided for them by or under this Act.

**POWER TO REMOVE DIFFICULTIES( SECTION 17)**

1. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to it to be necessary for removing the difficulty: Provided that no such order shall be made under this section after the expiry of a period of two years from the commencement of this Act.
2. Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

**SCHEDULE I**

[See Sections 2(l) and (3)] Social Security Schemes for the Unorganised Workers]

S. No.	Name of the Scheme
1.	Indira Gandhi National Old Age Pension Scheme.
2.	National Family Benefit Scheme.
3.	Janani Suraksha Yojana.
4.	Handloom Weavers' Comprehensive Welfare Scheme.
5.	Handicraft Artisans' Comprehensive Welfare Scheme.
6.	Pension to Master craft persons.
7.	National Scheme for Welfare of Fishermen and Training and Extension.
8.	Janshree Bima Yojana.
9.	Aam Admi Bima Yojana.
10.	Rashtriya Swasthya Bima Yojana.

**SCHEDULE II**

S. No.	Name of the Act
1.	The Workmen's Compensation Act 1923 (8 of 1923).
2.	The Industrial Disputes Act 1947 (14 of 1947).
3.	The Employees' State Insurance Act 1948 (34 of 1948).
4.	The Employees' Provident Funds and Miscellaneous Provisions Act 1952 (19 of 1952).
5.	The Maternity Benefit Act 1961 (53 of 1961).
6.	The Payment of Gratuity Act 1972 (39 of 1972).

**LESSON ROUND-UP**

- The Unorganised Workers' Social Security Act, enacted in 2008, provides for the formulation of welfare schemes by the Centre and State for the benefit on unorganized sector workers.
- The Act is provided with the purpose and object of providing social security and welfare of the unorganized workers. The provisions of this Act were extended to the whole of Indian territories.
- The Act provides for the registration of workers and issuance of smart cards to the workers with unique social security numbers in order to provide social security to workers in the unorganised sector.







# The Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988

## KEY CONCEPTS

- Employer ■ Form ■ Schedule Act ■ Small Establishment ■ Very Small Establishment

## Learning Objectives

### To understand:

- The important definitions like small establishment and very small establishment
- The Exemption from furnishing or maintaining of returns and registers required under certain labour laws
- The penalty for non-compliance of the provision of this Act

## Lesson Outline

- Introduction
- Employer
- Form
- Schedule Act
- Small Establishment
- Very Small Establishment
- Exemption from maintenance of Register and Return
- Penalty
- Lesson Round-Up
- Test Yourself

*The Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988 provides for the exemption of employers in relation to establishments employing a small number of persons from furnishing returns and maintaining registers under certain labour laws. It extends to the whole of India*

## INTRODUCTION

Parliament enacted from time to time a number of labour laws for regulating employment and conditions of service of workers. Whenever a new law was enacted, it prescribed certain registers to be maintained by the employers. Simultaneously, the laws also prescribed for furnishing of returns of various details by the employers to the concerned enforcing authorities. The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain establishments) Act, 1988 was enacted to provide for the exemption of employers in relation to establishments employing a small number of persons from furnishing returns and maintaining registers under certain labour laws. Small establishments were exempted from furnishing returns and maintaining registers under certain enactments mentioned in the first Schedule to the Act and instead they were required to furnish returns and maintain registers in the forms set out in the Second Schedule to the Act. Further the Act amended by the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Amendment Act, 2014.

The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Amendment Act, 2014 provides for the simplification of procedure for furnishing returns and maintaining registers in relation to establishments employing a small number of persons under certain labour laws. Now this Act may be called the Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988. The Amendment Act now includes 7 more Labour Acts under the purview of the Principal Act. Also, the coverage of Principal Act has been expanded from the establishments employing up to 19 workers to 40 workers. The Amendment Act also gives an option to maintain the registers electronically and to file the returns electronically which leads to ease of compliance as well as better enforcement of the labour laws.

## DEFINITIONS

Section 2 of the Act defines various terms used in the Act, the definitions are given here under:

### Employer

Employer, in relation to a Scheduled Act, and in relation to any other Scheduled Act, means the person who is required to furnish returns or maintain registers under that Act [Section 2 (a)].

### Establishment

Establishment has the meaning assigned to it in a Scheduled Act, and includes –

- (i) an “industrial or other establishment” as defined in Sec. 2 of the Payment of Wages Act, 1936;
- (ii) a “factory” as defined in Sec. 2 of the Factories Act, 1948;
- (iii) a factory, workshop or place where employees are employed or work is given out to workers, in any scheduled employment to which the minimum wages Act, 1948, applies.
- (iv) a “plantation” as defined in Sec. 2 of the Plantations Labour Act, 1951; and
- (v) a “newspaper establishment” as defined in Sec. 2 of the Working Journalists and other Newspaper Employees (conditions of Service) and Miscellaneous Provisions Act, 1955 [Section 2 (b)].

### Form

Form means a Form specified in the Second Schedule [Section 2 (c)]. Following forms are specified in the second schedule. They are as under:

- Form I - Annual Return (To be furnished to the Inspector or the authority specified for this purpose under the respective Scheduled Act before the 30th April of the following year)
- Form II -Register of persons employed-cum-employment card
- Form III- Muster roll-cum-wage register.

### Scheduled Act

Scheduled Act means an Act specified in the first Schedule and is in force on commencement of this Act in the territories to which such Act extends generally, and includes the rules made thereunder [Section 2 (d)].

Following are the sixteen Acts specified in the first schedule. They are as under:

1. The Payment of Wages Act, 1936
2. The Weekly Holidays Act, 1942
3. The Minimum Wages Act, 1948
4. The Factories Act, 1948
5. The Plantations Labour Act, 1951
6. The Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955
7. The Motor Transport Workers Act, 1961
8. The Payment of Bonus Act, 1965
9. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966
10. The Contract Labour (Regulation and Abolition) Act, 1970
11. The Sales Promotion Employees (Conditions of Service) Act, 1976
12. The Equal Remuneration Act, 1976
13. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
14. The Dock Workers (Safety, Health and Welfare) Act, 1986
15. The Child Labour (Prohibition and Regulation) Act, 1986
16. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996

### Small Establishment

Small establishment means an establishment in which not less than ten and not more than forty persons are employed or were employed on any day of the preceding twelve months [Section 2 (e)].

### Very Small Establishment

Very small establishment means an establishment in which not more than nine persons are employed or were employed on any day of the preceding twelve months. [Section 2 (f)].

### Exemption from furnishing or maintaining of returns and registers required under certain labour laws

Section 4(1) of the Act provides that notwithstanding anything contained in a Scheduled Act, on and from the commencement of the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Amendment Act, 2014, it shall not be necessary for an employer in relation to any small establishment or very small establishment to which a Scheduled Act applies, to furnish the returns or to maintain the registers required to be furnished or maintained under that Scheduled Act.

It may be noted that such employer –

- (a) furnishes, in lieu of such returns, annual return in Form I; and
- (b) maintains at the work spot, in lieu of such registers, –
  - (i) registers in Form II and Form III, in the case of small establishments, and
  - (ii) a register in Form III, in the case of very small establishments:

Every such employer shall continue to issue wage slips in the Form prescribed in the Minimum Wages (Central) Rules, 1950 made under sections 18 and 30 of the Minimum Wages Act, 1948 and slips relating to measurement of the amount of work done by piece-rated workers required to be issued under the Payment of Wages (Mines) Rules, 1956 made under sections 13A and 26 of the Payment of Wages Act, 1936; and file returns relating to accidents under sections 88 and 88A of the Factories Act, 1948 and sections 32A and 32B of the Plantations Labour Act, 1951.

### Furnishing or maintaining of returns and registers in electronic form

As per Section 4 (2) of the Act, the annual return in Form I and the registers in Forms II and III and wage slips, wage books and other records, as provided in sub-section (1), may be maintained by an employer either in physical form or on a computer, computer floppy, diskette or other electronic media.

It may be noted that in case of computer, computer floppy, diskette or other electronic form, a printout of such returns, registers, books and records or a portion thereof is made available to the Inspector on demand.

Under section 4(3) the employer or the person responsible to furnish the annual return in Form I may furnish it to the Inspector or any other authority prescribed under the Scheduled Acts either in physical form or through electronic mail if the Inspector or the authority has the facility to receive such electronic mail.

### Penalty

As per section 6 of the Act, any employer who fails to comply with the provisions of the Act shall, on conviction, be punishable, in the case of the first conviction, with fine which may extend to rupees five thousand; and in the case of any second or subsequent conviction, with imprisonment for a period which shall not be less than one month but which may extend to six months or with fine which shall not be less than rupees ten thousand but may extend to rupees twenty-five thousand, or with both.

### LESSON ROUND-UP

- The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988 provide for the exemption of employers in relation to establishments employing a small number of persons from furnishing returns and maintaining registers under certain labour laws. It extends to the whole of India.
- The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Amendment Act, 2014 provides for the simplification of procedure for furnishing returns and maintaining registers in relation to establishments employing a small number of persons under certain labour laws. Now this Act may be called the Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988.
- Small establishment means an establishment in which not less than ten and not more forty persons are employed or were employed on any day of the preceding twelve months.
- Very small establishment means an establishment in which not more than nine persons are employed or were employed on any day of the preceding twelve months.





# Introduction of Labour Codes\*

## KEY CONCEPTS

■ Wages ■ Minimum Wages ■ Appropriate Government ■ Payment of Bonus ■ Occupational Safety and Health ■ Social Security ■ Industrial Relations

## Learning Objectives

### To understand:

- The Salient features of Code on Wages, 2019
- The various provisions under Code on Wages 2019
- The Salient features and brief provisions under Occupational Safety, Health and Working Conditions Code, 2020
- The Salient features of Social Security Code, 2020
- The Salient features of Industrial Relations Code, 2020

## Lesson Outline

- Introduction
- Code on Wages 2019
- The salient features of the Code on Wages, 2019
- The Occupational Safety, Health and Working Conditions Code, 2020
- The salient features of the Occupational Safety, Health and Working Conditions Code, 2020
- Labour Code on Social Security
- Labour Code on Industrial Relations
- Lesson Round-Up
- Test Yourself
- List of Further Readings

\*Proposed



## INTRODUCTION

Labour as a subject is included in the concurrent list in India, which means that both the Central Government and State Governments are competent to make laws on the topic.

With the objective of strengthening the safety, security, health, social security for every worker and bringing ease of compliance for running an establishment to catalyse creation of employment opportunities / generation and as per the recommendations of the 2nd National Commission on labour, Ministry of Labour and Employment has taken steps for codification of existing Central labour laws into 4 Codes by simplifying, amalgamating and rationalizing the relevant provisions of:

- The Code on Wages, 2019
- The Occupational Safety, Health and Working Conditions Code, 2020
- Code on Social Security, 2020
- Industrial Relations Code, 2020

The Labour Code is a means to consolidate various statutes into a pruned and uncomplicated form. The amalgamated form of multiple statutes thus obtained is called a labour code. This operation is done with a view to have a unified law which can be understood and implemented with ease.

The legislative developments related to these Codes and existing labour laws to be repealed are mentioned below:

<b>The Code on Wages, 2019</b>	<b>The Occupational Safety, Health and Working Conditions Code, 2020</b>	<b>The Industrial Relations Code, 2020</b>	<b>The Code on Social Security, 2020</b>
<p>The Code on Wages Bill was first introduced in the Lok Sabha on 10th August, 2017 and referred to the Parliamentary Standing Committee on Labour.</p> <p>However, the bill lapsed on dissolution of the 16th Lok Sabha. Then it was introduced in Lok Sabha on 23rd July, 2019. Code on Wages, 2019 was passed by Lok Sabha on 30th July, 2019, Rajya Sabha on 2nd August, 2019 and received the assent of the President on 8th August, 2019.</p>	<p>The Occupational Safety, Health and Working Conditions Code, 2019 was introduced in the Lok Sabha on July 23, 2019. The Code was referred to Parliamentary Standing Committee on Labour. The report of the Standing Committee was placed before both the Houses of the Parliament on February 11, 2020.</p> <p>The Bill was reintroduced as The Occupational Safety, Health and Working Conditions Code, 2020 in the Parliament and has been passed by the Lok Sabha on 22nd September, 2020, Rajya Sabha on 23rd September, 2020 and received the assent of the President on 28th September, 2020.</p>	<p>The Industrial Relations Code, 2019 was introduced in the Lok Sabha on November 28, 2019. The Code was referred to Parliamentary Standing Committee on Labour. The report of the Standing Committee was placed before both the Houses of the Parliament on September 15, 2020.</p> <p>The Bill was reintroduced as The Industrial Relations Code, 2020 in the Parliament and has been passed by the Lok Sabha on 22nd September, 2020, Rajya Sabha on 23rd September, 2020 and received the assent of the President on 28th September, 2020.</p>	<p>The Code on Social Security, 2019 was introduced in the Lok Sabha on December 11, 2019. The Code was referred to Parliamentary Standing Committee on Labour. The report of the Standing Committee was placed before both the Houses of the Parliament on September 15, 2020.</p> <p>The Bill was reintroduced as The Code on Social Security, 2020 in the Parliament and has been passed by the Lok Sabha on 22nd September, 2020, Rajya Sabha on 23rd September, 2020 and received the assent of the President on 28th September, 2020.</p>

Existing labour laws to be repealed by these Codes		
1. The Payment of Wages Act, 1936	1. The Factories Act, 1948	1. The Industrial Disputes Act, 1947
2. The Minimum Wages Act, 1948	2. The Mines Act, 1952	2. The Trade Unions Act, 1926
3. The Payment of Bonus Act, 1965	3. The Dock Workers (Safety, Health and Welfare) Act, 1986	3. The Industrial Employment (Standing Orders) Act, 1946
4. The Equal Remuneration Act, 1976	4. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996	
	5. The Plantations Labour Act, 1951	
	6. The Contract Labour (Regulation and Abolition) Act, 1970	
	7. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979	
	8. The Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provision Act, 1955	
	9. The Working Journalists (Fixation of Rates of Wages) Act, 1958	
	10. The Motor Transport Workers Act, 1961	
	11. The Sales Promotion Employees (Conditions of Service) Act, 1976	
	12. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966	
	13. The Cine- Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981	
		1. The Employees' Compensation Act, 1923
		2. The Employees' State Insurance Act, 1948
		3. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952
		4. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959
		5. The Maternity Benefit Act, 1961
		6. The Payment of Gratuity Act, 1972
		7. The Cine- Workers Welfare Fund Act, 1981
		8. The Building and Other Construction Workers Welfare Cess Act, 1996
		9. The Unorganised Workers Social Security Act, 2008.

### CODE ON WAGES, 2019

The Code on Wages, 2019 has been passed by both Houses of the Parliament and assented to by the President on 08.08.2019. According to the Statement of objects and reasons of the Code on Wages 2019, the Second National Commission on Labour, which submitted its report in June, 2002, had recommended that the existing set of labour laws should be broadly amalgamated into the following groups, namely: –

- (a) Industrial relations;
- (b) Wages;
- (c) Social security;
- (d) Safety; and
- (e) Welfare and working conditions.

The Code on Wages, 2019 amalgamate, simplify and rationalise the relevant provisions of the following four central labour enactments relating to wages, namely: –

- (a) The Payment of Wages Act, 1936;
- (b) The Minimum Wages Act, 1948;
- (c) The Payment of Bonus Act, 1965; and
- (d) The Equal Remuneration Act, 1976.

The amalgamation of the said laws will facilitate the implementation and also remove the multiplicity of definitions and authorities without compromising on the basic concepts of welfare and benefits to workers. The Code on Wages, 2019 would bring the use of technology in its enforcement. All these measures would bring transparency and accountability which would lead to more effective enforcement. Widening the scope of minimum wages to all workers would be a big step for equity. The facilitation for ease of compliance of labour laws will promote in setting up of more enterprises thus catalyzing the creation of employment opportunities.

***The salient features of the Code on Wages, 2019, inter alia, are as follows: –***

- (a) It provides for all essential elements relating to wages, equal remuneration, its payment and bonus;
- (b) The provisions relating to wages shall be applicable to all employments covering both organised as well as un-organised sectors;
- (c) The power to fix minimum wages continues to be vested in the Central Government as well the State Government in their respective sphere;
- (d) It enables the appropriate Government to determine the factors by which the minimum wages shall be fixed for different category of employees. The factors shall be determined taking into account the skills required, the arduousness of the work assigned, geographical location of the workplace and other aspects which the appropriate Government considers necessary;
- (e) The provisions relating to timely payment of wages and authorised deductions from wages, which are presently applicable only in respect of employees drawing wages of twenty-four thousand rupees per month, shall be made applicable to all employees irrespective of wage ceiling. The appropriate Government may extend the coverage of such provisions to the Government establishments also;
- (f) It provides that the wages to employees may also be paid by cheque or through digital or electronic mode or by crediting it in the bank account of the employee. However, the appropriate Government may specify the industrial or other establishment, where the wages are to be paid only by cheque or through digital or electronic mode or by crediting the wages in the bank account of the employee;
- (g) It provides for floor wage for different geographical areas so as to ensure that no State Government fixes the minimum wage below the floor wage notified for that area by the Central Government;
- (h) In order to remove the arbitrariness and malpractices in inspection, it empowers the appropriate Government to appoint Inspectors-cum-Facilitators in the place of Inspectors, who would supply information and advice the employers and workers;
- (i) It empowers the appropriate Government to determine the ceiling of wage limit for the purpose of eligibility of bonus and calculation of bonus;
- (j) In the place of number of authorities at multiple levels, it empowers the appropriate Government to appoint one or more authorities to hear and decide the claims under the proposed legislation;

- (k) It enables the appropriate Government to establish an appellate authority to hear appeals for speedy, cheaper and efficient redressal of grievances and settlement of claims;
- (l) It provides for graded penalty for different types of contraventions of the provisions of the proposed legislation;
- (m) It provides that the Inspector-cum-Facilitator shall give an opportunity to the employer before initiation of prosecution proceedings in cases of contravention, so as to comply with the provisions of the proposed legislation. However, in case of repetition of the contravention within a period of five years such opportunity shall not be provided;
- (n) It provides for the appointment of officers not below the rank of Under Secretary to the Government of India or an officer of equivalent level in the State Government to dispose of cases punishable only with fine up to fifty thousand rupees, so as to reduce the burden on subordinate judiciary;
- (o) It provides for compounding of those offences which are not punishable with imprisonment;
- (p) It provides that where a claim has been filed for non-payment of remuneration or bonus or less payment of wages or bonus or on account of making deduction not authorised by the proposed legislation, the burden shall be on the employer to prove that the said dues have been paid to the employee;
- (q) It enables the appropriate Government to constitute Advisory Boards at Central and State level to advise the Central Government and the State Governments, respectively, on matters relating to wages, women employment, etc.;
- (r) The period of limitation for filing of claims by a worker has been enhanced to three years, as against the existing time period varying from six months to two years, to provide a worker more time to settle his claims.

#### COMPARATIVE CHART - EARLIER V. NEW PROVISIONS

S. No.	Provision of the law	Existing Laws	The Code on Wages, 2019
1.	Coverage and applicability	<b>The Minimum Wages Act, 1948:</b> Minimum wages are fixed by the appropriate State Governments for scheduled employments with more than 1,000 employees in the State.	Minimum wages will be paid to all employees.
		<b>The Payment of Wages Act, 1936 :</b> Applies to employees whose wages do not exceed Rs.24,000 per month.	Provisions regarding payment of wages will apply to all employees in both organized as well as unorganized sectors, irrespective of any such wage limit.
		<b>The Payment of Bonus Act, 1965:</b> Applies to every establishment which has 20 or more employees, on any given day, in an accounting year, but is applicable only on those employees whose wages do not exceed Rs. 21,000 per month.	Payment of Bonus will apply to employees whose wages do not exceed a monthly amount notified by Central or State governments.
2.	Revision of minimum wages	<b>The Minimum Wages Act, 1948 :</b> Minimum wages must be revised by the Central or State governments at least once in every five years.	Mandates that minimum wages be revised in five-year intervals.

3.	<b>National minimum wage/ Floor wage</b>	No provision.	Central Government will fix national minimum wage /floor wage after taking into account minimum standard of living of workers. The State Government shall not fix minimum wage below the floor wage.
4.	<b>Overtime payment</b>	Different States have different provisions for overtime payment mostly provided in the Shops and Establishments Act of each respective State.	Overtime payment shall be at two times the normal wages/ ordinary wages.
5.	<b>Gender discrimination</b>	<b>The Equal Remuneration Act, 1976:</b> Prohibits gender discrimination in wage payment.  Prohibits gender discrimination in recruitment, transfers, and promotions.	Prohibits gender discrimination in wage payment.  Prohibits any form of gender discrimination in any of the 'conditions of employment'.
6.	<b>Inspection</b>	The Minimum Wages Act, 1948, the Payment of Wages Act, 1936, the Payment of Bonus Act, 1965 and the Equal Remuneration Act, 1976:  Inspectors are appointed to carry out (i) surprise checks, and (ii) examine persons and require them to give information, among other powers.	The office of 'inspector' under the previous regime has been replaced with an 'Inspector-cum-Facilitator', who has additional duties of guiding and advising employers and employees on effective implementation of the Code. Employer can seek help of Inspector- cum-Facilitator to ensure compliance under the Code.
7.	<b>Claims</b>	Claims for wages and bonus can be filed within period varying from 6 months to 2 years.	The period of limitation for filing claims relating to wages and bonus has been enhanced to 3 years as against existing periods varying from 6 months to 2 years.
8.	<b>Penalties</b>	<b>The Minimum Wages Act, 1948:</b> Offences include (i) paying employees less than minimum wages, and  (ii) not providing for a day of rest in the week. Penalties include fines up to Rs.500 and imprisonment up to six months.  <b>The Payment of Wages Act, 1936 :</b> Offences include (i) non-payment of wages at specified time period (ii) unauthorised deductions from wages. Penalties include fines up to Rs.7,500.  <b>The Payment of Bonus Act, 1965:</b> In case a person or company does not comply with the Act, they can be punished with imprisonment up to six months or fine up to Rs.1,000.	Employers who pay less than what is due under the Code shall be liable to pay a fine of up to Rs.50,000. If an employer is guilty of repeat offence within five years, penalties include imprisonment up to three months or a fine of up to Rs.1 lakh or both.  Employers who do not comply with any other provision of the Code or any rule made or order made or issued thereunder shall be liable to pay a fine of up to Rs.20,000. If an employer is guilty of the same offence again within five years, penalties include imprisonment up to one month or a fine of up to Rs.40,000 or both.

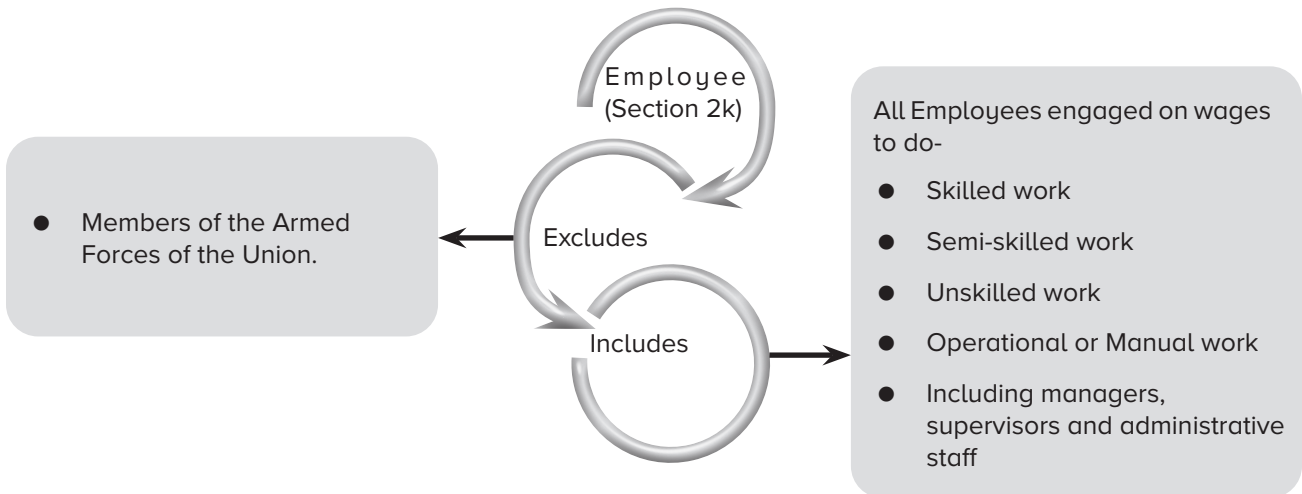
		<p><b>The Equal Remuneration Act, 1976:</b> Offences include:</p> <p>(i) non-maintenance of documents in relation to employees, and (ii) discrimination against women in recruitment. Penalties include fines up to Rs.20,000 or imprisonment up to one year or both.</p>	
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### IMPORTANT DEFINITIONS

Section 2 of the Code on Wages 2019 defines various terms used in the Code and certain important definitions are given below:

- (a) **“Accounting Year”** means the year commencing on the 1st day of April.
- (b) **“Advisory Board”** means the Central Advisory Board or, as the case may be, the State Advisory Board, constituted under section 42.
- (c) **“Agricultural Income Tax Law”** means any law for the time being in force relating to the levy of tax on agricultural income.
- (d) **“Appropriate Government”** means, –
  - (i) in relation to, an establishment carried on by or under the authority of the Central Government or the establishment of railways, mines, oil field, major ports, air transport service, telecommunication, banking and insurance company or a corporation or other authority established by a Central Act or a central public sector undertaking or subsidiary companies set up by central public sector undertakings or autonomous bodies owned or controlled by the Central Government, including establishment of contractors for the purposes of such establishment, corporation or other authority, central public sector undertakings, subsidiary companies or autonomous bodies, as the case may be, the Central Government;
  - (ii) in relation to any other establishment, the State Government.
- (e) **“Company”** means a company as defined in clause (20) of section 2 of the Companies Act, 2013.
- (f) **“Contractor”**, in relation to an establishment, means a person, who –
  - (i) undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour; or
  - (ii) supplies contract labour for any work of the establishment as mere human resource and includes a sub-contractor.
- (g) **“Contract Labour”** means a worker who shall be deemed to be employed in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer and includes inter-State migrant worker but does not include a worker (other than part-time employee) who –
  - (i) is regularly employed by the contractor for any activity of his establishment and his employment is governed by mutually accepted standards of the conditions of employment (including engagement on permanent basis), and
  - (ii) gets periodical increment in the pay, social security coverage and other welfare benefits in accordance with the law for the time being in force in such employment.
- (h) **“Co-operative Society”** means a society registered or deemed to be registered under the Co-operative Societies Act, 1912, or any other law for the time being in force relating to co-operative societies in any State.

- (i) **“Corporation”** means anybody corporate established by or under any Central Act, or State Act, but does not include a company or a co-operative society.
- (j) **“Direct Tax”** means –
- (i) Any tax chargeable under the –
    - (A) Income-tax Act, 1961;
    - (B) Companies (Profits) Surtax Act, 1964;
    - (C) 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, to be a direct tax for the purposes of this Code.
- (k) **“Employee”** means, any person (other than an apprentice engaged under the Apprentices Act, 1961), employed on wages by an establishment to do any skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and also includes a person declared to be an employee by the appropriate Government, but does not include any member of the Armed Forces of the Union.



- (l) **“Employer”** means a person who employs, whether directly or through any person, or on his behalf or on behalf of any person, one or more employees in his establishment and where the establishment is carried on by any department of the Central Government or the State Government, the authority specified, by the head of such department, in this behalf or where no authority, is so specified the head of the department and in relation to an establishment carried on by a local authority, the chief executive of that authority, and includes, –
- (i) in relation to an establishment which is a factory, the occupier of the factory as defined in clause (n) of section 2 of the Factories Act, 1948 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 said Act, the person so named.
  - (ii) in relation to any other establishment, the person who, or the authority which, has ultimate control over the affairs of the establishment and where the said affairs is entrusted to a manager or managing director, such manager or managing director;
  - (iii) Contractor; and



- (iv) legal representative of a deceased employer.
- (m) **“Establishment”** means any place where any industry, trade, business, manufacture or occupation is carried on and includes Government establishment.
- (n) **“Factory”** means a factory as defined in clause (m) of section 2 of the Factories Act, 1948.
- (o) **“Government establishment”** means any office or department of the Government or a local authority.
- (p) **“Income-tax Act”** means the Income -tax Act, 1961.
- (q) **“Industrial Dispute”** means, –
  - (i) any dispute or difference between employers and employers, or between employers and workers or between workers and workers which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person; and
  - (ii) any dispute or difference between an individual worker and an employer connected with, or arising out of, discharge, dismissal, retrenchment or termination of such worker.
- (r) **“Inspector-cum-Facilitator”** means a person appointed by the appropriate Government under sub-section (1) of section 51.
- (s) **“Minimum Wage”** means the wage fixed under section 6.
- (t) **“Notification”** means a notification published in the Gazette of India or in the Official Gazette of a State, as the case may be, and the expression “notify” with its grammatical variations and cognate expressions shall be construed accordingly.
- (u) **“Prescribed”** means prescribed by rules made by the appropriate Government.
- (v) **“Same Work or Work of a Similar Nature”** means work in respect of which the skill, effort, experience and responsibility required are the same, when performed under similar working conditions by employees and the difference if any, between the skill, effort, experience and responsibility required for employees of any gender, are not of practical importance in relation to the terms and conditions of employment.
- (w) **“State”** includes a Union territory.
- (x) **“Tribunal”** shall have the same meaning as assigned to it in clause (r) of section 2 of the Industrial Disputes Act, 1947.
- (y) **“Wages”** means all remuneration whether by way of salaries, allowances or otherwise, expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes, –
  - (i) basic pay;
  - (ii) dearness allowance; and
  - (iii) retaining allowance, if any,
 But does not include –
  - (a) any bonus payable under any law for the time being in force, which does not form part of the remuneration payable under the terms of employment;
  - (b) 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 appropriate Government;

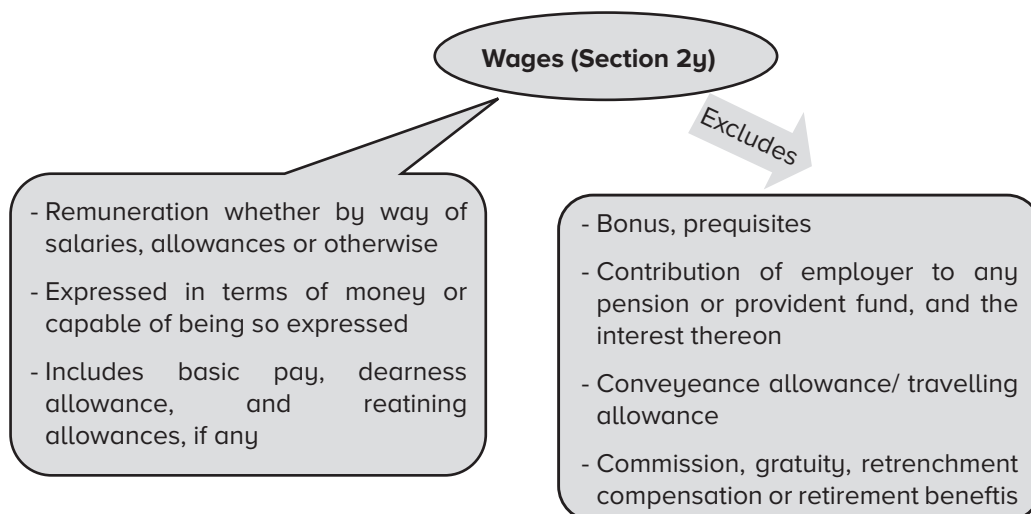


- (c) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
- (d) any conveyance allowance or the value of any travelling concession;
- (e) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment;
- (f) house rent allowance;
- (g) remuneration payable under any award or settlement between the parties or order of a court or Tribunal;
- (h) any overtime allowance;
- (i) any commission payable to the employee;
- (j) any gratuity payable on the termination of employment;
- (k) any retrenchment compensation or other retirement benefit payable to the employee or any *ex-gratia* payment made to him on the termination of employment:

However, for calculating the wages under this clause, if payments made by the employer to the employee under clauses (a) to (i) exceeds one-half, or such other per cent. as may be notified by the Central Government, of the all remuneration calculated under this clause, the amount which exceeds such one-half, or the per cent so notified, shall be deemed as remuneration and shall be accordingly added in wages under this clause.

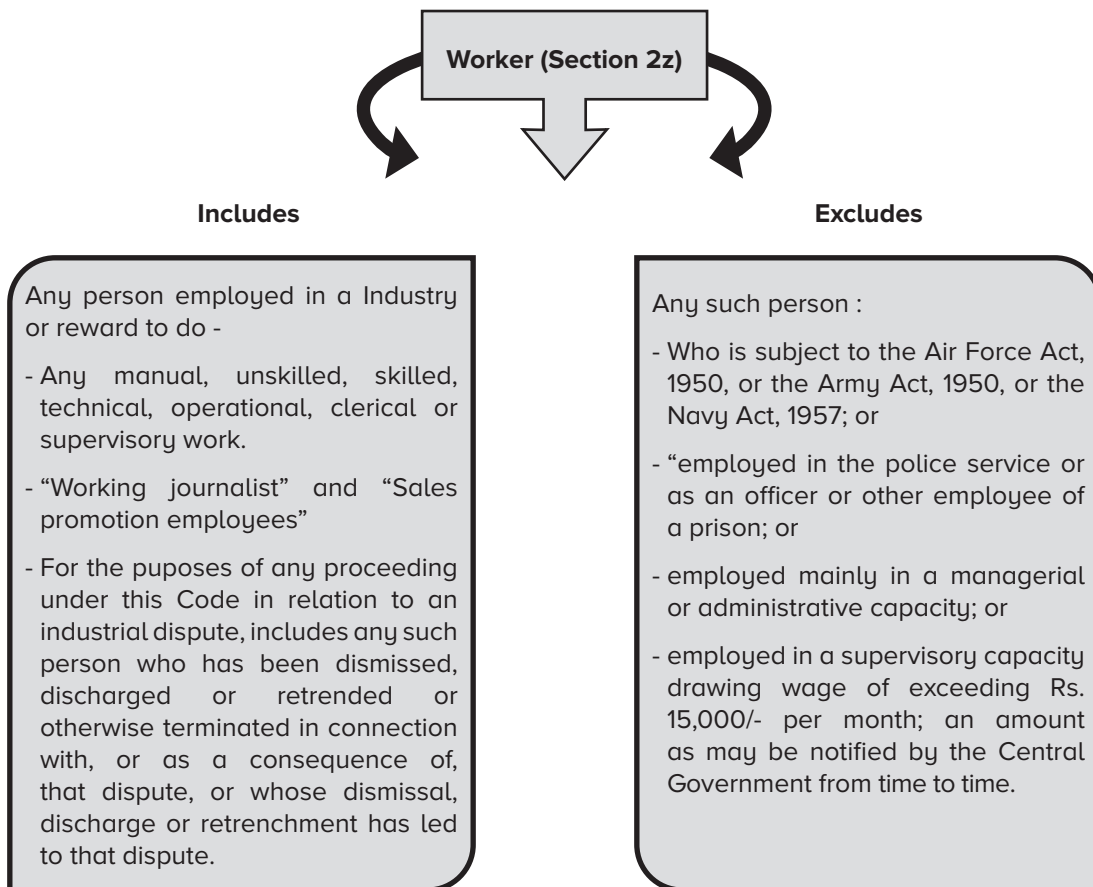
Further, for the purpose of equal wages to all genders and for the purpose of payment of wages, the emoluments specified in clauses (d), (f), (g) and (h) shall be taken for computation of wage.

*Explanation.* –Where an employee is given in lieu of the whole or part of the wages payable to him, any remuneration in kind by his employer, the value of such remuneration in kind which does not exceed fifteen per cent. of the total wages payable to him, shall be deemed to form part of the wages of such employee.



- (z) **“Worker”** means any person (except an apprentice as defined under clause (aa) of section 2 of the Apprentices Act, 1961) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and includes –
  - (i) working journalists as defined in clause (f) of section 2 of the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955; and

- (ii) sales promotion employees as defined in clause (d) of section 2 of the Sales Promotion Employees (Conditions of Service) Act, 1976, and for the purposes of any proceeding under this Code in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched or otherwise terminated in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person –
- who is subject to the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957; or
  - who is employed in the police service or as an officer or other employee of a prison; or
  - who is employed mainly in a managerial or administrative capacity; or
  - who is employed in a supervisory capacity drawing wage of exceeding fifteen thousand rupees per month or an amount as may be notified by the Central Government from time to time.



### PROHIBITION OF DISCRIMINATION ON GROUND OF GENDER

According to Section 3(1) of the Code, there shall be no discrimination in an establishment or any unit thereof among employees on the ground of gender in matters relating to wages by the same employer, in respect of the same work or work of a similar nature done by any employee.

Section 3(2) states that no employer shall, –

- for the purposes of complying with the provisions of sub-section (1), reduce the rate of wages of any employee; and

- (ii) make any discrimination on the ground of sex while recruiting any employee for the same work or work of similar nature and in the conditions of employment, except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force.

### **DECISION AS TO DISPUTES WITH REGARD TO SAME OR SIMILAR NATURE OF WORK**

Section 4 provides that where there is any dispute as to whether a work is of same or similar nature for the purposes of section 3, the dispute shall be decided by such authority as may be notified by the appropriate Government.

### **MINIMUM WAGES**

#### **Payment of Minimum Rate of Wages**

Section 5 states that no employer shall pay to any employee wages less than the minimum rate of wages notified by the appropriate Government.

#### **Fixation of Minimum Wages**

Section 6 (1) of the Code states that subject to the provisions of Section 9, the appropriate Government shall fix the minimum rate of wages payable to employees in accordance with the provisions of Section 8.

Section 6(2) provides that for the purposes of sub-section (1) above, the appropriate Government shall fix a minimum rate of wages –

- (a) for time work; or
- (b) for piece work.

According to Section 6(3) where employees are employed on piece work, for the purpose of sub-section (1), the appropriate Government shall fix a minimum rate of wages for securing such employees a minimum rate of wages on a time work basis.

As per Section 6(4) the minimum rate of wages on time work basis may be fixed in accordance with any one or more of the following wage periods, namely: –

- (i) by the hour; or
- (ii) by the day; or
- (iii) by the month.

Section 6(5) prescribed that where the rates of wages are fixed by the hour or by the day or by the month, the manner of calculating the wages shall be such, as may be prescribed.

Section 6(6) provides that for the purpose of fixation of minimum rate of wages under Section 6, the appropriate Government, –

- (a) shall primarily take into account the skill of workers required for working under the categories of unskilled, skilled, semi-skilled and highly-skilled or geographical area or both; and
- (b) may, in addition to such minimum rate of wages for certain category of workers, take into account their arduousness of work like temperature or humidity normally difficult to bear, hazardous occupations or processes or underground work as may be prescribed by that Government; and
- (c) the norms of such fixation of minimum rate of wages shall be such as may be prescribed.

The number of minimum rates of wages referred to in sub-section (6) above may, as far as possible, be kept at minimum by the appropriate Government.

### Components of Minimum Wages

As per Section 7 of the Code, any minimum rate of wages fixed or revised by the appropriate Government under section 8 may consist of –

- (a) a basic rate of wages and an allowance at a rate to be adjusted, at such intervals and in such manner as the appropriate Government may direct, to accord as nearly as practicable with the variation in the cost of living index number applicable to such workers (hereinafter referred to as “cost of living allowance”); or
- (b) a basic rate of wages with or without the cost of living allowance, and the cash value of the concessions in respect of supplies of essential commodities at concession rates, where so authorised; or
- (c) an all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any

Section 7(2) of the Code state that the cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concession rate shall be computed by such authority, as the appropriate Government may by notification, appoint, at such intervals and in accordance with such directions as may be specified or given by the appropriate Government from time to time.

### Procedure for Fixing and Revising Minimum Wages

Section 8(1) provides that in fixing minimum rates of wages for the first time or in revising minimum rates of wages under the Code, the appropriate Government shall either –

- (a) appoint as many committees as it considers necessary to hold enquiries and recommend in respect of such fixation or revision, as the case may be; or
- (b) by notification publish its proposals for the information of persons likely to be affected thereby and specify a date not less than two months from the date of the notification on which the proposals shall be taken into consideration.

According to Section 8(2) every committee appointed by the appropriate Government under clause (a) of sub-section (1) shall consist of persons –

- (a) representing employers;
- (b) representing employees which shall be equal in number of the members specified in clause (a); and
- (c) independent persons, not exceeding one-third of the total members of the committee.

As per Section 8(3) after considering the recommendation of the committee appointed under sub-section (1) (a) or, as the case may be, all representations received by it before the date specified in the notification under section (1) (b), the appropriate Government shall by notification fix, or as the case may be, revise the minimum rates of wages and unless such notification otherwise provides, it shall come into force on the expiry of three months from the date of its issue:

However, where the appropriate Government proposes to revise the minimum rates of wages in the manner specified in sub-section (1) (b), it shall also consult concerned Advisory Board constituted under section 42.

Section 8(4) states that the appropriate Government shall review or revise minimum rates of wages ordinarily at an interval not exceeding five years.

### Power of Central Government to Fix Floor Wage

Section 9 states that the Central Government shall fix floor wage taking into account minimum living standards of a worker in such manner as may be prescribed. It may be noted that different floor wage may be fixed for different geographical areas.

The minimum rates of wages fixed by the appropriate Government under section 6 shall not be less than the floor wage and if the minimum rates of wages fixed by the appropriate Government earlier is more than the floor wage, then, the appropriate Government shall not reduce such minimum rates of wages fixed by it earlier.

The Central Government may, before fixing the floor wage, obtain the advice of the Central Advisory Board constituted under section 42(1) and consult State Governments in such manner as may be prescribed.

### **Wages of Employee who works for less than Normal Working Day**

According to Section 10 of the Act, if an employee whose minimum rate of wages has been fixed under the Code by the day works on any day on which he was employed for a period of less than the requisite number of hours constituting a normal working day, he shall, save as otherwise hereinafter provided, be entitled to receive wages in respect of work done on that day, as if he had worked for a full normal working day:

It may be noted that he shall not be entitled to receive wages for a full normal working day, –

- (i) in any case 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 11 provides that 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 12 states that where a person is employed on piece work for which minimum time rate and not a minimum piece rate has been fixed under the Code, the employer shall pay to such person wages at not less than the minimum time rate.

### **Fixing Hours of Work for Normal Working Day**

According to Section 13 where the minimum rates of wages have been fixed under the Code, 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 which shall be allowed to all employees or to any specified class of employees 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.

The above stated provisions shall apply to the following classes of employees apply, only to such extent and subject to such conditions as may be prescribed, namely: –

- (a) employees engaged in any emergency which could not have been foreseen or prevented;
- (b) employees engaged in work of 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;

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.

- (d) employees engaged in any work which for technical reasons has to be completed before the duty is over; and
- (e) employees engaged in a work which could not be carried on except at times dependent on the irregular action of natural forces.

### Wages for Overtime Work

As per Section 14, where an employee whose minimum rate of wages has been fixed under the Code 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 which shall not be less than twice the normal rate of wages.

## PAYMENT OF WAGES

### Mode of Payment of Wages

According to Section 15, all wages shall be paid in current coin or currency notes or by cheque or by crediting the wages in the bank account of the employee or by the electronic mode.

The Appropriate Government may also specify the industrial or other establishment, the employer of which shall pay to every person employed in such industrial or other establishment, the wages only by cheque or by crediting the wages in his bank account.

### Fixation of Wage Period

Section 16 states that the employer shall fix the wage period for employees either as daily or weekly or fortnightly or monthly subject to the condition that no wage period in respect of any employee shall be more than a month. It may be noted that different wage periods may be fixed for different establishments.

### Time Limit for Payment of Wages

As per Section 17(1) of the Code the employer shall pay or cause to be paid wages to the employees, engaged on –

S. No.	Wage period	Payment timelines
i	Daily basis	At the end of the shift
ii	Weekly basis	On the last working day of the week that is to say before the weekly holiday.
iii	Fortnightly basis	Before the end of the second day after the end of fortnight
iv	Monthly basis	Before the expiry of the seventh day of the succeeding month

Section 17(2) provides that where an employee has been –

- (i) removed or dismissed from service; or
- (ii) retrenched or has resigned from service, or became unemployed due to closure of the establishment, the wages payable to him shall be paid within two working days of his removal, dismissal, retrenchment or, as the case may be, his resignation.

It may be noted that notwithstanding anything contained in Section 17(1) or Section 17(2), the Appropriate Government may, provide any other time limit for payment of wages where it considers reasonable having regard to the circumstances under which the wages are to be paid.

Further, nothing contained in Section 17(1) or Section 17(2) shall affect any time limit for payment of wages provided in any other law for the time being in force.

### **Deductions which may be Made from Wages**

Section 18(1) provides that notwithstanding anything contained in any other law for the time being in force, there shall be no deductions from the wages of the employee, except those as are authorised under the Code.

Following deduction shall not be deemed to be a deduction from wages in a case where the provisions made by the employer for such purposes are satisfying the requirements specified by the appropriate Government in this behalf:

- (a) any payment made by an employee to the employer or his agent shall be deemed to be a deduction from his wages;
- (b) any loss of wages to an employee, for a good and sufficient cause, resulting from –
  - (i) the withholding of increment or promotion, including the stoppage of an increment; or
  - (ii) the reduction to a lower post or time-scale; or
  - (iii) the suspension,

shall not be deemed to be a deduction from wages in a case where the provisions made by the employer for such purposes are satisfying the requirements specified in the notification issued by the appropriate Government in this behalf.

As per Section 18 (2), the list of authorized deductions from wages of an employee is as under:

<b>S. No.</b>	<b>Particulars of deductions</b>
1.	Fines imposed on him
2.	Deductions for his absence from duty
3.	Deductions for damage to or loss of goods expressly entrusted to the employee for custody; or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default;
4.	Deductions for house-accommodation supplied by the employer or by appropriate Government or any housing board set up under any law for the time being in force, whether the Government or such board is the employer or not, or any other authority engaged in the business of subsidising house-accommodation which may be specified in this behalf by the appropriate Government by notification;
5.	Deductions for such amenities and services supplied by the employer as the appropriate Government or any officer specified by it in this behalf may, by general or special order, authorise and such deduction shall not exceed an amount equivalent to the value of such amenities and services;

6.	Deductions for recovery of advances of whatever nature (including advances for travelling allowance or conveyance allowance), and the interest due in respect thereof, or for adjustment of over payment of wages;
7.	Deductions for recovery of loans made from any fund constituted for the welfare of labour, as may be prescribed by the appropriate Government, and the interest due in respect thereof;
8.	Deductions for recovery of loans granted for house-building or other purposes approved by the appropriate Government and the interest due in respect thereof;
9.	Deductions of income-tax or any other statutory levy levied by the Central Government or State Government and payable by the employee or deductions required to be made by order of a court or other authority competent to make such order;
10.	Deductions for subscription to, and for repayment of advances from any social security fund or scheme constituted by law including provident fund or pension fund or health insurance scheme or fund known by any other name;
11.	Deductions for payment of co-operative society subject to such conditions as the appropriate Government may impose;
12.	Deductions made, with the written authorisation of the employee, for payment of the fees and contribution payable by him for the membership of any Trade Union registered under the Trade Unions Act, 1926;
13.	Deductions for recovery of losses sustained by the railway administration on account of acceptance by the employee of counterfeit or base coins or mutilated or forged currency notes;
14.	Deductions for recovery of losses sustained by the railway administration on account of the failure of the employee to invoice, to bill, to collect or to account for the appropriate charges due to the railway administration whether in respect of fares, freight, demurrage, wharfage and crantage or in respect of sale of food in catering establishments or in respect of commodities in grain shops or otherwise;
15.	Deductions for recovery of losses sustained by the railway administration on account of any rebates or refunds incorrectly granted by the employee where such loss is directly attributable to his neglect or default;
16.	Deductions, made with the written authorisation of the employee, for contribution to the Prime Minister's National Relief Fund or to such other fund as the Central Government may, by notification, specify.

As per Section 18(3) of the Code, notwithstanding anything contained in the Code and subject to the provisions of any other law for the time being in force, the total amount of deductions which may be made under sub-section (2) in any wage period from the wages of an employee shall not exceed fifty per cent. of such wages. Where the total deductions authorised under sub-section (2) exceed 50% of the wages, the excess may be recovered in such manner, as may be prescribed.

Where any deduction is made by the employer from the wages of an employee under this section but not deposited in the account of the trust or Government fund or any other account, as required under the provisions of the law for the time being in force, such employee shall not be held responsible for such default of the employer.

## Fines

Section 19 states that:

- (1) No fine shall be imposed on any employee save in respect of those acts and omissions on his part as the employer, with the previous approval of the appropriate Government or of such authority as may be prescribed, may have specified by notice.



- (2) A notice specifying such acts and omissions shall be exhibited in such manner as may be prescribed, on the premises in which the employment is carried on.
- (3) No fine shall be imposed on any employee until such employee has been given an opportunity of showing cause against the fine or otherwise than in accordance with such procedure as may be prescribed for the imposition of fines.
- (4) The total amount of fine which may be imposed in any one wage-period on any employee shall not exceed an amount equal to 3% of the wages payable to him in respect of that wage-period.
- (5) No fine shall be imposed on any employee who is under the age of fifteen years.
- (6) No fine imposed on any employee shall be recovered from him by instalments or after the expiry of ninety days from the day on which it was imposed.
- (7) Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed.
- (8) All fines and all realisations thereof shall be recorded in a register to be kept in such manner and form as may be prescribed; and all such realisations shall be applied only to such purposes beneficial to the persons employed in the establishment as are approved by the prescribed authority.

### **Deductions for Absence from Duty**

According to Section 20 of the Code, deductions may be made under Section 18(2)(b) only on account of the absence of an employee from the place or places where by the terms of his employment, he is required to work, such absence being for the whole or any part of the period during which he is so required to work.

The amount of such deduction shall in no case bear to the wages payable to the employed person in respect of the wage-period for which the deduction is made in a larger proportion than the period for which he was absent bears to the total period within such wage-period during which by the terms of his employment he was required to work.

It may be noted that subject to any rules made in this behalf by the appropriate Government, if ten or more employed persons acting in concert absent themselves without due notice (that is to say without giving the notice which is required under the terms of their contracts of employment) and without reasonable cause, such deduction from any such person may include such amount not exceeding his wages for eight days as may by any such terms be due to the employer in lieu of due notice.

An employee shall be deemed to be absent from the place where he is required to work if, although present in such place, he refuses, in pursuance of a stay-in strike or for any other cause which is not reasonable in the circumstances, to carry out his work.

### **Deductions for Damage or Loss**

A deduction under clause (c) or clause (n) of sub-section (2) of section 18 for damage or loss shall not exceed the amount of the damage or loss caused to the employer by negligence or default of the employee.

A deduction shall not be made until the employee has been given an opportunity of showing cause against the deduction or otherwise than in accordance with such procedure as may be prescribed for the making of such deductions.

All such deductions and all realisations thereof shall be recorded in a register to be kept in such form as may be prescribed.

### **Deductions for Services Rendered**

Section 22 provides that deduction under Section 18(2)(d) or Section 18(2)(e) shall not be made from the wages of an employee, unless the house-accommodation amenity or service has been accepted by him as a term

of employment or otherwise and such deduction shall not exceed an amount equivalent to the value of the house-accommodation amenity or service supplied and shall be subject to such conditions as the appropriate Government may impose.

### **Deductions for Recovery of Advances**

As per Section 23 deductions under section 18(2) (f) for recovery of advances given to an employee shall be subject to the following conditions, namely:—

- (a) recovery of advance of money given to an employee before the employment began shall be made from the first payment of wages to him in respect of a complete wage-period but no recovery shall be made of such advances given for travelling expenses;
- (b) recovery of advance of money given to an employee after the employment began shall be subject to such conditions as may be prescribed;
- (c) recovery of advances of wages to an employee not already earned shall be subject to such conditions as may be prescribed.

### **Deductions for Recovery of Loans**

Section 24 provides that deductions under Section 18(2)(g) for recovery of loans granted to an employee, regulating the extent to which such loans may be granted and the rate of interest payable thereon, shall be such as may be prescribed.

## **PAYMENT OF BONUS**

### **Eligibility for Bonus**

Section 26(1) of the Code states that there shall be paid to every employee, drawing wages not exceeding such amount per mensem, as determined by notification, by the appropriate Government, by his employer, who has put in at least thirty days work in an accounting year, an annual minimum bonus calculated at the rate of eight and one-third per cent. of the wages earned by the employee or one hundred rupees, whichever is higher whether or not the employer has any allocable surplus during the previous accounting year.

Section 26(2) provides that for the purpose of calculation of the bonus where the wages of the employee exceed such amount per mensem, as determined by notification by the appropriate Government, the bonus payable to such employee under sub-sections (1) and (3) shall be calculated as if his wage were such amount, so determined by the appropriate Government or the minimum wage fixed by the appropriate Government, whichever is higher.

As per Section 26(3) where in respect of any accounting year referred to in sub-section (1), the allocable surplus exceeds the amount of minimum bonus payable to the employees under that sub-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 wages earned by the employee during the accounting year, subject to a maximum of twenty per cent. of such wages.

Section 26(4) states that in computing the allocable surplus under this section, the amount set on or the amount set off under the provisions of section 36 shall be taken into account in accordance with the provisions of that section.

Section 26(5) provides that any demand for bonus in excess of the bonus referred to in sub-section (1), either on the basis of production or productivity in an accounting year for which the bonus is payable shall be determined by an agreement or settlement between the employer and the employees, subject to the condition that the total bonus including the annual minimum bonus referred to in sub-section (1) shall not exceed twenty per cent. of the wages earned by the employee in the accounting year.

For the purpose of Section 26(6) in the first five accounting years following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, bonus shall be payable only in respect of the accounting year in which the employer derives profit from such establishment and such bonus shall be calculated in accordance with the provisions of this Code in relation to that year, but without applying the provisions of section 36.

As per Section 26(7), for the sixth and seventh accounting years following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, the provisions of section 36 shall apply subject to the following modifications, namely: –

- (i) for the sixth accounting year set on or set off, as the case may be, shall be made, in the manner as may be prescribed by the Central Government, taking into account the excess or deficiency, if any, as the case may be, of the allocable surplus set on or set off in respect of the fifth and sixth accounting years;
- (ii) for the seventh accounting year set on or set off, as the case may be, shall be made, in the manner as may be prescribed by the Central Government, taking into account the excess or deficiency, if any, as the case may be, of the allocable surplus set on or set off in respect of the fifth, sixth and seventh accounting years.

For the purpose of Section 26(8), from the eighth accounting year following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, the provisions of section 36 shall apply in relation to such establishment as they apply in relation to any other establishment.

*Explanation 1.* –For the purpose of sub-section (6), an employer shall not be deemed to have derived profit in any accounting year, unless –

- (a) he has made provision for depreciation of that year to which he is entitled under the Income-tax Act or, as the case may be, under the agricultural income tax law; and
- (b) the arrears of such depreciation and losses incurred by him in respect of the establishment for the previous accounting years have been fully set off against his profits.

*Explanation 2.* – For the purposes of sub-sections (6), (7) and (8), sale of the goods produced or manufactured during the course of the trial running of any factory or of the prospecting stage of any mine or an oil-field shall not be taken into consideration and where any question arises with regard to such production or manufacture, the appropriate Government may, after giving the parties a reasonable opportunity of representing the case, decide upon the issue.

Section 26(9) provides that the provisions of sub-sections (6), (7) and (8) shall, so far as may be, apply to new departments or undertakings or branches set up by existing establishments.

### **Proportionate Reduction in Bonus in Certain Cases**

Section 27 provides that where an employee has not worked for all the working days in an accounting year, the minimum bonus under Section 26(1), if such bonus is higher than eight and one third per cent. of the salary or wage of the days such employee has worked in that accounting year, shall be proportionately reduced.

### **Computation of Number of Working Days**

For the purposes of section 27, 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, or under the Industrial Disputes Act, 1947, or under any other law applicable to the establishment;

- (b) he has been on leave with salary or wages;
- (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 wages, during the accounting year.

### **Disqualification for Bonus**

Section 29 provides that notwithstanding anything contained in this Code, an employee shall be disqualified from receiving bonus under this Code, if he is dismissed from service for –

- (a) fraud; or
- (b) riotous or violent behaviour while on the premises of the establishment; or
- (c) theft, misappropriation or sabotage of any property of the establishment; or
- (d) conviction for sexual harassment.

### **Establishments to include Departments, Undertakings and Branches**

Under Section 30 where an establishment consists of different departments or undertakings or has branches, whether situated in the same place or in different places, all such departments or undertakings or branches shall be treated as parts of the same establishment for the purpose of computation of bonus under the Code.

However, where for any accounting year a separate balance sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking or branch, then, such department or undertaking or branch shall be treated as a separate establishment for the purpose of computation of bonus, under this Code for that year, unless such department or undertaking or branch was, immediately before the commencement of that accounting year treated as part of the establishment for the purpose of computation of bonus.

### **Payment of Bonus out of Allocable Surplus**

As per Section 31 the bonus shall be paid out of the allocable surplus which shall be an amount equal to 60% in case of a banking company and 67% in case of other establishment, of the available surplus and the available surplus shall be the amount calculated in accordance with section 33.

Audited accounts of companies shall not normally be questioned.

Where there is any dispute regarding the quantum of bonus, the authority notified by the appropriate Government having jurisdiction may call upon the employer to produce the balance sheet before it, but the authority shall not disclose any information contained in the balance sheet unless agreed to by the employer.

### **Computation of Gross Profits**

Section 32 states that the gross profits derived by an employer from an establishment in respect of the accounting year shall, –

- (a) in the case of a banking company, be calculated in the manner as may be prescribed by the Central Government;
- (b) in any other case, be calculated in the manner as may be prescribed by the Central Government.

### **Computation of Available Surplus**

According to Section 33 the available surplus in respect of any accounting year shall be the gross profits for that year after deducting therefrom the sums referred to in section 34.

It may be noted that the available surplus in respect of the accounting year commencing on any day in a year after the commencement of the Code 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 34; and
- (b) an amount equal to the difference between –
  - (i) the direct tax, calculated in accordance with the provisions of section 35, 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 provisions of section 35, 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 Code for that year.

### **Sums Deductible from Gross Profits**

Under Section 34 of the Code, the following sums shall be deducted from the gross profits as prior charges, namely: –

- (a) any amount by way of depreciation admissible in accordance with the provisions of section 32(1) of the Income-tax Act or in accordance with the provisions of the agricultural income-tax law, for the time being in force, as the case may be;
- (b) subject to the provisions of section 35, any direct tax which the employer is liable to pay for the accounting year in respect of his income, profits and gains during that year;
- (c) such further sums in respect of the employer as may be prescribed by the Central Government.

### **Calculation of Direct Tax Payable by Employer**

Under Section 35, any direct tax payable by the employer for any accounting year shall, subject to the following provisions, be calculated at the rates applicable to the income of the employer for that year, namely: –

- (a) in calculating such tax no account shall be taken of, –
  - (i) any loss incurred by the employer in respect of any previous accounting year and carried forward under any law for the time being in force relating to direct taxes;
  - (ii) any arrears of depreciation which the employer is entitled to add to the amount of the allowance for depreciation for any succeeding accounting year or years under section 32(2) of the Income- tax Act;
- (b) where the employer is a religious or a charitable institution to which the provisions of section 41 do not apply and the whole or any part of its income is exempt from the tax under the Income-tax Act, then, with respect to the income so(c) exempted, such institution shall be treated as if it were a company in which the public are substantially interested within the meaning of that Act;
- (c) where the employer is an individual or a Hindu undivided family, the tax payable by such employer under the Income-tax Act shall be calculated on the basis that the income derived by him from the establishment is his only income;
- (d) where the income of any employer includes any profits and gains derived from the export of any goods or merchandise out of India and any rebate on such income is allowed under any law for the time being in force relating to direct taxes, then, no account shall be taken of such rebate;

- (e) no account shall be taken of any rebate other than development rebate or investment allowance or development allowance or credit or relief or deduction (not hereinbefore mentioned in this section) in the payment of any direct tax allowed under any law for the time being in force relating to direct taxes or under the relevant annual Finance Act, for the development of any industry.

### Set on and Set off of Allocable Surplus

- (1) Where for any accounting year, the allocable surplus exceeds the amount of maximum bonus payable to the employees in the establishment under section 26, 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 such manner as may be prescribed by the Central Government.
- (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 26, and there is no amount or 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 such manner as may be prescribed by the Central Government.
- (3) The principle of set on and set off as may be provided in rules by the Central Government under the Code shall apply to all other cases not covered by sub-section (1) or sub-section (2) for the purpose of payment of bonus under the Code.
- (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. (Section 36)

### Adjustment of Customary or Interim Bonus against Bonus Payable

Section 37 provides that where in any accounting year, –

- (a) an employer has paid any puja bonus or other customary bonus to employee; or
- (b) an employer has paid a part of the bonus payable under this Code to an employee before the date on which such bonus becomes payable, then, the employer shall be entitled to deduct the amount of bonus so paid from the amount of bonus payable by him to the employee under this Code in respect of that accounting year and the employee shall be entitled to receive only the balance.

### Deduction of certain Amounts from Bonus Payable

As per Section 38, where in any accounting year, an employee is found guilty of misconduct causing financial loss to the employer, then, it shall be lawful for the employer to deduct the amount of loss from the amount of bonus payable by him to the employee under the Code in respect of that accounting year only and the employee shall be entitled to receive the balance, if any.

### Time Limit for Payment of Bonus

According to Section 39 all amounts payable to an employee by way of bonus under the Code shall be paid by crediting it in the bank account of the employee by his employer within a period of **eight months** from the close of the accounting year.

The appropriate Government or such authority as the appropriate Government may specify in this behalf may also, 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.

Where there is a dispute regarding payment of bonus pending before any authority, such bonus shall be paid, within a period of one month from the date on which the award becomes enforceable or the settlement comes into operation, in respect of such dispute:

It may be noted that if, there is a dispute for payment at the higher rate, the employer shall pay eight and one-third per cent. of the wages earned by the employee as per the provisions of the Code within a period of eight months from the close of the accounting year.

### **Application of Chapter VI (Payment of Bonus) to establishments in Public Sector in Certain Cases**

Section 40 prescribes that if in any accounting year an establishment in public sector sells any goods produced or manufactured by it or renders any services, in competition with an establishment in private sector, and the income from such sale or services or both, is not less than twenty per cent. of the gross income of the establishment in public sector for that year, then, the provisions of the Chapter VI i.e. Payment of Bonus shall apply in relation to such establishment in public sector as they apply in relation to a like establishment in private sector.

(2) Save as otherwise provided in sub-section (1), nothing in this Chapter shall apply to the employees employed by any establishment in public sector.

### **Non-applicability of Chapter VI (Payment of Bonus)**

Section 41 provides that Chapter VI (Payment of Bonus) shall not apply to following employees:

- (a) employees employed by the Life Insurance Corporation of India;
- (b) seamen as defined in section 3(42) of the Merchant Shipping Act, 1958;
- (c) employees registered or listed under any scheme made under the Dock Workers (Regulation of Employment) Act, 1948, and employed by registered or listed employers;
- (d) employees employed by an establishment under the authority of any department of the Central Government or a State Government or a local authority;
- (e) employees employed by –
  - (i) the Indian Red Cross Society or any other institution of a like nature including its branches;
  - (ii) universities and other educational institutions;
  - (iii) institutions including hospitals, chamber of commerce and social welfare institutions established not for purposes of profit;
- (f) employees employed by the Reserve Bank of India;
- (g) employees employed by public sector financial institution other than a banking company, which the Central Government may, by notification, specify, having regard to –
  - i. its capital structure;
  - ii. its objectives and the nature of its activities;
  - iii. the nature and extent of financial assistance or any concession given to it by the Government; and
  - iv. any other relevant factor;

- (h) employees employed by inland water transport establishments operating on routes passing through any other country; and
- (i) employees of any other establishment which the appropriate Government may, by notification, exempt having regard to the overall benefits under any other scheme of profit sharing available in such establishments to the employees.

The provisions of Chapter VI (Payment of Bonus) shall apply to such establishment in which **twenty or more persons** are employed or were employed on any day during an accounting year.

The Code brings transparency in dealing with matters pertaining to Bonus. The gist of important provisions pertaining to the Bonus is as follows:

Applicability of bonus to the Establishments [Sec 41(2)]	20 or more persons are employed or were employed on any day during an accounting year.
Minimum days to be worked for Bonus eligibility [Sec 26 (1)]	at least 30 days in an accounting year.
Minimum Bonus [Sec 26 (1)]	8.33 % of the wages earned by the employee or Rs. 100, whichever is higher, whether or not such employer has any allocable surplus during the previous accounting year.
Maximum Bonus amount [Sec 26 (3)]	If the allocable surplus exceeds the amount of minimum bonus payable to the employees, employers shall in lieu of such minimum bonus, be bound to pay to every employees in proportion to wages earned by them subject to the maximum of 20% of wage.
Payment of bonus out of allocable surplus (Sec 31)	The bonus shall be paid out of the allocable surplus which shall be an amount equal to <ul style="list-style-type: none"> <li>● 60% in case of a banking company and</li> <li>● 75% in case of other establishment, of the available surplus</li> </ul> <p>Available Surplus shall be computed as per Sec 33 of code.</p>
Maximum time limit for Bonus payment (Sec 39)	<ul style="list-style-type: none"> <li>● Within a period of 8 months from the close of the accounting year.</li> <li>● The above time limit can be further extended upto 2 years if there is sufficient reason by the employer.</li> </ul>
Set on and setoff of Allocable surplus. (Sec 36)	<ul style="list-style-type: none"> <li>● The allocable surplus exceeds the maximum bonus amount payable to the employees, the excess amount shall be carried forward for being set on in the succeeding accounting year.</li> <li>● The carry forward limit shall be 20% of the total wage of the employees in that accounting year.</li> <li>● Carry forward period shall be up to and inclusive of the 4th accounting year to be utilised for the bonus payment in a prescribe manner.</li> </ul>



Non applicability of above provisions	<p>Employees of:</p> <ul style="list-style-type: none"> <li>● LIC;</li> <li>● the Dock Workers (Regulation of Employment) Act, 1948;</li> <li>● an establishment under the authority of the Central Govt. or a State Govt. or a local authority;</li> <li>● the Indian Red Cross Society or like institution;</li> <li>● universities and other educational institutions;</li> <li>● Institutions including hospitals, chamber of commerce and social welfare institutions established not for purposes of profit;</li> <li>● Reserve Bank of India</li> <li>● public sector financial institution other than a banking company;</li> <li>● inland water transport establishments operating on routes passing through any other country;</li> <li>● Such other establishments as exempted by Central Govt. by notification.</li> </ul>
Application of Chapter IV to establishments in public sector in certain cases (Sec 40)	If in any accounting year an establishment in public sector sells any goods produced or manufactured by it or renders any services, in competition with an establishment in private sector, and the income from such sale or services or both, is not less than 20% of the gross income, then, the provisions of Bonus shall apply to such establishment in public sector as they apply in relation to a like establishment in private sector.

## ADVISORY BOARD

### Central Advisory Board and State Advisory Boards

- (1) The Central Government shall constitute the Central Advisory Board which shall consist of persons to be nominated by the Central Government –
  - (a) representing employers;
  - (b) representing employees which shall be equal in number of the members specified in clause (a);
  - (c) independent persons, not exceeding one-third of the total members of the Board; and
  - (d) five representatives of such State Governments as may be nominated by the Central Government.
- (2) One-third of the members referred to in sub-section (1) shall be women and a member specified in clause (c) of the said sub-section shall be appointed by the Central Government as the Chairperson of the Board.
- (3) The Central Advisory Board constituted under sub-section (1) shall from time to time advise the Central Government on reference of issues relating to –
  - (a) fixation or revision of minimum wages and other connected matters;
  - (b) providing increasing employment opportunities for women;

- (c) the extent to which women may be employed in such establishments or employments as the Central Government may, by notification, specify in this behalf; and
  - (d) any other matter relating to this Code, and on such advice, the Central Government may issue directions to the State Government as it deems fit in respect of matters relating to issues referred to the Board.
- (4) Every State Government shall constitute a State Advisory Board for advising the State Government –
- (a) in fixation or revision of minimum wages and other connected matters;
  - (b) for the purpose of providing increasing employment opportunities for women;
  - (c) with regard to the extent to which women may be employed in such establishments or employments as the State Government may, by notification, specify in this behalf; and
  - (d) in any other matter relating to this Code, which the State Government may refer from time to time to the Board.
- (5) The State Advisory Board may constitute one or more committees or sub-committees to look into issues pertaining to matters specified in clauses (a) to (d) of sub-section (4).
- (6) The State Advisory Board and each of the committees and sub-committees thereof shall consist of persons –
- (a) representing employers;
  - (b) representing employees which shall be equal in number of the members specified in clause (a); and
  - (c) independent persons, not exceeding one-third of the total members of the Board or committee or sub-committee, as the case may be.
- (7) One-third of the members referred to in sub-section (6) shall be women and one among the members specified in clause (c) of the said sub-section shall be –
- (a) appointed by the State Government as the Chairperson of the Board;
  - (b) appointed by the State Advisory Board as the Chairperson of the committee or sub-committee, as the case may be.
- (8) In tendering its advice in the matters specified in clause (b) or clause (c) of sub-section (4), the State Advisory Board shall have regard to the number of women employed in the concerned establishment, or employment, the nature of work, hours of work, suitability of women for employment, as the case may be, the need for providing increasing employment opportunities for women, including part time employment, and such other relevant factors as the Board may think fit.
- (9) The State Government may, after considering the advice tendered to it by the State Advisory Board and after inviting and considering the representations from establishment or employees or any other person which that Government thinks fit, issue such direction as may be deemed necessary.
- (10) The Central Advisory Board referred to in sub-section (1) and the State Advisory Board referred to in sub-section (4) shall respectively regulate their own procedure including that of the committees and sub-committees constituted by the State Advisory Board, in such manner as may be prescribed.
- (11) The terms of office of the Central Advisory Board referred to in sub-section (1) and the State Advisory Board referred to in sub-section (4) including that of the committees and sub-committees constituted by the State Advisory Board, shall be such as may be prescribed.(Section 42).

Summary		
Particulars	Central Advisory Board	State Advisory Board
Composition	<p>a. Representing employers;</p> <p>b. Representing employees which shall be equal in number of the members specified in clause (a);</p> <p>c. Independent persons, not exceeding one-third of the total members of the Board;</p> <p>d. 5 representatives of such State Governments; Above members shall be nominated by the Central Govt.</p> <p>Above members shall be nominated by the Central Govt.</p>	<p>a. Representing employers;</p> <p>b. Representing employees which shall be equal in number of the members specified in (a) below;</p> <p>c. Independent persons, not exceeding one third of the total members of the Board.</p>
Chairman	Independent Member as nominated by the Central Govt.	Independent Member as nominated by the State Govt.
Women Members	1/3rd of the total members shall be women.	
Terms of reference	<p>Advise the Central Govt. on the following matters:</p> <ul style="list-style-type: none"> <li>● fixation or revision of minimum wages and other connected matters;</li> <li>● providing increasing employment opportunities for women.</li> </ul>	<p>Advise the State Govt. on the following matters:</p> <ul style="list-style-type: none"> <li>● fixation or revision of minimum wages and other connected matters;</li> <li>● providing increasing employment opportunities for women.</li> </ul>
	<ul style="list-style-type: none"> <li>● the extent to which women may be employed in such establishments or employments as the Central Government may, by notification, specify in this behalf;</li> <li>● any other matter relating to this Code;</li> <li>● the Central Govt. may issue directions to the State Govt. as it deems fit in respect of matters relating to issues referred to the Board.</li> </ul>	<ul style="list-style-type: none"> <li>● the extent to which women may be employed in such establishments or employments as the State Government may, by notification, specify in this behalf;</li> <li>● any other matter relating to this Code.</li> </ul>

## PAYMENT OF DUES, CLAIMS AND AUDIT

### Responsibility for Payment of Various Dues

Under Section 43 every employer shall pay all amounts required to be paid under the Code to every employee employed by him. However, where such employer fails to make such payment in accordance with the Code, then, the company or firm or association or any other person who is the proprietor of the establishment, in which the employee is employed, shall be responsible for such payment.

Explanation. –For the purposes of this section the expression “firm” shall have the same meaning as assigned to it in the Indian Partnership Act, 1932.

### Payment of various Undisbursed Dues in case of Death of Employee

Section 44 states that all amounts payable to an employee under the Code shall, if such amounts could not or cannot be paid on account of his death before payment or on account of his whereabouts not being known, –

- (a) be paid to the person nominated by him in this behalf in accordance with the rules made under the Code; or
- (b) where no such nomination has been made or where for any reasons such amounts cannot be paid to the person so nominated, be deposited with the such authority, as may be prescribed, who shall deal with the amounts so deposited in the manner as may be prescribed.

All amounts payable to an employee are paid by the employer to the person nominated by the employee; or are deposited by the employer with the authority referred to (b) above then, the employer shall be discharged of his liability to pay those amounts.

### Claims under Code and Procedure thereof

Section 45(1) empowers the appropriate Government to appoint one or more authorities, not below the rank of a Gazetted Officer, to hear and determine the claims which arises under the provisions of the Code.

As per Section 45(2) the authority appointed under Section 45(1), while deciding the claim under that sub-section, may order, having regard to the circumstances under which the claim arises, the payment of compensation in addition to the claim determined, which may extend to ten times of the claim determined and endeavour shall be made by the authority to decide the claim within a period of three months.

Section 45(3) states that if an employer fails to pay the claim determined and compensation ordered to be paid under Section 45(2), the authority shall issue a certificate of recovery to the Collector or District Magistrate of the district where the establishment is located who shall recover the same as arrears of land revenue and remit the same to the authority for payment to the concerned employee.

According to Section 45(4) any application before the authority for claim referred to in sub-section (1) may be filed by, –

- (a) the employee concerned; or
- (b) any Trade Union registered under the Trade Unions Act, 1926 of which the employee is a member; or
- (c) the Inspector-cum-Facilitator.

Section 45(5) states that subject to such rules as may be made, a single application may be filed under this section on behalf or in respect of any number of employees employed in an establishment.

Under Section 45(6) the application under Section 45 (4) may be filed within a period of three years from the date on which claims referred to in sub-section (1) arises: Provided that the authority referred to in Section 45(1) may, entertain the application after three years on sufficient cause being shown by the applicant for such delay.

Section 45(7) The authority appointed under Section 45(1) and the appellate authority appointed under section 49(1), shall have all the powers of a civil court under the Code of Civil Procedure, 1908, for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such authority or appellate authority shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

### Reference of Disputes under the Code

Section 46 provides that notwithstanding anything contained in the Code, where any dispute arises between an employer and his employees with respect to –

- (a) fixation of bonus or eligibility for payment of bonus under the provisions of the Code; or
- (b) the application of the Code, in respect of bonus, to an establishment in public sector,

then, such dispute shall be deemed to be an industrial dispute within the meaning of the Industrial Disputes Act, 1947.

### Presumption about accuracy of balance sheet and profit and loss account of corporations and companies

According to Section 47(1) where, during the course of proceedings before –

- (a) the authority under section 45; or
- (b) the appellate authority under section 49; or
- (c) a Tribunal; or
- (d) an arbitrator referred to in clause (aa) of section 2 of the Industrial Disputes Act, 1947,

in respect of any dispute of the nature specified in sections 45 and 46 or in respect of an appeal under section 49, the balance sheet and the profit and loss account of an employer, being a corporation or a company (other than a banking company), duly audited by the Comptroller and Auditor-General of India or by auditors duly qualified to act as auditors of companies under section 141 of the Companies Act, 2013, are produced before it, then, the said authority, appellate authority, Tribunal or arbitrator, as the case may be, may presume the statements and particulars contained in such balance sheet and profit and loss account to be accurate and it shall not be necessary for the corporation or the company to prove the accuracy of such statements and particulars by the filing of an affidavit or by any other mode:

It may be noted that where the said authority, appellate authority, Tribunal or arbitrator, as the case may be, is satisfied that the statements and particulars contained in the balance sheet or the profit and loss account of the corporation or the company are not accurate, it may take such steps as it thinks necessary to find out the accuracy of such statements and particulars.

Section 47(2) provides that when an application is made to the authority, appellate authority, Tribunal or arbitrator, as the case may be, referred to in Section 47(1), by any Trade Union being a party to the dispute or as the case may be, an appeal, and where there is no Trade Union, by the employees being a party to the dispute, or as the case may be, an appeal, requiring any clarification relating to any item in the balance sheet or the profit and loss account, then such authority, appellate authority, Tribunal or arbitrator, may, after satisfying itself that such clarification is necessary, by order, direct the corporation or, as the case may be, the company, to furnish to the Trade Union or the employees such clarification within such time as may be specified in the direction and the corporation or, as the case may be, the company, shall comply with such direction.

### Audit of Account of Employers not being Corporations or Companies

Under Section 48 where any claim, dispute or appeal with respect to bonus payable under the Code between an employer, not being a corporation or a company, and his employees is pending before any authority, appellate

authority, Tribunal or arbitrator, as the case may be, as referred to in Section 47(1) and the accounts of such employer audited by any auditor duly qualified to act as auditor of companies under the provisions of section 141 of the Companies Act, 2013, are produced before such authority, appellate authority, Tribunal or arbitrator, then the provisions of section 47 shall, so far as may be, apply to the accounts so audited.

When the authority, appellate authority, Tribunal or arbitrator, as the case may be, finds that the accounts of such employer have not been audited by any such auditor and it is of opinion that an audit of the accounts of such employer is necessary for deciding the question referred to it, then, such authority, appellate authority, Tribunal or arbitrator, may, by order, direct the employer to get his accounts audited within such time as may be specified in the direction or within such further time as it may allow by such auditor or auditors as it thinks fit and thereupon the employer shall comply with such direction.

Where an employer fails to get the accounts audited, the authority, appellate authority, Tribunal or arbitrator, as the case may be, may, without prejudice to the provisions of section 54, get the accounts audited by such auditor or auditors as it thinks fit.

When the accounts are audited, the provisions of section 47 shall, so far as may be, apply to the accounts so audited.

The expenses of, and incidental to, any audit including the remuneration of the auditor or auditors shall be determined by the authority, appellate authority, Tribunal or arbitrator, as the case may be, and paid by the employer and in default of such payment shall be recoverable by the authority referred to in section 45(3) from the employer in the manner provided in that sub-section.

### Appeal

According to Section 49 any person aggrieved by an order passed by the authority under Section 45(2) may prefer an appeal, to the appellate authority having jurisdiction appointed by the appropriate Government, by notification, for such purpose, within ninety days from the date of such order, in such form and manner as may be prescribed: Provided that the appellate authority may entertain the appeal after ninety days if it satisfied that the delay in filing the appeal has occurred due to sufficient cause.

The appellate authority shall be appointed from the officers of the appropriate Government holding the post at least one rank higher than the authority referred under section 45(1).

The appellate authority shall, after hearing the parties in the appeal, dispose of the appeal and endeavour shall be made to dispose of the appeal within a period of three months.

The outstanding dues under the orders of the appellate authority shall be recovered by the authority by issuing the certificate of recovery in the specified manner.

### Records, Returns and Notices

Section 50(1) provides that every employer of an establishment to which the Code applies shall maintain a register containing the details with regard to persons employed, muster roll, wages and such other details in such manner as may be prescribed.

Section 50(2) states that every employer shall display a notice on the notice board at a prominent place of the establishment containing the abstract of this Code, category-wise wage rates of employees, wage period, day or date and time of payment of wages, and the name and address of the Inspector-cum-Facilitator having jurisdiction.

Every employer shall issue wage slips to the employees in such form and manner as may be prescribed under Section 50(3).

The above provisions shall not apply in respect of the employer to the extent he employs **not more than five persons for agriculture or domestic purpose**. Provided that such employer, when demanded, shall produce before the Inspector-cum-Facilitator, the reasonable proof of the payment of wages to the persons so employed.

It may be noted that the expression “*domestic purpose*” means the purpose exclusively relating to the home or family affairs of the employer and does not include any affair relating to any establishment, industry, trade, business, manufacture or occupation.

Summary		
Maintain Registers	Must contain the details w.r.t. persons employed, muster roll, wages and such other details in a prescribed manner	The Code seeks to provide single register as against multiple registers under existing laws and helps to provide better compliance in a simplified manner
Display Notice in the notice Board at the prominent place of establishment	Must contain the details as follows: <ul style="list-style-type: none"> <li>● abstract of this Code,</li> <li>● category-wise wage rates of employees,</li> <li>● wage period,</li> <li>● day or date and time of payment of wages, and</li> <li>● The name and address of the respective Inspector-cum-Facilitator.</li> </ul>	
wage slips	In a prescribed format	
Non applicability of above provisions	To the employer to the extent he employs not more than five persons for agriculture or domestic purpose	

### Appointment of Inspector-cum-Facilitators and their Powers

Section 51(1) empowers the appropriate Government to appoint Inspector-cum-Facilitators for the purposes of the Code who shall exercise the powers conferred on them throughout the State or such geographical limits assigned in relation to one or more establishments situated in such State or geographical limits or in one or more establishments, irrespective of geographical limits, assigned to him by the appropriate Government, as the case may be.

The appropriate Government may, by notification, lay down an inspection scheme which may also provide for generation of a web-based inspection and calling of information relating to the inspection under this Code electronically.

The appropriate Government may, by notification, confer such jurisdiction of randomised selection of inspection for the purposes of the Code to the Inspector-cum-Facilitator as may be specified in such notification.

Every Inspector-cum-Facilitator appointed shall be deemed to be public servant within the meaning of section 21 of the Indian Penal Code.

The Inspector-cum-Facilitator may –

- (a) advice to employers and workers relating to compliance with the provisions of this Code;
- (b) inspect the establishments as assigned to him by the appropriate Government, subject to the instructions or guidelines issued by the appropriate Government from time to time.

The Inspector-cum-Facilitator may, –

- (a) examine any person who is found in any premises of the establishment, whom the Inspector-cum-Facilitator has reasonable cause to believe, is a worker of the establishment;

- (b) require any person to give any information, which is in his power to give with respect to the names and addresses of the persons;
- (c) search, seize or take copies of such register, record of wages or notices or portions thereof as the Inspector-cum-Facilitator may consider relevant in respect of an offence under this Code and which the Inspector-cum-Facilitator has reason to believe has been committed by the employer;
- (d) bring to the notice of the appropriate Government defects or abuses not covered by any law for the time being in force; and
- (e) exercise such other powers as may be prescribed.

Any person required to produce any document or to give any information required by an Inspector-cum-Facilitator shall be deemed to be legally bound to do so within the meaning of section 175 and section 176 of the Indian Penal Code.

The provisions of the Code of Criminal Procedure, 1973 shall, so far as may be, apply to the search or seizure by the Inspector-cum-Facilitator as they apply to the search or seizure made under the authority of a warrant issued under section 94 of the Code of Criminal Procedure, 1973.

## OFFENCES AND PENALTIES

### Cognizance of offences

Section 52 provides that no court shall take cognizance of any offence punishable under this Code, save on a complaint made by or under the authority of the appropriate Government or an officer authorised in this behalf, or by an employee or a registered Trade Union registered under the Trade Unions Act, 1926 or an Inspector-cum-Facilitator.

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the first class shall try the offences under the Code.

### Power of Officers of Appropriate Government to Impose Penalty in Certain Cases

The appropriate Government may appoint any officer not below the rank of Under Secretary to the Government of India or an officer of equivalent rank in the State Government, as the case may be, for holding enquiry in such manner, as may be prescribed by the Central Government.

While holding the enquiry, the officer shall have the power to summon and enforce attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document, which in the opinion of such officer, may be useful for or relevant to the subject matter of the enquiry and if, on such enquiry, he is satisfied that the person has committed any offence, he may impose such penalty as he thinks fit in accordance with such provisions. (Section 53)

### Penalties for Offences

As per Section 54(1) any employer who –

- (a) pays to any employee less than the amount due to such employee under the provisions of the Code shall be punishable with fine which may extend to fifty thousand rupees;
- (b) having been convicted of an offence under clause (a) is again found guilty of similar offence under this clause, within five years from the date of the commission of the first or subsequent offence, he shall, on the second and the subsequent commission of the offence, be punishable with imprisonment for a term which may extend to three months or with fine which may extend to one lakh rupees, or with both;



- (c) contravenes any other provision of the Code or any rule made or order made or issued thereunder shall be punishable with fine which may extend to twenty thousand rupees;
- (d) having been convicted of an offence under clause (c) is again found guilty of similar offence under this clause, within five years from the date of the commission of the first or subsequent offence, he shall, on the second and the subsequent commission of the offence under this clause, be punishable with imprisonment for a term which may extend to one month or with fine which may extend to forty thousand rupees, or with both.

For the offences of non-maintenance or improper maintenance of records in the establishment, the employer shall be punishable with fine which may extend to ten thousand rupees.

The Inspector-cum-Facilitator shall, before initiation of prosecution proceeding for the offences, give an opportunity to the employer to comply with the provisions of the Code by way of a written direction, which shall lay down a time period for such compliance, and, if the employer complies with the direction within such period, the Inspector-cum-Facilitator shall not initiate such prosecution proceeding and, no such opportunity shall be accorded to an employer, if the violation of the same nature of the provisions under the Code is repeated within a period of five years from the date on which such first violation was committed and in such case the prosecution shall be initiated in accordance with the provisions of the Code.

### Offences by Companies

According to Section 55 if the person committing an offence under this Code 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.

It may be noted that nothing contained in above 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.

Where an offence under the Code 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 Section 55, –

- (a) “Company” means anybody corporate and includes –
  - (i) a firm; or
  - (ii) a limited liability partnership registered under the Limited Liability Partnership Act, 2008; or
  - (iii) other association of individuals; and
- (b) “Director” in relation to a firm means a partner in the firm.

### Composition of Offences

- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under the Code, not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may, on an application of the accused person, either before or after the institution of any prosecution, be compounded by a Gazetted Officer, as the appropriate Government may, by notification, specify, for a sum of fifty per cent. of the maximum fine provided for such offence, in the manner as may be prescribed.
- (2) Nothing contained in sub-section (1) shall apply to an offence committed by a person for the second time or thereafter within a period of five years from the date – (i) of commission of a similar offence which was earlier compounded; (ii) of commission of similar offence for which such person was earlier convicted.

- (3) Every officer referred to in sub-section (1) shall exercise the powers to compound an offence, subject to the direction, control and supervision of the appropriate Government.
- (4) Every application for the compounding of an offence shall be made in such manner as may be prescribed.
- (5) Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, against the offender in relation to whom the offence is so compounded.
- (6) Where the composition of any offence is made after the institution of any prosecution, such composition shall be brought by the officer referred to in sub-section (1) in writing, to the notice of the court in which the prosecution is pending and on such notice of the composition of the offence being given, the person against whom the offence is so compounded shall be discharged.
- (7) Any person who fails to comply with an order made by the officer referred to in sub-section (1), shall be punishable with a sum equivalent to twenty per cent. of the maximum fine provided for the offence, in addition to such fine.
- (8) No offence punishable under the provisions of the Code shall be compounded except under and in accordance with the provisions of this section (Section 56)

## MISCELLANEOUS

### Bar of Suits

Section 57 states that no court shall entertain any suit for the recovery of minimum wages, any deduction from wages, discrimination in wages and payment of bonus, in so far as the sum so claimed –

- (a) forms the subject of claims under section 45;
- (b) has formed the subject of a direction under this Code;
- (c) has been adjudged in any proceeding under this Code;
- (d) could have been recovered under this Code.

### Protection of Action Taken in Good Faith

No suit, prosecution or any other legal proceeding shall lie against the appropriate Government or any officer of that Government for anything which is in good faith done or intended to be done under the Code. (Section 58)

### Burden of Proof

Where a claim has been filed on account of non-payment of remuneration or bonus or less payment of wages or bonus or on account of making deductions not authorised by the Code from the wages of an employee, the burden to prove that the said dues have been paid shall be on the employer. (Section 59)

### Contracting Out

Any contract or agreement whereby an employee relinquishes the right to any amount or the right to bonus due to him under this Code shall be null and void in so far as it purports to remove or reduce the liability of any person to pay such amount under this Code. (Section 60)

### Effect of Laws Agreements, etc., Inconsistent with the Code

The provisions of this Code shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the terms of any award, agreement, settlement or contract of service. (Section 61)

### Delegation of Powers

The appropriate Government may, by notification, direct that any power exercisable by it under this Code shall, in relation to such matters and subject to such conditions, if any, as may be specified in the notification, be also exercisable –

- (a) where the appropriate Government is the Central Government, by such officer or authority subordinate to the Central Government or by the State Government or by such officer or authority subordinate to the State Government, as may be specified in the notification;
- (b) where the appropriate Government is a State Government, by such officer or authority subordinate to the State Government as may be specified in the notification. (Section 62)

### Exemption of Employer from Liability in Certain Cases

Where an employer is charged with an offence under this Code, he shall be entitled upon complaint duly made by him, to have any other person whom he charges as the actual offender, brought before the court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the court –

- (a) that he has used due diligence to enforce the execution of this Code; and
- (b) that the said other person committed the offence in question without his knowledge, consent or connivance, that other person shall be convicted of the offence and shall be liable to the like punishment as if he were the employer and the employer shall be discharged from any liability under this Code in respect of such offence.

Provided that in seeking to prove, as aforesaid, the employer may be examined on oath, and the evidence of the employer or his witness, if any, shall be subject to cross-examination by or on behalf of the person whom the employer charges as the actual offender and by the prosecution. (Section 63)

### Protection against Attachments of Assets of Employer with Government

Any amount deposited with the appropriate Government by an employer to secure the due performance of a contract with that Government and any other amount due to such employer from that Government in respect of such contract shall not be liable to attachment under any decree or order of any court in respect of any debt or liability incurred by the employer other than any debt or liability incurred by the employer towards any employee employed in connection with the contract aforesaid. (Section 64)

### Power of Central Government to Give Directions

The Central Government may, for carrying into execution of the provisions of this Code in the State give directions to the State Government, and the State Government shall abide by such directions. (Section 65)

### Saving

Nothing contained in the Code shall be deemed to affect the provisions of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 and the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948, or of any scheme made thereunder. (Section 66)

### Power of appropriate Government to make rules

As per Section 67 (1) of the Act, the appropriate Government may, subject to the condition of previous publication, make rules for carrying out the provisions of this Code.

As per Section 67 (3) of the Act, the Central Government may make rules subject to the condition of previous publication. As per section 67 (4), every rule made by the Central Government under this section shall be laid,

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

As per Section 67 (5) of the Act, every rule made by the State Government shall, as soon as possible after it is made, be laid before the State Legislature.

### **THE OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE 2020**

The Occupational Safety, Health and Working Conditions Code 2019 has been introduced in the Parliament on 23rd July, 2019.

The Code was referred to Parliamentary Standing Committee on Labour. The report of the Standing Committee was placed before both the Houses of the Parliament on February 11, 2020. The Bill was reintroduced as The Occupational Safety, Health and Working Conditions Code, 2020 in the Parliament and has been passed by the Lok Sabha on 22nd September, 2020, Rajya Sabha on 23rd September, 2020 and received the assent of the President on 28th September, 2020.

According to the Statement of Objects and Reasons of the Occupational Safety, Health and Working Conditions Code 2020, the Second National Commission on Labour (the Commission) had submitted its Report on "Occupational Safety, Health and Working Conditions of the Workers" in June, 2002. In pursuance of the recommendations of the said Commission, it has become necessary to enact a Central Legislation in the form of a Code, namely the Occupational Safety, Health and Working Conditions Code, 2020 which incorporates the essential features of the thirteen enactments relating to factories, mines, dock workers, building and other construction workers, plantations labour, contract labour, Inter-State migrant workmen, working Journalist and other newspaper employees, motor transport workers, sales promotion employees, beedi and cigar workers, cine workers and cinema theatre workers and to repeal the respective enactments. It provides broader legislative framework to secure just and humane conditions of work with flexibility and to provide enabling provisions for making rules and regulations in tune with the emerging technologies.

The Occupational Safety, Health and Working Conditions Code, 2020 simplifies, amalgamates and rationalises the provisions of thirteen enactments in the aforesaid areas and to comprise them in a concise volume with certain important changes. The thirteen enactments are as follows:

- The Factories Act, 1948;
- The Mines Act, 1952
- The Dock Workers (Safety, Health and Welfare) Act, 1986;
- The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996;
- The Plantations Labour Act, 1951;
- The Contract Labour (Regulation and Abolition) Act, 1970;
- The Inter-State Migrant workmen (Regulation of Employment and Conditions of Service) Act, 1979;
- The Working Journalist and other Newspaper Employees (Conditions of Service and Misc. Provision) Act, 1955;
- The Working Journalist (Fixation of rates of wages) Act, 1958;
- The Motor Transport Workers Act, 1961;

- Sales Promotion Employees (Condition of Service) Act, 1976;
- The Beedi and Cigar Workers (Conditions of Employment) Act, 1966; and
- The Cine Workers and Cinema Theatre Workers Act, 1981. After the enactment of the Code, all these Acts being subsumed in the Code will be repealed.

Safety, Health, welfare and improved Working Conditions are pre-requisite for well-being of the worker and also for economic growth of the country as healthy workforce of the country would be more productive and occurrence of less accidents and unforeseen incidents would be economically beneficial to the employers also. With the ultimate aim of extending the safety and healthy working conditions to all workforce of the country, the Code enhances the ambit of provisions of safety, health, welfare and working conditions from existing about 9 major sectors to all establishments having 10 or more employees.

***The salient features of the Occupational Safety, Health and Working Conditions Code, 2020, inter alia, provides for the following, namely: –***

- (i) To impart flexibility in adapting dynamic factors and technological changes, in the matters relating to health, safety, welfare and working conditions of workers;
- (ii) To apply the provisions of the proposed Code for all establishments having ten or more workers, other than the establishments relating to mines and docks;
- (iii) To expand –
  - (a) the ambit of the provisions relating to working conditions of cine and theatre workers to include them in the digital audio-visual workers encompassing all forms of electronic media;
  - (b) the scope of journalists to include them in electronic media such as in e-paper establishment or in radio or in other media;
  - (c) the scope of Inter-State migrant workers to include therein the workers recruited or engaged by an employer directly, from one State to another State for employment in his establishment;
  - (d) the definition of “family” to include therein the dependent grandparents in order to take care of them in old age;
- (iv) To provide the concept of “one registration” for all establishments having ten or more employees;
- (v) To constitute “the National Occupational Safety and Health Advisory Board” to give recommendations to the Central Government on policy matters, relating to occupational safety, health and working conditions of workers;
- (vi) To constitute “the State Occupational Safety and Health Advisory Board” at the State level to advise the State Government on such matters arising out of the administration of the proposed Code;
- (vii) To make a provision for the constitution of “Safety Committee” by the appropriate Government in any establishment or class of establishments;
- (viii) To allow the women employees to work at night, that is, beyond 7 PM and before 6AM subject to the conditions relating to safety, holiday, working hours and their consent;
- (ix) To make a provision of “common license” for factory, contract labour and beedi and cigar establishments and to introduce the concept of a single all India license for five years for engaging the contract labour;
- (x) To enable the courts to give a portion of monetary penalties upto fifty per cent. to the worker who is a victim of accident or to the legal heirs of such victim in the case of his death; and
- (xi) To make a provision for adjudging the penalties imposed under the Code.

### Coverage of the Occupational Safety, Health and Working Conditions Code, 2020

The Occupational Safety, Health and Working Conditions Code, 2020 contains one hundred forty three Clauses and divided into Thirteen Chapters.

Chapter I deals with Preliminary

Chapter II deals with Registration

Chapter III deals with Duties of Employer and Employees

Chapter IV deals with Occupational Safety and Health

Chapter V deals with health and working conditions

Chapter VI deals with Welfare Provisions

Chapter VII deals with Hours of Work and Annual Leave with Wages

Chapter VIII deals with Maintenance of registers and records and returns

Chapter IX deals with Inspector-Cum-Facilitators and Other Authority

Chapter X deals with Special Provision Relating to Employment of Women

Chapter XI deals with Special Provisions for Contract Labour and Inter-State Migrant Worker

Chapter XII deals with Offences and Penalties

Chapter XIII deals with Special Security Fund

Chapter XIV deals with Miscellaneous

#### COMPARATIVE CHART - EARLIER V. NEW PROVISIONS

S.No	Existing Provisions	Provisions as per Code
1	Few Key Terminologies like “Employee”, “Employer” and “Establishment” were defined inconsistently in various Acts and Rules	<ul style="list-style-type: none"> <li>● New definition of Employee introduced with a wide coverage</li> <li>● New definition of Employer introduced covering Occupier of a factory</li> <li>● "Establishment" is now defined to include factory, newspaper establishment and plantation in which more than ten workers are employed.</li> </ul>
2	Registration was required separately under all the previous labour laws.	One Electronic Registration for every Establishment covered under the Code.
3	Various returns required to be filed under different Acts	One Consolidated Return is required to be filed under ease of doing business.
4	The threshold for Appointment of Welfare Officer was 500 workers in a Factory	Now appointment of a Welfare Officer is mandatory for 250 workers in a Factory, mine, and Plantation.
5	No provision existed for mandatory welfare facilities to inter-state migrant workers	Provision made for mandatory welfare facilities to inter-state migrant workers.

6	No Provision existed for constitution of the National Occupational Safety and Health Advisory Board	Now Central Government shall constitute the National Occupational Safety and Health Advisory Board.
7	Annual leave with wages for one day on every 20 days of working by Employees/workers existed in previous Labour Laws	Annual leave with wages provision kept same in the Code.
8	The threshold for the Crèche facility was 30 Female workers / employees	Now threshold limit for crèche facility increased up to 50 number of female workers / employees
9	The threshold for the Canteen facility was 250 workers / employees	Now threshold for Canteen facility reduced up to 100 number of workers / employees
10	No provision for Women Employment during night shift.	New Clause introduced for the employment of female employees for working beyond 7 pm till 6 am with their consent and conditions relating to safety, holiday, working hours.
11	No Specific provision was there for Workers employed in Transport, Sales Promotion and Journalism	Special working hours and leave requirements specified in the code for Workers employed in Transport, Sales Promotion, and Journalism
12	No Specific provisions in all the previous Acts regarding Overtime with Consent	Now Overtime work can be taken by the employer with consent of worker/employee.
13	Threshold for Constitution of Safety Committee and appointment of Safety Officer was 1000 workers	Now there are following changes in the threshold for Constitution of Safety Committee and appointment of Safety Officer <ul style="list-style-type: none"> <li>● 500 workers in Factory</li> <li>● 250 workers in a building and other construction</li> <li>● 250 in a hazardous process</li> <li>● 100 workers in a mine.</li> </ul>
14	Week Day off Provision existed in all the previous Acts	Code introduced the provision in a new manner: Workers cannot be required to work for more than 6 days/week and will be entitled to one day off for every 20 days of work & one day off every week
15	No provisions were there for Leave encashment	Now provision has been made for entitlement of leave encashment.
16	Offenses and Penalties had less monetary fine and imprisonment duration	Now Stringent penalties with the comparatively high monetary amount and imprisonment period

## CODE ON SOCIAL SECURITY 2020

The Code on Social Security, 2019 has been introduced in Lok Sabha on December 11, 2019. The Code was referred to Parliamentary Standing Committee on Labour. The report of the Standing Committee was placed before both the Houses of the Parliament on September 15, 2020. The Bill was reintroduced as The Code

on Social Security, 2020 in the Parliament and has been passed by the Lok Sabha on 22nd September, 2020, Rajya Sabha on 23rd September, 2020 and received the assent of the President on 28th September, 2020. According to statement of objects and reasons of the Code, it intends to amalgamate, simplify and rationalise the relevant provisions of the following nine central labour enactments relating to social security, namely: –

1. The Employees' Compensation Act, 1923;
2. The Employees' State Insurance Act, 1948;
3. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952;
4. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959;
5. The Maternity Benefit Act, 1961;
6. The Payment of Gratuity Act, 1972;
7. The Cine Workers Welfare Fund Act, 1981;
8. The Building and Other Construction Workers Welfare Cess Act, 1996; and
9. The Unorganised Workers' Social Security Act, 2008.

The amalgamation of the said laws will facilitate the implementation and remove the multiplicity of definitions and authorities without compromising the basic concepts of welfare and benefits to workers. The proposed legislation, namely, the Code on Social Security, 2020 would facilitate the use of technology ensuring transparency and accountability leading to effective enforcement of the provisions of the proposed legislation. Widening the scope of the benefits to the fixed term employees and facilitating ease of compliance of labour laws would be a big step towards equity and promote setting up of more enterprises thus catalysing the creation of employment opportunities.

***The salient features of the Code on Social Security, 2020, inter alia, are –***

- (i) to extend the coverage of Employees' State Insurance to all establishments employing ten or more employees and to the employees working in establishments with less than ten employees on voluntary basis and also to plantations on option basis. It further seeks to empower the Central Government to notify the applicability of the said coverage to establishments which carries on the hazardous or life threatening occupation irrespective of the number of workers employed therein;
- (ii) to extend the Employees' Provident Fund, Employees' Pension Scheme and Employees Deposit Linked Insurance Scheme to all industries or establishments employing twenty or more;
- (iii) to make provision for specifying differential rates of employees' contribution for class of employees for employees' provident fund as the Central Government may notify for a specified period;
- (iv) to provide that the money dues shall be the charge on the assets of the employer and shall be paid on priority basis in accordance with the Insolvency and Bankruptcy Code, 2016;
- (v) to provide that in case of employer's failure to register the employee with Employees' State Insurance Corporation or failure to pay contribution and the Employees' State Insurance Corporation releasing the benefits to the workers, then, such benefits shall be recovered from the employer;
- (vi) to empower the Central Government to frame schemes for providing social security, to the gig workers and platform workers who do not fall under traditional employer-employee relation;
- (vii) to empower the Central Government, by notification, to constitute a Social Security Fund or funds for provision of social security for the unorganised workers, platform workers or gig workers or any such class of workers;



- (viii) to provide for payment of gratuity in case of Fixed Term Employment on pro-rata basis even if the period of fixed term contract is less than five years;
- (ix) to provide for maternity benefit to the woman employee;
- (x) to provide for compensation to the employees in case of the accidents while commuting from residence to place of work and vice versa;
- (xi) to provide for levying and collecting the cess for the purposes of social security and welfare of building workers;
- (xii) to provide for limitation period of five years for institution of proceedings in respect of assessment and determination of money dues from employer;
- (xiii) to expand the sources of the fund for schemes to include funds from corporate social responsibility or any other source as may be specified in the scheme and also contains enabling provision for constituting the special purpose vehicle for the purpose of implementation of schemes for unorganised workers;
- (xiv) to provide for renaming the designation of Inspector as Inspector-cum-Facilitator and to enhance his power to supply information and give advice to employers and workers concerning the most effective means of complying with the provisions of the proposed Code;
- (xv) to provide for filing of a single return electronically or otherwise by the employer;
- (xvi) to provide that the interests charged on delayed payments under the provisions of the proposed Code be specified in the rules;
- (xvii) to provide penalty for the different types of violations commensurate with the gravity of the violations;
- (xviii) to make Aadhaar mandatory for seeding at the time of registration of member or beneficiary or any other person to register or for receiving benefit;
- (xix) to empower the appropriate Government to exempt certain establishments from all or any of the provisions of the proposed Code.

#### **COMPARATIVE CHART - EARLIER V. NEW PROVISIONS**

S.No	Existing Provisions	Provisions as per Code
1	Definitions <ul style="list-style-type: none"> <li>● Not Defined: Self-employed Worker, Fixed-term employment, Aggregator, Career Centre, Home-Based Worker, Unorganised Workers, Gig Worker &amp; Platform Workers.</li> <li>● An “Employee” was not defined in Maternity Act, Cine Workers Act, Welfare Fund Act, Building and Other Construction Workers Welfare Cess Act &amp; Unorganized Workers’ Social Security Act.</li> </ul>	<ul style="list-style-type: none"> <li>● New Definitions introduced under the Code of Social Security.</li> <li>● New Definition of employee introduced, applicable on all the Laws covered under the Code of Social Security.</li> </ul>
2	Registration/ Cancellation of an Establishment was required under all the previous labour laws.	If Establishment is registered under any existing Central Labour Laws, it is not required to obtain registration under Section 3 of the Code of Social Security.

3	No provisions existed for the formation of Social Security Organisations under all the previous labour laws.	Section 4, The provisions enforce Constitution of Social Security Organizations for the administration of funds for the type of workers which have been added in the Code of Social Security.
4	No provisions were made for National Social Security Board and State Unorganized Workers' Board under all the labour laws.	Section 6, The provision enforces National Social Security Board and (State) Unorganized Workers' Board to be formed by persons of eminence in the fields of labour welfare, management, finance, law and administration. It will also administer schemes for the welfare of gig workers and platform workers.
5	Rule-7 of EPF Appellate Tribunal (Procedure) Rules, no appeal by employer shall be entertained by the Tribunal unless it has deposited a Demand Draft payable in the Fund and bearing 75% of the amount due from him.	Section 24, No appeal by the employer shall be entertained by the Tribunal unless it has deposited 25% of the amount due with Social Security Organization concerned.
6	No provision for Excessive Sickness Benefit existed in previous labour laws.	Section 43, provides extra expenditure as sickness benefit for insanitary working conditions in the factory or in the accommodations due to the neglect of the owner.
7	No provisions for Schemes for unorganized workers, gig workers and platform workers in previous labour laws.	Section 45, provides Employees State Insurance benefits to unorganized workers, gig workers and platform workers and their families.
8	Payment of Gratuity Act, the payment of gratuity term for a working journalist was for 5 years.	Section 53, the term for payment of gratuity has been reduced to three years for working journalists.
9	Funded Schemes for unorganized workers, gig workers and platform workers never occurred in labour laws.	Section 109 & Section 114 framed welfare schemes for these workers at Central and State level on matters related to the protection of life, health, accident, education, skill upgradation, provision of old age home etc.
10	Helpline, facilitation centre for unorganized workers, gig workers and platform workers never occurred in labour laws.	Section 112, provides for set up a toll free call centre or helpline to promulgate information on available social security schemes, process to file application for registration, to assist unorganized workers, gig workers and platform workers to obtain registration etc.
11	Only Inspectors were appointed to Inspect the Establishment.	Section 122, states appointment of Inspector-cum-Facilitators for the inspection. This section also advises the employees and employers to be in compliance of this Code.

12	The provisions for maintaining registers, records and returns was not so extensive.	Section 123 provides to maintain registers, records for the number of days/hours of work performed by employees; wage paid; leave, leave wages, wages for overtime work and attendance; employees identification number, number of dangerous occurrences, accidents, injuries in respect of which compensation; statutory deductions made by an employer from the wages of an employee; details as to cess paid in respect of building and other construction work; the total number of employees (regular, contractual or fixed-term employment) on the day specified; persons recruited during a particular period; occupational details of the employees; and vacancies for which suitable candidates were not available; display notices at the workplaces.
13	No limitation period was mentioned for determination of moneys due from an employer, under the EPF Act.	Section 125, In case of any dispute or proceedings for determination of dues from the employer, fixed the limitation period of proceedings and inquiry to be five years.
14	Inclusion of Enhanced punishment did not exist in previous labour laws.	<ul style="list-style-type: none"> <li>● Section 134 provides for enhanced punishment for every subsequent offence.</li> <li>● Section 137 allows employer an opportunity to correct non-compliance for any offence under the Code prior to the initiation of the prosecution or proceedings.</li> <li>● Compounding of Offence- any offence committed for 1st time which is punishable with: Fine &amp; Imprisonment up to 1 year or both.</li> <li>● Person can be compounded on payment of an amount In case of fine – half of the maximum fine.</li> <li>● In case of imprisonment – 3/4th of maximum fine Repeat offender to get enhanced punishment (imprisonment up to 2 years and with fine of INR 2 Lakhs).</li> </ul>

15	No provision for Defer or Reduction of Contribution existed.	Section 144, provides that the Central Government may by order, defer or reduce employer's contribution, or employee's contribution, or both for a period up to three months at a time, in the event of a pandemic, endemic or national disaster.
16	Misuse of benefits did not have any separate provisions under the labour laws.	Section 148, if any person has misused any benefit then the person will be deprived of such benefit where manner to ascertain misuse of any benefit will be specified in the Provident Fund Scheme or the Pension Scheme or the Insurance Scheme.

### THE INDUSTRIAL RELATIONS CODE, 2020

The Industrial Relations Code, 2019 has been introduced in the Lok Sabha on November 28, 2019. The Code was referred to Parliamentary Standing Committee on Labour. The report of the Standing Committee was placed before both the Houses of the Parliament on September 15, 2020. The Bill was reintroduced as The Industrial Relations Code, 2020 in the Parliament and has been passed by the Lok Sabha on 22nd September, 2020, Rajya Sabha on 23rd September, 2020 and received the assent of the President on 28th September, 2020. According to statement of objects and reasons of the Code, it intends to amalgamate, simplify and rationalise the relevant provisions of the following three central labour enactments relating to industrial relations, namely: –

- (a) the Trade Unions Act, 1926;
- (b) the Industrial Employment (Standing Orders) Act, 1946; and
- (c) the Industrial Disputes Act, 1947.

The amalgamation of the said laws will facilitate the implementation and also remove the multiplicity of definitions and authorities without compromising on the basic concepts of welfare and benefits to workers. The proposed legislation, namely, the Industrial Relations Code, 2020 would bring the use of technology in its enforcement. All these measures would bring transparency and accountability which would lead to more effective enforcement. The facilitation for ease of compliance of labour laws will promote in setting up of more enterprises thus catalysing the creation of employment opportunities.

***The salient features of the Industrial Relations Code, 2020, inter alia, are as follows: –***

- (a) to define the expression “fixed term employment” to mean engagement of a worker on the basis of a written contract of employment for a fixed period. The fixed term employee will get all statutory benefits like social security, wages, etc., at par with the regular employee who is doing work of same or similar nature;
- (b) to define the term “industry” with certain exceptions;
- (c) the definition of “strike” is proposed to be modified to include mass casual leave within its ambit;
- (d) to define the term “worker” to include persons in supervisory capacity getting wages up to fifteen thousand rupees within its ambit. At present, under the Industrial Disputes Act, 1947, definition of ‘worker’ includes person in supervisory capacity getting salary up to ten thousand rupees per month;
- (e) to provide for the obligation on the part of the industrial establishment pertaining to mines, factories and plantation having one hundred or more workers to take prior permission of the appropriate Government before lay-off, retrenchment or closure. However, the appropriate Government is proposed to be empowered to modify such threshold number of workers by notification;

- (f) to set up a re-skilling fund for training of retrenched employees, to which the employers will pay a contribution of fifteen days wages or such other days as may be notified by the Central Government in case of retrenchment of workers;
- (g) to provide for a sole negotiating union in an industrial establishment for negotiating with the employer of the industrial establishment, on such matters as may be provided by rules. In case of more than one Trade Union of workers, a Trade Union would be designated as a sole negotiating union if it has support of seventy-five per cent. or more of the workers on the muster roll in an establishment and if no Trade Union has such support strength on the muster roll of an establishment, then a negotiating council will be constituted for negotiation;
- (h) to provide for Industrial Tribunal to be the adjudicating body to decide appeals against the decision of the conciliation officer in place of multiple adjudicating bodies like Court of Inquiry, Board of Conciliation and Labour Courts;
- (i) the maximum number of members in the Grievance Redressal Committee has been increased from six to ten;
- (j) provisions are being made to have two member Industrial Tribunals, with second member being from administrative side, in place of single member Labour Court and Industrial Tribunal at present. Further, the Tribunal will be empowered to execute the award as a decree of a civil court, which will facilitate speedy disposal of disputes;

#### **COMPARATIVE CHART - EARLIER VS NEW PROVISIONS**

S. No.	Existing Provisions	Provisions as per Code
1	Definitions <ul style="list-style-type: none"> <li>● Employee. Fixed-term employment was not defined in any of the Act.</li> <li>● Changes in definitions of Strike, wages, Industrial Dispute, Lay off.</li> <li>● Workman was defined in the Industrial Dispute Act.</li> </ul>	<ul style="list-style-type: none"> <li>● New Definition of Employee, fixed term employment introduced.</li> <li>● Definition of Strike has been amended to mass casual leave by 50% or more workers on a given day, while the definition of Wages kept aligned with other Labour code.</li> <li>● Workman now renamed as the worker.</li> </ul>
2	Sec-9.C of the Industrial Dispute Act, the workman need not raise its grievance to the committee before moving to a conciliation officer.	Grievance Redressal Committee is mandate under Industrial Relations Code, 2020.
3	No provision for “Negotiating Union”.	Recognition of “Negotiating Union” is mandatory.
4	Standing Orders <ul style="list-style-type: none"> <li>● Only the Industrial Establishments defined under the Industrial Establishment Standing Order Act required to formulate standing orders.</li> <li>● Threshold for applicability of standing order was on having 100 or more workers.</li> </ul>	<ul style="list-style-type: none"> <li>● The code defines an Industrial Establishment as defined under the Payment of Wages Act, 1936.</li> <li>● Therefore, unless specifically notified under the Payment of Wages Act, the provisions of the code do not apply to an industrial establishment, except railways, establishment of a contractor of an industrial establishment and factories.</li> <li>● Threshold increased up to 300 workers.</li> </ul>

5	No time limit mentioned for completing the disciplinary proceedings against the worker.	Investigation and inquiry have to be completed within 90 days from the date of suspension of a worker.
6	Resolution of Industrial dispute use to be done by only one member Tribunal under Industrial Dispute Act.	The mechanism for the resolution of industrial disputes introduced under the Industrial Relations Code Now the Industrial tribunal will consist of two members out of whom one shall be a judicial member and the other will be an administrative member.
7	Prior Notice condition was only applicable to public utility service industries.	14 days prior notice before strike mandated for all industrial establishments.
8	No concept for worker re-skilling fund.	Chapter XI introduced around worker re-skilling fund. According to the provision, the employer will be required to deposit an amount equal to fifteen days last drawn wages of every retrenched worker.
9	No provision existed for Fixed-term Employment. Employers often enter into a contract with employees for the short term, but the same was not regulated.	Fixed-term Employment Introduced, which refers to workers employed for a fixed duration based on a contract signed between the worker and employer.
10	Penalties: For failure to certify standing orders or the modifications to the same and comply with the finally certified standing orders, fine which may extend to five thousand rupees, and in the case of a continuing offence with a further fine which may extend to INR 200 for every day after the first during which the offence continues..	Penalties are more stringent now. <ul style="list-style-type: none"> <li>● Up to INR 2,00,000.</li> <li>● In case of non-certification of standing orders, an additional fine of INR 2,000 per day during which the contravention continues.</li> <li>● In subsequent contravention of the finally certified standing orders, fine up to INR 4,00,000 and imprisonment for a term up to 3 months, or both.</li> </ul>

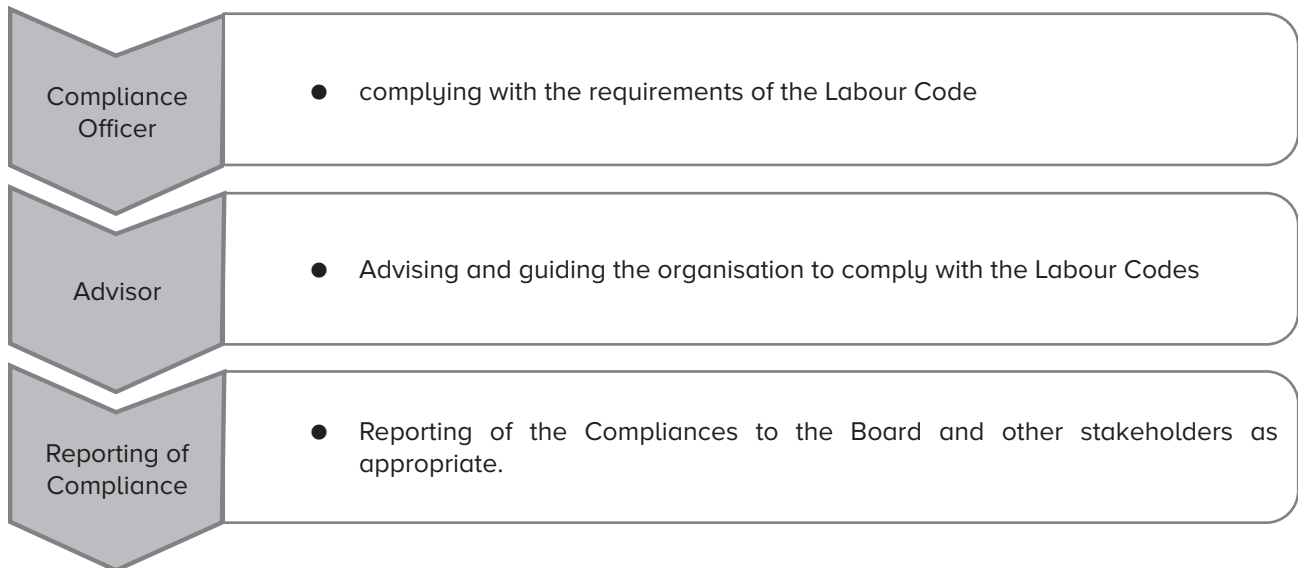
- (k) to provide for continuation of services of Presiding Officers of the existing adjudicating authorities;
- (l) to provide that reference by the Government will not be required for Industrial Tribunal, except the National Industrial Tribunal;
- (m) to prohibit strikes and lockouts in any industrial establishment without giving notice of fourteen days and also during the pendency of conciliation proceedings;
- (n) to provide for penalties for different types of violations to rationalise with such offences and commensurate with the gravity of the violations;
- (o) to empower the appropriate Government to appoint officers for holding enquiry and impose penalty in certain contraventions punishable with fine up to fifty thousand rupees;
- (p) to provide for compounding of offences which are not punishable with imprisonment.

### Role of the Company Secretary under the Labour Code

The Company Secretaries are vital link between the company and its stakeholders and being a “Principal and Compliance Officer” ensures that the organisation follows process, procedures and also complies various laws including Labour Laws as applicable to the organisation and also reviews and provides guidance to the organisation and its stakeholders who are discharging their responsibilities in running the organisation. A Company Secretary is associated with the planning process, judgment, and compliance of various laws,

financial matters, administration of general management and administration of tax laws including Labour Laws. The compliance of Labour Laws is as important for good corporate governance as any other corporate, economic and securities laws and by ensuring the compliance of various Labour Laws prevent unwanted lawsuits and penalty for non-compliance. With the technology in place, the Company Secretary can design a tool for ensuring a total compliance and to achieve the said purpose, a Company Secretary needs to set up adequate internal control system to minimize risks, Identify gaps and adequate measures to rectify the same and to implement an adequate system to ensure regular and timely compliance of the provisions of law.

Taking into the account the pivotal position the Company Secretaries are in and occupies and also being an “Compliance and Principal Officer”, the role of Company Secretaries either in nature of advisory role or compliance role under various Labour Codes can be broadly summarized as follows:



### Role as Compliance Officer

As a compliance officer, the Company Secretary has to ensure the following:

- The Contractors being an Immediate Employer would be primarily responsible for compliance with all the applicable provisions of the Code and has license to engage the contract labour. The organisation being a Principal Employer will be liable for the defaults committed by the contractors under Labour Codes and the relevant authorities could proceed against the organisation being Principal Employers for defaults committed by such contractors.
- the engagement of contract labour in core activities in the organisation is avoided except in case of utmost requirement as stated in the Code. The Code states that the principal employers are responsible for providing the prescribe welfare facilities and occupational health and safety to the contract labour engaged in the Organisation.
- The Service condition and the applicable provisions of the Code are made applicable to all employees including those in managerial and supervisory cadre as well as for fixed-term employment and the fixation of wage period, deduction from wages, payment of wages and bonus should be as mentioned in the Code
- The organisation is duly registered under Labour Codes as required and also comply with the licensing requirements and closure requirements as stated in the Code. Further, the Registers, returns and reporting requirements as stated in the Codes are maintained as required by the Code.
- The prior permission from the Government is obtained for lay-offs and retrenchment if the number of workers is more than 300 workers and also to pay the retrenchment compensation as fixed by the

appropriate Government. Further, in case of strike and lock-out to ensure that the workers are allowed to go on a strike/ declare lockout, only after giving notice as stated in the Code and not to permit strike or lockout during the pendency of a proceeding before tribunal, national tribunal, arbitrator and 60 days, after the conclusion of such proceedings; or any period in which a settlement or award is in operation.

- The certification of Standing Orders is completed within 60 days of the applicability by appropriate authority in case the industrial organisation is employing more than 300 workers or has employed 300 or more workers in the preceding 12 months and if not done, adopt the model standing orders as notified by the Central Government.
- The appointment letter / employment contract is issued to all employees containing amongst other things governing health, safety and working conditions for all employees and implication of these rules.
- A person including a Director but not Independent Director having ultimate control of a factory is appointed as Occupier.
- The women employees are employed with adequate safety measures before their employment. Further, the women employees can be employed in night shifts between 7.00 P.M. to 6 A.M. subject to the consent of the woman is obtained before employing women employees during night shifts, and compliance with additional safeguards relating to their safety, holidays, working hours, etc., to be prescribed by the appropriate Government.
- The establishment working environment is safe, without risk to the health of the employees, adequate welfare facilities such as separate shelter-rooms, rest-rooms, canteens, ambulance facilities etc to all employees including transgender employees.

### Role as Advisor

The Company Secretary shall assist and advise the organisation to comply with labour codes:

- In fixing of wages and deduction from wages, the provisions of the labour code are followed. The Company Secretary shall advise the HR dept. in fixation of wages of the employees by taking into account the inclusion part, exclusion part and conditions which limit the quantum of exclusions in fixing the wage of an employee and ensure that deduction shall not exceed 50% of the wages and also the manner in which an employer could make deductions to their salary. The Employment agreement needs to be drafted taking into above all the above mentioned aspects.
- There should be no gender discrimination among the employees employed including transgender on pay aspects, service conditions, working conditions etc. and ensure that all provisions of the code are followed.
- To make contribution as appropriate, at the rate specified and within the limit as provided in the Code towards Social Security schemes of its employees and, if applicable, Cess in case of Building and Other Construction Workers as allowed under the Code and also with the guidelines that may be notified for the Social Security Schemes for Unorganised Workers, Gig Workers and Platform Workers.
- A 21 day's prior notice to be given of any change in terms of employment, except in case of any emergent situation or if such change is effected in accordance with the orders of the appropriate Government or in pursuance of any settlement or award.
- To constitute a Grievance Redressal Committee with equal representatives of both workmen and employer including women members and also a Safety Committee consisting of equal number of representatives of employers and workers including appointment of safety officers with such qualifications and perform such duties, as may be prescribed by appropriate Government.
- Role in Reporting of the Compliances



- The Company Secretaries being an expert in the relevant field of labour laws have a greater responsibility to ensure that the compliance relating to all the applicable laws to the organization is complied with. The Company Secretary could ensure that compliance relating to all other laws except Companies Act and market regulations are ensured /done by the respective departmental heads responsible for the function and the company secretary could periodically run a check and monitor where necessary the compliance and report to the Board and other stakeholders stating that all compliances required to be done are in fact complied. This reporting to the Board can be by way of periodic or through quarterly compliance report as part of Board agenda. Needless to mention, the Board of Directors would place reliance on the report provided by the Company Secretary on compliance matter.

### LESSON ROUND-UP

- In line with recommendations of Second National Commission on Labour, the Ministry has taken steps for formulating of four Labour Codes on (i) Wages; (ii) Industrial Relations; (iii) Social Security & Welfare; and (iv) Occupational Safety, Health and Working Conditions by amalgamating, simplifying, and rationalizing the relevant provisions of the existing Central Labour Laws.
- The Code on Wages, 2019 intends to amalgamate, simplify and rationalise the relevant provisions of the following four central labour enactments relating to wages, namely:(a) The Payment of Wages Act, 1936;(b) The Minimum Wages Act, 1948;(c) The Payment of Bonus Act, 1965; and(d) The Equal Remuneration Act, 1976. The amalgamation of the said laws will facilitate the implementation and also remove the multiplicity of definitions and authorities without compromising on the basic concepts of welfare and benefits to workers. The Code on Wages, 2019 contains Sixty Nine Clauses and divided into Nine Chapters.
- The Occupational Safety, Health and Working Conditions Code, 2020 incorporates the essential features of the thirteen enactments relating to factories, mines, dock workers, building and other construction workers, plantations labour, contract labour, Inter-State migrant workmen, working Journalist and other newspaper employees, motor transport workers, sales promotion employees, beedi and cigar workers, cine workers and cinema theatre workers and to repeal the respective enactments. It provides broader legislative framework to secure just and humane conditions of work with flexibility and to provide enabling provisions for making rules and regulations in tune with the emerging technologies.
- Safety, Health, welfare and improved Working Conditions are pre-requisite for well-being of the worker and also for economic growth of the country as healthy workforce of the country would be more productive and occurrence of less accidents and unforeseen incidents would be economically beneficial to the employers also. With the ultimate aim of extending the safety and healthy working conditions to all workforce of the country, the Code enhances the ambit of provisions of safety, health, welfare and working conditions from existing about 9 major sectors to all establishments having 10 or more employees.
- It is the duty of the society in general and government in particular to ensure that nobody who has contributed to the growth of the nation in his good days is left alone to face the problems like sickness, accident, unemployment, disability, maternity and old age in his lean days. Under a Social Security System, these risks and eventualities can be managed through small contributions by all through a robust social security framework.
- The Labour Code on Social Security, inter-alia aims to provide universal social security including Pension, Sickness Benefit, Maternity Benefit, Disablement Benefit, Invalidity Benefit, Dependent's benefit, Medical Benefit, Group Insurance Benefit, Provident Fund, Unemployment Benefit and International worker's pension benefit.
- Labour Code on Industrial Relations subsumes the three Labour Acts, such as the Trade Unions Act 1926, the Industrial Employment (Standing Orders) Act 1946 and the Industrial Disputes Act 1947. The Labour Code on Industrial Relations contains One Hundred Seven Clauses and Three Schedules. The One Hundred Seven Clauses are divided into thirteen Chapters.





### KEY CONCEPTS ONE SHOULD KNOW

- Audit ■ Labour Audit ■ Compliances ■ Checklist

### Learning Objectives

#### To understand:

- The basic framework of audit under labour legislations
- The scope of Labour Audit
- The steps involved in the Labour Audit Process
- The compliance checklist under Labour Audit
- The benefits of Labour Audit
- Legislations that may be brought under the ambit of Labour Audit

### Lesson Outline

- Introduction
- Scope of labour audit
- Methodology of conduct of labour audit
- Steps involved in Labour Audit
- Compliance Checklist under labour Audit
- Benefits of labour audit
- Illustrative List of Legislations that may be brought under the ambit of Labour's Audit
- Lesson Round-Up
- Test Yourself
- List of Further Readings

***Under the Constitution of India, Labour is a subject in the Concurrent List where both the Central and State Governments are competent to enact legislation.***

## INTRODUCTION

Audit under labour laws is a new concept, which is necessitated, in direct consequences of its non-compliance in large scale. Even after over six decades of attaining independence, India is still plagued with victimisation, non-compliance of labour legislations is still at large. An analysis of these practices reveals that many employers resort to short cut methods to avoid the compliances of labour legislations. There is no system in place for reporting non-compliance of labour legislations by an independent professional like Company Secretary. Workers in India report many cases relating to non-compliance of labour legislation by employers.

Social Justice is guaranteed by the Preamble of our Constitution. The Directive Principles of State Policy also provides that it shall be endeavour of the State to promote the welfare of the people by effectively securing and protecting a social order in which social, economic and political justice shall inform all the institutions of national life.

Directive Principles provide –

- that the State should direct its policies towards securing the right of citizens, men and women, to an adequate means of livelihood;
- that the ownership and control of material resources of the community be so distributed as best to subserve the common good;
- that the economic system should not result in the concentration of wealth and the means of production to the common detriment;
- that there should be equal pay for equal work for both men and women;
- that the State should endeavour to secure the health and strength of workers;
- that State should ensure that the tender age of children is not abused and citizens are not forced by economic necessity to enter avocations unsuited to their age and strength;
- that childhood and youth are protected from exploitation and from moral and material abandonment;
- that State shall secure to all workers living wage, decent standard of living and free enjoyment of leisure.

Labour Audit envisages a systematic scrutiny of records prescribed under labour legislations by an independent professional like Company Secretary in Whole Time Practice (hereinafter referred to as PCS), who shall report the compliance and non-compliance/extent of compliance and conditions of labour in the Indian industry/ Factory/ Other Commercial Establishments. The Report should ideally, be addressed to the appropriate government. The appropriate government may provide for filing fees for such report on the lines of filing fees charged by Registrar of Companies for the documents filed with them.

## SCOPE OF LABOUR AUDIT

The audit should cover all labour legislations applicable to an Industry/factory or other commercial establishments. If a particular piece of labour legislation is not applicable to a specific employer, the same should distinctly be disclosed in the report of an Independent Professional like Company Secretary in Whole Time Practice. The mode of disclosure has to be decided in consultation with the Ministry of Labour. An illustrative list of legislations, which may be covered under Labour Audit, is given in the later part of this lesson.

## METHODOLOGY OF CONDUCT OF LABOUR AUDIT

At the commencement of audit, the Independent Professional like Company Secretary in Whole Time Practice should define the scope of his audit. The scope will certainly differ from employer to employer. Accordingly, if the employer does not own a factory, the provisions of the Factories Act, 1948 will not be applicable. Similarly, certain factories in remote areas may not have the facilities of Employees State Insurance Corporation. In such cases, there is no need to ensure compliance of ESI Act.

As stated Independent Professional like Company Secretary in Whole Time Practice should identify various Central and State Acts and Rules that are applicable to an employer. Based on such identification, he should commence scrutinising the compliance of provisions of various Acts/Rules. Checklist for compliance of each legislation has to be formulated before commencement of his audit.

### STEPS INVOLVED IN LABOUR AUDIT

It is always recommended to get the insights of the business before performing any compliance activity by interviewing with concerned department.

Following must be the key areas of discussion to determine the applicability of Labour and Industrial law on the establishment:-

1. Nature of Business
2. Number of offices and branch
3. Number of employees (permanent and contractual both)
4. Status of registrations (if obtained)

### Preliminary Steps

1. Identify the laws applicable to company/establishment based on nature of industry and number of employees.

S. No.	Name of the Act	Threshold/No. of Workmen
1.	Shops and Commercial Establishments Act, 1958	1 or more (immediate basis)
2.	Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996	10 or more contractual workmen (Section 7-Registration within 60 days)
3.	Contract Labour (Regulation and Abolition) Act, 1970	20/50 or more contractual workmen (50 in case of Haryana)
4.	Minimum Wages Act, 1948	1 or more (State wage rate will apply as defined in latest minimum wages notification)
5.	Payment of wages Act, 1936	1 or more (covers the workers getting wages below than INR 24,000)
6.	Employees Provident Fund and Miscellaneous Provisions Act, 1952	20 or more persons employed
7.	Employees' State Insurance Act, 1948	10 or more persons employed
8.	Child Labour (Prohibition and Regulation) Act, 1986	1 or more (No registration needed)
9.	Labour Welfare Fund Act	Number varies from state to state.
10.	National & Festival Holiday Act, 1963	1 or more person employed
11.	Payment of Bonus, 1965	20 or more persons employed

These are the names of few acts, in total there more than 50 different labour laws but an Independent Professional has to be wise while selecting appropriate acts to determine the applicability on company.

2. Prepare the checklist, based on discussions for coverage of applicable laws.
3. After preparation of checklist, the independent professional has to start the compliances under labour laws.

Following key areas must be covered while doing compliances and audit under labour law:-

1. Whether valid registration or license has been obtained. All dues to employees and workers are paid within timeline which include:
  - Monthly Wages (Equal or higher than minimum wages)
  - Bonus Payment
  - Leave Allowances
  - Gratuity (in case of left out employee)
  - Overtime Payment.
2. Check whether leave benefit is entitled to eligible employees (Leaves such as Sick Leave, Casual Leave, Earned Leave, Festival Holidays and Maternity Leave).
3. Whether safety and security of employees are ensured (Medical Facility, First Aid Box, etc.).
4. Whether display requirements under the act have been complied.
5. Whether contribution under laws such as ESI, EPF, Labour Welfare Fund and Profession tax have been made on or before due date.
6. Check whether all required registers and records are maintained as prescribed under the laws.
7. Whether periodic returns are filed timely. Based on the review, any short coming and/or observation must be discussed with the management and their statements on corrective action plan should be recorded within expected timeline.

This may be categorized further into High/ Medium/Low based on financial/ operational risk and penalties that may impose for non-compliances.

### Compliance Checklist under Labour Laws: A bird's eye view

Name of the Act	Event
Contract Labour (Regulation & Abolition) Act, 1970	<ul style="list-style-type: none"> <li>● Return/Notice within 15 days of commencement/ completion of each contract by the Principal employer</li> <li>● Notice of commencement/ completion of contract work by the Contractor within 15 days</li> </ul>
Building and Other Construction Workers (Regulation of Employment and Condition of Services) Act & the Rules, 1966	Annual Return
Employment Exchanges (CNV) Act, 1959 & Rules	<ul style="list-style-type: none"> <li>● Quarterly Return for respective quarter</li> <li>● Biennial return within 30 days of the due date as notified in the official gazette</li> </ul>
Payment of Gratuity Rules	Notice of applicability of the Act & any change

Factories Act, 1948	<ul style="list-style-type: none"> <li>● Annual Returns</li> <li>● Half Yearly Return</li> </ul>
Maternity Benefit Act, 1961	Annual returns & details of payment ending 31st Dec
Employees' State Insurance Act, 1948	Annual information about factory/ establishment covered
Minimum Wages Act, 1948	Annual Return
Payment of Bonus Act, 1965 & Rules	Annual Return, within 30 days after the expiry of 8 months from the close of the accounting year
Sexual Harassment of Women at Workplace (P, P & R) Act, 2013	Annual Return, in such form and at such time as may be prescribed

## BENEFITS OF THE LABOUR AUDIT

### Benefits to Labour

- (a) Introduction of Labour Audit will boost the morale of the workers to a large extent.
- (b) It will increase their Social Security.
- (c) It will inculcate in workers a sense of belongingness towards their employer.
- (d) It will secure timely payment of wages, gratuity, bonus, overtime, compensation etc. of the workers.
- (e) Timely payment of entitlements will reduce absenteeism in the organisation.

### Benefits to Employer

- (a) Increased productivity in view of lower absenteeism in the enterprise. Higher the productivity, higher will be the profit.
- (b) Status in the Society for the employer will increase, in view of the recognition that may be bestowed on them by the Government.
- (c) Strict compliance of all labour legislation will be ensured by each of the employers, which, in turn, will reduce or even eliminate penalties / damages / fines that may be imposed by the Government.
- (d) Co-operation of and understanding with the workers will improve labour relations. The congenial atmosphere is indispensable for good corporate governance.

### Benefits to the Government

- (a) Reduction in the number of field staff for inspection of Industries/Factories/ Commercial Establishments as most of their work will be done by an Independent Professional like Company Secretary in Whole Time Practice.
- (b) Compulsory Labour Audit will ensure compliance of past defaults.
- (c) In case the Government seeks to introduce filing fees for Compliance Report under Labour Legislation, the revenue of the Appropriate Government will rise phenomenally.
- (d) India's image before the International Labour Organisation will improve as a country with negligible non-compliance of labour legislation.



### ILLUSTRATIVE LIST OF LEGISLATIONS THAT MAY BE BROUGHT UNDER THE AMBIT OF LABOUR AUDIT

S. No.	Name of the Legislation	Certificates to Cover
1	Payment of Wages Act, 1936	<ul style="list-style-type: none"> <li>● Annual Certificate provides that the wages were paid in accordance with the Act.</li> <li>● Number of employees in the establishment who are governed by the Act.</li> <li>● No deduction from wages has been made other than those authorised under the Act.</li> <li>● Calculation of Wage Period.</li> </ul>
2	Payment of Bonus Act, 1965	<ul style="list-style-type: none"> <li>● Determination of Available and Allocable Surplus and correctness of Computation.</li> <li>● Timely payment of bonus.</li> <li>● Bonus is paid to the eligible persons.</li> <li>● Whether the company paid minimum or maximum bonus.</li> </ul>
3	Provident Funds and Miscellaneous Provisions Act, 1952	<ul style="list-style-type: none"> <li>● Timely deposit of Employer and Employee's dues with Provident Fund Provisions Act, 1952 Commissioner/Trust.</li> <li>● Reporting of cases where proceedings under the Act have been initiated against the Directors for recovery of dues.</li> <li>● If the Employer has created its own trust, whether the terms of trust are more beneficial than those provided under the trust?</li> <li>● Whether conditions imposed by PF Commissioner for the creation of Trust are satisfied?</li> </ul>
4	Payment of Gratuity Act, 1972	<ul style="list-style-type: none"> <li>● Whether liability for gratuity has been provided for in the Accounts maintained or not?</li> <li>● Whether the company has formed any trust that would take care of the liability arising out of gratuity?</li> <li>● Number of claims during the year for the payment of gratuity and time taken for its settlement.</li> <li>● Whether the Gratuity has been paid in accordance with the provisions of the Act?</li> <li>● Whether any dispute exists/arises against the company for the non-payment of gratuity ? If so, details thereof.</li> </ul>
5	Industrial Disputes Act, 1947	<ul style="list-style-type: none"> <li>● Certification that any industrial dispute arose during the year or not and manner of settlement of the same. Whether the dispute resulted in any closure of factory/ strike/lockout and if so the period therefore.</li> <li>● Was there any reference of dispute to Arbitration under section 10-A of the Act and results of such reference?</li> </ul>

		<ul style="list-style-type: none"> <li>● Whether the industry has adopted any unfair labour practice.</li> <li>● Name of the Protected workmen. Whether or not the industry is declared as Public Utility Services?</li> </ul>
6	Trade Unions Act, 1926	<ul style="list-style-type: none"> <li>● Number of Registered Trade unions in operation in the factory and its affiliations to any All India Organisations of Trade Unions.</li> </ul>
7	Minimum Wages Act, 1948	Whether the company is paying the wages in accordance with the provisions of the Act.
8	Employees' Compensation Act, 1923	<ul style="list-style-type: none"> <li>● Fatal Accidents to be reported.</li> <li>● Time taken for payment for compensation. Disputes on settlement of compensation to be reported.</li> <li>● Any case of Occupational Disease reported in the factory or establishment.</li> <li>● Insurance Cover for meeting the liability.</li> <li>● Pending Disputes under the Act and its nature along with a note on liability accepted by the Employer.</li> </ul>
9	Factories Act, 1948	<ul style="list-style-type: none"> <li>● Whether the factory is registered as per Factories Act, 1948. If so, registration number of the factory be given.</li> <li>● Item of manufactures.</li> <li>● Whether industry is hazardous or not? if so, steps suggested by appropriate government for safety has been complied with in to.</li> <li>● Whether Chapter IV on Safety has been complied with or not.</li> <li>● Whether Chapter V on Welfare has been taken care of.</li> <li>● Whether working hours are in accordance with the provisions of the Act.</li> <li>● Maintenance of proper records of Attendance and Leaves.</li> <li>● Provisions relating to employment of women, young persons etc. are duly complied with.</li> </ul>
10	Contract Labour (Regulation and Abolition) Act, 1970	<ul style="list-style-type: none"> <li>● Whether the factory/establishment is covered by the provisions of Contract Labour (Regulation and Abolition) Act, 1970 ?</li> <li>● Whether the factory/establishment has duly submitted all returns to the Commissioner/Regional Commissioner as per the provisions of the Act, Rules and Regulations made in this behalf?</li> <li>● Whether the establishment has duly applied for and obtained the certificate of registration before the employment of any contract labour?</li> <li>● Whether all the contractors engaged by the establishment to supply workmen do possess valid licence?</li> </ul>

### LESSON ROUND-UP

- Labour Audit is a process of fact finding. It is a continuous process. The Labour Audit will ensure a win-win situation for all interested persons. Initially, the Employers may frown at the idea of such Audits, but with passage of time, the compulsion of labour audit will infuse self-regulation amongst certain employers.
- Social Justice is guaranteed by the Preamble of our Constitution. The Directive Principles of State Policy also provides that it shall be endeavour of the State to promote the welfare of the people by effectively securing and protecting a social order in which social, economic and political justice shall inform all the institutions of national life.
- The audit should cover all labour legislations applicable to an Industry/factory or other commercial establishments. If a particular piece of labour legislation is not applicable to a specific employer, the same should distinctly be disclosed in the report of an Independent Professional.
- Labour Audit will boost the morale of the workers to a large extent and it will increase their Social Security.
- Labour Audit will increased productivity in view of lower absenteeism in the enterprise. Higher the productivity, higher will be the profit.
- Compulsory Labour Audit will ensure compliance of past defaults.

### TEST YOURSELF

*(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)*

1. Briefly explain the scope of labour audit.
2. Briefly explain the benefits of Labour audit.
3. Discuss the certificates covered under the Contract Labour (Regulation and Abolition) Act, 1970 to be verified for labour audit.
4. Comment on the significant role of Company Secretary in Labour Audit and how does it strengthen the industrial relations ?
5. Discuss the certificates covered under the Factories Act 1948 to be verified for labour audit.
6. Discuss the certificates covered under the Industrial Disputes Act, 1947 to be verified for labour audit.

### LIST OF FURTHER READINGS

- [https://www.icsi.edu/media/webmodules/linksofweeks/ICSI\\_May\\_2021.pdf](https://www.icsi.edu/media/webmodules/linksofweeks/ICSI_May_2021.pdf)
- [https://www.icsi.edu/media/webmodules/NIRC\\_May20\\_Newsletter.pdf](https://www.icsi.edu/media/webmodules/NIRC_May20_Newsletter.pdf)
- Challenging Opportunities for Practising Company Secretaries in Labour Laws; [https://www.icsi.edu/media/webmodules/publications/Challenging\\_Opportunities\\_for\\_Practising\\_Company\\_Secretaries\\_in\\_Labour\\_Laws.pdf](https://www.icsi.edu/media/webmodules/publications/Challenging_Opportunities_for_Practising_Company_Secretaries_in_Labour_Laws.pdf)

## **WARNING**

### ***Regulation 27 of the Company Secretaries Regulations, 1982***

*In the event of any misconduct by a registered student or a candidate enrolled for any examination conducted by the Institute, the Council or any Committee formed by the Council in this regard, may suo-moto or on receipt of a complaint, if it is satisfied that, the misconduct is proved after such investigation as it may deem necessary and after giving such student or candidate an opportunity of being heard, suspend or debar him from appearing in any one or more examinations, cancel his examination result, or registration as a student, or debar him from re-registration as a student, or take such action as may be deemed fit.*

*It may be noted that according to regulation 2(ia) of the Company Secretaries Regulations, 1982, 'misconduct' in relation to a registered student or a candidate enrolled for any examination conducted by the Institute means behaviour in disorderly manner in relation to the Institute or in or around an examination centre or premises, or breach of any provision of the Act, rule, regulation, notification, condition, guideline, direction, advisory, circular of the Institute, or adoption of malpractices with regard to postal or oral tuition or resorting to or attempting to resort to unfair means in connection with writing of any examination conducted by the Institute, or tampering with the Institute's record or database, writing or sharing information about the Institute on public forums, social networking or any print or electronic media which is defamatory or any other act which may harm, damage, hamper or challenge the secrecy, decorum or sanctity of examination or training or any policy of the Institute.*

# PROFESSIONAL PROGRAMME

## LABOUR LAWS & PRACTICE

### GROUP 2 • ELECTIVE PAPER 7.3

*(This test paper is for practice and self-study only and not to be sent to the Institute)*

Time Allowed: 3 Hours

Maximum Marks: 100

Answer all questions

#### Question No. 1

University ABC is a newly form State University in Ambala, Haryana in 2019. The university is situated at the outskirts of Ambala city, around 25 km from main bus stand south direction. University provides residential facilities to students as well as academic and non-academic staff. For day scholar, it provides the community transport facility from University to Ambala City.

University has around 150 teaching staff in various departments and 200 non-teaching staff including bus driver, library staff, administrative staff. Teachers have formed association named 'AUTA' (ABC University Teachers Association) and non-academic staff has formed 'AUTU' (ABC University Trade Union).

Apart from specific complain, both groups have some general grounds of complain such as non-implementation of salary structure as per 7th pay commission; harsh working conditions guidelines; no pension scheme for employees and pathetic infrastructure conditions.

As per the guidelines of the University, seats for Haryana domicile are 85% reserved and 15% of seats are reserved for students from outside state. Around 300 students stay in the hostel of university and 400 students are day scholars. Students have their Union named as 'SAUA' (Student of ABC University Association).

Students have certain regular regular complains to the University about poor infrastructure, poor conditions of buses/transport facility, lack of basic amenities, lock of good canteen and playing grounds. University has not responded to any complain of teaching staff, non-teaching staff and student's union positively. It has not deliberated on the issue at any forum showing their non-sensitiveness to the complaints.

On 15 January 2022, while commuting from Ambala City to University in early hours, the University bus met with an accident. Driver of the bus along with 2 students suffered injury. Maniram, the driver due to accident lost his left eye and broken left hand. Students with minor injuries are safe.

Instead of making proper inquiry to the issue, the university administration issued a show cause notice of termination to Maniram, saying that he was driving bus in inebriated conditions and therefore, he alone is responsible for the accident.

Maniram is not the member of the 'ABC University Staff Union' on the day of accident and notice. His reply to the notice of termination was not taken into consideration on this ground. Realizing the injustice to Maniram, the AUSU, AUTA and SAUA joined together and gheraoed the administrative head of university for 2 hours on 30 January, 2022. After the intervention of enforcement agency, the matter was sorted out on that day. However, these three groups continued with strike in the University.

On the basis of above facts, please advise on the following issues:

- (a) Whether the dispute as mentioned above will be counted as an 'industrial dispute'?
- (b) Whether the University is an 'industry' and the faculties of university are 'workmen'?
- (c) Whether an individual dispute can be named as industrial dispute ?

- (d) Whether students' union can raise an industrial dispute ?

**(5 marks each)**

**Question No. 2**

- (a) Hotel Tushar is managed by a firm employing more than 100 employees and covered under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Some of its partners started a new restaurant in the premises registering the restaurant as a new unit as per the applicable State enactment. The restaurant employed 15 employees and the management of restaurant took a stand that the restaurant is a different establishment and is not covered under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Will it succeed?
- (b) New India Co-operative Society (NICS) is engaged in the packing and selling of pulses and has employed 42 workers belonging to the nearby villages within the radius of 20 kms. The NICS is registered with the Registrar of Co-operative Society under the Co-operative Societies Act, 1912 and is having its works/administrative office in Chandigarh. The NICS is providing salary to its workers, but is not deducting any Provident Fund. One day, Sandhya, a female worker of the NICS, made a complaint to the Provident Fund Department of that area for not deducting the Provident Fund from her salary by the employer. Consequently, the NICS received a notice from the Provident Fund Department. The NICS has approached you for the legal advice. Please advise and provide justification.
- (c) "Shrikishan was employed by the Shree Silk Company Ltd. at its registered office in Mumbai in the dyeing section in the year 2008. He was later promoted in 2012 and again in 2016 and continued to be located at the company's registered office in Mumbai. The company in its orders of transfer located Shrikishan at the company's establishment in Nashik in 2020 and again transferred him at company's another establishment in Vadodara (Gujarat) in 2022. However, Shrikishan's services were terminated in January, 2023 due to the closure of the establishment in Vadodara. Aggrieved by the order of termination Shrikishan intends to file a suit in the Labour Court in Mumbai under the Industrial Disputes Act, 1947. Will he succeed ?

Give reasons in support your answer.

- (d) Tulsi, who was a godown keeper in a Rice manufacturing plant stole 100 bags of rice worth Rs. 2.50 lakhs while he was in employment. He then sold the stolen goods in the market. Through the use of CCTV footage and a physical investigation of the godown, Tulsi was caught in the act. Tulsi was promptly fired from his position. Is the employer's decision to forfeit the sum of the gratuity justified? Describe your response in accordance with the relevant legal provisions.

**(5 marks each)**

**Question No. 3**

Read the case below and answer the questions at the end :

The case is relating to Compensation under Section 3 of Employees' Compensation Act. In the matter the appeal was filed by the employer against the judgement of the Workmen Compensation Commissioner. The material facts which have given rise to this appeal is briefly stated mentioned below:

Kumar (deceased) who was employed as a driver on a truck of Mr. Harsh Vardhan, owner of M/s Nirankari Trading Company (the appellant) which used to carry petrol tank. The deceased reported to the appellant that the tank was leaking upon which the appellant got the tank partly filled with water at night and ordered the deceased to check it on the next morning. On the next morning i.e., on 10th January, 2022, the deceased entered the tank to see from where it leaked and lighted a match stick as a result of which it caught fire and the deceased received burns due to which he succumbed subsequently.

The evidence produced on behalf of respondent was that the match box supplied to the deceased by the appellant. But this fact was denied by the appellant in his deposition and in the opinion of the learned Commissioner it was doubtful that the appellant had given the match box to the deceased though no reasons are given for the aforesaid conclusion. Learned Counsel for the appellant contends :

- (i) That in the present case the accident did not arise out of and in the course of the deceased's employment and it occurred due to the 'added peril' that is the lighting of match stick within the petrol tank by him.
- (ii) That the Commissioner out to have held the Insurance Company i.e., respondent insurance is also liable for compensation.
- (iii) That after remarriage respondent widow was not entitled to claim compensation because she no longer remained a dependent.

In order to appreciate the argument, it would be useful to reproduce the relevant parts of Section 3 of the Employees' Compensation Act, 1923. If personal injury is caused to an employee by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation.

Provided that the employer shall not be so liable :

- (a) In respect of any injury which does not result in the total or partial disablement of the employee 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 employee having been at the time thereof under the influence of drink or drugs or
  - (ii) The willful disobedience of the employee to an order expressly given or to rule expressly framed, for the purpose of securing the safety of employee, or
  - (iii) The willful removal or disregard by the employee of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of employee.

On the basis of the above facts, answer the following :

- a) Whether the accident of employee is in course of employment ?
- b) Whether the employer can take plea of 'added peril' in his defense ? Is the employer liable to pay compensation ?
- c) Whether dependents will succeed in recovering compensation from the employer?
- d) Whether a widow become debarred from claiming compensation ? On account of her remarriage?

**(5 marks each)**

#### Question No. 4

- (a) The principle of gender equality is enshrined in the Constitution, in its Preamble, fundamental rights, fundamental duties and Directive Principles. However, workplace sexual harassment in India, was for the very first time recognized by the Supreme Court of India in its landmark judgment of *Vishaka v. State of Rajasthan, 1997 6 SCC 241: AIR 1997 SC 3011* ("Vishaka Judgment").

India's first legislation specifically addressing the issue of workplace sexual harassment; the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("POSH Act") was enacted by the Ministry of Women and Child Development, India in 2013 – after 16 years of the Supreme Court judgment in the case of *Vishaka & Ors. vs. State of Rajasthan & Ors.* The Act came into force w.e.f. 9th December, 2013.

In view of the above, highlight the importance of 'Vishaka Judgement' in enactment of 'The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013'.

- (b) Shri Bankey Bihari Associates, Company Secretaries (Firm) is a partnership firm with four partners having presence in Mathura. Each of the partners is the fellow member of the Institute of Company Secretaries of India. The Firm is also having some management trainees and paid employees and total staff strength is 60 (20 Management Trainees and 40 Professional employees).

Based on the above facts, discuss whether the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH) is applicable to the office of Company Secretaries?

**(10 marks each)**

**Question No. 5**

The Second National Commission on Labour, which submitted its report in June, 2002 had recommended that the existing set of labour laws should be broadly amalgamated into the following groups, namely: - (a) industrial relations; (b) wages; (c) social security; (d) safety; and (e) welfare and working conditions.

With the objective of strengthening the safety, security, health, social security for every worker and bringing ease of compliance for running an establishment to catalyse creation of employment opportunities/generation and as per the recommendations of the 2nd National Commission on labour, Ministry of Labour and Employment has taken steps for codification of existing Central labour laws into 4 Codes by simplifying, amalgamating and rationalizing the relevant provisions of:

- **The Code on Wages, 2019** - To give right of minimum wages to all the workers
- **The Occupational Safety, Health and Working Conditions Code, 2020** - To provide better and safe environment along with occupational health and safety to workers at the work place
- **The Code on Social Security, 2020** - to secure the right of workers for insurance, pension, gratuity, maternity benefit etc.
- **The Industrial Relations Code, 2020**- To safeguard the interests of Trade Unions as well as the workers

The Central Government amalgamated 4 laws in the Wage Code, 9 laws in the Social Security Code, 13 laws in The Occupational Safety, Health and Working Conditions Code, 2020 and 3 laws in the Industrial Relations Code.

The Labour Code is a means to consolidate various statutes into a pruned and uncomplicated form. The amalgamated form of multiple statutes thus obtained is called a labour code. This operation is done with a view to have a unified law which can be understood and implemented with ease.

***On the basis of the above facts, answer the following:***

- (a) Briefly explain the salient features of the Code on Wages, 2019.
- (b) Discuss floor wages and minimum wages under the Code on Wages, 2019.
- (c) List out the Labour legislations that are amalgamated under the Occupational Safety, Health and Working Conditions Code, 2020
- (d) Social Security Code consolidate the laws relating to social security with the goal to extend social security to all employees and workers either in the organized or unorganized or any other sectors. Briefly explain the salient features of Code on Social Security, 2020.

***(5 marks each)***





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**EASTERN INDIA REGIONAL OFFICE (KOLKATA): 033-22901065, eiro@icsi.edu**



- Bhubaneswar: 0674-2552282; bhubaneswar@icsi.edu
- Dhanbad: 0326-6556005; dhanbad@icsi.edu
- Guwahati (NE): 0361-2467644; guwahati@icsi.edu
- Hooghly: 033-26720315; hooghly@icsi.edu
- Jamshedpur: 0657-2234273; jamshedpur@icsi.edu
- Patna: 0612-2322405; patna@icsi.edu
- Ranchi: 0651-2223382; ranchi@icsi.edu
- Siliguri: 0353-2432780; siliguri@icsi.edu

**NORTHERN INDIA REGIONAL OFFICE (NEW DELHI): 011-49343000, niro@icsi.edu**



- Agra: 0562-4031444; agra@icsi.edu
- Ajmer: 0145-2425013; ajmer@icsi.edu
- Alwar: 0144-2730446; alwar@icsi.edu
- Amritsar: 0183-5005757; amritsar@icsi.edu
- Bareilly - 0581-4050776; bareilly@icsi.edu
- Bhilwara: 01482-267400; bhilwara@icsi.edu
- Bikaner: 0151-2222050; bikaner@icsi.edu
- Chandigarh: 0172-2661840; chandigarh@icsi.edu
- Dehradun: 8266045008; dehradun@icsi.edu
- Faridabad: 0129-4003761; faridabad@icsi.edu
- Ghaziabad: 0120-4559681; ghaziabad@icsi.edu
- Gorakhpur: 0551-3562913; gorakhpur@icsi.edu
- Gurugram: 0124-4232148; gurugram@icsi.edu
- Jaipur: 0141-2707236; jaipur@icsi.edu;
- Jalandhar: 0181- 7961687; jalandhar@icsi.edu
- Jammu: 0191-2439242; jammu@icsi.edu
- Jodhpur: 0291-2656146; jodhpur@icsi.edu
- Kanpur: 0512-2296535; kanpur@icsi.edu
- Karnal: 9877938334; karnal@icsi.edu
- Kota: 0744-2406456; kota@icsi.edu
- Lucknow: 0522-4109382; lucknow@icsi.edu
- Ludhiana: 0161-2401040; ludhiana@icsi.edu
- Meerut: 0120-4300148; meerut@icsi.edu
- Modinagar: 01232-298162; modinagar@icsi.edu
- Noida: 0120-4522058; noida@icsi.edu
- Panipat: 0180-4009144; panipat@icsi.edu
- Patiala: 9812573452; patiala@icsi.edu
- Prayagraj: 0532-4006166; prayagraj@icsi.edu
- Shimla: 0177-2672470; shimla@icsi.edu;
- Srinagar: 0194-2488700; srinagar@icsi.edu
- Udaipur: 88520 85020; udaipur@icsi.edu
- Varanasi: 0542-2500199; varanasi@icsi.edu

**SOUTHERN INDIA REGIONAL OFFICE (CHENNAI): 044-28222212, siro@icsi.edu**



- Amaravati: 0863-2233445; amaravati@icsi.edu
- Belagavi: 0831-4201716; belagavi@icsi.edu
- Bengaluru: 080-23111861; bengaluru@icsi.edu;
- Coimbatore: 0422-2237006; coimbatore@icsi.edu
- Hyderabad: 040-27177721; hyderabad@icsi.edu
- Kochi: 0484-2375950; kochi@icsi.edu
- Kozhikode: 0495-2770702; calicut@icsi.edu
- Madurai: 0452-4295169; madurai@icsi.edu
- Mangaluru: 0824-2216482; mangalore@icsi.edu
- Mysuru: 0821-2516065; mysuru@icsi.edu
- Palakkad: 0491-2528558; palakkad@icsi.edu
- Salem: 0427 - 2443600; salem@icsi.edu
- Thiruvananthapuram: 0471-2309915; tvm@icsi.edu
- Thrissur: 0487-2327860; thrissur@icsi.edu
- Visakhapatnam: 0891-2533516; vpatnam@icsi.edu

**WESTERN INDIA REGIONAL OFFICE (MUMBAI): 022-61307900, wiro@icsi.edu**



- Ahmedabad: 079-26575335; ahmedabad@icsi.edu;
- Aurangabad: 0240-2451124; aurangabad@icsi.edu
- Bhayander: 022-28183888; bhayander@icsi.edu
- Bhopal: 0755- 2577139/4907577; bhopal@icsi.edu
- Dombivli: 0251-2445423; dombivli@icsi.edu
- Goa: 0832-2435033; goa@icsi.edu
- Indore: 0731-4248181; indore@icsi.edu
- Kolhapur: 0231-2526160; kolhapur@icsi.edu
- Nagpur: 0712-2453276; nagpur@icsi.edu
- Nashik: 0253-2318783; nashik@icsi.edu
- Navi Mumbai: 022-49727816; navimumbai@icsi.edu
- Pune: 020-25393227; pune@icsi.edu
- Raipur: 0771-2582618; raipur@icsi.edu
- Rajkot: 0281-2482489; rajkot@icsi.edu
- Surat: 0261-2463404; surat@icsi.edu
- Thane: 022-46078402; thane@icsi.edu
- Vadodara: 0265-2331498; vadodara@icsi.edu

**CCGRT, NAVI MUMBAI : 022-41021503 - CCGRT, HYDERABAD : 040-23399541**

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