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LABOUR LEGISLATIONS – I

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Units (1-14)

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INTRODUCTION

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Labour legislation is also known as employment legislation. It comprises of a number of legal clauses, administrative verdicts and standards. These govern the legal rights of and implement restrictions on the working of employees and employers. This legislation works as a mediator for the liaisons between trade unions, workers and owners.

Labour legislations in the Indian history have been initially blended with the history of British colonialists who established their colonies in India. As expected, they upheld the interests of the British political economy. In other words, early labour legislations were more inclined to favour British colonialism. However now, the system has undergone changes along with the changes in Indian conditions.

Labour legislation seeks to regulate the relations between an employer or a class of employers and their workmen. The reach of this law is so wide that it touches the lives of millions of men and women who constitute the labour force. However, it is unfortunate that barring a few statutes, most labour legislations are not applicable to unorganized labour, which constitutes about 92 per cent of the entire labour force. Further, most labour legislations are more than five decades old. It is felt that our labour laws are overprotective, overreactive, fragmented, outdated and irrelevant and have created hurdles in achieving the target of ensuring fair labour practices.

This book, *Labour Legislations – I* has been divided into fourteen units. The book has been written in keeping with the self-instructional mode or the SIM format wherein each Unit begins with an Introduction to the topic, followed by an outline of the Objectives. The detailed content is then presented in a simple and organized manner, interspersed with Check Your Progress questions to test the student's understanding of the topics covered. A Summary along with a list of Key Words, set of Self Assessment Questions and Exercises and Further Readings is provided at the end of each Unit for effective recapitulation.

BLOCK I
BASICS OF LABOUR LEGISLATIONS - I

NOTES

UNIT 1 THE FACTORIES ACT, 1948-I

Structure

1.0 INTRODUCTION

This unit deals with the Factories Act of 1948, which was introduced to ensure appropriate and suitable working conditions for workers in a factory. The Act defines the term 'factory' and explains who an 'occupier' refers to. This unit will take you through the basic concepts and definitions set out in the Factories Act as well as the health, safety and welfare provisions set out in the Act. It will also look at the provisions made with respect to working hours, annual leave and wages.

1.1 OBJECTIVES

After going through this unit, you will be able to:

- Define the terms 'factory', 'manufacturing process' and 'occupier'
- List the health provisions that are required in factories
- Discuss the safety provisions for factory workers
- State the amenities in factories for the welfare of workers
- Discuss the working hours for factory workers
- Give examples of the calculation of leaves and wages of workers

1.2 FACTORIES ACT: IMPORTANT DEFINITIONS

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1. Meaning of Factory

Section 2(m) of the Factories Act, 1948 defines the word **'factory'** to mean any premises including the precincts thereof:

(i) Wherein 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) Wherein 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. (Section 2m(i) and 2(m)(ii) of the Act)

A Factory does not mean 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 hotel, or restaurant or eating place.

Explanation 1: For computing the number of workers for the purposes of this clause, all the workers in different groups or relays in a day shall be taken into account.

Explanation 2: For the purposes of this clause, the mere fact that the 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.

2 Meaning of Manufacturing Process

In *V.P. Gopala Rao* v. *Public Prosecutor, Andhra Pradesh*, tobacco leaves were subjected to processes of moistening, stripping and packing in a company's premises with a view to their use in and transport to the company's main factory for manufacturing cigarettes. More than twenty persons under the supervision of management were working in the premises. It was held that the manufacturing process was carried on in the 'premises' and the persons employed were 'workers' and it was a 'factory' within the meaning of section 2(m) of the Factories Act, 1948.

3. Meaning of Occupier

Section 2(n) of the Act defines an **'occupier'** of a factory to mean:

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

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(ii) In the case of a company, any one of the directors shall be deemed to be the occupier

(iii) In the case of a factory owned or controlled by the Central government or any state government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central government, the State government or the local authority, as the case may be, shall be deemed to be the occupier

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

1. The owner of the dock shall be deemed to be the occupier for the purposes of any matter provided for by or under—
   (a) Section 6, Section 7, Section 7-A, Section 7-B, Section 11 or Section 12
   (b) Section 17, in so far as it relates to the providing and maintenance of sufficient and suitable lighting in or around the dock
   (c) Section 18, Section 19, Section 42, Section 46, Section 47 or Section 49, in relation to the workers employed on such repair or maintenance
2. The owner of the ship or his agent or master or other officer-in-charge of the ship or any person who contracts with such owner, agent or master or other officer-in-charge to carry out the repair or maintenance work shall be deemed to be the occupier for the purposes of any matter provided for by or under Section 13, Section 14, Section 16 or Section 17 (save as otherwise provided in this provisio) 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
   (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 *M/s. Bhatia Metal Containers Pvt. Ltd.* v. *State of U.P.*, the Allahabad High Court held that from the first proviso of Section 2(n) it is clear that in the case of a company, one of the directors shall be deemed to be occupier. This proviso is also applicable to private limited companies. But Section 2(n) does not require that a company has to nominate only one of the directors or partners or individuals of an association as the occupier.

Check Your Progress

1. Can a mine be called a factory?
2. How many workers are required to call a premise a factory?
3. Who is an 'occupier'?

1.3 HEALTH PROVISIONS FOR FACTORY WORKERS

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Cleanliness

Section 11 of the Factories Act, 1948, provides for general cleanliness in the factory. It lays down that dust, fumes and refuse should be removed daily; floors, staircases and passages should be cleaned regularly by sweeping and other effective means while washing of interior walls and roofs should take place at least once in fourteen months and where these are painted with washable water paint, they must be repainted after every three years and where oil paint is used at least once in five years. Further, all doors and window frames and other wooden or metallic framework and shutters should be kept painted or varnished and the painting or varnishing should be carried out at least once in five years.

Disposal of Wastes and Effluents

Section 12 makes it obligatory on the occupier of every factory to make effective arrangements 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.

Ventilation and Temperature

Section 13 of the Act provides that:

1. Effective and suitable provision shall be made in every factory for securing and maintaining in every workroom:
   (a) adequate ventilation by the circulation of fresh air
   (b) such a temperature as will secure to workers therein reasonable conditions of comfort and prevent injury to health; and in particular–
      (i) walls and roofs shall be of such material and so designed that such temperature shall not be exceeded but kept as low as practicable
      (ii) where the nature of the work carried on in the factories involves, or is likely to involve, the production of excessively high temperatures, such adequate measures as are practicable shall be taken to protect the workers therefrom, by separating the process, which produces such temperatures, from the workroom, by insulating the hot parts or by other effective means

Dust and Fumes

Section 14 of the Act provides for elimination of dust and fumes. It reads:

1. In every factory, in which, by reason of the manufacturing process carried on, there is given off any dust or fume or other impurity of such a nature and to such an extent as is likely to be injurious or offensive to the workers

employed therein, or any dust in substantial quantities, effective measures shall be taken to prevent its inhalation and accumulation in any workroom, and if any exhaust appliance is necessary for this purpose, it shall be applied as near as possible to the point of origin of the dust, fume or other impurity, and such point shall be enclosed so far as possible.

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

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Artificial Humidification

The Act empowers the state government to make rules in respect of all factories in which the humidity of the air is artificially increased, that is to (i) prescribe standards of humidification, (ii) regulate the methods used for artificially increasing the humidity of the air, (iii) direct prescribed tests for determining the humidity of the air to be correctly carried out and recorded, and (iv) prescribe methods to be adopted for securing adequate ventilation and cooling of the air in the workrooms.

Overcrowding

No room of any factory shall be overcrowded to the extent it is injurious to the health of the workers. The Act further prescribes that in every workroom, each worker should be provided with a minimum space of 9.9 cubic metres which was there on the commencement of this Act and 14.2 cubic metres in the factories built after the passing of the Factories Act, 1948. No account shall however be taken of any space which is more than 4.2 metres above the level of the floor of the room for the aforesaid purpose.

Lighting

The Factories Act requires that sufficient and suitable natural or artificial lighting should be provided and maintained in every part of the factory. Further, all windows and skylights used for lighting should be kept clean and free from obstruction. Moreover, glare, either from source of light or by reflection from a smooth or polished surface, and formation of shadows causing eye strain or the risk of accident are to be prevented. In addition to these provisions, the state government is empowered to prescribe standards for sufficient and suitable lighting.

Conservancy Arrangements

The Act makes it obligatory on the employer to provide separately for male and female workers in every factory a sufficient number of toilets of the prescribed type. Further, it should be situated at a place so at to be convenient and accessible to the employees. Moreover, it should be enclosed, adequately lighted, ventilated and cleanly maintained. For the purposes of sanitation, sweepers should be

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employed to clean toilets and washing places. But in factories employing more than 250 workers all and urinals shall be of prescribed sanitary types and the floors and internal walls, 90 centimetres tall. The sanitary blocks shall be laid in glazed tiles or otherwise finished to provide a smooth polished impervious surface.

Check Your Progress

4. What is the provision for waste disposal in the Factories Act?
5. What does the Factories Act say about overcrowding in factories?
6. What is the requirement of the Factories Act in terms of lighting?

1.4 SAFETY OF WORKERS IN FACTORIES

Fencing of Machinery

Section 21(1) requires that in every factory, the following must be securely fenced by safeguards of substantial construction while the machinery are in motion or use:

(i) every moving part of a prime mover and flywheel connected to prime mover, whether the prime mover or fly-wheel is in the engine house or not

(ii) the headrace and tailrace of every waterwheel and water turbine

(iii) any part of stock-bar which projects beyond the head stock of a lathe

(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,

(a) every part of electric generator, a motor or rotary convertor

(b) every part of transmission machinery

(c) every dangerous part of any other machinery

shall be securely fenced by safeguards of substantial construction which shall be consistently maintained and kept in position while the parts of machinery they are fencing are in motion or in use.

Work on or Near Machinery in Motion

Section 22(1) requires that, where in the factory it is essential to examine any part of the machinery (referred to in Section 21) while it is in motion or as a result of such examination, it is necessary to carry out:

(a) lubrication or other adjusting operation

(b) any mounting or shipping of belts or lubrication or other adjusting operation

Such examination or operation shall be made or carried out only by a specially trained adult male worker wearing tight-fitting clothing (which shall be supplied by

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the occupier) whose name has been recorded in the register prescribed in this behalf and who has been furnished with a certificate of his appointment, and while he is so engaged:

(a) Such worker shall not handle a belt at a moving pulley unless:
   (i) the belt is not more than fifteen centimetres in width
   (ii) the pulley is normally for the purpose of drive and not merely a flywheel or balance wheel (in which case a belt is not permissible)
   (iii) the belt joint is either laced or flush with the belt
   (iv) the belt, including the joint and the pulley rim, are in good repair
   (v) there is reasonable clearance between the pulley and any fixed plant or structure
   (vi) secure foothold and, where necessary, secure handhold, are provided for the operator
   (vii) any ladder in use for carrying out any examination or aforesaid operation is securely fixed or lashed or is firmly held by a second person

(b) Without prejudice to any other provision of this Act relating to the fencing of machinery, every set screw, bolt and key on any revolving shaft, spindle, wheel, or pinion, and all spur, worm and other toothed or friction gearing in motion with which such worker would otherwise be liable to come into contact, shall be securely fenced to prevent such contact.

Employment of Young Persons on Dangerous Machines

Section 23 prohibits the employment of a young person on a dangerous machine unless he has been fully instructed as to the dangers arising from the machine and the precautions to be observed and (i) has received sufficient training in work at the machine, or (ii) is under adequate supervision by a person who has a thorough knowledge and experience of the machine.

This provision applies to those machines which, in the opinion of the state government, are of such a dangerous nature that young persons ought not to work at them unless the foregoing requirements are complied with.

Striking Gear and Devices for Cutting off Power

In order to move the driving belts to and from fast and loose pulleys in transmission machinery and to prevent the belt from creeping back onto the fast pulley, suitable striking gear or other efficient mechanical appliances shall be provided, maintained and used. No driving belt when unused shall be allowed to rest or ride upon shafting in motion. Suitable devices are also maintained in every workroom for cutting off power in emergencies. But in factories operating before the commencement of the Act, this precaution is taken only where electricity is used as power for machines. Further, when a device, which can inadvertently shift from 'off' to 'on' position, is provided in a factory to cut off power, arrangements shall

be provided for locking the device in a safe position to prevent accidental starting of the transmission machinery or other machines to which the device is fitted.

Self-acting Machines

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Section 25 of the Factories Act provides further safeguards to workers being injured by self-acting machines. It provides:

> 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 centimetres from any fixed structure which is not part of the machine.

The chief inspector however, empowered to 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.

Casing of New Machinery

Section 26(1) provides that in all machinery driven by power, after the commencement of the Factories Act, 1948, every set screw, bolt or key on any revolving shaft, spindle, wheel or pinion shall be sunk, encased or effectively guarded to prevent danger. Further, all spur, worm and other toothed or friction gearing not requiring/frequent adjustment while in motion shall be completely encased, unless they are safely situated. Furthermore, Section 26(2) provides that whoever sells or lets on hire or, as agent of the 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 of sub-section (1) or any rules made under sub-section (3), shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to ₹ 500 or with both. Under the Act, the state government is empowered to make rules for the safeguards to be provided from dangerous parts of machinery.

Prohibition of Employment of Women and Children Near Cotton Openers

The Factories Act, 1948, prohibits the employment of women and children in any part of the factory for pressing cotton where the cotton opener is at work. But if the feed-end of the cotton opener is in a room separated from the delivery and 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.

Hoists and Lifts

Hoists and lifts cause numerous accidents. Section 28(1) therefore requires that hoists and lifts must be of good mechanical construction, sound material and adequate strength. They should not only be properly maintained but also thoroughly

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examined at least twice a year by competent persons. A register should also be maintained for the particulars of examination. Further, every hoistway and liftway must be sufficiently protected by enclosures fitted with gates. Every hoist, lift and enclosure must be constructed in such a way 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. Moreover, the maximum safe working load should be marked clearly on every hoist or lift and no load greater than that shall be carried thereon. The cage of hoists or lifts used for carrying persons must have interlocking devices on the gates so as to secure that the gates cannot be opened except when the cage is at the landing and that the cage cannot be moved unless the gate is closed.

According to Section 28(2), the following additional requirements shall apply to hoists and lifts used for carrying persons and installed or reconstructed in a factory after the commencement of the 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 Act empowers the chief inspector to permit the continued use of a hoist or lift installed in a factory before the commencement of this Act which does not fully comply with the provisions of Section 28 upon such conditions for ensuring safety as he may think fit to impose.

Lifting Machines, Chains, Ropes and Lifting Tackles

Section 29(1) requires that all lifting machines, such as cranes, crabs, winches, teagles, pulleys, blocks, gin wheels, transporters or runways (other than hoists or lifts), chains, ropes or lifting tackles (such as chain slings, rope slings, hooks, shackles and swivels) should be of good construction, sound material, adequate strength and free from defects. These lifting machines, chains, ropes or lifting tackles must be properly maintained and examined by competent persons at least once a year or within such intervals as prescribed by the chief inspector. Further, the lifting machine, chain, rope or lifting tackle should not be overloaded, and 'shall be 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'. The travelling crane should be 6 metres away from the person working on or near its wheel track.

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The state government is empowered to make rules providing for additional requirements to be observed. It is also empowered to exempt from compliance with all or any of the requirements of this section, where in its opinion, such a compliance is unnecessary or impracticable.

Section 29(3) lays down that 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.

Revolving Machinery

Section 30(1) provides that a notice indicating the maximum safe working peripheral speed of the grindstone or abrasive wheel, the speed of the shaft, or spindle, must be permanently affixed on all rooms in a factory where grinding is carried on. The speeds indicated in notices under sub-section (1) shall not be exceeded. Similarly, care shall be taken not to exceed the safe working peripheral speed of every revolving machine like revolving vessel, cage, basket, flywheel, pulley, disc or similar appliances run by power.

Pressure Plant

Section 31(1) provides that effective measures should be taken to ensure safe working pressure of any part of the plant or machinery used in the manufacturing process operating at a pressure above the atmospheric pressure.

Section 31(2) empowers the state government to make rules for the examination and testing of any plant or machinery operated above atmospheric pressure and to provide for other safety measures. Sub-section (3) empowers the state government to exempt, by making rules, subject to such conditions as may be specified therein any part of any plant or machinery referred to in sub-section (1) from the provisions of the section.

Pit, Sump and Opening in Floors

Section 33(1) of the Factories Act, 1948, requires that every fixed vessel, sump, tank, pit or opening in the ground or in the floor in every factory should be covered or securely fenced, if by reason of its depth, situation, construction or contents, they are or can be a source of danger.

Section 33(2) empowers the state government to grant exemption from compliance to the provision of this section (i) in respect of any item mentioned in the Section, (ii) to any factory or class of factories, and (iii) on such condition as may be provided in the rules.

Precautions against Dangerous Fumes and Gases

In order to protect factory workers from dangerous fumes, special measures have been taken under the Factories Act. Thus, Section 36(1) 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(2) provides that 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 permissible limits.

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Precaution against Using Portable Electric Light

The Act prohibits any factory to use portable electric light or any other electric appliance of voltage exceeding 24 volts in any chamber, tank, vat, pipe, flue or other confined space unless adequate safety devices are provided.8 The Act further prohibits the factory to use any lamp or light (other than that of flame-proof construction) if any inflammable gas, fume or dust is likely to be present in such chamber, tank, vat, pet, pipe, flue or other confined space.

Explosives or Inflammable Materials

Experience shows that in day-to-day working, manufacturing in certain factories produces dust, gas, fume or vapour of such character and to such extent as is likely to explode on ignition. This causes danger to the personnel and property of the factory. It is with this view that several measures have been adopted under the Factories Act to prevent any such explosion. These measures include: (i) effective enclosures of the plant or machinery used in the process; (ii) removal or prevention of the accumulation of such dust, gas or vapour; (iii) exclusion or effective enclosure of all possible sources of ignition. However, where in any factory the plant or machinery used in a process referred above is not so constructed as to withstand the probable pressure which such an explosion as aforesaid would produce, all practicable measures shall be taken to restrict the spread and effects of the explosion by the provision in the plant or machinery of chokes, baffles, vents or other appliances.

Further,

> where any part of the plant or machinery in a factory contains any explosive or inflammable gas or vapour under pressure greater than atmospheric pressure, that part shall not be opened except in accordance with the following provisions, namely: (a) before the fastening of any joint of any pipe connected with the part or the fastening of the cover of any opening into the part is loosened, any flow of the gas or vapour into the part of any such pipe shall be effectively stopped by a stop-value or other means; (b) before any such fastening as aforesaid is removed, all practicable measures shall be taken to reduce the pressure of the gas or vapour in the part or pipe to atmospheric pressure; (c) where any such fastening as aforesaid has been loosened or removed, effective measures shall be taken to prevent any explosive or inflammable gas or vapour from entering the part of pipe until the fastening has been secured, or, as the case may be, securely replaced.

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These provisions shall, however, not apply in the case of plant or machinery installed in the open air.

Moreover, Section 37(4) provides that,

> no plant tank or vessel which contained any explosive or inflammable substance shall be subjected in any factory to any welding, brazing, soldering or cutting operation which involves the application of heat unless adequate measures have first been taken to remove such substance and any fumes arising therefrom or to render such substance and fumes non-explosive or non-inflammable, and no such substance shall be allowed to enter such plant tank or vessel after any such operation until the metal has cooled sufficiently to prevent any risk of igniting the substance.

The state government is, however, empowered to exempt by framing rules any factory or class or description of factories from compliance with all or any of the provisions of Section 37.

Precaution in Case of Fire

Section 38 provides that 'in every factory all practical measures shall be taken to prevent outbreak of fire and its spread, both internally and externally, and to provide and maintain (i) safe means of escape for all persons in the event of a fire, and (ii) the necessary equipment and facilities for extinguishing fire'. Further, under sub-section (2), effective measures should 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 trained in the routine to be followed in such cases. The state government under sub-section (3) is empowered to make rules, in respect of any factory or class or description of factories, requiring the measures to be adopted to give effect to the aforesaid provisions.

Safety of Building and Machinery

According to Section 40(1), 'if it appears to the Inspector that any building or part of 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'.

The inspector may serve upon the manager or occupier (or both) of the factory, prohibiting the use of any building or part of a building or any part of the ways, machinery or plant in a factory which involves imminent danger to human life or safety until it has been properly repaired or altered.

Maintenance of Buildings

In order to ensure safety, the inspector is empowered to serve on the occupier or manager (or both) of the factory, an order specifying the measures to be taken and requiring the same to be carried out if it appears to him 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.

Safety Officers

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In order to prevent accidents, the Act provides for the appointment of safety officers in factories employing 1000 or more workers or where 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 the health of the persons employed in the factory. The state government may prescribe the duties, qualifications and conditions of service of safety officers.

Power to Make Rules to Supplement

The state government is empowered 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 the safety of persons employed therein as it may deem necessary.

Check Your Progress

7. Does the Factories Act, 1948 prohibit employment of women?
8. What does the Factories Act, 1948 say about lifting machines?
9. What are the precautions against fumes and gases laid down in the Factories Act, 1948?

1.5 WELFARE OF WORKERS

Chapter V of the Act imposes a duty upon the occupier to provide the following:

(i) Washing facilities for male and female workers should be provided as prescribed in the rules.

(ii) Facilitates for storing clothes not used during working hours and for drying wet clothes should be provided.

(iii) For such workers who are to work in standing position, facilities should be provided for sitting whenever the course of work so permits.

(iv) In every factory employing more than 500 workers there should be provided an adequately maintained ambulance room of the prescribed size and specifications which should be under the charge of such medical and nursing staff as may be prescribed in the rules which ought to be consulted for the purpose.

(v) First-aid boxes or cupboards equipped with the prescribed materials should be provided in all factories.

(vi) Trained first aiders should also be provided.

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(vii) In every factory employing more than 250 workers a canteen of the specified specification should be provided.

(viii) In every factory employing more than fifty women workers there should be provided a creche for the children of such female workers.

(ix) In every factory employing more than 150 workers suitable rest room and lunch room should be provided.

(x) In every factory employing more than 500 workers a welfare officer should be employed to safeguard the welfare of the workers. The grade and the rank of the welfare officer goes on increasing with the increase in the number of workers employed in the factory.

Broadly speaking, the legislation relating to labour welfare may be divided into two categories: (i) welfare amenities within the plant or establishment, and (ii) welfare amenities outside the plant or establishment.

Amenities within the Plant

(i) Drinking Water

Section 18 of the Factories Act, 1948 provides:

1. 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 metres of any washing place, urinal, latrine, spitoon, open drain carrying sullage or effluents or any other source of contamination unless a shorter distance is approved in writing by the chief inspector.
2. In every factory wherein more than 250 workers are ordinarily employed, provision shall be made for cool drinking water during hot weather by effective means and for distribution thereof.
3. In respect of all factories or any class or description of factories the state government may make rules for securing compliance with the provisions of sub-sections (1), (2) and (3) and for the examination by prescribed authorities of the supply and distribution of drinking water in factories.

(ii) Washing Facilities

Section 42 of the Factories Act provides that adequate and suitable facilities for washing shall be provided and maintained for the use of the workers. It has been observed that washing facilities have not been properly maintained and have not been kept in good conditions.

(iii) Facilities for Storing and Drying Clothing

The Factories Act provides for facilities for storing and drying clothing. Section 43 of the Act provides:

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

Suitability of accommodation within the meaning of Section 43 includes giving protection from theft. Whether accommodation is suitable or not depends on whether the workers' clothes are exposed to risk of theft.

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(iv) Facilities for Sitting

It 'is unusual for factory management to provide even seating arrangements to the operators during working hours. It would help to reduce fatigue consideration if high stools are provided, specially for women workers'. To make available such facilities, Section 44 of the Factories Act, *inter alia*, provides that in:

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

(v) Rest Shelters

Under the Factories Act, only factories employing 150 or more workers are required to provide shelter or rest rooms and suitable lunch rooms (with provisions for drinking water) where workers can have their meals.

1.6 WORKING HOURS

1. **Daily Hours:** Subject to forty-eight weekly hours of work no adult worker shall be required or allowed to work for more than nine hours on any day [Section 54]; however this maximum daily may be exceeded to facilitate change of shifts with the previous approval of the chief inspector [proviso to Section 54].
2. **Intervals for Rest:** While fixing the periods of employment of adult workers it must be ensured that no period exceeds five hours and no worker works for more than five hours without an interval or rest of at least half an hour [Section 55 (1)]. The state government, may however, exempt any factory from this provision. But in that case the total number of hours worked by a worker would not exceed six hours [Section 55 (2)].
3. **Spread Over:** The spread over of the period of work of an adult worker must not exceed ten-and-a-half hours in any day including his intervals for rest, (Section 56). The chief inspector may, however, increase it to twelve hours for reasons to be specified in writing [proviso to Section 56].
4. **Night Shift:** Where a worker works in a shift extending beyond midnight for the purpose of the provision of weekly holidays and compensatory holidays, holidays and compensatory holidays and holiday for whole day

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shall mean a period of twenty-four consecutive hours, beginning when the shift ends [Section 57 (a)]. The following day for such worker shall be deemed to be period of twenty-four hours beginning when the shift ends and the hours he has worked after midnight, shall be counted in the previous day. [Section 5 (b)].

5. **Prohibition of Overlapping Shifts:** No worker shall be carried on by means of a system of shifts in such a way that more than one relay of workers is engaged in work of the same mind of the same time [Section 58 (1)]. However, the state government may make exceptions to this rule [Section 58 (2)]. In exercise of this power, printing presses attached to newspaper offices have been exempted subject to certain conditions. [Rule 84-A (1)].
6. **Extra Wages for Overtime:** A worker working in excess of an hour in any day or forty-eight hours in any week, shall be entitled to wages at the rate of twice his ordinary rate of wages for overtime work [Section 59 (1)].
7. **Restriction on Double Employment:** An adult worker shall not be required or allowed to work on any day on which he had already been working in any other factory, except in the prescribed circumstances [Section 60].
8. **Notice of Periods of Work for Adults:** A notice of periods of works for adults shall be displayed and it shall show clearly for every day, the periods during which adult workers are required to work [Section 61 (1)]. The period in the notice shall be fixed beforehand and shall not contravene the provisions of weekly and daily hours, weekly holidays, intervals for rest, spread over and prohibition of overlapping shifts [Section 61(2)].

Check Your Progress

10. What is the provision for crèches as per the Factories Act, 1948?
11. What is the role of the welfare officer?
12. Do all factories require rest shelters?
13. Does the Act prohibit overlapping shifts?

1.7 ANNUAL LEAVE AND WAGES

According to Section 79 of the Factories Act, 1948, leave shall be calculated on the basis of the previous calendar year.

1. The minimum days of work entitling a worker to earn leave is 240 days which would include—
   (a) days of layoff by agreement or contract or as permissible under the Standing Orders
   (b) the leave earned in the year prior to that in which leave is enjoyed

(c) if the worker is a female, maternity leave for any number of days, not exceeding twelve weeks

It means that for the purpose of computation of the period of 240 days or more, the above-noted days shall be deemed to be days on which the worker has worked in a factory, but he shall not earn leave for these days.

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 performed by him during the previous calendar year

Explanation: The leave admissible under sub-section (1), as noted earlier, shall be exclusive of all holidays whether occurring during or at either end of the period of leave.

2. A worker whose service commences otherwise than on the first day of January shall be entitled to leave with wages at the rate laid down in clause (i), or as the case may be, clause (ii) of sub-section (1), if he has worked for two-thirds of the total number of days in the remainder of the calendar year.
3. Leave to worker discharged or dismissed: If a worker is discharged or dismissed from service, or quits his employment, or is superannuated, or dies while in service, during the course of the calendar year, he or his heir or nominee, as the case may be, shall be entitled to wages in lieu of the quantum of leave to which he was entitled immediately before his discharge, dismissal, quitting of employment, superannuation, or death, calculated at the rates specified in sub-section (1) even if he had not worked for the entire period specified in sub-section (2), 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 the second working day from the date of 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
4. In calculating leave under this section, fraction of leave of half a day or more shall be treated as one full day's leave, and fraction of less than half a day shall be omitted.
5. Leave not availed of: If a worker does not in any one calendar year take the whole of the leave allowed to him under sub-section (1), or under sub-section (2), as the case may be, any leave not taken by him shall be added to the leave to be allowed to him in the succeeding calendar year.

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Provided that the total number of days of the leave that may be carried forward to a succeeding year shall not exceed thirty in the case of any adult or forty in the case of a child.

It is further laid down that a worker, who has applied for leave with wages, but has not been given such leave in accordance with any scheme laid down in sub-sections (8) and (9) or in contravention of sub-section (10), shall be entitled to carry forward the leave refused without any limit.

6. How to avail leave: Leave may be availed of in accordance with the following provisions:
   (i) Application for leave must be made fifteen days before the date on which he wishes his leave to begin, to take all the leave or any portion thereof allowable to him during the calendar year. He may apply at any time in writing to the manager of the factory where he is working. But in public utility services, such application must be made thirty days ahead when leave is to begin.
   (ii) The worker may avail of the leave in maximum three installments [Section 79(6)].
   (iii) The leave with wages due to a worker to cover a period of illness may be availed of and it would be necessary for him to apply in advance. In such a case, the wages as admissible under Section 81 shall be paid not later than fifteen days or in case of a public utility service, not later than thirty days from the date of the application for leave [Section 74(7)].
   (iv) An application for leave which is in accordance with the above-noted provisions cannot be refused, unless such refusal is in accordance with the scheme for the time being in operation under sub-sections (8) and (9) which is mentioned hereunder [Section 79(10)].

   Scheme for leave: The occupier of the factory and the representatives of the workers may agree to a scheme for regulating the leave in terms of Section 79(8). The scheme shall be drawn up by the occupier. This scheme shall be lodged with the chief inspector. Essential conditions for the same are as follows:
   (i) In the first instance, it shall remain in force for twelve months only
   (ii) With or without any modification, it may be renewed in agreement with the representatives of the workers
   (iii) The maximum period for which the scheme is renewable at a time shall not be more than twelve months
   (iv) The scheme shall be displayed at some convenient and conspicuous place in the factory [Section 79(9)]

7. Payment in lieu of leave on termination: Under Section 79(11), it is laid down that in case leave has not been taken, but the worker's employment is terminated, he shall be entitled to be paid for the unavailed leave (in terms of Section 80), as under:
   (i) if the occupier has terminated his employment and he has not taken leave, he shall get payment before the expiry of the second working day after termination
   (ii) if the worker quits the employment, but the leave was not granted, although applied for, he shall get payment on or before the next pay day

Sub-section (12) provides that the unavailed leave of a worker shall not be taken into consideration in computing the period of any notice required to be given before discharge or dismissal.

It may be noted that if a worker cannot be given the benefit in its original form, he should be compensated therefore by payment in lieu of it.

Payment of wages during leave period: For the leave allowed to the worker under Section 78 or Section 79, as the case may be, a worker is entitled to receive from his employer at a rate equal to the daily average of his total full-time earnings for the day on which he actually worked during the month immediately preceding his leave, exclusive of any overtime and bonus. But it shall be inclusive of dearness allowance and the cash equivalent of the advantage accruing through concessional sale to the worker of food grains and other articles. (Section 80).

Payment in advance in certain cases: A worker who has been allowed leave for not less than four days (if he is an adult), and five days (if he is a child), shall be paid wages due for the leave period in advance, i.e., before his leave begins. (Section 81).

Check Your Progress

14. How is the leave calculated for workers who have completed 240 days?
15. How are the leaves/wages calculated for a worker who dies in service?
16. What happens if a worker does not take all the leaves entitled during a year?

1.8 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. A factory does not mean 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 hotel, or restaurant or eating place.

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2. To be called a factory, the concerned premises should have ten or more people working on a manufacturing the individual who has final control over the factory affairs is the occupier. In the case of a firm, this would be any individual partners or members; in the case of a company it will be any one of the directors; and in the case of Central /state government factory or that of any local authority, it will be the individual appointed by the central/ state government or local authority will be the occupier.
3. The individual who has final control over the factory affairs is the occupier. In the case of a firm, this would be any individual partners or members; in the case of a company it will be any one of the directors; and in the case of Central /state government factory or that of any local authority, it will be the individual appointed by the central/state government or local authority will be the occupier.
4. Section 12 makes it obligatory on the occupier of every factory to make effective arrangements for the treatment of wastes and effluents resulting from the manufacturing process to render them innocuous/nontoxic and for their disposal.
5. As per the Factories Act, no room of any factory shall be overcrowded to the extent it is injurious to the health of the workers. The Act further prescribes that in every workroom, each worker should be provided with a minimum space of 9.9 cubic metres which was there on the commencement of this Act and 14.2 cubic metres in the factories built after the passing of the Factories Act, 1948.
6. The Factories Act requires that's suitable and sufficient natural or artificial lighting should be provided and maintained in all parts of the factory. All windows and skylights used for lighting should be kept clean and free from obstruction. There should be no glare, either from source of light or by reflection from a smooth or polished surface. No shadows should be formed causing eye strain or the risk of accident.
7. The Factories Act, 1948, prohibits the employment of women and children in any part of the factory for pressing cotton where the cotton opener is at work.
8. According to Section 29(1) of the Factories Act, all lifting machines, such as cranes, crabs, winches, teagles, pulleys, blocks, gin wheels, transporters or runways (other than hoists or lifts), chains, ropes or lifting tackles (such as chain slings, rope slings, hooks, shackles and swivels) should be of good construction, sound material, adequate strength and free from defects. They must be properly maintained and examined by competent persons at least once a year or within such intervals as prescribed by the chief inspector. They should never be overloaded, and 'shall be 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.

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9. Section 36(1) of the Factories Act 1948 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(2) provides that 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 permissible limits.

10. In every factory employing more than fifty women workers there should be provided a creche for the children of such female workers.

11. In every factory employing more than 500 workers, a welfare officer should be employed to safeguard the welfare of the workers. The grade and the rank of the welfare officer goes on increasing with the increase in the number of workers employed in the factory.

12. Under the Factories Act, only factories employing 150 or more workers are required to provide shelter or rest rooms and suitable lunch rooms (with provisions for drinking water) where workers can have their meals.

13. The Factories Act provides that no worker shall be carried on by means of a system of shifts in such a way that more than one relay of workers is engaged in work of the same mind of the same time [Section 58 (1)]. However, the state government may make exceptions to this rule [Section 58 (2)]. In exercise of this power, printing presses attached to newspaper offices have been exempted subject to certain conditions. [Rule 84-A (1)].

14. 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 performed by him during the previous calendar year

    The leave admissible under sub-section (1), as noted earlier, shall be exclusive of all holidays whether occurring during or at either end of the period of leave.

15. If a worker dies while in service, during the course of the calendar year, he or his heir or nominee, as the case may be, shall be entitled to wages in lieu of the quantum of leave to which he was entitled immediately before his death, calculated at the rates specified in sub-section (1) even if he had not worked for the entire period specified in sub-section (2), making him eligible to avail of such leave.

16. If a worker does not in any one calendar year take the whole of the leave allowed to him under sub-section (1), or under sub-section (2), as the case may be, any leave not taken by him shall be added to the leave to be allowed to him in the succeeding calendar year.

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1.9 SUMMARY

- The Factories Act of 1948, which was introduced to ensure appropriate and suitable working conditions for workers in a factory.
- The person who has ultimate control over the affairs of the factory is the occupier.
- Section 2(m) of the Factories Act, 1948 defines the word **'factory'** to mean any premises including the precincts thereof:
  - (i) Wherein 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) Wherein 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. (Section 2m(i) and 2(m)(ii) of the Act)
- Section 11 of the Factories Act, 1948, provides for general cleanliness in the factory.
- Section 12 makes it obligatory on the occupier of every factory to make effective arrangements 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.

  Section 13 of the Act provides effective and suitable provision for securing and maintaining in every workroom, adequate ventilation by the circulation of fresh air, such a temperature as will secure to workers therein reasonable conditions of comfort and prevent injury to health; walls and roofs shall be of such material and so designed that such temperature shall not be exceeded but kept as low as practicable
- Section 14 of the Act provides for elimination of dust and fumes.
- The Act empowers the state government to make rules in respect of all factories in which the humidity of the air is artificially increased.
- The Act makes it obligatory on the employer to provide separately for male and female workers in every factory a sufficient number of toilets of the prescribed type.

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- Section 21(1) requires that in every factory, the all the dangerous machinery that is in motion should be securely fenced by safeguards of substantial construction while the machinery are in motion or use.
- Section 23 prohibits the employment of a young person on a dangerous machine unless he has been fully instructed as to the dangers arising from the machine and the precautions to be observed and (i) has received sufficient training in work at the machine, or (ii) is under adequate supervision by a person who has a thorough knowledge and experience of the machine.
- Section 25 of the Factories Act provides further safeguards to workers being injured by self-acting machines**.**
- Section 26(1) provides that in all machinery driven by power, after the commencement of the Factories Act, 1948, every set screw, bolt or key on any revolving shaft, spindle, wheel or pinion shall be sunk, encased or effectively guarded to prevent danger.
- The Factories Act, 1948, prohibits the employment of women and children in any part of the factory for pressing cotton where the cotton opener is at work.
- Hoists and lifts cause numerous accidents. Section 28(1) therefore requires that hoists and lifts must be of good mechanical construction, sound material and adequate strength.
- Section 29(1) requires that all lifting machines, such as cranes, crabs, winches, teagles, pulleys, blocks, gin wheels, transporters or runways (other than hoists or lifts), chains, ropes or lifting tackles (such as chain slings, rope slings, hooks, shackles and swivels) should be of good construction, sound material, adequate strength and free from defects.
- Section 30(1) provides that a notice indicating the maximum safe working peripheral speed of the grindstone or abrasive wheel, the speed of the shaft, or spindle, must be permanently affixed on all rooms in a factory where grinding is carried on.
- Section 31(1) provides that effective measures should be taken to ensure safe working pressure of any part of the plant or machinery used in the manufacturing process operating at a pressure above the atmospheric pressure.
- Section 33(1) of the Factories Act, 1948, requires that every fixed vessel, sump, tank, pit or opening in the ground or in the floor in every factory should be covered or securely fenced, if by reason of its depth, situation, construction or contents, they are or can be a source of danger.
- Section 38 provides that 'in every factory all practical measures shall be taken to prevent outbreak of fire and its spread, both internally and externally,

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and to provide and maintain (i) safe means of escape for all persons in the event of a fire, and (ii) the necessary equipment and facilities for extinguishing fire'.

- Section 42 of the Factories Act provides that adequate and suitable facilities for washing shall be provided and maintained for the use of the workers
- Subject to forty-eight weekly hours of work no adult worker shall be required or allowed to work for more than nine hours on any day [Section 54].
- While fixing the periods of employment of adult workers it must be ensured that no period exceeds five hours and no worker works for more than five hours without an interval or rest of at least half an hour [Section 55 (1)].

1.10 KEY WORDS

- **Factory:** It refers to a building or set of buildings where large amounts of goods are made using machines.
- **Mine:** It is hole or tunnel dug into the earth from which ore or minerals are extracted**.**
- **Innocuous:** It refers to something without any harmful effect.
- **Dock:** It is a platform extending from a shore over water, used to secure, protect, and provide access to a boat or ship; a pier**.**
- **Effluents:** It is the discharge of liquid waste, as from a factory or nuclear plant**.**
- **Fumes:** There are strong, irritating and harmful gas or vapours.
- **Lubrication:** It refers to the application of oil or something like grease to make surface slippery.
- **Prejudice:** It is the act or state of holding unreasonable preconceived judgments or convictions:

1.11 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. What are the parts of a machinery that need to be fenced as per the Factories Act?
2. What is meant by conservancy arrangements?
3. What does Section 11 pertain to?
4. How does the Factories Act, 1948 ensure fire-related precautions?
5. Does the Factories Act, 1948 provide for maintenance of buildings?

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Long-Answer Questions

1. Describe all the provisions in the Factories Act, 1948 pertaining to women, children and young persons.
2. What all provisions pertain to machinery in the Factories Act, 1948?
3. Explain the provisions for elimination of dust and fumes as per the Factories Act.
4. What are the responsibilities of the safety officer?
5. Describe the drinking water and washing facilities inside a factory as per the Factories Act, 1948.
6. What provisions does the Factories Act, 1948 make for working hours?

1.12 FURTHER READINGS

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UNIT 2 THE FACTORIES ACT, 1948-II

NOTES

Structure

2.0 INTRODUCTION

In order to establish any manufacturing business or unit, different licenses are required from both the state and the Central Government. These licenses vary according to the product that is manufactured.

However, no matter what the license, the registration of the plant is a must. In this unit, you will learn about the licensing and registration of factories; the obligations of managers and occupiers, and also the powers of the authorities under the Factories Act. The unit also covers the penalty provisions under the Act.

2.1 OBJECTIVES

After going through this unit, you will be able to:

- Discuss the rules for licensing and registration of factories
- State the duties of the managers and occupiers under the Factories Act
- Discuss the powers of the inspectors, certifying surgeons, safety officers and welfare officers.
- Discuss Section 92 that outlines the general penalty for offences

2.2 LICENSING AND REGISTRATION OF FACTORIES

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1. The State Government may 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.

2. 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.

3. 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*:** 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.]

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2.3 OBLIGATIONS OF MANAGERS OR OCCUPIERS

1. 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.
2. Without prejudice to the generality of the provisions of sub-section (1), the matters to which such duty extends, shall include:
   (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 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.
3. 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.

Check Your Progress

1. What is the result of a refusal of permission to the construction of a factory?
2. What is the prime duty of the occupier?
3. To whom could the State require the plan of the factory to be submitted?

2.4 AUTHORITIES AND THEIR POWERS

Factories Act 1948 provides for appointment of Inspectors, Certifying Surgeons, Safety Officers and Welfare Officers. The relevant provisions are presented subsequently in this unit.

1. Inspectors

Factories Act 1948 provides for appointment of Chief Inspectors, Additional Chief Inspectors, Joint Chief Inspectors, Deputy Chief Inspectors, Inspectors and other officers. The provisions are as follows:

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Section 8 provides that

1. The State Government may, by notification in the Official Gazette, appoint such persons as possessing the prescribed qualification to be Inspectors for the purposes of this Act and may assign to them such local limits as it may think fit.
2. The State Government may, by notification in the Offlcial Gazette, appoint any person to be a Chief Inspector who shall, in addition to powers conferred on Chief Inspector under this Act, exercise the powers of an Inspector throughout the State.

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

   2B. Every additional Chief Inspector, Joint Chief Inspector, Deputy Chief Inspector and every other officer appointment under sub-section (2A) shall, in addition to the powers of a Chief Inspector specified in the notification by which he is appointed, exercise the power of an Inspector throughout the State.
3. No person shall be appointed under sub-section (1), sub-section (2), sub-section (2A) or sub-section (5), or having been so appointed, shall continue to hold office, who is or becomes directly or indirectly interested in a factory or in any process or business carried on therein or in any patent or machinery connected therewith.
4. Every District Magistrate shall be an Inspector for his district.
5. The State Government may also, by notification as aforesaid, appoint such public officers as it thinks fit to be additional Inspectors for all or any of the purposes of this Act, within such local limits as it may assign to them respectively.
6. In any area where there are more Inspectors than one the State Government may, by notification as aforesaid, declare the powers which such Inspectors shall respectively exercise and the Inspector to whom the prescribed notices are to be sent.
7. Every Chief Inspector, Additional Chief Inspector, Joint Chief Inspector, Deputy Chief Inspector, Inspector and every other officer appointed under this section, shall be deemed to be a public servant within the meaning of

the Indian Penal Code (XLV of 1860), and shall be officially subordinate to such authority as the State Government may specify in this behalf.

Section 9. Powers of Inspectors

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

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

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

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

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

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

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

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

(h) in case of any article of 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.

1. Certifying Surgeons

Section 10 provides for appointment of Certifying Surgeons. The related provisions are presented below.

1. The State Government may appoint qualified medical practitioners to be certifying surgeons for the purposes of this Act within such local limits or for

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such factory or class or description of factories as it may assign to them respectively.

2. A certifying surgeon may, with the approval of the State Government, authorize any qualified medical practitioner to exercise any of his powers under this Act for such period as the certifying surgeon may specify and subject to such conditions as the State Government may think fit to impose, and references in this Act to a certifying surgeon shall be deemed to include references to any qualified medical practitioner when so authorized.
3. No person shall be appointed to be, or authorized to exercise the powers of, a certifying surgeon, or having been so appointed or authorized, continue to exercise such powers, who is or becomes the occupier of a factory or is or becomes directly or indirectly interested therein or in any process or business carried on therein or in any patent or machinery connected therewith or is otherwise in the employ of the factory:

   Provided that the State Government may, by order in writing and subject to such conditions as may be specified in the order exempt any person or class of persons from the provisions of this sub-section in respect of any factory or class or description of factories.
4. The certifying surgeon shall carry out such duties as may be prescribed in connection with-
   (a) the examination and certification of young persons under this Act;
   (b) the examination of persons engaged in factories in such dangerous Occupations or processes as may be prescribed;
   (c) the exercising of such medical supervisions 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 (VII of 1916), or in the Schedule to the Indian Medical Council Act, 1933 (XXVI1 of 1933).

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2. Safety Officers

Section 40B of the Factories Act provides for appointment of Safety Officers in designated factories. The relevant provisions are presented below.

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

Safety officers must be in every factory, wherein one thousand or more workers are ordinarily employed or wherein, in the opinion of the State Government, any manufacturing process or operation is carried on, which processor operation involves any risk of bodily injury, poisoning or disease, or any hazard to health, to the persons employed in the factory.

If the State Govt, gives a notification, the occupier will have to mandatorily employ the number of safety officers stated in the notification. The duties, qualifications, conditions of service of Safety officers shall be such as may be prescribed by the state Govt.

Each Safety Officer should have some delegated authority in occupational health and safety matters which will be determined by the department heads to whom they report, in consultation with the Zone OHS Committee.

The appointment of a Safety Officer does not diminish the particular responsibilities of department heads and supervisors or the primary responsibility of every individual for maintaining occupational health and safety standards.

Role of a Safety Officer: The main role of a Safety Officer is to act as a focal point for all occupational health and safety matters arising at the particular location. Carrying out the role involves: assisting with promoting occupational health and safety awareness; advising on occupational health and safety problems or obtaining advice on unfamiliar problems from Occupational Health and Safety or other sources; bringing to the attention of staff and students, occupational health and safety hazards associated with their work; bringing to the attention of the relevant department heads unresolved occupational health and safety problems; investigating and reporting on all incidents, injuries and occupational health problems and notifying Occupational Health and Safety of incidents and hazards in line with reporting requirements; liaison with Occupational Health and Safety including providing

requested information to Occupational Health and Safety; Co-operation and liaison with occupational health and safety representative(s) on occupational health and safety activities in their zone or department in line with the procedures detailed in the Appendix to the Occupational Health and Safety Policy; and dealing with health and safety issues in line with the procedures detailed in the Appendix to the Occupational Health and Safety Policy.

Safety Officer-Responsibilities

The Safety Officer is responsible for monitoring and assessing hazardous and unsafe situations and developing measures to assure personnel safety. The Safety Officer will correct unsafe acts or conditions through the regular line of authority, although the **Safety Officer may exercise emergency authority to prevent or stop unsafe acts** when immediate action is required. The Safety Officer maintains awareness of active and developing situations. The Safety Officer ensures the Site Safety and Health Plan is prepared and implemented. The Safety Officer ensures there are safety messages in each Incident Action Plan.

Only one Safety Officer will be assigned for each incident, including incidents operating under Unified Command and multi- jurisdiction incidents. The Safety Officer may have assistants, as necessary, and the assistants may also represent assisting agencies or jurisdictions. During initial response, document the hazard analysis process, hazard identification, exposure assessment and controls. Participate in planning meetings to identify any health and safety concerns inherent in the operations daily work plan. Review the Incident Action Plan for safety implications. Exercise emergency authority to prevent or stop unsafe acts. Investigate accidents that have occurred within incident areas. Ensure preparation and implementation of Site Safety and Health Plan (SSHP) Assign assistants and manage the incident safety organization.

3. Welfare Officers

Section 49 of the Factories Act provides for appointment of Welfare Officers in designated factories. The legal provisions are presented below.

1. In every factory wherein five hundred or more workers are ordinarily employed the occupier shall employ in the factory such number of welfare officers as may be prescribed.
2. The State Government may prescribe the duties, qualifications and conditions of service of officers employed under sub-section (1). 50. Power to make rules to supplement this Chapter. -

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.

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2.5 PENALTY PROVISIONS

Section 92. General penalty for offences

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

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

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

Check Your Progress

4. Where does the notification for appointment of chief inspector appear?
5. Who all are appointed to assist the chief inspector and by whom?
6. State three powers of the inspector.
7. Who are certifying surgeons?
8. In which kind of factory is a safety officer appointed?
9. What is the main role of a safety officer?
10. How much is the fine charged as penalty in case of contravention?

2.6 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

NOTES

1. 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.
2. 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. Occupiers shall also see to it that the work environments are maintained and safety is ensured without any risk to health.
3. The plan of the factory to be submitted to the chief inspector or the State Government.
4. The State Government appoints the chief inspector through a notification in the Official Gazette.
5. The State Government may, by notification in the Official Gazette, appoint as many Additional Chief Inspectors, Joint Chief Inspectors and Deputy Chief Inspectors and as many other officers as it thinks fit to assist the Chief Inspector and to exercise such of the powers of the Chief Inspector as may be specified in such notification.
6. An Inspector may, within the local limits for which he is appointedenter 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; he may examine the premises, plant, machinery, article or substance; inquire into accidents or ask to see any register or document related to the factory.
7. 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.
8. A safety office is appointed in any factory where a thousand or more workers are employed.
9. The main role of a Safety Officer is to act as a focal point for all occupational health and safety matters arising at the particular location.
10. In case of contravention, the minimum fine is rupees twenty-five thousand in case of an accident causing death, and rupees five thousand in case of an accident causing serious bodily injury.

NOTES

2.7 SUMMARY

- Under the Factories Act, 1948 the State Government may make rules 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.
- 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.
- 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.
- Factories Act, 1948 provides for appointment of Inspectors, Certifying Surgeons, Safety Officers and Welfare Officers.
- The State Government may, by notification in the Offlcial Gazette, appoint any person to be a Chief Inspector who shall, in addition to powers conferred on Chief Inspector under this Act, exercise the powers of an Inspector throughout the State.
- Every District Magistrate shall be an Inspector for his district.
- An Inspector may, within the local limits for which he is appointed 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.
- An inspector may in every factory wherein one thousand or more workers are ordinarily employed, or wherein, in the opinion of the State Government, any manufacturing process or operation is carried on, which 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 occupier shall, if so required by the State Government by notification in Official Gazette, employ such number of Safety Officers as may be specified in that notification.
- An inspector may 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.
- An inspector may in case of any article of 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.

- In every factory wherein one thousand or more workers are ordinarily employed, or wherein, in the opinion of the State Government, any manufacturing process or operation is carried on, which 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 occupier shall, if so required by the State Government by notification in Official Gazette, employ such number of Safety Officers as may be specified in that notification.
- The main role of a Safety Officer is to act as a focal point for all occupational health and safety matters arising at the particular location.
- In every factory wherein five hundred or more workers are ordinarily employed the occupier shall employ in the factory such number of welfare officers as may be prescribed.

2.8 KEY WORDS

- **Licensing:** It is the authorisation of the use of something.
- **Registration:** It is the act of recording a name of information on an official list.
- **Hazard:** It refers to a danger or risk.
- **Compliance:** It is an act in accordance with a set rule or wish.
- **Contravention:** It is an action that offends the law or a rule.
- **Penalty:** It is a punishment imposed for breaking a law or rule.

2.9 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. List the officials who can be appointed as per the Factories Act, 1948?
2. State two duties of a certifying surgeon.
3. Where are safety officers required?
4. State the primary role of a safety officer.
5. State one obligation of a manager and occupier.

NOTES

Long-Answer Questions

1. Explain the rules laid by the state government for registering a factory.
2. Discuss the powers of inspectors as laid down in the Factories Act, 1948.
3. Why are certifying surgeons required? List their duties.
4. Describe the role of a safety officer.
5. Discuss the responsibilities of a safety officer.
6. Describe the penalty provisions under the Factories Act, 1948.
7. Describe the obligations of managers and occupiers.

2.10 FURTHER READINGS

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NOTES

UNIT 3 WORKMEN'S COMPENSATION ACT, 1923-I

Structure

3.0 INTRODUCTION

The first two units discussed in detail the various provisions of the Factories Act, 1948. This unit will touch upon selected provisions of the Workmen's Compensation Act, 1923.

The object of the Workmen's Compensation Act is to impose an obligation upon employers to pay compensation to workers for accidents arising out of and in the course of employment. The scheme of the Act is not to compensate the workman in lieu of wages, but to pay compensation for the injury sustained by him.

3.1 OBJECTIVES

After going through this unit, you will be able to:

- Explain the salient features of the Workmen's Compensation Act, 1923
- Define the words 'dependant', 'workman', 'partial disablement', 'total disablement'
- Discuss the rights of a workman to compensation and liability of an employer to payment of compensation
- Calculate the amount of compensation
- State the methods of calculating wages

3.2 LIABILITY OF AN EMPLOYER TO PAYMENT COMPENSATION

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Let us begin our discussion with the introduction of the scope and coverage of the Workmen's Compensation Act, 1923.

Scope and Coverage

The Act extends to the whole of India and applies to any person who is employed, otherwise than in a clerical capacity, in the railways; factories; mines; plantations; mechanically propelled vehicles; loading and unloading work on a ship; construction; maintenance and repairs of roads; bridges; and so on electricity generation; cinemas; catching or training of wild elephants; circus; and other hazardous occupations and employments specified in Schedule II to the Act. Under Sub-section (3) of Section 2 of the Act, the state governments are empowered to extend the Scope of the Act to any class of persons whose occupations are considered hazardous after giving three months' notice in the Official Gazette. The Act, however, does not apply to members serving in the Armed Forces of the Indian Union, and employees covered under the provisions of the Employee's State Insurance Act, 1948, as disablement and dependants' benefits are available under this Act.

(i) Dependant—This term has been defined under Section 2(1) (d) to mean any of the following relatives of the deceased workman:

(i) A widow, a minor legitimate son, an unmarried legitimate daughter or a widowed mother

(ii) A son or daughter who is wholly dependent upon the earnings of the workman, who at the time of his death has attained the age of 18 years and who is infirm

(iii) If wholly or in part dependant on the earnings of the workman at the time of his death;

(a) a widower,

(b) a parent other than a widowed mother,

(c) a minor illegitimate son, an unmarried illegitimate daughter or a daughter, legitimate if married and a minor or if widowed and minor,

(d) a minor brother or an unmarried sister or a widowed sister if a minor,

(e) a widowed daughter-in-law,

(f) a minor child of a predeceased son,

(g) a minor child of a predeceased daughter where no parent of the child is alive, or

(h) a paternal grandparent if no parent of the workman is alive.

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The basic principle behind dependency is that a person can claim compensation when he was really dependent on the earnings of the workman at the time of his death. It may be pointed out that the dependents mentioned in the first class need not prove that they were dependants on the earnings of the deceased workman but the persons mentioned in the second and third class must have to prove that they were wholly or partly dependent on the earnings of the deceased workmen at the time of his death. This is quite just and equitable to make provisions for the payment of compensation in the event of death of a worker to the persons who do not have other means of subsistence.

(ii) 'Partial Disablement'—This means that where the disablement is of a temporary nature such disablement reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement; and, where the disablement is of a permanent nature, such disablement reduces his earning capacity in every employment that he would have been capable of undertaking at the time, subject to the provision that every injury specified in Part II of Schedule I shall be deemed to result in permanent partial disablement. (Section 2(1) (g).

Two disablements have been dealt with under Clause (g)—temporary partial disablement and permanent partial disablement. Any injury sustained by the worker during his employment resulting in loss of this earning capacity is called disablement. If such earning capacity is reduced in the particular employment in which the worker was engaged while he met with an accident, it is called temporary partial disablement. But if his capacity is reduced in every employment, it is called permanent partial disablement. There are forty-eight injuries specified in Part II of Schedule I, and it is expressly laid down that all of them shall be deemed to result in permanent partial disablement. Some such injuries are: amputation through shoulder joint, loss of thumb, loss of one eye without complications, the other being normal, and so on.

(iii) Total disablement—This means such disablement, whether of a temporary or permanent nature, that incapacitates a workman for all the work 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 Schedule I or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to 100 per cent or more Section 2(1) (g).

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(iv) 'Workman'—Section 2(1) (n) defines 'workman' to mean any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is—

(i) a railway servant as defined in Section 3 of the Indian Railways Act, 1890, not permanently employed in any administrative, district, or subdivisional office of a 'railway' and not employed in any such capacity as specified in Schedule II, or

(ii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether 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; any reference to a workman who has been injured, shall, where the workman is dead, include a reference to his dependants or any of them.

Section 3 of the Workmen's Compensation Act lays down conditions under which a workman is entitled to claim compensation. An employer shall be liable to pay compensation in accordance with the provisions of Sections 3 to 18-A to the workman if, firstly, personal injury is caused to him and, secondly, if he contracts any occupational disease or diseases in conditions stipulated in sub-sections (2), (3) and (4) of Section 3 of the Act.

Personal injury—Such personal injury:

(i) must have been caused during the course of his employment, and

(ii) must have been caused by an accident arising out of his employment.

An accident alone does not give a workman a right to compensation. For him to be entitled to compensation at the hands of his employers, the accident must arise out of and in the course of his employment. Any workman while undertaking a work which is not during the course of employment, if involved in an accident, is not entitled to compensation. An occurrence which is sudden and unexpected, and without any design on the part of the workman is an accident. In *G.A.R.* vs *Bombay Port Trust*, it was held that a workman suffering from heart disease, if dies on account of strain by standing and walking, the accident arose out of employment. Death from heat stroke is a personal injury.

The employer is liable to pay compensation under the following conditions:

(i) The personal injury must have been caused by an accident.

(ii) The accident must have arisen out of and in the course of his employment.

(iii) The personal injury caused to the worker must have resulted either in total or partial disablement of the workman for a period exceeding three days, or it must have resulted in the death of the worker.

(iv) Personal injury sustained by the workman may be a physical one; it may be mental strain and disbalance as well.

NOTES

Occupational Diseases—Section 3(2) lays down that if a workman employed in any employment specified in Part A of Schedule III contracts any disease specified therein as an occupational disease peculiar to that employment or if a workman, whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months (which shall not include a period of service under any other employer in the same kind of employment, in any employment specified in Part B of Schedule III, contracts any disease, specified therein as an occupational disease peculiar to that employment, or if a workman whilst in the service of one or more employers in any employment specified in Part C of Schedule III for such continuous period as the Central Government may specify in respect of each employment, contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section and unless the contrary is proved, the accident shall be deemed to have arisen out of, and in the course of, the employment:

Provided that if it is proved—

(a) that a workman 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.

Provided further that if it is proved that a workman who having served under any employer in any employment specified in Part B of Schedule III or who having served under one or more employers in any employment specified in Part C of that Act Schedule for a continuous period specified under this sub-section for that employment, and he has, after the cessation of such service, contracted any disease specified in the said Part B or the said Part C, as the case may be, as an occupational disease, peculiar to the employment, and that such disease arose out of the employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this Section.

Section 3(2-A) provides that if a workman employed in any employment specified in Part C of Schedule III contracts any occupational disease peculiar to that employment, the contracting whereof is deemed to be an injury by accident within the meaning of this Section, and such 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 the circumstances, deem just.

NOTES

Section 3(3) lays down that the state government in the case of employment specified in Part A and Part B of Schedule III and the Central Government in the case of employment specified in Part C of that Schedule, after giving, by notification in the official Gazette, not less than three months notice of its intention so to do, may, by a similar 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 disease peculiar to those employments respectively, and thereupon the provisions of sub-section (2) shall apply as if such disease had been declared by this Act to be occupational disease peculiar to those employments.

As is clear from the provisions of sub-section (2) of Section 3, the list of occupational diseases is contained in Schedule III of the Act. This Schedule is divided into three parts — A, B, and C. The disease contacted must be an occupational disease peculiar to the employment as specified in Schedule III. A list of several employments is given in relation of every such disease, described as occupational diseases in Schedule III. No specified period of employment is necessary for a claim for compensation with respect to occupational diseases mentioned in Part A: but for diseases mentioned in Part B, the workman must be in continuous service of the same employer for a period of six months in the employment specified in that Part. For diseases in Part C, the period of employment would be such as is specified by the Central Government for each of such employment, whether in the service of one or more employers. The contracting of any disease specified in Schedule III shall be deemed to be an injury by accidents arising out of and in the course of employment, unless the contrary is proved.

Provisions to sub-section (2) of Section 3—The first proviso says that if it is proved that—

(a) a workman whilst in the service of one or more employers in any employment contracts a disease specified as an occupational disease peculiar to the employment, during a continuous period which is less than the period specified under sub-section (2), for that employment, and

(b) the said disease has arisen out of and in the course of the employment, then the contracting of such disease shall be deemed to be an injury by accident as contemplated by this section.

The second proviso to sub-section (2) lays down that if it is proved that a workman who—

(i) having served under any employer in any employment specified in Part B of Schedule III; or

(ii) having served under one or more employer in any employment specified in Part C of Schedule III

for a continuous period specified under sub-section (2), for that employment, and he has, after the cessation of such service, contacted any disease (in the said Part

B or the said Part C), as the case may be, as an occupational disease peculiar to the employment, and such disease arose out of the employment, the contacting of the disease shall be deemed to be an injury by accident.

NOTES

Liability of all employers—Sub-section (2-A), reproduced above, provides that if a workman employed in any employment mentioned in Part C of the Schedule III contacts any occupational disease peculiar to that employment, the contacting whereof is deemed to be an injury by accident within the meaning of Section 3, and such employment was under more than one employers. Then, in such a case, all the employers shall be liable for the payment of compensation in such proportion, as the commissioner, in the circumstances may deem just.

We have already noted that sub-section (3) empowers the Central Government with respect to Part C and the state governments with respect to Parts A and B of Schedule III to make additions to the employments and occupational diseases in the prescribed manner.

Non-occupational disease—Sub-section (4) of Section 3 provides that save as provided by sub-section (2) (2-A), and (3), no compensation shall be payable to a workman 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 the employment.

It is a substantial question of law whether a workman who was suffering from a disease and died when he was in employment would come under Section 3(4) of the Act.

When is the employer not liable for compensation?

The employer shall not be liable for personal injury caused to a workman by accident in the following cases:

(a) In respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding three days

(b) In respect of any injury, not resulting in death, caused by an accident which is directly attributable

  (i) The workman having been at the time thereof under the influence of drink or drugs

  (ii) The wilful disobedience of the workman to an order expressly given, or to rule expressly framed, for the purpose of securing the safety of workmen.

  (iii) The wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workman.

No compensation shall be payable to a workman 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, save as provided by sub-sections (2), (2-A) and (3) of Section 3.

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Doctrine of Notional Extension of 'Time' and 'Place'

The doctrine of notional extension has been mostly applied to four types of cases of injury to workmen employed in: (i) workshops, factories or other such establishments; (ii) harbours or on ships; (iii) transport services; (iv) mines. In some cases, the basis of the notional extension is considered to be an implied term of the contract, while in others it is the proved or practical necessity.

Saurashtra Salt Manufacturing Co. vs. *Bai Velu Raja* laid down the following principles of notional extension of time and place:

As a general rule the employment of a workman does not commence until he has reached the place of employment and does not continue when he has left the place of employment, the journey to and from the place of employment being excluded. It is now well settled, however, that this is subject to the theory of notional extension of the employer's premises so as to include an area in which the workman passes and repasses in going to and in leaving the actual place of work. There may be some reasonable extension in both time and place and a workman may be regarded as in course of his employment even though he had not reached or had left his employer's premises. The facts and circumstances of each case will have to be examined very carefully in order to determine whether the accident arose out of and in course of the employment of the workman, keeping in view at all times the theory of notional extension.

The aforesaid principle was extended in *B.E.S.T. Undertakings* vs. *Mrs Agnes* to cases where the employer offered the facility of bus service to its drivers for them to come to their depots and go back to their homes, as employees as of right and in interest of efficiency of service. The court accordingly held by a majority judgement that when a driver when going home from the depot or coming to the depot uses the bus provided as a means of transport any accident in such bus that happens to him is an accident in the course of his employment. The I.L.O. also adopted a convention in 1964 which defines more explicitly the kind of trips which are to be covered under workmen's compensation systems. They include trips between the place of work and (1) the employee's permanent or temporary residence; (2) the place where the employee takes his meals; and (3) the place where the employee ordinarily receives his salary.

In *Union of India* vs *Mrs Noor Jahon*, a railway gangman, while working at one place of his duty, was asked by his employer to shift to another place for some cleaning purposes. While he was proceeding to another place with another gangman, he was knocked down by a motor lorry on the public street and he died ultimately. The Allahabad High Court held that the deceased workman was in the course of his employment at the time of the accident. Mr Justice Shukla observed:

> The accident having taken place within the hours of duty at [the] time when the deceased was proceeding to discharge his duty at the behest of his employers at the second site, the conclusion cannot be escaped that the accident occurred in the course of employment.

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Travelling by special means of transport provided by the employer—If the journey after work is made in the truck, bus, car or other vehicle provided by the employer, an injury during that journey is incurred in the 'course of employment'. The justification for this holding is that the employer himself expanded the range of the employment and the attendant risks. He has, in a sense, sent the employee home in a small ambulatory portion of the premises. As Lord Wrenbury in *St. Helens Colliery Co. Ltd.* vs *Hewiton* said:

If the employer (being entitled so to do) says 'come to work by a particular route' the employer is on the risk when the man is coming by that route. This is so because in each of these cases there is an obligation. The man enters the assigned route because he has received and is obeying an order to do so.

In *B.E.S.T. Undertakings* vs *Mrs Agnes* a bus driver who was injured while going from the depot to his home by a public bus of his employer, was held by the Supreme Court 'in the course of his employment' even though other alternative means were available to him and he was not obliged to travel by it. This decision was followed in *Indian Rare Earths Ltd.* vs *A. Subaida Beevi.*

Non-contractual or causal provision of transportation—In Patel Engineering Co. vs *Commissioner, Workmen's Compensation*, the workmen employed under the contractor used to travel by a departmental lorry because the contractor had no lorry of his own for the purpose of carrying these workers. One day, while they were so travelling, the lorry met with an accident in which four workmen employed under the contractor died. The Andhra Pradesh High Court held them in the 'course of employment' at the time of the accident. The question arose before the court whether it was obligatory on the part of the deceased workmen to travel in that lorry? While answering the question, the court stated:

> ..... it is not necessary that the workmen concerned should either travel in a conveyance provided by the employer or that it would be obligatory on their part to do so in order to conclude that they were in the 'course of employment' while travelling in that conveyance.

Check Your Progress

1. How is the 'workman' defined in the Workmen's Compensation Act, 1923?
2. What does 'total disablement' mean?
3. What is 'personal injury' according to the Workmen's Compensation Act, 1923?
4. Give two situations when the employer is liable to pay compensation.
5. Give one situation when the employer is not liable for compensation.

3.3 AMOUNT OF COMPENSATION AND METHOD OF CALCULATION

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Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:

(a) Where death results from the injury	An amount equal to 50 per cent of the monthly wages of the deceased workman multiplied by the relevant factor; or an amount of ₹ 80,000, whichever is more.
(b) Where permanent total disablement results from the injury	An amount equal to 60 per cent of the monthly wages of the injured workman multiplied by the relevant factor; or an amount of ₹ 90,000 whichever is more.

Explanation I—For the purposes of Clause (a) and Clause (b), 'relevant factor' in relation to a workman means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the workman on his last birthday immediately preceding the date on which the compensation fell due.

Explanation II—Where the monthly wages of a workman exceed ₹ 4,000 his monthly wages for the purposes of clause (a) and clause (b) shall be deemed to be ₹ 4,000 only;

(c) Where permanent partial disablement results from the injury	(i) in the case of an injury specified in Part II of Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury, and (ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury.

Explanation I—Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not

so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries.

Explanation II—In assessing the loss of earning capacity for the purposes of sub-clause (ii), the qualified medical practitioner shall have due regard to the percentages of loss of earning capacity in relation to different injuries specified in Schedule I;

(d)	Where temporary disablement, total or partial, results from the injury	a half-monthly payment of the sum equivalent to 25 per cent of monthly wages of the workman, to be paid in accordance with the provisions of sub-section (2).

1. Notwithstanding anything contained in sub-section (1), while fixing the amount of compensation payable to a workman in respect of an accident occurred outside India, the Commissioner shall take into account the amount of compensation, if any, awarded to such workman in accordance with the law of the country in which the accident occurred and shall reduce the amount fixed by him by the amount of compensation awarded to the workman in accordance with the law of that country.
2. The half-monthly payment referred to in Clause (d) of sub-section (1) shall be payable on the sixteenth day—
   (i) from the date of disablement where such disablement lasts for a period of twenty-eight days or more; or
   (ii) after the expiry of a waiting period of three days from the date of disablement where such disablement lasts for a period of less than twenty-eight days; and thereafter half-monthly during the disablement or during a period of five years, whichever period is shorter:

   Provided that—
   (a) there shall be deducted from any lump sum or half-monthly payments to which the workman is entitled the amount of any payment or allowance which the workman has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the first half-monthly payment, as the case may be; and
   (b) no half-monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the workman before the accident exceeds half the amount of such wages which he is earning after the accident.

   Explanation I—Any payment or allowance which the workman has received from the employer towards his medical treatment shall not be deemed to be a payment or allowance received by him by way of compensation within the meaning of Clause (a) of the proviso.

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3. On the ceasing of the disablement before the date on which any half-monthly payment falls due there shall be payable in respect of that half-month a sum proportionate to the duration of the disablement in that half-month.
4. If the injury of the workman results in his death, the employer shall, in addition to the compensation under sub-section (1) deposit with the Commissioner a sum of ₹ 2,500 for payment of the same to the eldest surviving defendant of the workman towards the expenditure of the funeral of such workman or where the workman did not have a dependent or was not living with his dependent at the time of his death to the person who actually incurred such expenditure.

Calculation of Wages for Compensation: Section 4 of the Act provides that where the monthly wages of a workman exceed ₹ 2,000, his monthly wages for the purpose of Clause (a) and Clause (b) shall be deemed to be ₹ 4,000 only. Now, therefore, all workmen except managerial and clerical staff without any wage limit are covered under the Act, the total lump sum compensation is determined by first determining the monthly wages, then finding out the relevant multiplying factor given in Schedule IV pertaining to the age of the workman at the time of accident and then dividing it by the percentage payable *vide* section 4(a) for death and 4(b) for permanent total disablement.

Compensation to be paid when Due and Penalty for Default

1. Compensation under Section 4 pertaining to the amount of compensation shall be paid as soon as it falls due.
2. In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and such payment shall be deposited with the Commissioner or made to the workman, as the case may be, without prejudice to the right of the workman to make any further claim.
3. Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall—
   (a) direct the employer to, in addition to the amount of the arrears, pay simple interest thereon at the rate of 12 per cent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due; and
   (b) if, in his opinion, there is no justification for the delay, direct the employer to, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding 50 per cent of such amount by way of penalty.

Provided that an order for the payment of penalty shall not be passed under Clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.

Explanation—For the purposes of this sub-section, 'scheduled bank' means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934.

The interest payable under sub-section (3) shall be paid to the workman or his dependant as the case may be.

Check Your Progress

6. What is the compensation paid in case of death resulting from injury?
7. What is the compensation paid in case of permanent partial disablement?
8. What is the compensation for temporary disablement (total or partial) from an injury?

3.4 METHOD OF CALCULATING WAGES

Under the Workmen's Compensation Act, 1923 and for the purposes thereof the expression 'monthly wages' means the amount of wages deemed to be payable for a month's service whether the wages are payable by the month or by whatever other period or at piece rates and calculated as follows:

(a) Where the workman has, during a continuous period of not less than twelve months immediately preceding the accident, been in the service of the employer who is liable to pay compensation, the monthly wages of workman shall be one-twelfth of the total wages which have fallen due for payment to him by the employer in the last twelve months of that period.

(b) Where the whole of the continuous period of service immediately preceding the accident during which the workman was in the service of the employer, who is liable to pay the compensation, was less than one month, the monthly wages of the workman shall be the average monthly amount which, during the twelve months immediately preceding the accident, was being earned by a workman employed by the same employer or, if there was no workman so employed, by a workman employed on similar work in the same locality.

(c) In other cases including cases in which it is not possible for want of necessary information to calculate the monthly wages under clause (b), the monthly wages shall be thirty times the total wages earned in respect of 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.

Explanation—A period of service shall, for the purposes of this section, be deemed to be continuous which has not been interrupted by a period of absence from work exceeding fourteen days.

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Check Your Progress

9. What will be the wages of a workman who has worked for at least a year before the accident?
10. What happens in cases where it is impossible to calculate monthly wages ?

3.5 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. Section 2(1) (n) defines 'workman' to mean any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is—
   (i) a railway servant as defined in Section 3 of the Indian Railways Act, 1890, not permanently employed in any administrative, district, or subdivisional office of a 'railway' and not employed in any such capacity as specified in Schedule II, or
   (ii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether 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; any reference to a workman who has been injured, shall, where the workman is dead, include a reference to his dependants or any of them.
2. The word means disablement of a temporary or permanent nature that renders a workman incapable of doing all the work he was earlier capable of doing before the accident resulting in such disablement. provided that permanent total disablement shall be deemed to result from every injury specified in Part I of Schedule I or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to 100 per cent or more Section 2(1) (g).
3. According to the Workmen's Compensation Act, 'personal injury' will be injury caused to a worker during the course of his employment or caused by an accident arising out of his employment
4. The employer is liable to pay compensation when (i) the personal injury must have been caused by an accident and (ii) when the accident must have arisen out of and in the course of his employment.
5. The employer shall not be liable for personal injury caused to a workman by accident In respect of any injury which does not result in the total or

partial disablement of the workman for a period exceeding three days and In respect of any injury, not resulting in death, caused by an accident which is directly attributable.

6. Any amount equal to 50 per cent of the monthly wages of the deceased workman multiplied by the relevant factor; or an amount of Rs 80,000/- , whichever is more.
7. In case of an injury that leaves a worker partially disabled forever, he is eligible for a percentage of the compensation which would have been paable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury.
8. In case of a partial or total disablement that is temporary, the worker will be eligible for a half-monthly payment of the sum equivalent to 25 per cent of monthly wages of the workman, to be paid in accordance with the provisions of subsection (2).
9. Where the workman has, during a continuous period of not less than twelve months immediately preceding the accident, been in the service of the employer who is liable to pay compensation, the monthly wages of workman shall be one-twelfth of the total wages which have fallen due for payment to him by the employer in the last twelve months of that period.
10. In cases where it is not possible for want of necessary information to calculate the monthly wages under clause (b), the monthly wages shall be thirty times the total wages earned in respect of 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.

3.6 SUMMARY

- The object of the Workmen's Compensation Act, 1923 is to impose an obligation upon employers to pay compensation to workers for accidents arising out of and in the course of employment.
- The Act extends to the whole of India and applies to any person who is employed, otherwise than in a clerical capacity, in the railways; factories; mines; plantations; mechanically propelled vehicles; loading and unloading work on a ship; construction; maintenance and repairs of roads; bridges; and so on electricity generation; cinemas; catching or training of wild elephants; circus; and other hazardous occupations and employments specified in Schedule II to the Act.
- The basic principle behind dependency is that a person can claim compensation when he was really dependent on the earnings of the workman at the time of his death.

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- Section 3 of the Workmen's Compensation Act lays down conditions under which a workman is entitled to claim compensation.
- The list of occupational diseases is contained in Schedule III of the Act.
- Sub-section (4) of Section 3 provides that save as provided by sub-section (2) (2-A), and (3), no compensation shall be payable to a workman 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 the employment.
- The employer shall not be liable for personal injury caused to a workman by accident in the following cases: (a) In respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding three days (b) In respect of any injury, not resulting in death, caused by an accident which is directly attributable (i) The workman having been at the time thereof under the influence of drink or drugs (ii) The wilful disobedience of the workman to an order expressly given, or to rule expressly framed, for the purpose of securing the safety of workmen. (iii) The wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workman.
- In case of death from injury, the worker's family is liable to receive 50 per cent of the monthly wages of the worker multiplied by the relevant factor; or an amount of ₹80,000, whichever is more.
- Compensation under Section 4 pertaining to the amount of compensation shall be paid as soon as it falls due.

3.7 KEY WORDS

- **Compensatio**n: It is the money offered in recognition of loss or injury.
- **Disablement:** It is the condition of being unable to perform as a consequence of physical or mental unfitness.
- **Predeceased:** This term refers to someone who died before someone else.
- **Deceased:** This term refers to a recently dead person.
- **Liable:** This implies responsible by law or legally answerable.
- **Strain:** If implies to making an unusually great effort.
- **Disbalance:** This means lack of balance.

3.8 SELF ASSESSMENT QUESTIONS AND EXERCISES

NOTES

Short-Answer Questions

1. What is the scope of the Workmen's Compensation Act, 1923?
2. What is meant by partial disablement as per the Workmen's Compensation act?
3. List the cases of injury where the doctrine of notional existence is applicable.
4. List the trips included by ILO under the Workmen's Compensation Act, 1923.
5. What is a scheduled bank as per the Act?

Long-Answer Questions

1. What are occupational diseases?What are the provisions for the same in the Workmen's Compensation Act?
2. Write a note on the amount of compensation to be paid.
3. How are wages calculated under the Workmen's Compensation Act, 1923?

3.9 FURTHER READINGS

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UNIT 4 WORKMEN'S COMPENSATION ACT, 1923-II

Structure

4.0 INTRODUCTION

The compensation for a workman is always deposited with the Commissioner and never handed over to him/her directly (or the family in case of death), irrespective of the kind of injury, disability or even death. This is one of the rules laid down in the Workmen's Compensation Act. The Act also talks about the legal provisions to get the compensation entertained; the statements regarding fatal incidents, and so on. In this unit, you will learn about all this in addition to the remedies of employer against stranger and the rules laid down for appointment of commissioners in Sec 20.

4.1 OBJECTIVES

After going through this unit, you will be able to:

- Discuss the method of compensation distribution as per the Workmen's Compensation Act, 1923
- List the functions of the Commissioners
- Explain the disposal of cases of injuries
- Discuss the sending of correct returns as to compensation
- State the provisions for appointment of Commissioners for workmen's compensation

4.2 DISTRIBUTION OF COMPENSATION

NOTES

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

   Provided that, in the case of a deceased workman, an employer may make to any dependent advances on account of compensation of an amount equal to three months' wages of such workman and so much of such amount as does not exceed the compensation payable to that dependent shall be deducted by the Commissioner from such compensation and repaid to the employer.

2. Any other sum amounting to not less than ₹ 10 which is payable as compensation may be deposited with the Commissioner on behalf of the person entitled thereto.

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

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

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

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

7. Where any lump sum deposited with the Commissioner is payable to a woman or a person under a legal disability, such sum may be invested, applied or otherwise dealt with for the benefit of the woman, or of such person during his disability, in such manner as the Commissioner may direct;

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and where a half-monthly payment is payable to any person under a legal disability, the Commissioner may, on his own motion or on an application made to him in this behalf, order that the payment be made during the disability to any dependant of the workman or to any other person whom the Commissioner thinks best fitted to provide for the welfare of the workman.

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

   Provided that no such order prejudicial to any person shall be made unless such person has been given an opportunity of showing cause as to why the order should not be made, or shall be made in any case in which it would involve the repayment by a dependant of any sum already paid to him.

If an employer is in default, in the payment of compensation within one month from the date it fell due, the Commissioner may direct the recovery of not only the amount of the arrears but also a simple interest at the rate of 6 per cent per annum on the amount due. If, in the opinion of the Commissioner, there is no justification for the delay, an additional sum, not exceeding 50 per cent of such amount, may be recovered from the employer by way of penalty (Section 4-A).

Notice, Claim and Appeal

To get compensated, notice of accident, claim and if need be appeal are needed. The legal provisions are presented here below.

1. No claim for compensation shall be entertained by a Commissioner unless 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:

   Provided that where the accident is the contracting of a disease in respect of which the provisions of sub-section (2) of section 3 are applicable the accident shall be deemed to have occurred on the first of the days during which the workman was continuously absent from work in consequence of the disablement caused by the disease:

   Provided further that in case of partial disablement due to the contracting of any such disease and which does not force the workman to absent himself from work the period of two years shall be counted from the day the workman gives notice of the disablement to his employer:

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Provided further that if a workman who, having been employed in an employment for a continuous period, specified under sub-section (2) of section 3 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:

Provided further that 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 a workman resulting from an accident which occurred on the premises of the employer, or at any place where the workman at the time of the accident was working under the control of the employer or of any person employed by him, and the workman 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 person responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed had knowledge of the accident from any other source at or about the time when it occurred: Provided further that 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 so to give the notice or prefer the claim, as the case may be, was due to sufficient cause

2. 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 workman was employed.

3. The State Government may require that any prescribed class of employers shall maintain at these premises al which workmen are employed a notice book, in the prescribed form, which shall be readily accessible al all reasonable times to any injured workman employed on the premises and lo any person acting bona fide on his behalf.

4. 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 (he person on whom it is to be served, or, where a notice book is maintained, by entry in the notice book.

If the compensation is not paid by the employer, the workman concerned or his dependants may claim the same by filing an application before the

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Commissioner for Workmen's Compensation. The claim shall be filed within a period of two years of the occurrence of the accident or death. The application which is filed after the period of limitation can be entertained if sufficient cause exists. An appeal will lie to the High Court against certain orders of the Commissioner if a substantial question of law is involved. An appeal by an employer against an award of compensation is incompetent unless the memorandum of appeal is accompanied by a certificate that the employer has deposited the amount of such compensation. Unless such a certificate accompanies the memorandum of appeal, the appeal cannot be regarded as having been validly instituted. The period of limitation for an appeal under Section 30 is sixty days (Sections 10 and 30).

Administration

The Act is administered by state governments. The state governments are required to appoint a Commissioner for Workmen's Compensation. The functions of the Commissioner include the following:

(i) Settlement of disputed claims

(ii) Disposal of cases of injuries involving death

(iii) Revision of periodical payments (Section 20)

The Commissioner may recover as an arrear of land revenue any amount payable by any person under this Act, whether under an agreement for the payment of compensation or otherwise (Section 31).

The Act made provision for the framing of the rules by the State and Central Government and also their publication (Section 32-36).

Disposal of Cases of Injuries

All cases of fatal accidents should be brought to the notice of the Commissioner for Workmen's Compensation; and if the employer admits the liability, the amount of compensation payable should be deposited with him. Where the employer disclaims his liability for compensation to the extent claimed, he has to make provisional payment based on the extent of liability that he accepts, and such payment must be deposited with the Commissioner or paid to the workman. In such cases, the Commissioner may, after such enquiry as he thinks fit, inform the dependants that it is open to them to prefer a claim and may give such other information as he thinks fit. Advances by the employers against compensation are permitted only to the extent of an amount equal to 3 months' wages. He is also empowered to deduct an amount not exceeding ₹ 50 from the amount of compensation in order to indemnify the person who incurred funeral expenses. The employer is required to file annual returns giving details of the compensation paid, the number of injuries and other particulars (Sections 4A, 8 and 16).

The amount deposited with the Commissioner for Workmen's Compensation is payable to the dependants of the workman. The amount of compensation is to

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be apportioned among the dependants of the deceased workman or any of them in such the section of the Commissioner thinks fit (Sections 2 and 8), therefore, the employer is liable to pay compensation (*Director DNK Project* v. *Smt. D. Buchitalli* 1989 I LLJ 259).

A jeep driver of Maharashtra State Land Development Bank took the officers of the bank to a village in connection with recovery proceedings conducted by the bank. He rested the jeep in the rest house and went to the market where he was assaulted by some unknown persons in the crowd and was found dead. It was held to be an accident arising out of and in the course of employment and the bank is liable to pay compensation (*Salmabegum* vs. *D.B. Manager* 1990 I LLJ 112).

PWD engaged a contractor for the construction of a canal. The contractor engaged workmen to do the work. Two workmen died in a landslide while at work. PWD as principal, is liable to pay compensation and workmen or their dependants cannot claim compensation from either of them at their option (*K. Koodalingam* vs. *S.E. & Ors.* 1995 I LLJ 334).

Statements Regarding Fatal Accidents

10-A. Power to require from employers statements regarding fatal accidents—

1. Where a Commissioner receives information from any source that a workman 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 workmen's employer requiring him to submit, within thirty days of service of the notice, a statement, in the prescribed form, giving the circumstances attending the death of the workman, and indicating whether, in the opinion of the employer, he is not liable to deposit compensation on account of the death.
2. If the employer is of opinion that he is liable to deposit compensation, he shall make the deposit within ten days of the service of the notice.
3. 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.
4. 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 workman 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.

10-B. Reports of fatal accident—

1. 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 on his premises which results in death, the person required to give the notice shall, within seven days of the death, send a report to the Commissioner giving the circumstances attending the death:

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Provided that where the [Provincial Government] has so prescribed, the person required to give the notice may instead of sending such report to the Commissioner send it to the authority to whom he is required to give the notice.

2. The [Provincial- Government] may, by notification in the [official Gazette], extend the provisions of sub-section (1) to any class of premises other than those coming within the scope of the sub-section, and may, by such notification, specify the persons who shall send the report to the Commissioner].

Medical Examination

(1) Where a workman has given notice of an accident, the employer shall, before the expiry of three days from the time at which service of the notice has been effected, have the workman examined free of charge by a qualified medical practitioner, and the workman shall submit himself for such examination, and any workman who is in receipt of a half-monthly payment under this Act, shall if so required, submit himself for such examination from time to time.

Provided that a workman not examined free of charge as aforesaid may get himself examined by a qualified medical practitioner and the expenses of such medical examination shall be reimbursed to the workman by the employer.

Provided further that a workman shall not be required to submit himself for examination by a medical practitioner otherwise than in accordance with rules made under this Act, or at more frequent intervals than may be prescribed].

(2) If a workman, on being required to do so by the employer under sub-section (1) or by the Commissioner at any time, 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 continuance of such refusal or obstruction unless, in the case of refusal, he was prevented by any sufficient cause from so submitting himself.

(3) If a workman, before the expiry of the period within which he is liable under subsection:

(1) to be required to submit himself for medical examination 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 offers himself for such examination.

(4) Where a workman, whose right to compensation has been suspended under sub-section (2) or sub-section (3), 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 dependents of the deceased workman.

(5) Where under sub-section (2) or sub-section (3) 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 (1) of section 4, the waiting period shall be increased by the period during which the suspension continues.

(6) Where an injured workman 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 deliberately disregarded the instructions of such medical practitioner, then, [if it is proved that the workman has not thereafter been regularly attended by a qualified medical practitioner or having been so attended has 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 workman had been regularly attended by a qualified medical practitioner [whose instructions he had followed], and compensation, if any, shall be payable accordingly.

Check Your Progress

1. To whom is the compensation sum deposited?
2. What is the main requirement in order to get compensated?
3. What is the action to be taken if the compensation is not paid by the employer?
4. What are the functions of the Commissioner?
5. What is the time limit within which workman needs to be examined following notice of accident?

4.3 REMEDIES OF EMPLOYER AGAINST STRANGER

Where a workman has recovered compensation in respect of any injury caused under circumstances creating a legal liability of some person other than the person by whom the compensation was paid to pay damages in respect thereof, the person by whom the compensation was paid and any person who has been called on to pay an indemnity under section 12 shall be entitled to be indemnified by the person so liable to pay damages as aforesaid.

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Liability in the Event of the Company in Winding-up Proceedings

1. Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any workman, 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 workman, 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 workman than they would have been under to the employer.
2. If the liability of the insurers to the workman is less than the liability of the employer to the workman, the workman may prove for the balance in the insolvency proceedings or liquidation.
3. 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 primia), the provision 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 workman: Provided that the provisions of this sub-section shall not apply in any case in which the workman fails to give notice to the insurers of the happening of the accident and of any resulting disablement as soon as practicable after he becomes aware of the insolvency or liquidation proceedings.
4. There shall be deemed to be included among the debts which under section 49 of the [Insolvency (Karachi Division) Act.], 1909 (III of 1909)], or under section 230 of [the Companies Act, 1913 (VII of 1913).] are in the distribution of the property of an insolvent or in the distribution of the assets of a company being wound up to be paid to priority to all other debts, the amount due in respect of any compensation the liability wherefore 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.
5. Where the compensation is a half-monthly payment, the amount due in respect thereof shall, for the purpose 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.

6. The provisions of sub-section (4) shall apply in the case of any amount for which an insurer is entitled to prove under sub-section (3) but otherwise those provisions shall not apply where the insolvent or the company being wound up has been entered into such a contract with insurers as is referred to in sub-section (1).
7. This section shall not apply where a company is wound up voluntarily merely for the purpose of reconstruction or of amalgamation with another company.

NOTES

4.4 RETURNS AS TO COMPENSATION

Employer's liability for compensation. — (1) If personal injury is caused to workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this chapter;

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 workman for a period exceeding [four] days.

(b) in respect of any [injury, not resulting in death, caused by] an accident which is directly attributable to—

(i) the workman having been at the time thereof under the influence .of drink or drugs, or

(ii) the willful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or

(iii) the willful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen.

(2) [If a workman employed in any employment specified in Part A of Schedule III contracts any disease specified therein as an occupational disease peculiar to that employment] or if a workman, whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months in any employment specified in [Part 8 of] Schedule III, contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section and, unless the employer proves the contrary, the accident shall be deemed to have arisen out of and in the course of the employment.

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Check Your Progress

6. What happens if the liability of the insurer to the workman is less than the liability of the employer to the workman?
7. What is the action to be taken if the employer becomes insolvent?

4.5 COMMISSIONERS FOR WORKMEN'S COMPENSATION

The Act provides for appointment of commissioners for workmen compensation. The provisions are as below.

Sec. 20 Appointment of commissioners:

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

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

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

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

Form of application:

(1) Where an accident occurs in respect of which liability to pay compensation under this Act arises, a claim for such compensation may, subject to the provisions of this Act, be made before the Commissioner.

(1A) Subject to the provisions of sub-section (1), no application for the settlement] of any matter by Commissioner other than an application by a dependant or dependants for compensation,] shall be made unless and until some question has arisen between the parties in connection therewith which they have been unable to settle by agreement.

(2) 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 or order which the applicant claims;

(b) in the case of a claim for compensation against an employer, the 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 dependants for compensation a concise statement of the matters on which agreement has and of those on which agreement has not been come to.

(3) 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.

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

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

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

Check Your Progress

8. Which is the section that deals with the appointment of commissioners?
9. What happens when there are many commissioners for one area?
10. What are the powers of the commissioner?

4.6 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

NOTES

1. The compensation is always deposited with the Commissioner.
2. To get compensated, notice of accident, claim and if need be appeal are needed.
3. If the compensation is not paid by the employer, the workman concerned or his dependants may claim the same by filing an application before the Commissioner for Workmen's Compensation.
4. The Commissioner has to do the following:
   (i) Settle disputed claims
   (ii) Dispose of cases of injuries involving death
   (iii) Revise periodical payments
5. Where a workman has given notice of an accident, the employer shall, before the expiry of three days from the time at which service of the notice has been effected, have the workman examined free of charge by a qualified medical practitioner, and the workman shall submit himself for such examination, and any workman who is in receipt of a half-monthly payment under this Act, shall if so required, submit himself for such examination from time to time.
6. If the liability of the insurers to the workman is less than the liability of the employer to the workman, the workman may prove for the balance in the insolvency proceedings or liquidation.
7. Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any workman, 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 workman, 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 workman than they would have been under to the employer.
8. Section 20 of the Workmen's Compensation Action deals with the appointment of commissioners.

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9. Where more than one Commissioner has been appointed for any area, the State Government may, by general or special order, regulate the distribution of business between them.
10. The Commissioner shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (V of 1908), for the purpose of taking evidence on oath (which such commissioner is hereby empowered to impose) and of enforcing the attendance of witnesses and compelling the production of documents and material objects, [and the Commissioner shall be deemed to be a Civil Court for all the purposes of section 195 and of Chapter XXXV of the Code of Criminal Procedure, 1898 (V of 1898)].

4.7 SUMMARY

- Payment of compensation to a deceased worker's family or an injured worker has to be done through the Commissioner alone.
- In the case of a deceased workman, an employer may make to any dependent advances on account of compensation of an amount equal to three months' wages of such workman or an amount that does not exceed the compensation payable to that dependent shall be deducted by the Commissioner from such compensation and repaid to the employer.
- The commissioner has the right to call the dependents of a deceased worker on a fixed date to determine the compensation and how it is to be given.
- If the employer is of opinion that he is liable to deposit compensation, he shall make the deposit within ten days of the service of the notice.
- 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.
- Where a workman has given notice of an accident, the employer shall, before the expiry of three days from the time at which service of the notice has been effected, have the workman examined free of charge by a qualified medical practitioner, and the workman shall submit himself for such examination, and any workman who is in receipt of a half-monthly payment under this Act, shall if so required, submit himself for such examination from time to time.
- Where an injured workman 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 deliberately disregarded the instructions of such medical practitioner, then, [if it is proved that the workman has not thereafter been regularly attended by a qualified medical practitioner or having been so attended has 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 workman had been regularly attended by a qualified medical practitioner [whose instructions he had followed], and compensation, if any, shall be payable accordingly.

- Section 20 of the Act provides for appointment of commissioners for workmen compensation.
- Any Commissioner may, for the purpose of deciding any matter referred to him for decision under this Act, choose one or more persons possessing special knowledge of any matter relevant to the matter under inquiry to assist him in holding the inquiry.
- Every Commissioner shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860).
- The Commissioner shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (V of 1908), for the purpose of taking evidence on oath (which such commissioner is hereby empowered to impose) and of enforcing the attendance of witnesses and compelling the production of documents and material objects.

4.8 KEY WORDS

- **Commissioner:** It refers to a representative of the supreme authority in an area.
- **Liability:** It means the state of being legally responsible for something.
- **Fatal:** It means something that results in death.

4.9 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. List the points under the Workmen's Compensation Act, 1923 to demand employer's statements regarding fatal accidents.
2. What are the powers of the commissioners?
3. What action is taken if an injured workman refuses medical examination?
4. State the rules laid down for reporting fatal accidents.

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Long-Answer Questions

1. Discuss the liability of the company in the event of winding-up proceedings.
2. Discuss the provisions of medical examination of a workman under the Act.
3. Write a note on Returns as to Compensation.

4.10 FURTHER READINGS

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BLOCK II
INDUSTRIAL DISPUTES ACT AND
UNFAIR PRACTICES ACT

UNIT 5 INDUSTRIAL DISPUTES ACT, 1947-I

Structure

5.0 INTRODUCTION

The Industrial Disputes Act, 1947 was created with the aim of securing industrial peace and harmony by providing machinery and set procedures to investigate and settle industrial disputes through conciliation, arbitration and adjudication machinery as provided under the statute.

In this unit, you will be made familiar with industrial disputes and the authorities that settle these disputes. You will also learn about arbitrators and their conduct.

5.1 OBJECTIVES

After going through this unit, you will be able to:

- Define the word 'industry'
- Explain what industrial disputes are and how they are settled
- Describe the role of arbitrators
- Explain the significance of grievance procedures
- Describe the conduct expected from arbitrators
- State the conditions that arbitration agreements are expected to fulfil

5.2 INDUSTRIAL DISPUTE

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Let us begin by understanding what the word 'industry' means.

'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.

According to the Supreme Court, this term would cover professions such as those of lawyers, etc., clubs, educational institutions such as universities, co-operatives, research institutes, charitable projects and other kindred ventures, if they are being carried on as systematic activities organized through co-operation between the employer and employee for the production and/or distribution of goods and services, calculated to satisfy human wants and wishes, not being spiritual or religious, but inclusive of material things or services goaded to celestial bliss, *i.e.* making on a large scale, *prasad* or food. It also includes welfare activities or economic ventures or projects undertaken by the Government or statutory bodies, and the discharge of sovereign functions by Government departments if there are units that are 'Industries' and that are substantially severable. Thus, the State Insurance and Provident Fund Departments of the Government and godowns of the Food Corporation of India have been held to be an 'industry'.

In view of the Supreme Court's decision, the definition of 'industry' is proposed to be elaborated.

As per the proposed definition, 'industry' includes activities of the Dock Labour Board, sales and/or business promotion activities and agricultural operations carried on in an integrated manner with some other predominant industry/activity.

However, as per the proposed definition, 'industry' shall not include purely/mainly agricultural activities, hospitals, dispensaries, educational, scientific, research or training institutions, charitable, social or philanthropic institutions, khadi or village industries, sovereign functions of the Government dealing with defence, research, atomic energy and space, domestic services, professional activities and activities of a co-operative society, club or other such body, if the number of persons employed by these is less than ten.

What is an industrial dispute?

An **'industrial dispute'** means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is related to the employment or non-employment or the terms and conditions of employment of any person.

An 'industrial dispute' must necessarily be a dispute in an industry. An 'industrial dispute' has three constituents, *viz.*

(a) There should be real and substantial dispute or difference

(b) The dispute or difference must be between employers and/or workmen

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(c) The dispute or difference must be connected with the employment or non-employment or terms of employment, or with the conditions of labour of any person

Besides, all disputes relating to the matters specified in Schedules II and III shall also constitute 'industrial dispute'. These are:

(i) The propriety or legality of an order passed by an employer under the Standing Orders

(ii) The application and interpretation of Standing Order

(iii) Discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed

(iv) Withdrawal of any customary concession or privilege

(v) Illegality or otherwise of a strike or lock-out

(vi) Wages including the period and mode of payment

(vii) Compensatory and other allowances

(viii) Hours of work and rest intervals

(ix) Leaves with wages and holidays

(x) Bonus, profit sharing, provident fund and gratuity

(xi) Shift working otherwise than in accordance with Standing Orders

(xii) Classification by grades

(xiii) Rules of discipline

(xiv) Rationalization

(xv) Retrenchment of workmen and closure of establishment

Further, the following disputes have been held to be industrial disputes:

(a) Allegation of wrongful termination of services

(b) Compulsory retirement of employee

(c) Claim for reinstatement of dismissed workmen

(d) Dispute connected with minimum wages

(e) Disputes regarding payments to be made under Production Bonus Scheme

(f) Claim for compensation for wrongful dismissal

(g) Disputes regarding interpretation of Standing Orders

(h) Disputes relating to lock-out or *bona fide* and genuine closure of business

(i) Non-implementation of award and claim for compensation payable by workmen to the employer for loss caused by strike

(j) Demand of an employee relating to his confirmation on a post holding in an acting capacity

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Who can raise a dispute?

A dispute is said to have arisen when some demand is made by workmen and it is rejected by the management or vice versa, and the demand relates to the employment. The Act says that a workman can raise a dispute. However, it is pertinent to note that a dispute between an employer and a single workman does not fall under the preview of 'industrial dispute', but if the workmen as a body or a considerable section of them make a common cause with the individual workman, then such a dispute would be an industrial dispute. A dispute arising between a workman and the employer, if espoused by a body of workers, assumes the nature and character of an industrial dispute. Thus, an 'industrial dispute' is a collective dispute supported by either a trade union or a substantial number of fellow workers. The word collective does not mean substantial majority. However, where only 5 out of 60, *i.e.* 1/12th of the employees in the establishment espouse the cause of the dismissed workmen, it cannot be considered an appreciable or substantial body of workmen for constituting the dispute as an industrial dispute.

However, certain individual disputes relating to dismissal, discharge, retrenchment or termination of services of a workman, are also covered under this Act, since the Act applies even to industrial establishments employing a single workman. But dispute in relation to a person who is not a 'workman' within the meaning of the Act is not an industrial dispute under Section 2(k).

Check Your Progress

1. What is meant by 'industry'?
2. What is an industrial dispute?
3. List the constituents of an industrial dispute.
4. Give two examples of industrial dispute.

5.3 AUTHORITIES FOR SETTLEMENT OF INDUSTRIAL DISPUTES

Experience shows that in the day-to-day running of business the disputes between the employer and workman are resolved by the administrative process referred to as grievance procedure. The Indian Labour Conference has also adopted a similar concept of a grievance in its following recommendations: Complaints, affecting one or more individual workers in respect of their wage payments, overtime, leave, transfer, promotion, seniority, work assignment, working conditions and interpretation of service agreement, dismissal and discharges would constitute grievance. Where the points of dispute are of general applicability or of considerable magnitude, they will fall outside the scope of grievance procedure.

The aforesaid concept has also been adopted in the guiding principles for a grievance procedure appended to the Model Grievance Procedure in India. Further,

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clause 15 of the Model Standing Orders in Schedule I of the Industrial Employment (Standing Orders) Central Rules, 1946, specifies that 'all complaints arising out of employment including those relating to unfair treatment or wrongful exaction on the part of the employer or his agent, shall be submitted to the manager or the other person specified in this behalf with the right to appeal to the employers.' Moreover, the state governments have framed rules under the Factories Act, 1948 requiring a welfare officer to ensure the settlement of grievances.

The Voluntary Code of Discipline adopted by the Sixteenth Session of the Indian Labour Conference in 1958 also provides that: (*a*) the management and unions will establish, upon a mutually agreed basis, a grievance procedure which will ensure a speedy and full investigation leading to settlement, and (*b*) they will abide by the various stages in the grievance procedures. However, there is no legislation in force that provides for a well-defined and adequate procedure for redressal of day-to-day grievances in industrial establishment. In order to meet the shortcoming, the Industrial Disputes (Amendment) Act, 1982, provides for the setting up of the Grievance Settlement Authorities and the reference of certain individual disputes to such authorities. Section 9C of the amended Act provides:

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

(2) Where an industrial dispute connected with an individual workman arises in an establishment referred to in sub-section (1), a workman or any trade union of workmen of which such workman is a member, refer, in such manner as may be prescribed such dispute to the Grievance Settlement Authority provided for by the employer under that sub-section for settlement.

(3) The Grievance Settlement Authority referred to in sub-section (1) shall follow such procedure and complete its proceedings within such period as may be prescribed.

(4) No reference shall be made under Chapter III with respect to any dispute referred to in this section unless such dispute has been referred to the Grievance Settlement Authority concerned and the decision of the Grievance Settlement Authority is not acceptable to any of the parties to the dispute.

The Industrial Disputes (Amendment) Act, 1982 excludes hospitals, educational institutions, institutions engaged in any charitable, social or philanthropic service, khadi or village industries and every institution performing sovereign function. For these institutions, the Hospitals and other Institutions (Settlement of Disputes) Bill, 1982, enjoins upon an employer to constitute, within a specified period, a Grievance Settlement Committee for the resolution of individual disputes

and a Consultative Council and a Local Consultative Council for the resolution of industrial disputes of a collective nature. The Bill also provides for the arbitration of disputes not resolved by teh Grievance Settlement Committee or the Local Consultative Council or Consultative Council. However, these provisions of the Industrial Disputes (Amendment) Act, 1982, have not yet been enforced, presumably because the Hospitals and other Institutions (Settlement of Disputes) Bill, 1982 has not so far been passed. Further, no rules have been framed under the unenforced Section 9C. The (Second) National Commission on Labour has recommended that a Grievance Redressal Committee for organizations employing 20 or more workers be constituted.

Conciliation

Conciliation is a persuasive process of settling industrial disputes. It is a process by which a third party persuades disputants to come to an equitable adjustment of claims. The third party, however, is not himself a decision maker—he is merely a person who helps the disputants through persuasion to amicably adjust their claims. The ultimate decision is of the disputants themselves. For this purpose the Industrial Disputes Act, 1947, provides for the appointment of conciliation officers and the constitution of a Board of Conciliation by the appropriate government for promoting the settlement of industrial disputes. For the successful functioning of the conciliation machinery, the Act confers wide powers and imposes certain duties upon them.

Conciliation as a mode of settling industrial disputes has shown remarkable success in many industrialized countries. It is said that it has proved to be a great success in Sweden.

In India, it has generally been reported that conciliation machinery has played an important role in resolving industrial disputes. Statistics no doubt support this claim. During 1959–66, the percentage of disputes settled by conciliation machinery varied from 57 to 83 in the central sphere. During 1988, 10,106 disputes were referred to conciliation officers out of which the number of failure report received was 3,183 in the central sphere. The failure report of conciliation was 2,691 out of 4,685 cases referred to conciliation in Haryana, 336 out of 2,126 referred in Karnataka, 4,471 out of 9,918 referred in Punjab, 4,430 out of 4,530 in Delhi and 22 out of 230 cases referred to conciliation in Goa. During 1997, CIRM intervened in 783 cases of threatened strikes and its conciliatory efforts succeeded in averting 696 strikes, which represents a success rate of 88.88 per cent.

The statistics of the working of the conciliation machinery, however, reveal that the conciliation machinery on the whole is satisfactory in many states. It has, however, made no remarkable success in India. Several factors may be accounted for the same. *First*, failure of conciliation proceeding may lead to the reference to adjudicating authorities under the Industrial Disputes Act, 1947. *Second*, lack of proper personnel, inadequate training and low status enjoyed by conciliation officers and too frequent transfer of conciliation officers result in the failure of conciliation. *Third*, undue emphasis on legal and formal requirements also leads to the failure of

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conciliation. *Fourth*, considerable delay in concluding the conciliation proceedings also makes the conciliation machinery ineffective. *Fifth*, the failure of the conciliation machinery has been attributed to lack of adequate powers of conciliation authorities.

Conciliation Authorities

1. Constitution of Conciliation Authorities

(*a*) *Appointment of Conciliation Officer*. Under Section 4 the appropriate government is empowered to appoint conciliation officers for promoting the settlement of industrial disputes. These officers are appointed for a specified area or for specified industries in a specified area or for one or more specified industries, either permanently or for a limited period.

(*b*) *Constitution of Board of Conciliation.* Where the dispute is of a complicated nature and requires special handling, the appropriate government is empowered to constitute a Board of Conciliation. Boards are preferred to conciliation officers. However, in actual practice it has been found that Boards are rarely constituted. Under Section 10(1) (a) the appropriate Government is empowered to refer the existing or apprehended dispute to a Board. The Board is constituted on an *ad hoc* basis. It consists of an independent person as Chairman and one or two nominees respectively of employers and workmen. The Chairman must be an independent person. A quorum is also provided for conducting the proceedings.

2. Qualifications and Experiences

Unlike the adjudicating authorities, the Act does not prescribe any qualification and/or experience for a conciliation officer or a member of a board of Conciliation. A report of the study committee of the [First] National Commission on Labour, however, reveals that one of the causes of failure of the conciliation machinery is lack of proper personnel in handling the dispute. The conciliation officer is sometimes criticized for being unaware of industrial life and not having received the requisite training. It is therefore suggested that the Act should prescribe the qualification and experience for the conciliation officer, which may include proper and adequate training and adequate knowledge of handling labour problems.

3. Filling of Vacancies

The proviso to Section 5(4) requires that where the services of the chairman or any other member have ceased to be available, the Board shall not function until the appointment of the Chairman or member, as the case may be is made. Section 8 deals with the manner in which the vacancy in the office of chairman or other member of a Board is to be filled.

4. Jurisdiction

Conciliation officers are appointed by the Central and State Government for industries that fall within their respective jurisdiction.

Check Your Progress

5. What is meant by grievance procedure?
6. What is the purpose of the grievance procedure?
7. What is meant by 'conciliation'?
8. Who appoints conciliation officers?

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5.4 REFERENCE OF INDUSTRIAL DISPUTES

Process Involved in Reference of Dispute to Voluntary Labour Arbitrator

Choice of Dispute Settlement

Section 10A (1) of the Industrial Disputes Act, 1947 authorizes the parties to refer to the voluntary arbitrator. But before the reference may be made to the arbitrator, four conditions must be satisfied:

1. The industrial dispute must exist or is apprehended
2. The agreement must be in writing
3. The reference must be made before a dispute has been referred under Section 10 to a Labour Court, Tribunal or National Tribunal
4. The name of arbitrator/arbitrators must be specified

The Conditions Precedent

A perusal of the aforesaid provisions may conveniently be delineated with reference to:

1. ***Parties to Arbitration.*** Under the Industrial Disputes Act, 1947, a reference to the voluntary arbitrator under Section 10 A can only be made if a dispute arises between employers and employers, or between employers and workmen, or between workmen and workmen.
2. ***Subject-Matter of Reference.*** The Industrial Disputes Act, 1947 seeks to resolve industrial disputes. The parties can only make a reference of an 'industry dispute' to an arbitrator. If, for instance, parties refer a dispute, which is not an 'industrial dispute' the arbitrator will have no jurisdiction to make a valid award.
3. ***Time for Making the Agreement.*** Section 10A of the Industrial Disputes Act, *inter alia*, provides that the reference to the arbitrator should be made at any time before the dispute has been referred under Section 10 to a Labour Court, Tribunal or National Tribunal.

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Selection of Arbitrator

The next phase is the selection of the arbitrator. The parties acting under Section 10A are required to select any person or persons including the presiding officer of a Labour Court, Tribunal or National Tribunal to arbitrate in a dispute. Further, the parties may select or appoint as many arbitrators as they wish. However, where a reference is made to an even number of arbitrators, the parties, by agreement, should provide for the appointment of an umpire who shall enter upon the reference and if the arbitrators are equally divided in their opinion, the award of umpire shall prevail and be deemed to be the 'award'. However, Section 10A, unlike the 'procedure for voluntary arbitration of labour disputes' as approved by the National Arbitration Promotion Board or Section 7 (1) of the Industrial Relations Bills, 1978, does not provide for any agreement if the parties on their own fail to agree to an arbitrator or arbitrators.

Arbitration Agreement

1. ***Agreement must be in writing.*** Once the parties agree to refer the dispute to arbitration, they are required to make such an arbitration agreement in writing.
2. ***Form of the Agreement.*** The other requirement of Section 10A (2)(d) is that the arbitration agreement should be in the prescribed form and Rule 7 of the Industrial Disputes (Central) Rules, 1957, provides that it should be in Form C. How far and to what extent the aforesaid requirement should be complied with formed the subject matter of dispute in *North Orissa Workers' Union* v. *State of Orissa*. The Court held that it is not necessary that the agreement must be made in the prescribed form 'C'. It would be enough if the requirements of that form are substantially complied with.
3. ***Signature of the Parties.*** Section 10A (2) further requires that an arbitration agreement be signed by the parties thereto in such manner as may be prescribed in the rules framed by the appropriate government. However, decided cases reveal that the validity of the award or arbitration agreement has often been questioned on the basis of non-compliance of signature of all parties on the arbitration agreement. This has been a ground for not issuing the notification by the appropriate government and enabling the government to refer such disputes to labour tribunals. This tendency of the appropriate government has, however, been scrutinised by the judiciary.
4. ***Consent of Arbitrator(s).*** Even though the Act does not expressly require that the arbitration agreement be accompanied by the consent of the arbitrator, the Industrial Disputes (Central) Rule, 1957 stipulates that the arbitration agreement be accompanied by consent, in writing, of the arbitrator or arbitrators. But for our purposes, it is enough if there is substantial compliance with this rule.

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5. ***Submission of the Copy of Arbitration Agreement.*** Once an arbitration agreement has been entered into and executed in the prescribed form under Section 10A, a copy of the arbitration agreement shall be forwarded to the appropriate government and the conciliation officer. Non-submission of a copy of the arbitration agreement to the appropriate government would make the award made thereon outside the purview of Section 10A of the Industrial Disputes Act, 1947 because Section 10A (4) is interlinked with Section 10A (3) and only on satisfaction of the mandates of Section 10A would there be an investigation into the dispute and only then would the award be made by the Arbitrator and then forwarded to the appropriate government.

6. ***Publication of Arbitration Agreement.*** The appropriate government comes into the picture in the process of reference to the arbitrator only after the receipt of a copy of a valid arbitration agreement. If this is done:

> .... the appropriate Government shall, within one month from the date of the receipt of such copy publish the same in the official Gazette.
>
> The aforesaid provision raises a question whether the publication of the agreement is mandatory or directory. A corollary of this issue is whether the appropriate government can override the wishes of the parties to refer the matter to the arbitration by making a reference to the Labour Court, Tribunal or National Tribunal. This issue may be discussed under two heads: (*i*) Publication of arbitration agreement, and (*ii*) Time of publication.

(*a*) *Publication of Arbitration Agreement.* In *Karnal Leather Karamchari Sangathan* v. *Liberty Footwear Co.*, the Supreme Court was invited to consider whether the publication of the arbitration agreement under Section 10A(3) is obligatory. The Supreme Court answered the question in the affirmative and observed:

> The voluntary arbitration is a part of the infrastructure of dispensation of justice in the industrial adjudication. The arbitrator thus falls within the rainbow of statutory tribunals. When a dispute is referred to arbitration, it is therefore, necessary that the workers must be made aware of the dispute as well as the arbitrator whose award ultimately will bind them. They must know what is referred for arbitration who is their arbitrator and what is in store for them. They must have an opportunity to share their views with each other and if necessary place the same before the arbitrator.

The Court held that the arbitration agreement must be published before an arbitrator considers the merits of the disputes. Non-compliance with this requirement will be fatal to the arbitration award.

(*b*) *Time for Publication.* The high courts are divided on the issue of whether the requirement of publication of agreement within one month is mandatory or directory. While the Division Bench of the Madhya Pradesh High Court in *K.P. Singh* v. *S.K. Gokhale* and the Orissa High Court in *North Orissa Workers' Union* v. *State of Orissa* has

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taken the view that the requirement is mandatory, the High Court of Punjab and Haryana in *Landra Engineering and Foundary Workers* v. *Punjab State*, the Delhi High Court in *Mineral Industrial Association* v. *Union of India*, Madhya Pradesh High Court in *Modern Stores Cigarettes* v. *Krishnadas Shah* and *Aftab-e-Jadid, Urdu Daily Newspapers* v. *Bhopal Shramjivi Patrakar Sangh* have taken the opposite view and held that the requirement is only directory. The decisions of these three high courts, which held the provisions to be directory said:

> ... on the true construction of ... Section 10A(3) that the other requirement namely, its notification within one month from its receipt is only directory and not imperative.

Voluntary Labour Arbitrator

1. ***Nature of Voluntary Arbitrator.*** It is exceedingly difficult to maintain a distinction between a statutory and a private arbitrator on the basis of nomenclature because both are products of statute: the former is made under the Industrial Disputes Act, 1947 while the latter under the Arbitration Act, 1940. But such distinction has not come to stay through a series of judicial decisions. Thus, in *R. V. National Joint Council for the Craft of Dental Technicians*, Chief Justice Goodard drew such a distinction when he said:

   > There is no instance of which I know in the books, where *certiorari* or prohibition has gone to any arbitrator, except a statutory arbitrator, and a statutory arbitrator is a person to whom by statute, the parties must resort.

   The aforesaid distinction was adopted by the Supreme Court in *Engineering Mazdoor Sabha* v. *Hind Cycles Ltd.* wherein Justice Gajenderagadkar introduced the concept of 'statutory arbitrator' in India by holding that:

   > Having regard to several provisions contained in the Act and rules framed thereunder, an arbitrator appointed under Section 10A cannot be treated to be exactly similar to a private arbitrator to whom a dispute has been referred under an arbitration agreement under the Arbitration Act. The arbitrator under Section 10A is clothed with certain powers. His procedure is regulated by certain rules and the award pronounced by him is given by statutory provisions a certain validity and a binding character for a specified period. Having regard to these provisions, it may perhaps be possible to describe such an arbitrator in a loose sense, a statutory arbitrator.

2. ***Conduct of the Arbitrator.*** The Industrial Disputes Act, 1947 does not prescribe how the conduct of the arbitrator should be regulated. However, the decided cases of the Supreme Court and high courts reveal that an arbitrator should be impartial and he must build up a relationship of confidence with both the parties. Thus, he or any of his near relatives should not accept any hospitality or favour from any party to the disputes before him, because justice should not only be done but it must be seen to be

done. If he does accept any such favours, that would be an act of misconduct. Similarly, if he does not hear the party or exceeds his jurisdiction or fails to determine an important question referred to him, his decision is liable to be interfered.

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3. ***Jurisdiction of the Voluntary Arbitrator.*** An arbitrator under Section 10A comes into existence when appointed by the parties and he derives his jurisdiction from the agreement of the parties. If the arbitrator decides matters not referred to him by the parties, he acts beyond his jurisdiction. For instance, in *Raza Textile Labour Union* v. *Mohan*, three disputes upon which the arbitrator gave the award were not covered by 167 matters of disputes which were referred to him. The Court quashed the award as these matters were beyond the jurisdiction of the arbitrator. Similarly, in *Rohtas Industries Ltd.* v. *Workmen,* the Patna High Court held that the award regarding dearness allowance was vitiated by the fact that it was not in accordance with the terms of agreement. Likewise, the Madras High Court in *Vaikuntam Estate* v. *Arbitrator* quashed the interim award of the arbitrator where he exceeded the terms of reference. Further, unlike the jurisdiction of adjudicatory bodies, the arbitrator cannot arbitrate upon matters 'incidental to' or 'any matter appearing to be connected or relevant' to the dispute. But unlike the adjudicatory authorities under the Act, the arbitrator has a wider power to decide upon all 'industrial dispute' referred to him under an arbitration agreement irrespective of whether it falls under Schedule II or III of the Industrial Disputes Act, 1947.

4. ***Powers of Arbitrator.*** Section 11A merely provides:

> Where an industrial dispute relating to the discharge or dismissal of a workmen 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 of dismissal as the circumstances of the case may require.

It does not specifically mention 'arbitrator'. It, therefore, raises a question whether the arbitrator has the power to interfere with the punishment awarded by the management under Section 11A. Justice Krishna Iyer in *Gujarat Steel Tubes Ltd*. v. *Gujarat Steel Tubes Mazdoor Sabha* answered the question in the affirmative. He stated:

> Section 11 did clothe the arbitrator with similar powers as tribunals, despite the doubt created by the abstruse absence of specific mention of 'arbitrator' in Section 11 A.

In *Rajinder Kumar* v. *Delhi Administration*, the Supreme Court explained the powers of the Arbitrator and the Supreme Court:

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In exercise of the jurisdiction conferred by Section 11A of the Industrial Disputes Act, 1947 both arbitrator and ... (the Supreme Court) can reappraise the evidence led in the domestic enquiry and satisfy themselves whether the evidence led by the employer established misconduct against the workman. It is too late in the day to contend that the arbitrator has only the power to decide whether the conclusions reached by the enquiry officer were plausible one deducible from the evidence led in the enquiry and not to re-appraise the evidence itself and to reach the conclusion whether the conduct alleged against the workman has been established or not.

The Court added:

Where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man would come, the arbitrator appointed under Section 10A or this court in appeal under Art 136 can reject such findings as perverse. The industrial tribunal or the arbitrator or a quasi-judicial authority can reject not only such findings but also the conclusion based on no legal evidence or if it is merely based on surmises and conjectures unrelated to evidence on the ground that they disclose total non-application of mind.

Signing of an Award

Sub-section (4) of Section 10A requires that the arbitration award be signed by the arbitrator or all the arbitrators, as the case may be. The provisions of the section are mandatory. The award of an arbitrator shall be void and inoperative in the absence of signature in view of the mandatory terms of the section.

Submission of an Award

Section 10A (4A) of the Act enjoins the arbitrator to investigate the dispute and submit its award to the appropriate government. The non-submission would render the award inoperative.

Publication

Sub-section (3) of Section 10A requires that a copy of the arbitration agreement be forwarded to the appropriate government and the conciliation officer and requires the appropriate government to publish the same in the official Gazette within one month from the date of receipt of such copy.

Power of Superintendence of the High Court under Article 227 of the Constitution over Voluntary Arbitrators

In addition to Article 226, Article 227 confers upon the high court a power of superintendence over all lower courts and Tribunals within its jurisdiction. A question therefore arises regarding whether a high court can interfere under Article 227 with an award of an arbitrator (under Section 10A). The Supreme Court in *Engineering Mazdoor Sabha* v. *Hind Cycles Ltd.* answered it in the negative and placed Article 227 on par with Article 136. It held that:

> Like Article 136, Article 227 refers to Courts and Tribunals and what we have referred to the requirements of Article 136 may *prima facie* apply to the requirements of Article 227.

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The net effect of the aforesaid statement is that the high court is not competent to have power of superintendence over voluntary arbitrators under Section 10A because the 'arbitrator' is not a 'Tribunal'.

But in *Rohtas Industries Ltd.* v. *Rohtas Industries Staff Union,* even though Justice Krishna Iyer conceded that the position of the arbitrator under Section 10A (as it then stood) vis-à-vis Article 227 might have been different, but in view of the changed situation after the amendment in the Industrial Disputes Act by XXXVI of 1964, he observed:

> Today, however, such an arbitrator has power to bind even those who are not parties to the reference or agreement and the whole exercise under Section 10A as well as the source of the force of the award on publication derive from the statute. It is legitimate to regard such an arbitrator now as part of the methodology of the sovereign's dispensation of justice, thus falling within the rainbow of statutory Tribunals amenable to judicial review.

The aforesaid view was reiterated in the majority judgement in *Gujarat Steel Tubes* case.

However, one is tempted to ask if the Court's decision would have been different if the Government does not issue a notification under sub-section 3A of Section 10A on the ground that persons making a reference do not represent the majority of each party. An answer in the affirmative would revive the view stated in *Engineering Mazdoor Sabha (supra)*. Under the circumstances, it is suggested that the Parliament clarify the position by legislative amendment.

In *Association of Chemical Workers* v. *B.D. Borude*, the Bombay High Court ruled:

> If the findings of an arbitrator are perverse and not based on the evidence available on record or contrary thereto or no reasonable person would come to such a conclusion, while interpreting and applying the provisions of Section 11A of the Industrial Disputes Act, this Court can always interfere, with the Award passed by an Arbitrator appointed under Section 10A of the I.D. Act.

Relief under Article 136 of the Constitution from Arbitration J. Award

The question that arose before the Supreme Court was whether an appeal could be made under Article 136 of the Constitution for an arbitration award under Section 10A of the Industrial Disputes Act. The Supreme Court in *Engineering Mazdoor Sabha* v. *Hind Cycles* answered the question in the negative. It stated:

> ..... the arbitrator is not a tribunal because the State has not invested him with, its inherent judicial power and the power of adjudication which he exercises is derived by him from the agreement of the parties. His position thus, may be said to be higher than that of a private arbitrator and lower than that of a tribunal.

Accordingly, the Court held that the decision of the arbitrator would not amount to 'determination' or 'order' for the purposes of Article 136. But this position appears to have been changed through *Rohtas Industries* v. *Rohtas Industries Staff Union*. The Court, in view of the amendment in 1964 of the Industrial Disputes Act, appears to have extended the application of Article 136 to an award of an arbitrator under Section 10A. This view was reiterated in *Gujarat Steel Tubes Ltd.* v. *Gujarat Steel Tubes Mazdoor Sabha*.

The aforesaid view removes one of the stated hurdles in the progress of arbitration, namely, that no appeal is maintainable against the award of the arbitrator.

Check Your Progress

9. List the conditions to be satisfied before a dispute is referred to the arbitrator.
10. What are the primary qualities that an arbitrator should possess?

5.5 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. The word 'Industry' refers to any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen. It covers professions such as that of lawyers, as well as clubs, educational institutions such as universities, co-operatives, research institutes, charitable projects and other kindred ventures, if they are being carried on as systematic activities organized through co-operation between the employer and employee for the production and/or distribution of goods and services, calculated to satisfy human wants and wishes, not being spiritual or religious, but inclusive of material things or services goaded to celestial bliss, i.e. making on a large scale, prasad or food. It also includes welfare activities or economic ventures or projects undertaken by the Government or statutory bodies
2. An 'industrial dispute' refers to any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is related to the employment or non-employment or the terms and conditions of employment of any person.
3. The three constituents of an industrial dispute are as follows:
   (a) There should be real and substantial dispute or difference
   (b) The dispute or difference must be between employers and/or workmen
   (c) The dispute or difference must be connected with the employment or non-employment or terms of employment, or with the conditions of labour of any person

4. Two instances of industrial dispute would be:
   (i) Allegation of wrongful termination of services
   (ii) Compulsory retirement of employee
5. The administrative process that is used to resolve disputes between employer and workman is known as grievance procedure.
6. The grievance procedure ensures a speedy and full investigation that leads to settlement of a dispute.
7. Conciliation is a persuasive process of settling industrial disputes. It is a process by which a third party persuades disputants to come to an equitable adjustment of claims. The third party, however, is not himself a decision maker—he is merely a person who helps the disputants through persuasion to amicably adjust their claims. The ultimate decision is of the disputants themselves.
8. Under Section 4 the appropriate government is empowered to appoint conciliation officers for promoting the settlement of industrial disputes. These officers are appointed for a specified area or for specified industries in a specified area or for one or more specified industries, either permanently or for a limited period.
9. Before the reference may be made to the arbitrator, the following four conditions must be satisfied:
   a. The industrial dispute must exist or is apprehended
   b. The agreement must be in writing
   c. The reference must be made before a dispute has been referred under Section 10 to a Labour Court, Tribunal or National Tribunal
   d. The name of arbitrator/arbitrators must be specified
10. The arbitrator should be impartial and he must build up a relationship of confidence with both the parties involve. He or any of his near relatives should not accept any hospitality or favour from any party to the disputes before him, because justice should not only be done but it must be seen to be done.

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5.6 SUMMARY

- '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.
- An 'industrial dispute' means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is related to the employment or non-employment or the terms and conditions of employment of any person.

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- The following disputes have been held to be industrial disputes:
  (a) Allegation of wrongful termination of services
  (b) Compulsory retirement of employee
  (c) Claim for reinstatement of dismissed workmen
  (d) Dispute connected with minimum wages
  (e) Disputes regarding payments to be made under Production Bonus Scheme
  (f) Claim for compensation for wrongful dismissal
  (g) Disputes regarding interpretation of Standing Orders
  (h) Disputes relating to lock-out or *bona fide* and genuine closure of business
  (i) Non-implementation of award and claim for compensation payable by workmen to the employer for loss caused by strike
  (j) Demand of an employee relating to his confirmation on a post holding in an acting capacity
- A dispute is said to have arisen when some demand is made by workmen and it is rejected by the management or vice versa, and the demand relates to the employment. The Act says that a workman can raise a dispute.
- Complaints, affecting one or more individual workers in respect of their wage payments, overtime, leave, transfer, promotion, seniority, work assignment, working conditions and interpretation of service agreement, dismissal and discharges would constitute grievance. Where the points of dispute are of general applicability or of considerable magnitude, they will fall outside the scope of grievance procedure.
- Conciliation is a persuasive process of settling industrial disputes. It is a process by which a third party persuades disputants to come to an equitable adjustment of claims. The third party, however, is not himself a decision maker—he is merely a person who helps the disputants through persuasion to amicably adjust their claims. The ultimate decision is of the disputants themselves.
- Under Section 4 the appropriate government is empowered to appoint conciliation officers for promoting the settlement of industrial disputes.
- Where the dispute is of a complicated nature and requires special handling, the appropriate government is empowered to constitute a Board of Conciliation. Boards are preferred to conciliation officers.
- Conciliation officers are appointed by the Central and State Government for industries that fall within their respective jurisdiction.
- Section 10A (1) of the Industrial Disputes Act, 1947 authorizes the parties to refer to the voluntary arbitrator. But before the reference may be made to the arbitrator, four conditions must be satisfied:

1. The industrial dispute must exist or is apprehended
2. The agreement must be in writing
3. The reference must be made before a dispute has been referred under Section 10 to a Labour Court, Tribunal or National Tribunal
4. The name of arbitrator/arbitrators must be specified

- The parties acting under Section 10A are required to select any person or persons including the presiding officer of a Labour Court, Tribunal or National Tribunal to arbitrate in a dispute.
- Once the parties agree to refer the dispute to arbitration, they are required to make such an arbitration agreement in writing
- Once an arbitration agreement has been entered into and executed in the prescribed form under Section 10A, a copy of the arbitration agreement shall be forwarded to the appropriate government and the conciliation officer.
- The appropriate government comes into the picture in the process of reference to the arbitrator only after the receipt of a copy of a valid arbitration agreement.
- An arbitrator under Section 10A comes into existence when appointed by the parties and he derives his jurisdiction from the agreement of the parties.

5.7 KEY WORDS

- **Arbitration:** It means the use of a mediator to settle a dispute.
- **Conciliation:** It refers to the act of placating through mediation between two parties.
- **Dispute:** It means a disagreement or argument.
- **Impartial:** It is the act of treating all rivals or disputants equally.
- **Philanthropic:** It is the quality of seeking to promote the welfare and benefit of others**.**
- **Retrenchment:** It means the reduction of costs in the face of economic crisis or difficulty.

5.8 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. What is the purpose of the Industrial Disputes Act, 1947?
2. Who appoints conciliation officers?
3. How is an arbitrator selected?

4. What do you know about the signing and submission of an award?
5. How is an arbitrator's jurisdiction decided? In what way can he overstep this?

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Long-Answer Questions

1. What are industrial disputes? Cite the constituents of industrial disputes and list examples of disputes.
2. Write a note on the conciliation process.
3. What are the conditions that an agreement must fulfil? Elaborate.
4. Describe the power of Superintendence of the High Court under Article 227 of the Constitution over Voluntary Arbitrators.
5. How are the arbitrators supposed to conduct themselves? Explain in detail.

5.9 FURTHER READINGS

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UNIT 6 INDUSTRIAL DISPUTES ACT, 1947-II

NOTES

Structure

6.0 INTRODUCTION

The previous unit introduced you to the Industrial Disputes Act, 1947. In this unit, the discussion on the Act will continue. It will discuss strikes, lockouts, retrenchments, transfers and closures. It will also discuss how industrial disputes are settled. In the final section, we will examine the different powers and authorities of the conciliation authorities.

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6.1 OBJECTIVES

After going through this unit, you will be able to:

- Discuss strikes, lockouts, retrenchments and lay-offs
- Describe how industrial disputes are settled according to the Industrial Dispute Act, 1947
- Examine the powers and duties of conciliation officers under the Act

6.2 STRIKES

In retrospect, it appears commonplace to appreciate that capital, raw materials, tools and labour are essential prerequisites for industrial production. The owner of any one or more of these ingredients yields a vital economic power and, subject to the prevailing environmental conditions, he can use this power to his advantage in negotiating with the owner or owners of the other ingredients regarding the terms and conditions for the supply of that which he owns. In particular, withholding of labour until the stated terms and conditions of employment are conceded is a potent instrument of economic coercion.

Though the use of the term 'strike' to describe workmen's instrument of economic coercion in labour management relations is of relatively recent origin, the strategy of withholding labour as an instrument of economic coercion has been known for several centuries. Indeed, prohibition, direct or indirect, or withholding labour as an instrument of economic coercion is not unknown.

Statutory Definition

Section 2(q) of the IDA defines 'strike' to mean:

> 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.

The judicial delineation of the aforesaid expression of 'strike' is confusing, inadequate and inapt. While some of these may be the result of imprecise legislative definition, ignorance of the facts of industrial life and lack of a policy-oriented approach have also contributed to the prevailing confusion.

The shortcoming of the definition became a matter of concern. It raises several issues: (*i*) Who goes on strikes? (*ii*) Against whom do they go on strike? (*iii*) What are the acts that constitute a strike? (*iv*) Why do they go on strike?

1. ***Who goes on Strikes?*** The Industrial Disputes Act does not specifically mention who goes on strikes. However, the definition of a strike itself suggests that 'strikers' must be: (*a*) persons, (*b*) employed, (*c*) in any industry, (*d*) to do work.

2. ***Against whom do they go on Strike?*** Strike, we have already seen, is called by persons employed in any industry. Further, it is an instrument of economic coercion that seeks to deprive an 'employer' of labour input and thereby diminish through loss of production, his earning capacity in the hope that the resulting economic strain would compel him to come round to the strikers' point of view. If this analysis is correct, it follows that the person against whom a strike is called must be an employer. Further, the statutory regulation of strikes, namely:

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

   (*i*) without giving to the employer notice of strike.

   read with Rule 71 of the rules framed under Section 30 office Act and the prescribed form, makes it clear that a 'strike' is called against the 'employer', at least, the Act is concerned with only those strikes that are called against 'employers'.

3. ***The Element of Combination.*** The definition recognizes concerted action under a common understanding on the part of strikers as an essential element of strike.

   The expression 'concerted' action indicates that it has been planned, arranged, adjusted or agreed on and settled between parties acting together pursuant to some design or scheme. The emphasis in strikes is on acting together and not on pre-planning or prearranging; the parties who resort to strike may come to a common understanding at the time in question without any formal agreement or consultations but nevertheless the concerted action must be collectively combined on the basis of spirit *de corpse* and must be combined together by the community of demands and interest with a view to compel employer to accede to their demands of wages, bonus, allowances, hours of work, holidays and the likes. The length or duration of the 'concerted' action is immaterial.

   (*a*) *Judicial delineation of statutory provisions:*

   (*i*) *The concept of acting in combination or a concerted refusal or a refusal under a common understanding*. The Tribunals and Courts have had several opportunities to delineate the contours of the expression, acting in combination, or a concerted refusal or refusal under a common understanding.

   The emerging picture, however, is hardly satisfactory. Generally speaking, conceptual interpretations have been superseded by literal interpretation.

   (*ii*) *The conceptual interpretation.* In *Shamnagar Jute Factory* v. *Their Workmen*, the Tribunal observed:

   The words, 'acting in combination' mean that the *body of persons employed must be shown to be acting in combination, with their*

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> *psychology directed to a particular end, namely, the cessation of work* ... and... *that the cessation of work was the direct common object of the body of persons acting in combination*. For instance, if a factory is on fire the body of workers should be expected to run simultaneously for safety and leave their work thus bringing about a cessation of work. Under such circumstances the body of workers may be said to be acting in combination in so far as they would be acting conjointly and simultaneously more or less for the purpose. *But such a cessation would not amount to a strike*, for the simple reasons that the object of the body of workers under such circumstances *would not involve a direct purpose of bringing about a cessation of work, although the purpose actually pursued would have the indirect effect of causing cessation of work.*
>
> . . . and being of the opinion that 'workers were members of an unlawful assembly with the common object of assaulting and overpowering the manager and the police party' held that the conduct of the workmen did not amount to a strike. All that happened had the indirect effect of causing a cessation of work ... there was, therefore, no strike.

(*b*) *The evidence required to prove 'combination'* or '*concert*' or '*common understanding*'. Mere absence from work does not amount to taking part in a strike. There ought to be some evidence to show that the absence was due to some concert between him and other persons.

Proof of 'combination' or 'concert' or 'common understanding' is inevitably dependent on proof of 'common intention' or 'common object' and though the theoretical possibility of direct evidence to prove 'common intention' cannot be eliminated, in practice, there cannot be any direct evidence of 'common intention' except by an approver and the common intention must be gathered from the circumstances.

6.2.1 Forms of Strikes

Most of the cases present relatively simple instances of '*cessation of work*', 'refusal to continue to work' or 'refusal to accept employment'. While negotiating for the settlement of an industrial dispute, workmen may resort to the use of instruments of economic coercion to get their point of view accepted by the management. The workmen may remain at their respective homes or at any place other than the place of their work or may even be present at, near or within the premises of the place of employment but not at their seats. However, difficult questions arise when workmen deviate from traditional methods. What about stay-in-strike, pen-down strike, tool-down strike, go-slow, hunger strike, sympathetic strike, and work-to-rule? Do these fall within the meaning of the definition of strike as defined in Section 2 (q) of the IDA?

1. ***Stay-in-Strike, Sit-Down Strike, Pen-Down Strike, or Tool-Down Strike:*** Decision-makers and writers have used the expressions 'stay-in

strike', 'sit-down strike', 'pen-down strike" and 'tool-down strike' as synonyms of each other.

2. ***Go-Slow:*** Not infrequently, workers deliberately slow-down the pace of production. There is no 'cessation of work' or 'refusal to continue to work' or 'refusal to accept employment'. Nevertheless, the economic implications are very serious: the cost of production goes up, the delivery schedule gets upset and very often, raw material and machinery are adversely affected.

   Workers adopt this practice to circumvent the statutory restrictions. On go-slow, however, when they are disciplined for misconduct, they assert that the practice amounts to a strike. Obviously, they cannot be permitted to blow hot and cold at the same time. But then the all-important question is whether this practice, popularly called 'go-slow' is 'strike'. The definition of 'strike' uses the phrases 'cessation of work', 'refusal to continue to work' and 'refusal to accept employment'. These phrases are not qualified by the expression 'total' or 'partial'.

3. ***Hunger Strike:*** Hunger strike is a strike with fasting by some or all strikers, or even outsiders super added to exert moral force or perhaps what may be more aptly described as coercion, for acceptance of the demands. Its usage, however, is complicated because, like the word strike, it is used to describe all protest fasts, whether or not the particular protest activity is in furtherance of an industrial dispute.

4. ***Lightning or Wildcat Strike:*** The characteristic feature of this type of withdrawal of labour is that the workmen suddenly withdraw their labour and bargain afterwards. Such strikes are prohibited in public utility services under the Industrial Disputes Act, 1947 and all industrial establishments in public utility services in UP, Maharashtra and Gujarat, where notice is required to be given. Further, the standing orders of the company generally require a notice. Since no notice is required in industrial establishment other than the public utility concern, a question arises whether the Act in such a situation would be a misconduct or unjustified strike. These questions have been the subject matter of judicial controversy.

5. ***Work-to-Rule:*** In this form of concerted activity, employees, though remaining on the job, do the work literally in accordance with the rules or procedure laid down for the purpose, decline to do anything not mentioned therein, take all permissible time of the job, and do the work in such a manner that it results in dislocation of the work. Usually, rules of work are stretched and followed in such a manner that under the shelter of complying with rules the very purpose of these rules, namely, harmonious working, for maximizing production, is frustrated. In these tactics, the workers literally work according to rules but in spirit therefore they work against them; though they are called 'work to rule' tactics, in substance they amount to work against rule tactics.

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These tactics are generally employed as an alternative to traditional strikes, particularly where traditional strikes cannot be called. Whatever may be the form of compliance of the rules and whatever may be the outward manifestation, in substance, the conduct of employees amounts to compliance in a manner not commensurable with the prevailing normal practice and in harmony with the expectations then entertained, it amounts to bringing about unilateral changes in the working system by the employees and it is a misconduct for which the employer is justified in taking action.

In the US, these tactics are recognized as a form of strike. But in India, they are not covered by the definition of 'strike'. As in go-slow, so here, there is no 'stoppage' of work. Again for the very reason because of which we are against the extension of the definition of 'strike' to include go-slow, we are also against inclusion of work-to-rule within the ambit of 'strike'. The (Second) National Commission on Labour has recommended that work to rule must be regarded as misconduct.

6. ***Why Workmen go on Strike:*** We have already seen how the Industrial Disputes Act, 1947 defines a 'strike'. A question arises whether strike is a means to achieve ends other than getting time-off or an end in itself, *i.e.*, to get time off on the very day the workmen indulge in cessation of work. Further, if a strike is merely a means to an end, whether the three forms of withdrawal of labour, *viz*., 'cessation of work', 'refusal to continue to work' and 'refusal to accept employment' are means to further 'trade dispute objectives' of the participants or even to achieve political and other non-trade dispute objectives.

6.3 LOCKOUT

The use of the term 'lockout' to describe the employer's instruments of economic coercion dates back to 1860 and is more recent than its counterparts in the hands of workers–strike–by one hundred years. Formerly, the instrument of lockout was resorted to by an employer or group of employers to ban union membership; the employers refused employment to workers who did not sign a pledge not to belong to a trade union. Later the lockout was declared generally by a body of employers against a strike at a particular work by closing all factories until the strikers returned to work.

India witnessed a lockout twenty-five years after the 'lockout' was known and used in the arena of labour management relations in industrially advanced countries. Karnik reports that the first known lockout was declared in 1895 in Budge Budge Jute Mills.

The Statutory Definition

Section 2 (1) of the Industrial Disputes Act, 1947 defines a 'lockout' to mean:

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. A delineation of the nature of this weapon of industrial warfare requires description of (*i*) the acts that constitute it; (*ii*) the party who uses it; (*iii*) the party against whom it is directed; and (*iv*) the motive that prompts it.

He concluded that this was a case of a lockout.

1. ***Disciplinary Measure not Lockout:*** Cases of indiscipline, misconduct and violation of the provisions of the certified standing orders frequently occur in Indian industrial and business undertakings. Disciplinary measures adopted by the management range from adverse entry in the character to roll the termination of employment. We are concerned here only with those of the management actions that result in suspension of the concerned workmen during the pendency of investigatory proceedings as a punishment or otherwise either on payment of emoluments, or otherwise and all other cases resulting into refusal by an employer to continue to employ any number of persons employed by him such as orders prohibiting late-coming workmen to resume work and making them absent for the day. The question here is whether these disciplinary measures which come within the literal meaning of Section 2 (1) of the Industrial Disputes Act, 1947 amount to a lockout or not.
2. ***Security Measure not Lockout:*** Dicta in certain cases indicate that 'the 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' may be a security measure and yet the conduct of the employer may fall within the ambit of Section 2 (1) of the Industrial Disputes Act, 1947. For instance, in *Lakshmi Devi Sugar Mills* v. *Ram Sarup*, Justice Bhagwati, summarizing the views expressed by the Labour Appellate Tribunal in *Jute Workers' Federation* v. *Clive Jute Mills*, observed that 'a lockout is generally adopted as a security measure and may in certain cases be used as a weapon corresponding to what the employees have in the shape of a strike.' This is unacceptable. A lockout is an instrument of economic coercion and not a security measure. It is not an end in itself but a means to an end. The particular means adopted are the putting of economic pressures on recalcitrant workmen. Further, in harmony with the view: 'no work no pay', 'the closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ and number of persons employed by him' is the means adopted to put the requisite economic pressure. The emphasis here is due as much on the means adopted as on the object sought to be achieved.
3. ***Closure not Lockout:*** In a lockout, the employer refuses to continue to employ the workmen employed by him even though the business activity was not closed down nor intended to be closed down. The essence of lockout is the refusal of the employer to continue to employ workmen. There is no intention to close the industrial activity. Even if the suspension of work is ordered it would constitute lockout. On the other hand closure

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implies closing of industrial activity as a consequence of which workmen are rendered jobless.

4. ***Discharge not Lockout:*** The Act treats strike and lockout on the same basis; it treats one as the counter-part of the other. A strike is a weapon of the workers while a lock-out is that of the employer. A strike does not, of course, contemplate the severance of the relation of employer and employed: it would be surge in these circumstances, if a lockout did so. The words 'refusal by an employer to continue to employ any number of persons employed by him' in Section 2 (1) do not include the discharge of an employee. Court held that discharge was not covered in Section 2 (1) of the Act.

5. ***Refusal to give work to a single workman: If a Lockout:*** Whether the management's refusal to give work to a single workman amounts to a lock-out within the meaning of Section 2(1) of the Act. This question was answered in the negative in *Singareni Collieries Co.* v. *Their Mining Sirdars*, wherein it was observed that:

> ...the definition of the word 'lockout' in Section 2(1) of the Act does not mean and include one workman, but means more than one, that is, a number of workmen. On this interpretation, an individual workman 'is not included in the wold 'lockout' as defined in Section 2(1) of the Act.

6.4 LAY-OFF

Section 2 (*kkk*) of the Industrial Disputes Act, 1947, defines **'layoff'** to mean the 'failure', 'refusal' or 'inability' on the part of employer to give employment to any number of workmen on account of:

(*a*) Shortage of coal

(*b*) Shortage of power

(*c*) Shortage of raw material

(*d*) Accumulation of stock

(*e*) Breakdown of machinery

(*f*) For any other reason

The definition requires further analysis. *First*, the definition mentions three acts, namely, 'failure', 'refusal', or 'inability' on the part of the employer. The absence of these circumstances will not amount to a 'lay-off' within the meaning of Section 2 (*kkk*) of the Act. *Second*, the expression 'for any other reason' occurring in Section 2 (*kkk*) is *ejusdem generis* with the preceding expression. *Third*, the definition includes the subsisting employer workman relationship during lay-off.

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6.4.1 Management's Right to Lay-off

1. ***Under the Traditional Law:*** Under the traditional law, the management had a right to lay-off its workmen and adjust the labour force to the requirement of work. If the lay-off or adjustment of labour force happened to be in breach of contract of employment or otherwise wrongful, the aggrieved workmen were entitled to compensation. This right of management has been curtailed to a great extent by the modern labour legislation and judicial decisions following thereunder. They assert that the right of the management to lay-off their workmen and adjust labour force is not absolute. It has now been settled that the management has no common law right to lay-off its workmen.
2. ***Under the Standing Orders:*** Where the Standing Orders certified under the Industrial Employment (Standing Orders) Act, 1946 provide for lay-off, the employers are allowed to lay-off their workmen in accordance with the provisions of the standing orders of their establishment. They have got no right to lay-off for reasons other than those laid down in the relevant clauses of the standing orders.
3. ***Under the Industrial Disputes Act, 1947:*** Chapters V-A and V-B recognize the management's right to declare lay-offs for reasons laid down therein. If any case is not covered by the provisions of the standing orders of the establishment, it will be regulated by the provisions of the Industrial Disputes Act, 1947.

6.4.2 Prohibition on Lay-off

Till 1976 there was no provision for preventing lay-off in the Industrial Disputes Act, 1947. In the seventies, a number of cases of large-scale lay-off were reported. This resulted in an all-round demoralizing effect on the workmen. In order to prevent avoidable hardship and to maintain a higher tempo of production and productivity, the Industrial Disputes Act, 1947 was amended in 1976, whereby restrictions were imposed on the employer's right to lay-off by Section 25 M. However, following the decision of the Supreme Court in the *Excel Wear* case, some High Courts declared invalid the provisions contained in Section 25 M. In order to remove the anomaly, Section 25 M was re-drafted and substituted by the Industrial Disputes (Amendment) Act, 1984 which came into force with effect from 18.8.84. Section 25 M applies to every industrial establishment (not of seasonal character) in which not less than one hundred workmen were employed on the average per working day for the preceding twelve months. Thus, Section 25 M, which imposes prohibition on lay-off, provides:

1. No workman (other than a *badli* workman or a casual workman) whose name is borne on the muster rolls of an industrial establishment to which this chapter applies shall be laid-off by his employer except with the prior permission of the appropriate Government or such authority as may be

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specified by that Government by notification in the Official Gazette (hereinafter in this section referred to as the specified authority), obtained on an application made in this behalf, unless such lay-off is due to shortage of power or natural calamity, and in the case of a mine, such lay-off is due also to fire, flood, excess of inflammable gas or explosion.

2. An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended lay-off and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
3. Where the workmen (other than *badli* workmen or casual workmen) of an industrial establishment being a mine, have been laid-off under sub-section (1) for reasons of fire, flood or excess of inflammable gas or explosion, the employer, in relation to such establishment, shall, within a period of thirty days from the date of commencement of such lay-off, apply, in the prescribed manner, to the appropriate Government or the specified authority for permission to continue the lay-off.
4. Where an application for permission under sub-section (1) or sub-section (3) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such lay-off, may, having regard to the genuineness and adequacy of the reasons for such lay-off, the interest of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.
5. Where an application for permission under sub-section (1) or sub-section (3) has been made and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.
6. An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (7), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.
7. The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (4) or refer the matter or, as the case may be, cause it to be referred to a Tribunal for adjudication, provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

8. Where no application for permission under sub-section (1) is made, or where no application for permission under sub-section (3) is made within the period specified therein, or where the permission for any lay-off has been refused, such lay-off shall be deemed to be illegal from the date on which the workmen had been laid-off and the workmen shall be entitled to all the benefits under any law for the time being in force as if they had not been laid-off.
9. Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1), or, as the case may be, sub-section (3) shall not apply in relation to such establishment for such period as may be specified in the order.
10. The provisions of Section 25 C (other than the second proviso thereto) shall apply to cases of lay-off referred to in this section.

Explanation. For the purposes of this Section, a workman shall not be deemed to be laid-off by an employer if such employer offers any alternative employment (which in the opinion of the employer does not call for any special skill or previous experience and can be done by the workmen) in the same establishment from which he has been laid-off or in any other establishment belonging to the same employer, situated in the same town or village, or situated within such distance from the establishment to which he belongs that the transfer will not involve undue hardship to the workman having regard to the facts and circumstances of his case, provided that the wages which would normally have been paid to the workman are offered for the alternative appointment also.

6.4.3 Penalty for Lay-off without Previous Permission

Section 25 Q prescribes penalty upon the employer contravening the provisions of Section 25 M. Thus, the employer who contravenes the provisions of Section 25 M is 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.

6.4.4 Procedure for Lay-off

The Industrial Disputes Act, 1947 does not provide for the procedure to be adopted before declaring a lay-off. The procedure is, however, provided in the Industrial Disputes (Central Rules), 1957. Rule 75 A makes it obligatory upon the employer of an industrial establishment (as defined in the Explanation to Section 25 A) to give notice of the period of lay-off in the forms 0-1 and 0-2 within seven days of the commencement or termination of such lay-off as the case may be to the affected workmen. This notice should be given by the employer to the affected workmen irrespective of whether they are or are not entitled to any compensation under Section 25-C of the Act.

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6.4.5 Compensation for the Period of Lay-off

1. ***Under the Standing Orders:*** Most of the standing orders contain a clause providing for lay-off. They also generally provide for the manner in which lay-off compensation should be paid. Where the relevant clauses of the standing orders provide for lay-off and the compensation thereof, the question of compensation is determined by such standing orders. But in case of conflict between the provisions of standing orders and the statutory provisions for lay-off compensation, the latter will over-ride the former. If the standing orders of establishment merely provide for the reasons for which lay-off may be declared by the employer and not provide the manner in which the compensation shall be paid to the laid-off workmen, the compensation shall be paid to them in accordance with Section 25-C provided, of course, the lay-off is covered under Section 2 (*kkk*).
2. ***Under Section 25 C of the Industrial Disputes Act:*** To ensure a minimum of earning during forced unemployment when a workman's name is borne on muster rolls, the Industrial Disputes Act, 1947 provides for payment of compensation equal to fifty per cent of the total of the basic wage and dearness allowance, for all days during which he is laid-off, provided he has completed continuous service of one year or more. However, under proviso Section 25-C (1), if during any period of twelve months, a workman is laid-off for more than forty-five days, no compensation shall be payable to a workman in respect of any period of lay-off after the expiry of forty-five days if there is an agreement to that effect between the workman and the employer. Alternatively, the employer may retrench the workman at any time after the expiry of forty-five days. If the workman is retrenched under such circumstances, the compensation paid to him for having been laid-off during the proceeding twelve months may be set-off against compensation payable for retrenchment.

6.5 RETRENCHMENT

With the cessation of World War II and the re-establishment of normal transport facilities, new and improved machinery began to flow into the country. These in turn resulted in the rationalization of production processes and retrenchment of surplus labour. The situation was, however, met by State interference in regulating the employer's right to retrench their workmen directly through the Ministry of Labour and indirectly through the Industrial Tribunals. This situation continued till 1953. In 1953, a grave situation arose in textile mills resulting in the retrenchment of a large number of workers employed therein. This led to the promulgation of the Industrial Disputes (Amendment) Ordinance No. 5 of 1953. Subsequently, these measures, with a number of innovations and refinements, were incorporated in the Industrial Disputes (Amendment) (Act 42 of 1953).

Though the 1953 Amendment Act provided for notice and retrenchment compensation, it did not contain any provision for preventing retrenchment. Cases of large-scale retrenchment were reported time and again. Consequently, the State Government and National Apex bodies approached the Central Government to take legislative measures for preventing arbitrary action of the management in retrenching their workmen. Accordingly, the Industrial Disputes (Amendment) Act, 1976 was enacted.

By this amendment, a new Chapter V-B was added to the Industrial Disputes Act, 1947, which applies to industrial establishments that are factories, mines and plantations, employing 300 or more workmen. For purposes of these new provisions, the central sphere has been widened and the Central Government would also be the appropriate government in respect of (*i*) Companies in which not less than 51 per cent of the paid-up share capital is held by the Central Government and (*ii*) Corporations established by or under any law made by the Parliament, despite the fact that insofar as other provisions of the Industrial Disputes Act are concerned some of these establishments are in the state sphere. This legislation makes it obligatory for the employers of these industrial establishments to obtain previous permission of the specified authority before retrenching any workmen. The specified authority has to give his decision within a period of two months and previous approval for closure within ninety days of the date of intended closure. The Act also provides for certain transitional provisions in respect of continuing lay-off, retrenchments and closures where the period of notices already sent have not expired and also in respect of retrenchment. The decision have to be communicated within two months. A new provision has also been made in the Act for restarting an already closed down undertaking under certain special circumstances. The penal provisions in the Act for violation of any of these new provisions are much more stringent than that already existing in the Act. The maximum penalties provided are imprisonment for a term which may extend to one year or fine which may extend to ₹ 5,000 or with both. For continuing offences the fine for each day of contravention after conviction is ₹ 2,000.

However, the Industrial Disputes (Amendment) Act, 1982 extended the aforesaid special provisions of retrenchment to industrial establishments employing one hundred workmen. Two years later the Industrial Disputes (Amendment) Act, 1984 curtailed the scope of retrenchment by inserting a new clause (bb) in Section 2 (oo). Further, the proviso to clause (a) of Section 25-F was omitted. Moreover, Section 25-N dealing with the conditions-precedent to retrenchment of workmen was substituted and Section 25 Q dealing with penalties for retrenchment was amended.

6.5.1 Nature of Retrenchment

1. ***General:*** Retrenchment generally means 'discharge of surplus labour or staff' by the employer on account of a long period of lay-off or rationalization or production processes or improved machinery or automation of machines

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or similar other reasons. It is adopted as an economy measure. The subsisting employer-workmen relationship is, however, terminated in case of retrenchment.

2. ***Retrenchment and Lockout:*** Retrenchment and lockout have some common phenomena of continuing business. Both are the acts of employer. Both involve subsisting employer-workmen relationship. But, there are weighty reasons to distinguish lockout from retrenchment on the basis of the status of employment relationship. Whereas there is a subsisting employer-workman relationship in lockout, that relationship is terminated in case of retrenchment. There is yet another basis of distinction, lockout is an instrument of economic coercion and seeks to compel recalcitrant workmen to agree to the management's point of view, whereas retrenchment is a measure of economy and while it does affect workmen, the motive of bringing workmen to their knees by putting economic pressure on them is absent.
3. ***Retrenchment and Lay-off:*** Retrenchment and lay-off have some elements in common. Both are declared by the employer. Both require statutory compensation but they differ in many other respects. Whereas there is a subsisting employer-workmen relationship during lay-off that relationship is terminated in the case of retrenchment. There is yet another basis of distinction. While retrenchment is a permanent measure to remove surplus labour, lay-off is a temporary measure.
4. ***Retrenchment and Closure of Business:*** Retrenchment and closure of business have some common features. Both are the measures of economy by the employer; both require statutory compensation. In both the cases the employer-workmen relationship is terminated. But they differ in many other respects. In closure the industry is closed but in case of retrenchment the industry may be continuing.

6.5.2 Statutory Definition of Retrenchment

Prior to 1953, the word 'retrenchment' was not defined in any legislative enactment in India. Section 2 (oo) of the Industrial Disputes Act, 1947 defines 'retrenchment' to mean:

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

(b) Retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf

(c) 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

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

6.5.3 Procedure for Retrenchment

Section 25 G of the Industrial Disputes Act, 1947 lays down the procedure for retrenchment:

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

The ordinary rule of retrenchment is 'first come, last go' and where other things are equal, this rule has to be followed by the employer in effecting retrenchment. But this rule should be applied in the interest of business. The Industrial Tribunal will not interfere with the decision of the management, unless preferential treatment is actuated by *mala fides*. Whether the management has acted *mala fide* or not depends upon the circumstances of the case; it cannot be inferred merely from departure from the rule. Where those retrenched and those retained are doing substantially the same kind of work and no special skill or aptitude is required for doing the work which the retained clerk is doing, preference given to the retained clerk on the ground that he has some experience in the branch may justifiably raise an inference of *mala fide*.

1. ***The Rule of Last Come, First Go:*** The rule is that the employer shall retrench the workman who came last popularly known as 'last come first go'. Of course, it is not an inflexible rule and extraordinary situations may justify variations. For instance, a junior recruit who has a special qualification needed by the employer may be retained even though another who is one up is retrenched. There must be a valid reason for this deviation, and obviously, the burden is on, the Management to substantiate the special ground for departure from the rule.
2. ***Departure from the Rule: Last Come, First Go:*** The normal rule, it has been observed earlier, is that the employer should adopt the principle of 'last come, first go' in effecting retrenchment. However, for departing from the rule, which would normally apply only when other things are equal, the employer, for the purpose of arriving at the specific reasons to be recorded, may take into consideration the efficiency and trustworthy character of the employees, and that if he is satisfied that a person with long service is inefficient, unreliable or

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habitually irregular in the discharge of his duties, it would be open to him to retrench him while retaining in his employment, employees who are more efficient, reliable and regular, though they may be juniors in service to the retrenched workman. Normally, where the rule is thus departed from, there should be reliable evidence preferably in the recorded history of the workman showing his inefficiency, unreliability or habitual irregularity.

6.6 TRANSFERS AND CLOSURES

Let us now study about transfers and closures with reference to the Industrial Dispute Acts, 1947.

6.6.1 Transfers

Workmen may be transferred due to exigencies of work from one department to another or from one station to another or from ore coal mine to another under the same ownership provided that the pay, grade, continuity and other conditions of service of the workman are not adversely affected by such transfer and provided also that if a workman is transferred from one job to another, that job should be of similar nature and such as he is capable of doing and provided further that (i) reasonable notice is given of such transfers and (ii) reasonable joining time is allowed in case of transfers from one station to another. The workman concerned shall be paid the actual transport charges plus 50 per cent, thereof to meet incidental charges.

6.6.2 Closure

Section 2 (cc) of the Industrial Disputes (Amendment) Act, 1982 defines **'closure'** to mean 'the permanent closing down of a place of employment or part thereof'. Section 25-FFF imposes a liability on the employer, who closes down his business, to give one month's notice and pay compensation equal to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months. In case of closure on account of unavoidable circumstances beyond the control of employer, the maximum compensation payable to a workman is his three months salary. However, unlike Section 25-F, payment of compensation in lieu of notice are not conditions precedent to closure. Thus, as a consequence of closure of the industry Section 25-F is not attracted and the rigour imposed thereunder stand excluded. By the Industrial Disputes (Amendment) Act, 1976, Section 25-O (which was amended in 1982) lays down the procedure for closing down an undertaking and Section 25-P makes special provision regarding restarting the undertakings closed down before the commencement of the Industrial Disputes (Amendment) Act, 1976.

Closure of a Portion of an Undertaking. So far as the closure of a portion of an undertaking or a part of an industrial establishment is concerned, the Supreme

Court in *Workmen of the Straw Board Manufacturing Co. Ltd.* v. *M/s Straw Board Manufacturing Co. Ltd*. pointed out:

> The most important aspect in this particular case relating to closure, in our opinion, is whether one unit has such componental relation that closing of one must lead to the closing of the other or the one cannot reasonably exist without the other. Functional integrality will assume an added significance in a case of closure of a branch or unit. That the R. Mill is capable of functioning in isolation is of very material import in the case of closure. There is bound to be a shift of emphasis in the application of various tests from one case to another.

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The Court added:

> the workmen cannot question the motive of the closure, once closure has taken place in fact. The matter may be different if under the guise of closure the establishment is being carried on in some shape or form or at a different place and the closure is only a ruse or pretence. Once the Court comes to the conclusion that there is closure of an undertaking the motive of the employer ordinarily ceases to be relevant. No employer can be compelled to carry on his business if he chooses to close it in truth and reality for reasons of his own.

The Court further pointed out: 'there is nothing wrong for an employer who has decided to close the establishment to follow the steps of closure by stages. It may be in the nature of a business to take recourse to such a mode, which cannot ordinarily and *per se* be considered as unfair or illegitimate. Therefore, the termination of services of the first batch of workmen on account of closure is not unjustified.'

In *Avon Services* v. *Industrial Tribunal*, the management attempted to serve notice on certain workmen. The notice stated that the management had decided to close the painting section from a certain date due to unavoidable circumstances, and further that the services of the said workmen would no longer be required due to surplus age; they were, therefore, retrenched. The workmen were accordingly informed that they should collect their dues under Section 25-FFF from the office of the company. On these facts a question arose whether the case fell under Section 25-F or 25-FFF. The Supreme Court first explained the distinction between Sections 25-F and 25-FFF as follows:

> By Section 25-F a prohibition against retrenchment until the conditions prescribed by that Section are fulfilled, is imposed; by Section 25-FFF (1) termination of employment on closure of the undertaking without payment of compensation and without either serving notice or paying wages in lieu of notice is not prohibited. Payment of compensation and payment of wages for the period of notice are not, therefore, conditions precedent to closure.

The Court proceeded to determine whether there was anything in the notice to suggest that the case was one of retrenchment or closure. It observed:

> The tenor of the notice clearly indicates that workmen were rendered surplus and they were retrenched. It is thus on the admission of appellant a case of retrenchment.

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The Court then examined the contention that the notice referred to in Section 25-FFF was intended to be a notice of termination of service consequent upon closure of the painting undertaking. It pointed out:

> Now, even if a closure of an undertaking as contemplated by Section 25-FFF need not necessarily comprehend a closure of the entire undertaking and a closure of a distinct and separate unit of the undertaking would also be covered by Section 25-FFF, the question is — whether painting section was itself an undertaking?

The Court held that in the context of Section 25-FFF it must mean a separate and distinct business or commercial, trading or industrial activity and not an infinitesimally small part of a manufacturing process. In view of this the Court stated that if painting was no more undertaken as one of the separate jobs, the workmen would become surplus and they could be retrenched, after paying compensation as required by Section 25-F. It observed:

> An employer may stop a certain work which was part of an undertaking but which could not he classified as an independent undertaking, the stoppage of work in this context would not amount to closure of the undertaking. The three workmen were doing work of painting the containers. No records were shown that there was a separate establishment, that it was a separate sub-section or that it had some separate supervisory arrangement. In fact, once the container making section was closed down, the three painters became part and parcel of the manufacturing process and if the painting work was not available for them they could have been assigned some other work and even if they had to be retrenched as surplus, the case would squarely fall in Section 25-F and not be covered by Section 25-FFF on a specious plea of closure of an undertaking.

The Supreme Court, accordingly, upheld the finding of the Tribunal that this was a case of 'retrenchment'. As conditions precedent were not complied with, it was invalid and the workers were entitled to reinstatement with full back wages.

The net effect of this decision has been to restrict the scope of closure either to an entire undertaking or to a distinct and separate unit of the undertaking.

1. ***Closure Compensation.*** The workmen are entitled to compensation but not any additional sum by way of *ex-gratia* otherwise than what is provided under the statue when the act of the management in closing down the establishment is found to be valid and all legally payable amounts have been paid in time.
2. ***Closure Compensation in Unavoidable Circumstances.*** The proviso to Section 25-FFF states that the maximum compensation payable to workmen on account of unavoidable circumstances beyond the control of the employer, is limited to the average pay for three months. The explanation to Section 25-FFF (1) provides that an undertaking which is closed down by reason merely of:
   - (*i*) financial difficulties (including financial losses)
   - (*ii*) accumulation of undisposed stock
   - (*iii*) the expiry of the period of the lease or license granted to it

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

Check Your Progress

1. What is a lockout?
2. When was the first known lockout declared in India?
3. What is meant by retrenchment?

6.7 SETTLEMENT OF INDUSTRIAL DISPUTES

Let us study how disputes are settled after discussing about work committees.

Works Committee

The institution of the works committee was introduced in 1947 under the Industrial Disputes Act, 1947 to promote measures for securing and preserving amity and good relations between employers and workmen. It was meant to create a sense of partnership or comradeship between employers and workmen. It is concerned with problems arising in the day-today working of the establishment and with ascertaining the grievances of the workmen.

Constitution of Works Committee

The Industrial Disputes Act, 1947 empowers the appropriate government to require an employer having 100 or more workmen to constitute a works committee. Such a committee shall consist of representatives of employers and workmen engaged in the establishment. However, the number of representatives of the workmen shall not be less than the number of representatives of the employer.

Rule 39 of the Industrial Disputes (Central) Rules, 1957 contemplates that the number of representatives of the workmen shall not be less than the number of representatives of the employer and further that the total number of members shall not exceed 20. Rule 40 contemplates that the representatives of the employer shall be nominated by the employer and shall as far as possible be officials in direct touch with or associated with the working of the establishment. Rule 41 envisages that the employer shall ask the registered trade union of the workmen in the concerned establishment to inform the employer in writing as to how many of the workmen are members of that union and how their membership is distributed among the sections, shops or departments of the establishment. In other words, the employer is required to ask the registered trade union to supply him the nominal roll of members of the trade union. The election held without consultation with the trade union is liable to be set aside. Rule 42 provides that on receipt of the said

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information from the registered trade union, the employer shall provide for the election of representatives of the workmen on the works committee in two groups: (1) those to be elected by the workmen who are members of the registered trade union and (2) those to be elected by the workmen who are not members of the registered union. It is further provided that the number of two groups should bear the same proportion to each other as the union members in the establishment bear to the non-members. The first proviso to this rule contemplates that where more than half the workmen are members of the union or any one of the unions, the above kind of division in two groups shall not be made. This shows that where in an industrial establishment the majority of the workers are in union, the distribution of the elected representatives as provided in Rule 42 in two groups will not be necessary. In other words, in that situation the representatives of the workmen will be elected in a single group without any kind of division. It is not provided that if the union has majority of the workers as its members, then the nomination of the representatives of the workmen may be done by the employer in consultation with the Trade Union. There can, however, never be any nomination of representatives of workmen on the works committee. The scheme of these rules for the constitution of the works committee has been fully explained in *Union of India* v. *M.T.S.S.D. Workers Union,* as follows:

It is therefore clear that the scheme of these Rules for constitution of works committees clearly provide:

> (*a*) where there is a registered trade union having more than 50 per cent membership of the workers in that establishment the total number of members of the works committee will be elected without distribution of any constituencies, (*b*) if in an industry no trade union registered under Trade Unions Act represents more than 50 per cent of the members then only the election will be held in two constituencies, one from the members of the registered trade union or unions and the other from non-members of the trade unions and it is only in this contingency, it is further provided that if the employer thinks proper (he) may further subdivide the constituency into department section or shed.

6.8 POWERS AND DUTIES OF AUTHORITIES

Let us discuss the power of conciliation authorities.

(a) *Powers of Conciliation Officer:* The Act confers certain powers upon the conciliation officer to conciliate and mediate between the parties. The conciliation officer is deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code. He is empowered to enforce the attendance of any person for the purpose of examination of such person or call for and inspect the documents which he has ground for considering (*i*) to be relevant to the industrial dispute or (*ii*) to be necessary for the purpose of verifying the implementation of any award or carrying out any other duty imposed on him under the Act. For this purpose he enjoys the same power as are vested in the Civil Court under the Code of Civil Procedure, 1908.

The conciliation officer is also empowered for the purposes of enquiry into any existing or apprehended industrial dispute to enter the premises occupied by any establishment to which the dispute relates, after giving reasonable notice. Failure to give any such notice does not, however, affect the legality of the conciliation proceedings.

(*b*) *Powers of the Board of Conciliation:* The Board of Conciliation acts in a judicial capacity and enjoys more powers than conciliation officers. Under the Act, every Board of Conciliation enjoys the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, when trying a suit. It can enforce the attendance of any person and examine him on oath, compel the production of documents and material objects, issue commission for examination of witnesses, make discovery and inspection, grant adjournment and receive evidence taken on affidavit. Every enquiry by a Board is deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code and Sections 345, 346 and 348 of the Code of Criminal Procedure, 1973. The proceedings are normally held in public but the Board may at any stage direct that any witness be examined or proceedings be held in camera.

The Board is empowered subject to the rules in this behalf to follow such procedure as it may think fit. The rules provide for the place and time of hearing of the industrial dispute by the adjudication or arbitration authorities as the case may be, administration of oath by the adjudication or arbitration authorities, citation or description of the parties in certain cases, the issuance of notices to the parties, the circumstances when the Board can proceed *ex-parte* and correction of clerical mistakes or errors arising from accidental slip or omission in any award. The Board also has to keep certain matters confidential in the award. The Board can accept, admit or call for evidence at any stage of the proceedings before it in such manner as it thinks fit. The representatives of the parties have the right of examination, cross-examination and addressing the Board when any evidence has been called. The witnesses who appear before a Board are entitled for expenses in the same way as witnesses in the civil court.

6.8.1 Duties of Conciliation Authorities

Duties of Conciliation Officers: The Industrial Disputes Act provides for the appointment of conciliation officers, 'charged with the duty of mediating in and promoting the settlement of industrial disputes.' Where an industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice under Section 22 has been given, he shall hold conciliation proceedings in the prescribed manner. He may do all such things that he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the disputes. Further, Section 12 (2) directs the conciliation officer to investigate 'without delay' the dispute and all matters affecting the merits and right

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settlement thereof. If the settlement is arrived at, the conciliation officer shall send a report together with a memorandum of settlement signed by the parties to the dispute, to the appropriate government or an officer authorized on his behalf. If no settlement is arrived at, the conciliation officer is required to send a report to the appropriate government containing (*i*) a full report setting forth the steps taken by him for ascertaining the facts and circumstances of the dispute and for bringing about a settlement thereof, (*ii*) a full statement of facts and circumstances leading to the dispute, and (*iii*) the reasons why a settlement could not be arrived at. It is a mandatory duty on the part of the conciliation officer to submit the failure report. His omission to do is culpable, if not motivated. Be that as it may, it is for the appropriate government to consider whether on the basis of the failure report and other relevant materials, it should refer the dispute for adjudication or not. If on consideration of the report, the appropriate government is satisfied that there is a case for reference to the Board or Adjudicating Authority, it may make a reference. Where it does not make a reference, it shall record and communicate to the parties concerned its reasons thereof. Sub-section 6 of Section 12 provides that the report 'shall be submitted' either within 14 days of the commencement of the conciliation proceedings or earlier if required by the appropriate government, or later if all the parties to the dispute agree in writing.

The Industrial Disputes Act, 1947 draws a distinction between public utility services and non-public utility services. Thus, while in a public utility service the conciliation officer is bound to hold conciliation, he is not bound to do so in a non-public utility service.

The power of the conciliation officer is not adjudicatory but is intended to promote a settlement of dispute. However, a special responsibility is vested in the conciliation officer to see that the settlement arrived at is fair and reasonable and he should then give his concurrence. This is so because the settlement arrived at in the course of conciliation proceedings is binding not only on all parties to the industrial dispute but all other parties summoned to appear in the proceedings and where a party is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates; and where a party is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.

Section 12, however, raises several important issues:

(*i*) What will be the effect of the failure of the conciliation officer to submit the report within 14 days of the commencement of the conciliation proceedings? Two views are discernible. One view is that the conciliation officer becomes *functus officio* on the expiry of 14 days from the commencement of the conciliation proceedings and thereby invalidates the conciliation proceedings. The other view is that failure to submit the report within 14 days of the commencement of the conciliation proceedings does not affect the legality

of the proceedings. The latter view found the approval of the Supreme Court in the *State of Bihar* v. *Kripa Shankar Jaiswal.* In this case, the conciliation officer had not sent its report to the appropriate government within 14 days of the commencement of the conciliation proceedings. A question arose whether failure to submit the report by the conciliation officer within the prescribed period would affect the legality of the conciliation proceedings. The Supreme Court answered the question in the negative. The Court observed that the failure of the conciliation officer to submit its report after the prescribed period does not affect the legality of the proceedings. However, contravention of Section 12 (6) may amount to a breach of duty on the part of the conciliation officer.

This decision however, is open to several objections. *First*, protracted conciliation proceedings tend to be fruitless. *Second*, since under Section 22 of the Industrial Disputes Act a strike or lockout cannot be declared during the pendency of any conciliation proceedings... and seven days after (its) conclusion and, on the other hand in order to make the strike or lockout legal it must take place within 6 weeks of the date of notice, the time limit must be certain. *Third*, the management too is debarred by Section 33 from exercising certain of its prerogatives during conciliation proceedings and since this means deprivation of a right, the canons of statutory interpretation suggest that the period of deprivation should be definite and tailored to meet the needs of the situation. *Fourth*, for industrial peace and harmony it is essential that the dispute be settled at an early date. Under the circumstances, it is suggested that the Supreme Court may reconsider its view in the light of the aforesaid reasoning.

(*ii*) Whether Conciliation Officer has jurisdiction to initiate conciliation proceedings at a place where the management's establishment is not situated. This issue was raised in *M/s. Juggat Pharma (P) Ltd.* v. *Deputy Commissioner of Labour, Madras.* In this case, the management's establishment was situated at Bangalore. The company employed certain workmen therein as sales representatives at Madras to look after its business. The management later terminated their services. On these facts, the question arose whether the conciliation officer at Madras had jurisdiction under Section 12 over the management whose establishment was situated at Bangalore and the sales representatives appointed by them were looking after their work at Madras. The answer to the question depends upon whether a dispute existed or apprehended between the management and the workmen in Madras. The Court observed that Section 2 (k), which defines an industrial dispute, is not controlled by the location of the management's establishment in Bangalore or the absence of such establishment in Madras. The fact that the management had no establishment or branch office in Madras did not alter the fact that termination of the workmen's service was in connection with their employment in Madras. The Court accordingly held that it was open to the conciliation officer to initiate conciliation proceedings under Section 12(1).

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(*iii*) Is a notice necessary for a settlement to be in the course of conciliation proceedings? This question was raised in *Delhi Cloth & General Mills Co. Ltd.* v. *Union of India*. In this case, the conciliation officer neither initiated any proceeding for conciliation nor issued any notice for holding the conciliation proceedings. He also made no attempt to induce the party for reaching a settlement *de hors* conciliation proceedings. The Delhi High Court held that there was no settlement in the course of conciliation proceedings.

(*iv*) Whether the conciliation officer could go into the merit of the dispute and decide various points in issue one way or the other. The Kerala High Court answered the question in the negative and observed that a conciliation officer was not competent to decide the various points at issue between the opposing parties. All that he could do was to persuade the parties to come to a fair and amicable settlement. Although wide powers are conferred upon a conciliation officer to use his resourcefulness to persuade the parties, he has no power to decide anything at all. After having commenced the conciliation proceedings under Section 12, the conciliation officer exceeded his power and acted beyond his jurisdiction by passing the order. The Court highlighted the duties of a conciliation officer:

The provision in sub-section (4) of Section 12 of the Act relating to the sending to the Government a full report as contemplated thereunder is mandatory in nature. Having failed to bring about or arrive at a settlement of the dispute, it was the bounden duty of the Conciliation Officer to send to the appropriate Government a full report as mandatorily enjoined under Section 12(4) of the Act setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof together with a full statement of such facts and circumstances and the reasons on account of which, in his opinion a settlement could not be arrived at. Thereafter by virtue of the provisions in Section 12(5), it is for the appropriate Government to consider whether it should make a reference or refuse to make a reference.

The Court accordingly held that by disposing of the conciliation proceedings on the close of the investigation the conciliation officer not only failed to perform the statutory function vested in him under Section 12 (4) but also exceeded his power under Section 12 (1).

(*v*) Whether a writ of *mandamus* can be issued to the conciliation officer, on whose intervention a settlement was arrived at between the management and workmen, directing him to take all measures to see that settlements are implemented or to prohibit the management from laying-off the staff. The Court answered the question in the negative and observed that the Commissioner of Labour, while acting under Section 12 as conciliation officer, was not empowered to adjudicate an industrial dispute. All that he could do was to try to persuade the parties to come to a fair and amicable

settlement. In other words, his duties were only administrative and incidental to industrial adjudication. There was nothing either in the Act or in the rules empowering the Commissioner of Labour to implement the settlement arrived at between the parties under Section 12 (3). If any of the parties to the settlement were aggrieved by the non-implementation of the terms of settlement by the other party, then the remedy would be to move the Government for sanction to prosecute the party in breach of settlement under Section 29.

The scope of Section 12 was raised in *Manoharan Nair* v. *State of Kerala* where the Central Government rejected the demand of the trade unions regarding minimum wages and dearness allowance. Consequently, the workmen went on strike but later it was called off. The negotiations commenced on the Central Government's counter proposal but the trade unions rejected the proposal. The Regional Joint Labour Commissioner's efforts to convene another conference also failed. The Additional Labour Commissioner, however, succeeded in persuading three of these unions to accept the Central Government's proposal and a settlement was arrived at to this effect, which was countersigned by the Additional Labour Commissioner. The validity of this settlement was challenged on two main grounds: (*i*) The conciliation officer erred in holding that the trade unions, who were parties to the settlement, represented the majority of the workmen in the establishment and (*ii*) the jurisdiction of the conciliation officer to resolve that dispute, which related to the matters mentioned in clause 6 did not bind the workmen in other matters. As to the first contention, the Kerala High Court, following the Supreme Court decision in *Ramnagar Cane & Sugar Co.* v. *Jatin Chakravarthy*, negated it by holding that a settlement made with the minority would bind all the workmen of the establishment when it was countersigned by the conciliation officer unless a collusive settlement, designed to defeat certain kinds of claims, is arrived at with those who could not speak for even a small section of the interested workmen.

As to the second contention, the Court held that no manner was prescribed for raising an industrial dispute (whether existing at the commencement or cropping up during the pendency of proceedings). It accordingly rejected the contention that the conciliation officer was incompetent to countersign the final settlement.

If the conciliation officer fails to effect a settlement, the appropriate government may, after considering the report of the conciliation officer, refer the dispute to a Board or adjudicating authorities and, in particular, not to a Court of Enquiry. The power is discretionary. But, if the appropriate government decides not to refer, it must record its reasons thereof and communicate the same to the parties concerned. It follows that the conciliation officers' report is considered by the appropriate government.

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But unlike the Board of Conciliation, the conciliation officer is not required to make recommendations for the determination of the dispute under the Act. It is suggested that the conciliation will prove to be more effective if the conciliation officer should also be required to make a recommendation to the appropriate government regarding whether or not the matter is fit for adjudication. It is also suggested that the recommendation of a conciliation officer should be given due consideration by the appropriate government.

(*vi*) Can the conciliation proceedings pertaining to industrial disputes be initiated and continued by legal heirs even after the death of the workman? This question was answered in the affirmative by the Division Bench of the Karnataka High Court in *Dhanalakshmi* v. *Reserve Bank of India*, *Bombay*. The Court held that despite the death of the workman, the point sought to be settled by the legal heirs remains an 'industrial dispute' for the purpose of adjudication under the Industrial Dispute Act, 1947.

(*vii*) Can the Registrar of Co-operative Society nullify a settlement pertaining to wages made before the conciliation officer between co-operative societies and their employees? This question was answered in the negative by the Madras High Court in *S. Jina Chandran* v *Registrar of Co-operative Societies, Madras*.

6.8.2 Duties of Board of Conciliation

A Board to which a dispute is referred must investigate the dispute and all matters affecting the merits and the right settlement thereof and do all things for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute without delay.

If a settlement is arrived at, the Board should send a report to the appropriate government together with a memorandum of the settlement signed by the parties to the dispute. If no settlement is reached, the Board must send a full report together with its recommendation for the determination of the dispute.

In case of failure of settlement by a Board, the 'appropriate government' may refer the dispute to a Labour Court, Tribunal or National Tribunal. The Government is, however, not bound to make a reference. But where the Government does not make a reference in a public utility service after receiving a report from a Board it must record and communicate to the parties concerned its reasons for not doing so.

A Board is required to submit its report within two months of the date on which the dispute was referred to it or within such shorter period as may be fixed by the appropriate government. The time-limit for the submission of a report can be extended by the appropriate government or by agreement in writing by all the parties to the dispute.

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6.8.3 Conciliation Proceedings

The study of conciliation proceedings requires examination of: (*i*) when and how conciliation machinery is set in motion and (*ii*) the duration of the conciliation proceedings. The study is of great practical significance. It is important because the management is prohibited from exercising its prerogative during the pendency of conciliation proceedings before a conciliation officer and the Board of Conciliation in respect of an industrial dispute. Further, workmen and employers in a public utility services are prohibited from declaring strike or lockout as the case may be during the pendency of any conciliation proceedings before a conciliation officer. In non-public utility services, management and workmen are prohibited to declare lockout or strike during the pendency of conciliation proceeding before a Board of Conciliation and seven days thereafter.

Let us now examine when a conciliation machinery is set in motion and what is the duration of the conciliation proceedings before the conciliation officer and the Board of Conciliation.

(*i*) *Cognizance.*

(*a*) ***By Conciliation Officer.*** In case of public utility services where a notice of strike or lockout has been given under Section 22, it is mandatory for the conciliation officer to intervene under the Act. But in non-public utility services where an industrial dispute exists or is apprehended, the conciliation officer my exercise his discretion to conciliate or not. In practice, it has been found that the optional provision is acquiring compulsory status in non-public utility services also. The conciliation officer may take note of an existing or apprehended disputes either *suo motu* or when approached by either of the parties as his power under the Act is essentially confined to investigation and mediation of industrial dispute.

(*b*) ***By Board of Conciliation.*** The Board assumes jurisdiction over the existing or apprehended dispute when it is referred to it by the appropriate government.

(*ii*) *Pendency of conciliation proceeding before a Conciliation Officer*. The opening clause of Sections 22 (1) (d), 22 (2) (d) and 33, namely, 'during the pendency of any conciliation proceeding before a conciliation officer' prescribes the period of prohibition of strikes and lockouts in public utility services as well as on the exercise of management's prerogative. These critical words, however, have to be read with other provisions of the Act and the Rules framed thereunder.

(*a*) *The commencement of proceedings.* Sub-section (1) of Section 20 provides that in public utility services the starting point of the prohibition is the date on which the conciliation officer receives a notice of strike or lock out under Section 22.

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(*b*) *The termination of proceedings*. Sub-section (2) of Section 20 provides the other terminus of the period of prohibition:

A conciliation proceeding shall be deemed to have concluded:

(*a*) where a settlement is arrived at, when a memorandum of the settlement is signed by the parties to the disputes

(*b*) where no settlement is arrived at, when the report of the conciliation officer is received by the appropriate Government or when the report of the Board is published under Section 17, as the case may be

(*c*) where reference is made to a Court, Labour Court, Tribunal or National Tribunal under Section 10 during the pendency of conciliation proceedings

6.8.4 Pendency of Proceedings before a Board of Conciliation

(*a*) ***The commencement of Proceedings.*** The proceeding is deemed to have commenced on the date of the order referring the dispute to the Board. The effect of this provision can be interpreted only with reference to the provisions of Section 5 and Rule 6 of the Industrial Disputes (Central) Rules, 1957. These provisions do not provide sufficient safeguards to the workmen or the employer. What if the employer declares a lock out or the workmen declare a strike between the date of notice under Rule 6 and the date of order referring the dispute to the Board of Conciliation?

(*b*) ***The termination of proceedings.*** Under Sub-section (2) of Section 20, conciliation proceedings shall be deemed to have concluded—

(*i*) where a settlement is arrived at, when a memorandum of the settlement is signed by the parties to the dispute

(*ii*) where no settlement is arrived at, when the report of the Board is published under Section 17

(*iii*) when a reference is made to a Labour Court, Tribunal or National, Tribunal under Section 10

6.8.5 Settlement in Conciliation

After having discussed the proceedings in conciliation it is necessary to examine the settlement in conciliation. The settlement in conciliation requires consideration of several aspects such as concept and nature of settlement, form of settlement, publication of settlement, period of operation of settlement, persons on whom settlement is binding and enforceability of settlement.

(*a*) *Concept of settlement.* Section 2 (p) defines 'settlement' to mean 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 authorized in this behalf by the appropriate government and the conciliation officer.

An analysis of the aforesaid definition reveals that there are two modes of settlement of industrial disputes: (*i*) settlement arrived at in the course of conciliation proceedings, *i.e.*, one that is arrived at with the assistance and concurrence of the conciliation officer, who is duty bound to promote a settlement and to do everything to induce the parties to come to a fair and amicable settlement of the dispute, and (*ii*) a written agreement between employer and workmen arrived at otherwise than in the course of conciliation proceedings.

It also appears from the above definition that 'unless an agreement arrived at between the parties is a settlement in its grammatical or ordinary signification, such an arrangement although arrived at in a conciliation proceedings will not be a settlement within the meaning of Section 2 (p).' Further, the expression 'in the course of conciliation proceedings' refers to the duration when the conciliation proceedings are pending. Moreover, for the validity of this kind of settlement 'it is essential that the parties thereto should have subscribed to it in the prescribed manner and a copy thereof should have been sent to an officer authorised in this behalf by the appropriate Government and the Conciliation Officer.'

(*b*) *Nature of settlement.* The nature of proceedings before the conciliation officer is not judicial or quasi-judicial but administrative. Let us examine the requirements in order to examine its nature.

(*i*) *Settlement must be 'in writing'.* The Industrial Disputes Act, 1947 requires the settlement arrived at in the course of conciliation proceedings by the conciliation officer and Board of Conciliation to be 'in writing'. The purpose is to minimize the area of disputes over the contents thereof and to have a permanent record of matters affecting labour management relations.

(*ii*) *Writing must be signed by the parties.* The Industrial Disputes Act, 1947 requires the 'settlement arrived at in the course of conciliation proceedings by the Conciliation Officer or by the Board to be signed by the parties to the dispute. Thus, clause (2) of Rule 58 of the Industrial Disputes (Central) Rules provides:

> the settlement shall be signed by (*a*) in the case of employer, by the employer himself, or by his authorised agent, or when the employer is an incorporated company or other body corporate, by the agent, manager or other principal officer of the corporation; (*b*) in the case of workmen by an officer of a trade union of the workmen or by five representatives of the workmen duly authorised in this behalf at a meeting of the workmen held for the purpose.

The provision raises several problems. *First*, what if the parties do not sign it? *Second*, what is the position of an individual workman who is not a

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member of any union whatsoever and his erstwhile co-workers are not prepared to help him? *Third*, what is the position of an individual workman who is made a scapegoat by his own union?

As to the first, it is significant to note that Sections 12 (3) and 13 (3) make it obligatory upon the conciliation officer and the Board of Conciliation to submit the report with a 'memorandum of the settlement signed by the parties to the dispute'.

The second and third problems are not easy to answer. It would be observed that Rule 59(2) (b) does not at all recognize an individual workman. This is all the more so in view of the fact that his erstwhile co-workers are not prepared to help him. Under the circumstances, he will be helpless and will be bound by the settlement arrived at by the union. This view is fortified by the provisions of Section 18.

(*c*) *Settlement must be in the prescribed form.* Should the settlement be one document signed by both the parties, or can it be gathered from documents that have been separately signed by the parties, *e.g.*, correspondence? Clause (i) of Rule 58 which provides that 'a settlement arrived at in the course of conciliation proceedings or otherwise, shall be in form 4' suggests that the written agreement must be embodied in one document.

(*d*) *Publication of the settlement by Board of Conciliation.* Section 17 (1), which deals with the publication of the award by the appropriate government provides:

> Every report of a Board... together with any minute of dissent recorded there with shall, within a period of thirty days from the date of its receipt by the appropriate Government, be published in such manner as the appropriate Government thinks fit.

The aforesaid provision raises several issues: the key question is whether the aforesaid provision is mandatory or directory? Second, what will be the effect of withholding the publication of the report? Third, whether the publication of the report after the expiry of statutory period of thirty days will make the settlement invalid or unenforceable? Fourth, whether the report will be taken to have been published on the date of the Government's notification or the date on which such notification appeared in the gazette?

(*e*) *Settlement must be fair, just and bonafide.* The Apex Court in *K.C.P. Ltd.* v. *The Presiding Officer & Ors.* held that a Court or Tribunal must satisfy itself that a settlement was not *ex facie* unfair, unjust or *mala fide*.

(*f*) *Period of Operation of Settlement.* (*i*) ***Commencement.*** Sub-section (1) of Section 19 provides:

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

Thus, the settlement shall come into operation on the date agreed upon by the parties or, if none, the date on which the memorandum of settlement is signed by them.

(*ii*) ***Termination.*** Sub-section (2) of Section 19 provides for the other terminus of the settlement.

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

6.8.6 Court of Inquiry

Constitution

A procedure similar to the constitution of a Board of Conciliation is provided for bringing into existing a Court of Inquiry as well. While a Board of Conciliation may be constituted for promoting the settlement of an industrial dispute, the purpose for which a Court of Inquiry may be constituted is 'for enquiring into any matter appearing to be connected with or relevant to an industrial dispute'. The idea of a Court of Inquiry is borrowed from the British Industrial Courts Act, 1919. This Act enables the minister on his own motion and irrespective of the consent of the parties to a dispute, to set up a Court of Inquiry to enquire into the report on the causes and circumstances of any trade dispute, together with such recommendations as the Court may make for the resolution of the dispute. Perhaps because of the extended field of operation of the Court of Inquiry, the Legislative thought fit to allow the parties to use instruments of economic coercion during pendency of proceeding before it.

Jurisdiction of the Court of Inquiry

The Act empowers the appropriate Government to constitute a Court of Inquiry to inquire into any matter appearing to be connected with or relevant to an industrial dispute. The Court of Inquiry consists of one or more independent persons at the discretion of the appropriate government. Where a Court consists of two or more members, one of them shall be appointed as the Chairman. The Court, having the prescribed quorum, may act notwithstanding the absence of the Chairman or any of its members or any vacancy in its number. However, if the appropriate government notifies the Court that the services of the Chairman have ceased to be available, the Court shall not act until a new Chairman has been appointed. The Court can inquire into matters 'connected with or relevant to an industrial dispute' but not into the industrial dispute.

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Duties of the Court

It is the duty of the Court of Inquiry to inquire into matters referred to it and submit its report to the appropriate government ordinarily within six months from the commencement of its inquiry. This period is, however, not mandatory and the report even after the said period would not be invalid.

Publication of the Report

The Act requires that the report of the appropriate government shall be published within thirty days of its receipt.

Voluntary Arbitration

Voluntary arbitration is one of the effective modes of settlement of industrial dispute, which supplements collective bargaining. When negotiation fails, arbitration may prove to be a satisfactory and most enlightened method for resolving industrial dispute. It provides 'a new focus for setup animosities'. It has been found that in 'many arbitration cases, in which the parties start out angry at each other, they end up less so. The winning party is satisfied, and the losing party is likely to feel aggrieved, not at the other party, but at the arbitrator'. Further, informal arbitration offers an opportunity to dissipate the hard feeling, which the industrial dispute may have aroused.

It is important because it is (*i*) expected to take into consideration the realities of the situation; (*ii*) expected to meet the aspiration office parties: (*iii*) based on voluntarism; (*iv*) without compromising the fundamental position of the parties, and finally; (*v*) expected to promotes mutual trust. However, it is unfortunate that despite the Government's stated policy to encourage collective bargaining and voluntary arbitration, India adopted only the compulsory adjudication system after independence and did not give legal sanctity to voluntary arbitration till 1956. The severe criticism of conciliation and adjudication led to the introduction of Section 10 A relating to voluntary arbitration through the Industrial Disputes (Amendment) Act, 1956. The 1956 Amendment, to some extent, has tried to give legal force to voluntary arbitration but it still stands on a lower footing than adjudication as it permits the parties to adopt recourse to arbitration prior to reference to adjudication. Further, the 1956 Amendment also did not place an arbitrator on the same footing as that of adjudicators. The 1964 Amendment did try to bridge the gap but still the disparity remains in several respects.

Check Your Progress

4. Why were works committee introduced?
5. What is the special responsibility of the conciliation officer?
6. What is the composition of the Court of Inquiry under the Industrial Disputes Act, 1947?

6.9 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

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1. The use of the term 'lockout' to describe the employer's instruments of economic coercion dates back to 1860 and is more recent than its counterparts in the hands of workers–strike–by one hundred years.
2. The first known lockout was declared in 1895 in Budge Budge Jute Mills.
3. Retrenchment generally means 'discharge of surplus labour or staff' by the employer on account of a long period of lay-off or rationalization or production processes or improved machinery or automation of machines or similar other reasons.
4. The institution of the works committee was introduced in 1947 under the Industrial Disputes Act, 1947 to promote measures for securing and preserving amity and good relations between employers and workmen.
5. The power of the conciliation officer is not adjudicatory but is intended to promote a settlement of dispute. However, a special responsibility is vested in the conciliation officer to see that the settlement arrived at is fair and reasonable and he should then give his concurrence.
6. The Court of Inquiry consists of one or more independent persons at the discretion of the appropriate government.

6.10 SUMMARY

- A strike is an instrument of economic coercion that seeks to deprive an 'employer' of labour input and thereby diminish through loss of production, his earning capacity in the hope that the resulting economic strain would compel him to come round to the strikers' point of view.
- While negotiating for the settlement of an industrial dispute, workmen may resort to the use of instruments of economic coercion to get their point of view accepted by the management.
- Retrenchment generally means 'discharge of surplus labour or staff' by the employer on account of a long period of lay-off or rationalization or production processes or improved machinery or automation of machines or similar other reasons.
- The Industrial Disputes Act, 1947 empowers the appropriate government to require an employer having 100 or more workmen to constitute a works committee.
- The Industrial Disputes Act provides for the appointment of conciliation officers, 'charged with the duty of mediating in and promoting the settlement of industrial disputes.'

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- The study of conciliation proceedings requires examination of: (*i*) when and how conciliation machinery is set in motion and (*ii*) the duration of the conciliation proceedings.
- The settlement in conciliation requires consideration of several aspects such as concept and nature of settlement, form of settlement, publication of settlement, period of operation of settlement, persons on whom settlement is binding and enforceability of settlement.
- Voluntary arbitration is one of the effective modes of settlement of industrial dispute, which supplements collective bargaining.

6.11 KEY WORDS

- **Strike:** It means a refusal to work organized by a body of employees as a form of protest, typically in an attempt to gain a concession or concessions from their employer.
- **Lockout:** It means the exclusion of employees by their employer from their place of work until certain terms are agreed to.
- **Retrenchment:** It is activity to legally terminate any employment contract with the employee by offering a compensation package.
- **Arbitration:** It means settlement of a dispute (whether of fact, law, or procedure) between parties to a contract by a neutral third party (the arbitrator) without resorting to court action.

6.12 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. What is a strike?
2. What are the different forms of strike?
3. How does the Industrial Disputes Act, 1947 define a lockout?
4. What is common between retrenchment and lay-offs?
5. What is the jurisdiction of the court of enquiry?

Long-Answer Questions

1. Discuss the rights the management has to lay-off employees.
2. Examine the procedure to lay-off employees under the Industrial Disputes Act, 1947.

3. Describe the procedure for retrenchment.
4. Explain how industrial disputed are settled.
5. Describe the power and duties of the conciliation authorities.

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UNIT 7 INDUSTRIAL DISPUTES ACT, 1947-III

NOTES

Structure

7.0 INTRODUCTION

In the previous unit, you learnt about strikes, lockouts, lay-offs, retrenchment as well the process laid down by the Industrial Disputes Act, 1947 to settle industrial disputes. This unit will examine how the Industrial Disputes Act, 1947 defines unfair labour practices, as well as the miscellaneous provisions of the Act, such as offences by companies, conditions of service, and so on.

7.1 OBJECTIVES

After going through this unit, you will be able to:

- Discuss some of the unfair labour practices of employers and employees
- Describe some of the miscellaneous provisions of the Industrial Disputes Act, 1947

7.2 UNFAIR LABOUR PRACTICES

Unfair labour practices are codified in the Industrial disputes Act in section 2(ra) and 23. Such practices could be indulged in by Employers/Unions of Employees. These are presented below:

I. On the part of employers and trade unions of employers [section 2(ra)]

(i) To interfere with, restrain from, or coerce, workmen in the exercise of their right to organize, form, join or assist a trade union or to engage in concerted

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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 organized;

(c) Granting wage increase to workmen at crucial periods of trade union organizations, with a view to undermining the efforts of the trade union organizations.

(ii) 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 organizing a trade union of his workmen; and

(b) An employer showing partiality or granting favour to one of several trade unions attempting to organize his workmen or to its members, where such a trade union is not a recognized trade union.

(iii) To establish employer sponsored trade unions of workmen.

(iv) To encourage or discourage membership in any trade union by discriminating against any workman, that is to say:-

(a) Discharging or punishing a workman, because he urged other workmen to join or organize 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.

(v) To discharge or dismiss workmen-

(a) By way of victimization;

(b) Not in good faith, but in the colourable exercise of the employer's 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;

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(g) For misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record or service of the workman, thereby leading to a disproportionate punishment.

(vi) 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.

(vii) To transfer a workman mala fide from one place to another, under the guise of following management policy

(viii) 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.

(ix) To show favouritism or partiality to one set of workers regardless of merit.

(x) To employ workmen as 'badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen.

(xi) To discharge or discriminate against any workman for filing charges or testifying against an employer in any enquiry or proceeding relating to any industrial dispute.

(xii) To recruit workmen during a strike which is not an illegal strike.

(xiii) Failure to implement award, settlement or agreement.

(xiv) To indulge in act, of force or violence.

(xv) To refuse to bargain collectively, in good faith with the recognised trade unions.

(xvi) Proposing or continuing a lock-out deemed to be illegal under this Act.

II. On the part of workmen and trade unions of workmen

(i) To advise or actively support or instigate any strike deemed to be illegal under this Act.

(ii) To coerce workmen in the exercise of their right to self-organizations 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.

(iii) For a recognized union to refuse to bargain collectively in good faith with the employer.

(iv) To indulge in coercive activities against certification of a bar-gaining representative.

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(v) 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.

(vi) To stage demonstrations at the residences of the employers or the managerial staff members.

(vii) To incite or indulge in wilful damage to employer's property connected with the industry.

(viii) To indulge in acts of force or violence or to hold out threats of intimidation against any workman with a view to prevent him from attending work

7.3 MISCELLANEOUS PROVISIONS

Let us now discuss some of the Miscellaneous Provisions under the Industrial Disputes Act, 1947.

7.3.1 32. 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 the management thereof shall, unless he proves that the offence was committed without his knowledge or consent, be deemed to be guilty of such offence.

33: Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.

1. During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall—
   (a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or
   (b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.
2. During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman,—

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(a) 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 proceeding; or

(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman: Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

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

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

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

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

4. In every establishment, the number of workmen to be recognised as protected workmen for the purposes of sub-section (3) 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.

5. Where an employer makes an application to a conciliation officer, Board, an arbitrator, a labour Court, Tribunal or National Tribunal under the proviso to sub-section (2) for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass, within a period of three months from the date of receipt of such application], such order in relation thereto as it deems fit: Provided that where any such authority considers it necessary or expedient so to do, it may, for reasons to be recorded in writing, extend such period by such further period as it may think fit: Provided further that no proceedings before any such authority shall lapse merely on the ground that any period specified in this sub-section had expired without such proceedings being completed:

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7.3.2 33A Special Provision for Adjudication as to Whether Conditions of Service, etc., Changed during Pendency of Proceedings

Special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceedings.- Where an employer contravenes the provisions of section 33 during the pendency of proceedings before a conciliation officer, Board, an arbitrator, a Labour Court, Tribunal or National Tribunal any employee aggrieved by such contravention may, make a complaint in writing, in the prescribed manner,— (a) to such conciliation officer or Board, and the conciliation officer or Board shall take such complaint into account in mediating in, and promoting the settlement of, such industrial dispute; and (b) to such arbitrator, Labour Court, Tribunal or National Tribunal and on receipt of such complaint, the arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit his or its award to the appropriate Government and the provisions of this Act shall apply accordingly.

Sec. 34: Cognizance of offences.

1. No Court shall take cognizance of any offence punishable under this Act or of the abetment of any such offence, save on complaint made by or under the authority of the appropriate Government.
2. No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class], shall try any offence punishable under this Act.

35. Protection of persons:

1. No person refusing to take part or to continue to take part in any strike or lock-out which is illegal under this Act shall, by reason of such refusal or by reason of any action taken by him under this section, be subject to expulsion from any trade union or society, or to any fine or penalty, or to deprivation of any right or benefit to which he or his legal representatives would otherwise be entitled, or be liable to be placed in any respect, either directly or indirectly, under any disability or at any disadvantage as compared with other members of the union or society, anything to the contrary in the rules of a trade union or society notwithstanding.
2. Nothing in the rules of a trade union or society requiring the settlement of disputes in any manner shall apply to any proceeding for enforcing any right or exemption secured by this section, and in any such proceeding the Civil Court may, in lieu of ordering a person who has been expelled from membership of a trade union or society to be restored to membership, order that he be paid out of the funds of the trade union or society such sum by way of compensation or damages as that Court thinks just.

38. Power to make rules

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

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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 powers and procedure of conciliation officers, Boards, Courts, Labour Courts, Tribunals and National Tribunals including rules as to the summoning of witnesses, the production of documents relevant to the subject-matter of an inquiry or investigation, the number of members necessary to form a quorum and the manner of submission of reports and awards;
3. the form of arbitration agreement, the manner in which it may be signed by the parties, the manner in which a notification may be issued under sub-section (3A) of section 10A, the powers of the arbitrator named in the arbitration agreement and the procedure to be followed by him;
4. the appointment of assessors in proceedings under this Act.
5. the constitution of Grievance Settlement Authorities referred to in section 9C, (section 38.) the manner in which industrial disputes may be referred to such authorities for settlement, the procedure to be followed by such authorities in the proceedings in relation to disputes referred to them and the period within which such proceedings shall be completed;

Sec. 39: Delegation of powers

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

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

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

Sec. 40: Power to amend Schedules

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

Check Your Progress

1. What does the Industrial Disputes Act, 1947 consider as an unfair labour practice in terms of employees and trade unions?
2. What is a protected workman?
3. According to the Act, how many workmen can be recognized as protected workmen?

7.4 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

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1. According to the Industrial Disputes Act, 1947, to interfere with, restrain from, or coerce, workmen in the exercise of their right to organize, 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 can be considered as an unfair labour practice.
2. A protected workman, in relation to an establishment, means a workman who, being a member of the executive or other office bearer of a registered trade union connected with the establishment, is recognised as such in accordance with rules made in this behalf.
3. In every establishment, the number of workmen to be recognised as protected workmen for the purposes of sub-section (3) 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.

7.5 SUMMARY

- Unfair labour practices are codified in the industrial disputes act in section 2(ra) and 23. Such practices could be indulged in by employers/unions of employees.
- One type of unfair labour practice on the part of the employer is to interfere with, restrain from, or coerce, workmen in the exercise of their right to organize, 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.
- Another type of unfair labour practice is 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.
- An unfair labour practice on the part of employees is for a recognized union to refuse to bargain collectively in good faith with the employer.
- Where a person committing an offence under the Industrial Dispute 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 the management thereof shall, unless he proves that the offence was committed without his knowledge or consent, be deemed to be guilty of such offence.

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7.6 KEY WORDS

- **Unfair labour practice:** It means any of various acts by an employer or labour organization that violate a right or protection under applicable labour laws.
- **Tribunal:** It is a body established to settle certain types of dispute.
- **Adjudication:** It refers to a formal judgement on a disputed matter.

7.7 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. Write a short note on the unfair labour practices on the part of employees under the Industrial Disputes Act, 1947.
2. What does the Industrial Disputes Act, 1947 have to say in relation to condition of service during pendency of proceedings?

Long-Answer Questions

1. Describe the different unfair labour practices on the part of the employer under the Industrial Disputes Act, 1947.
2. Discuss some of the miscellaneous provisions of the Industrial Disputes Act, 1947.

7.8 FURTHER READINGS

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UNIT 8 SHOPS AND ESTABLISHMENTS ACT, 1947

NOTES

Structure

8.0 INTRODUCTION

This unit focuses on the Shops and Establishment Act, 1947. The unit provides definitions of the terms 'commercial establishment' and 'shop' as set out in Sections 2 (4) and 2 (27), respectively. Some of the other terms defined in the Act such as apprentice, employee, holiday, registration certificate, and so on are also discussed in this unit for your benefit. Following this, the registration of establishments is discussed along with a delineation of the working hours of shops, restaurants, theatres and other public places of amusement or entertainment. In addition, you will be familiarized with the provisions of the Act that relate to the employment of children, women and young persons and the safety of employees.

8.1 OBJECTIVES

After going through this unit, you will be able to:

- Define commercial establishments and shops
- Explain the registration process of establishments
- Describe salient features of Shops and Establishment Act, 1947
- Outline the obligations of an employer

8.2 DEFINITION: COMMERCIAL ESTABLISHMENT AND SHOP

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Section 2(4) of the act defines 'commercial establishment' to mean an establishment which carries on any business, trade or profession or any work in connection with or incidental or ancillary to, any business, trade or profession and includes a society registered under the Societies Registration Act, 1860, and a charitable or other trust, whether registered or not, which carries on, whether for purposes of gain or not, any business, trade or profession or work in connection with or incidental or ancillary thereto but does not include a factory, shop, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment.

Section 2(27) of the Act defines a shop to mean any premises where goods are sold either by retail or wholesale or where services are rendered to customers and includes an office, a store room, godown, warehouse or work place, whether in the same premises or otherwise, mainly used in connection with such trade or business but does not include a factory, a commercial establishment, residential hotel, restaurant, eating house, theatre, or other place of public amusement or entertainment.

Object and Scope

The object of the Act is to consolidate and amend the law relating to the regulation of conditions of work and employment in shops, commercial establishments, residential hotels, restaurants, eating houses, theatres, others places of public amusement or entertainment and other establishments.

8.3 SOME BASIC TERMINOLOGY

Apprentice: A person who is employed, whether on payment of wages or not for the purpose of being trained, in any trade, craft or employment in any establishment.

Day: The period of twenty-four hour beginning at midnight, provided that in the case of an employee whose hours of work extend beyond midnight, day means the period of twenty-four hours beginning when such employment commences irrespective of midnight.

Employee: A person wholly or principally employed, whether directly or through any agency, whether for wages or other consideration, or in connection with any establishment; including an apprentice but not a member of the employer's family.

Employer: A person owning or having ultimate control over the affairs of an establishment.

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Establishment: A shop, commercial establishment, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment to which this Act applies and includes such other establishment as the state government may, by notification in the official gazette, declare to be an establishment for the purposes of this Act.

Factory: Any premises which is a factory within the meaning of clause (m) of Section 2 of the Factories Act, 1948 or which is deemed to be a factory under Section 85 of the said Act.

Goods: Includes all materials, commodities and articles.

Holiday: A day on which an establishment shall remain closed or on which an employee shall be given a holiday under the provisions of this Act.

Inspector: An inspector appointed under the provisions of this Act.

Leave: Leave provided for in Chapter VII of this Act.

Local area: Any area or combination of areas to which this Act Applies

Manager: A person declared to be a manager under Section 7.

Member of the family of an employer: The husband, wife, son, daughter, father, mother, brother or sister of an employer who lives with and is dependent on such employer.

Opened: Opened for the service of any customer, or for any business of the establishment, or for work, by or with the help of any employee, of or connected with the establishment.

Prescribed: Prescribed by rules made under this Act.

Prescribed authority: The authority prescribed under the rules made under this Act.

Register of establishment: A register maintained for the registration of establishments under this Act.

Registration certificate: A certificate showing the registration of an establishment [granted or renewed under Section 7]

Residential hotel: Any premises used for the reception of guests and travellers desirous of dwelling or sleeping therein and includes a residential club.

Restaurant or eating house: Any premises in which is carried on wholly or principally the business of the supply of meals or refreshments to the public or a class of the public for consumption on the premises.

Spread-over: The period between the commencement and the termination of the work of an employee on any day.

NOTES

Theatre: Includes any premises intended principally or wholly for the exhibition of pictures or other optical effects by means of a cinematograph or other suitable apparatus or for dramatic performances or for any other public amusement or entertainment.

Week: The period of seven days beginning at midnight of Saturday.

Year: A year commencing on the first day of January.

Check Your Progress

1. What is the objective of the Shops and Establishments Act, 1947?
2. Who is an apprentice?

8.4 REGISTRATION OF ESTABLISHMENTS

1. Section 7 imposes an obligation upon the employer of every establishment to send to the inspector of the local area concerned a statement, in a prescribed form, together with such fees as may be prescribed, containing:
   a. The name of the employer and the manager, if any
   b. The postal address of the establishment
   c. The name, if any, of the establishment
   d. The category of the establishment, *i.e.,* whether it is a shop, commercial establishment, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment
   e. Such other particulars as may be prescribed
2. On receipt of the statement and the fees, the inspector shall, on being satisfied about the correctness of the statement register of the establishment in the register of establishments in such manner as may be prescribed, shall issue, in the prescribed form, a registration certificate to the employer.
3. In the event of any doubt or difference of opinion between an employer and the inspector as to the category to which an establishment should belong, the inspector shall refer the matter to the prescribed authority, which shall, after such inquiry as it thinks proper, decide the category of such establishment and its decision shall be final for the purposes of this Act..
4. Within thirty days from the date mentioned in column 2 below in respect of an establishment mentioned in column 1, the statement, together with the fees, shall be sent to the inspector under sub-section (1):

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1 Establishments	2 Date from which the period of 30 days is to commence
(i) Establishments existing in local areas mentioned in Schedule I on the date on which this Act comes into force.	The date on which this Act comes into force.
(ii) Establishments existing in local areas on the date on which this section comes into force.	The date on which this section comes into force in the local area.
(iii) New establishments in local areas mentioned in Schedule I and other local areas in which this section has come into force.	The date on which the establishment commences its work.

5. A registration certificate granted under sub-section (2) shall, unless it is cancelled earlier, remain in force from the date of its grant upto the end of the year in which it is granted, and shall be renewable from time to time for a period not exceeding three years at a time; however, any such period shall not include a fraction of a year, provided that a registration certificate granted before the commencement of the Bombay Shops and Establishments (Gujarat Extension and Amendment) Act, 1961 and in force immediately before such commencement shall remain in force upto the end of December 1961 unless it is cancelled earlier.
6. An employer, holding a registration certificate shall, except in the circumstances mentioned in Section 9, make an application for its renewal in the prescribed form to the inspector not later than fifteen days before the date of its expiry. Such application shall be accompanied by such fee as may be prescribed.
7. On receipt of an application in accordance with sub-section (6), the inspector shall, on being satisfied about the correctness of the particulars mentioned in the application, renew the registration certificate in the prescribed form,
8. The registration certificate renewed under sub-section (7) shall, unless it is cancelled earlier, remain in force from the period for which it is renewed.
9. The registration certificate shall be prominently displayed at the premises of the establishment.

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8.4.1 Working Hours of Shops, Restaurants and Theatres

Shops and Commercial Establishments

Opening Hours of Shops

(1) Under Section 10 (1) no shop

(a) dealing wholly in milk, vegetable, fruits, fish, meat, bread or any other goods notified by the state government shall, on any day, be opened earlier than 5 a.m.

(b) other than those specified in clause (a) of this sub-section shall, on any day, be opened earlier than 7 a.m.

(2) Subject to the provisions of sub-section (7), the state government may fix later opening hours for different classes of shops or for different areas or for different periods of the year.

Closing Hours of Shops

(1) Notwithstanding anything contained in any other enactment for the time being in force, no shop

(a) other than that, specified in clause (b) of this sub-section shall, on any day, be closed later than 8.30 p.m.

(b) dealing mainly in *pan, bidi,* cigarettes, matches and other ancillary articles shall, on any day, be closed later than 11.00 p.m.

Provided that any customer who was being served or was waiting to be served at such closing hour in any shop may be served in such shop during the quarter of an hour immediately following such hour.

(2) Subject to the provisions of sub-section (1), the state government may fix earlier closing hours for different classes of shops or for different areas or for different periods of the year. (Section 11)

Opening and Closing Hours of Commercial Establishments

1. No commercial establishment shall, on any day, be opened earlier than 8.30 a.m and closed later than 8.30 p.m.
2. Subject to the provisions of sub-section (1), the state government may fix later opening or earlier closing hours for different classes of commercial establishments or for different areas or for different periods of the year.

Daily and Weekly Hours of Work in Shops and Commercial Establishments

1. Subject to the provisions of this Act, no employee shall be required or allowed to work in any shop or commercial establishment for more than nine hours on any day and forty-eight hours in any week.

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2. Any employee may be required or allowed to work in a shop or commercial establishment for any period in excess of the limit fixed under sub-section (1), if such period does not exceed three hours in any week.
3. On not more than six days in a year which the state government may fix by rules made in this behalf, for purposes of making of accounts, stock taking settlements or other prescribed occasions, any employee may be required or allowed to work in a shop or commercial establishment in excess of the period fixed under sub-section (1), if such excess period does not exceed twenty-four hours. (Section 14)

Interval for Rest

1. The period of work of an employee in a shop or commercial establishment each day shall be so fixed that no period of continuous work shall exceed five hours and that no employee shall be required or allowed to work for more than five hours before he has had an interval for rest of at least
   (i) half an hour, if he is employed in a commercial establishment engaged in any manufacturing process
   (ii) one hour in any other ease, subject however to the provisions of sub-section (2)
2. In the case of employees other than those employed in a commercial establishment engaged in any manufacturing process, the state government, on an application made in that behalf by the employees concerned, may permit the reduction of the interval for rest to half an hour. (Section 15)

Spread-over in Shops

Section 16 provides that the spread-over of an employee in a shop shall not exceed eleven hours on any day, provided also that where an employee works on any day in accordance with the previsions of sub-section (2) of Section 14, the spread-over shall not exceed fourteen hours on any such day and where he works on any day in accordance with the provisions of sub-section (3) of the said section, the spread-over shall not exceed sixteen hours on any such day.

Spread-over in Commercial Establishments

Under Section 17, the spread-over of an employee in a commercial establishment shall not exceed eleven hours on any day, provided that the state government may increase the spread-over period subject to such conditions as it may impose either generally or in the case of a particular commercial establishment or a class or classes of commercial establishments

2. It shall not be lawful for an employer to call an employee at, or for an employee to go to, his residential hotel, restaurant or eating house or any other place for any work in connection with the business of his residential

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hotel, restaurant or eating house on a day on which such employee has a holiday.

3. No deduction shall be made from the wages of any employee in a residential hotel, restaurant or eating house on account of any holiday given to him under sub-section (7). If an employee is employed on a daily wage, he shall nonetheless be paid his daily wage for the holiday.

8.4.2 Theatres or other Places of Public Amusement or Entertainment

Closing Hours

Notwithstanding anything contained in any other enactment for the time being in force, no theatre or other place of public amusement or entertainment shall, on any day, be closed later than midnight. (Section 26)

Theatres or other places of public amusement or entertainment shall not sell goods of the kind sold in shops after the closing hour of shops.

After the hour fixed for the closing of shops under Section 11, no goods of the kind sold in a shop shall be sold in any theatre or other place of public amusement or entertainment except for consumption on premises. (Section 27)

Daily Hours of Work

1. No employee shall be required or allowed to work in any theatre or other place of public amusement or entertainment for more than nine hours in any day.
2. Any employee may be required or allowed to work in a theatre or other place of public amusement or entertainment for any period in excess of the limit fixed under sub-section (1), if such period does not exceed six hours in any week. [Section 28]

Interval for Rest

The period of work of an employee in a theatre or other place of public amusement or entertainment each day shall be so fixed that no period of continuous work shall exceed five hours and that no employee shall be required or allowed to work for more than five hours before he has had an interval for rest of at least one hour, provided that the state government may, on an application made in that behalf by the employees concerned, permit the reduction of the interval for rest to half an hour. [Section 29]

Spread-over

The spread-over of an employee in a theatre or other place of public amusement or entertainment shall not exceed eleven hours in any day, provided that the state government may increase the spread–over period subject to such conditions as it may impose either generally or in the case of particular or other place of public amusement or entertainment.

8.5 EMPLOYMENT OF CHILDREN, YOUNG PERSONS AND WOMEN

NOTES

Prohibition of Employment of Children

No child shall be required or allowed to work whether as employee or otherwise in any establishment, notwithstanding that such child is a member of the family of the employer. (Section 32)

Prohibition of Employment of Young Persons or Women

No young person or woman shall be required or allowed to work whether as an employee or otherwise in any establishment before 6.00 a.m. and after 7 p.m. notwithstanding that such young person or woman is a member of the family of the employer. (Section 33)

Daily Hours of Work for Young Persons

1. Notwithstanding anything contained in this Act, no young person shall be required or allowed to work, whether as an employee or otherwise, in any establishment for more than six hours on any day.
2. No young person shall be required or allowed to work, whether as an employee or otherwise, in any establishment for more than three hours on any day unless he has had an interval for rest of at least half an hour. (Section 34)

Prohibition of Employment of Young Persons and Women in Dangerous Work

No young person or woman a working in any establishment whether as an employee or otherwise, shall be required or allowed to perform such work as may be declared by the state government by notification in the Official Gazette, to be work involving danger to life, health or morals. [Section 34A]

8.5.1 Health and Safety of Employees

Cleanliness

Under Section 39, the premises of every establishment shall be kept clean and free from effluvia arising from any drain or privy or other nuisance and shall be cleaned at such times and by such methods as may be prescribed. These methods may include lime washing, colour washing, painting, varnishing, disinfecting and deodorizing.

Ventilation

Section 40 requires every premise of every establishment to be ventilated in accordance with such standards and by such methods as may be prescribed.

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Lighting

Under section 41, the premises of every establishment shall be sufficiently lighted during all working hours. However, if it appears to an inspector that the premises of any establishment within his jurisdiction are not sufficiently lighted, he may serve on the employer 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.

Precautions against Fire

Under Section 42, every establishment shall take, except such establishment or class of establishments as may be prescribed, such precautions against fire as may be prescribed.

First Aid

Section 42A provides that in every establishment wherein a manufacturing process as defined in clause (k) of Section 2 of the Factories Act, 1948 is carried on, there shall be provided and maintained a first aid box containing such articles as may be prescribed.

8.6 OBLIGATIONS OF EMPLOYER

The act imposes the following obligations upon the employer:

1. To get the establishment registered, to get it renewed from time to time and to prominently display the same at the premises of the establishment (for details see Section 7)
2. To observe the following in shops, commercial establishment, theatres and other places of amusement or entertainment:
   (i) Opening hours
   (ii) Closing hours
   (iii) Daily and weekly hours of work
   (iv) Provide for interval for rest
   (v) Comply with the spread-over in shops and commercial establishments (for details see Sections 10 to 30)
3. Not to employ children
4. Not to employ young persons and women after 7.00 p.m. and before 6.00 a.m.
5. Not to employ women and young persons in dangerous work
6. To provide leave with pay at the rate of one day for every 21 days of work for each completed year of service consisting of 240 days or more

7. To provide for the health and safety of workers in terms of the following:
   (i) Cleanliness
   (ii) Ventilation
   (iii) Lighting
   (iv) First aid
   (v) Precautions against fire

NOTES

Check Your Progress

3. What are the opening hours of shops according to the Shops and Establishments Act, 1947?
4. What should be the spread over in theatres as per the Shops and Establishments Act, 1947?

8.7 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. The objective of the act is to consolidate and amend the law relating to the regulation of conditions of work and employment in shops, commercial establishments, residential hotels, restaurants, eating houses, theatres, others places of public amusement or entertainment and other establishments.
2. A person who is employed, whether on payment of wages or not for the purpose of being trained, in any trade, craft or employment in any establishment.
3. (i) Under Section 10 (1) no shop
   (a) dealing wholly in milk, vegetable, fruits, fish, meat, bread or any other goods notified by the state government shall, on any day, be opened earlier than 5 a.m.
   (b) other than those specified in clause (a) of this sub-section shall, on any day, be opened earlier than 7 a.m.

   (ii) Subject to the provisions of sub-section (7), the state government may fix later opening hours for different classes of shops or for different areas or for different periods of the year.
4. The spread-over of an employee in a theatre shall not exceed eleven hours in any day, provided that the state government may increase the spread–over period subject to such conditions as it may impose either generally or in the case of particular or other place of public amusement or entertainment.

8.8 SUMMARY

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- Section 2(4) of the act defines 'Commercial establishment' to mean an establishment which carries on any business, trade or profession or any work in connection with or incidental or ancillary to, any business, trade or profession and includes a society registered under the Societies Registration Act, 1860 and a charitable or other trust, whether registered or not, which carries on, whether for purposes of gain or not, any business, trade or profession or work in connection with or incidental or ancillary thereto but does not include a factory, shop, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment.
- Section 2(27) of the act defines a shop to mean any premises where goods are sold either by retail or wholesale or where services are rendered to customers and includes an office, a store room, godown, warehouse or work place, whether in the same premises or otherwise, mainly used in connection with such trade or business but does not include a factory, a commercial establishment, residential hotel, restaurant, eating house, theatre, or other place of public amusement or entertainment.
- The object of the act is to consolidate and amend the law relating to the regulation of conditions of work and employment in shops, commercial establishments, residential hotels, restaurants, eating houses, theatres, others places of public amusement or entertainment and other establishments.
- Section 7 of the act imposes an obligation upon the employer of every establishment to send to the inspector of the local area concerned a statement, in a prescribed form, together with such fees as may be prescribed.
- Under Section 17 of the act the spread-over of an employee in a commercial establishment shall not exceed eleven hours on any day, provided that the state government may increase the spread-over period subject to such conditions as it may impose either generally or in the case of a particular commercial establishment or a class or classes of commercial establishments.
- As per section 29 of the act of the period of work of an employee in a theatre or other place of public amusement or entertainment each day shall be so fixed that no period of continuous work shall exceed five hours and that no employee shall be required or allowed to work for more than five hours before he has had an interval for rest of at least one hour, provided that the state government may, on an application made in that behalf by the employees concerned, permit the reduction of the interval for rest to half an hour.

- As per section 32 of the act, no child shall be required or allowed to work whether as employee or otherwise in any establishment, notwithstanding that such child is a member of the family of the employer.
- Under Section 39 of the act the premises of every establishment shall be kept clean and free from effluvia arising from any drain or privy or other nuisance and shall be cleaned at such times and by such methods as may be prescribed.
- Under section 40 of the act requires every premise of every establishment to be ventilated in accordance with such standards and by such methods as may be prescribed.
- Under section 41 of the act the premises of every establishment shall be sufficiently lighted during all working hours.
- Under Section 42 of the act, every establishment shall take, except such establishment or class of establishments as may be prescribed, such precautions against fire as may be prescribed.
- Of the Shops and Establishments Act, 1947 section 42A provides that in every establishment wherein a manufacturing process as defined in clause (k) of Section 2 of the Factories Act, 1948 is carried on, there shall be provided and maintained a first aid box containing such articles as may be prescribed.

8.9 KEY WORDS

- **Commercial:** It is a term relating to commerce or general business activity.
- **Amendment:** It refers to a minor change or addition designed to improve a text, piece of legislation, etc.
- **Employer:** It refers to a legal entity that controls and directs a servant or worker under an express or implied contract of employment and pays (or is obligated to pay) him or her salary or wages in compensation.

8.10 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. How does the Shops and Establishments Act, 1947 define a commercial establishment?
2. Who constitutes the local authority under the Act?
3. What are the daily and weekly hours of work in shops and commercial establishments?

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Long-Answer Questions

1. Discuss the procedure for the registration of establishments.
2. Explain the health and safety conditions that have to be maintained in shops and commercial establishment according to the Act.
3. What are the provisions set out in the Act with regard to the employment of women, children and young persons?

8.11 FURTHER READINGS

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BLOCK III
EMPLOYEE'S

NOTES

UNIT 9 EMPLOYEES STATE INSURANCE ACT, 1948-I

Structure

9.0 INTRODUCTION

This unit will introduce you to the selective provisions of the Employees State Insurance Act, 1948 and the other provisions of this act have been discussed in Unit 10 and Unit 11.

Object of the Act

The object of the Act is to provide sickness, disablement, medical benefits and maternity benefits to the employees of factories and other industrial establishments as well as to their dependants.

Applicability of the Act

The Act extends to the whole of India. In the first instance, the Act applies to all factories, including the Government owned factories. However, the Act is not applicable to seasonal factories. But the Government may extend the Act to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise. The Act covers workers employed directly, as well as the clerical staff.

The Act covers employees drawing wages upto ₹10,000 per month engaged either directly or through a contractor.

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Definitions

Employee

The term 'employee' as defined under Section 2(9) of the Act, refers to any person employed on wages in, or in connection with, the work of a factory or establishment to which this Act applies. It has a wide connotation and includes within its scope clerical, manual, technical and supervisory functions. Persons whose remuneration (excluding the remuneration for over-time work) does not exceed ₹ 6,500 a month are covered under the Act. The Act does not make any distinction between casual and temporary employees or between technical and non-technical employees. There is also no distinction between those employed on time-rate and piece-rate basis. Employees employed directly by the principal employer and those employed by or through a contractor on the premises of the factory and those employed outside the factory premises under the supervision of the principal employer are all included under the Act. It also covers administrative staff and persons engaged in the purchase of raw materials or the distribution or sale of products and similar or related functions. However, the definition of 'employee' does not include any member of the Indian naval, military or air force.

Wages

'Wages' means all remuneration paid in cash if the terms of the contract are fulfilled. It includes any payment in any period of authorized leave, lockouts or strike which are not illegal lay-offs, and also includes other remuneration paid at intervals not exceeding two months. It does not, however, include the following:

(i) Contributions paid to the provident fund or pension funds

(ii) Travelling allowance or the value of travelling concession

(iii) Sum paid to defray special expenses

(iv) Gratuity payable on discharge

9.1 OBJECTIVES

After going through this unit, you will be able to:

- Discuss the process for registration of factories and establishments
- Prepare an overview of the Employees State Insurance Corporation (ESIC)
- State the composition and powers and functions of the Standing Committee and Medical Benefit Council
- Standing Committee and Medical Benefit Council,
- Describe the provisions relating to contributions

9.2 REGISTRATION OF FACTORIES AND ESTABLISHMENTS

NOTES

Registration

The registration of a factory/establishment with the Employees' State Insurance Corporation is a statutory responsibility of the employer under Section 2-A of the Act, read the Regulation 10-B. The owner of a factory/establishment to which the Act applies for the first time is liable to furnish to the appropriate regional office, within 15 days after the Act becomes applicable, a declaration of registration in Form 01. On receipt of Form 01, the regional office will examine the coverage it and, after it is satisfied that the Act applies to the factory/establishment, will allot a code number to the employer.

The forms for the registration of employees are the declaration form and the return of declaration form (covering letter). The principal employer should get the declaration form filled in by every employee covered under the scheme.

The statutory registers to be maintained up to date are the following:

(a) Register of Employees

(b) Accident Book in which every accident to employees during the course of employment is recorded

(c) Inspection Book (to be produced before an Inspector or any other authorized officer)

As and when required, certain other forms, such as ESIC 32, ESIC 37, ESIC 53, ESIC 71, ESIC 72, ESIC 86, ESIC 105, shall be filled up.

Benefits

The following benefits are granted to all insured workers under the Act:

(i) Maternity benefit

(ii) Disablement benefit

(iii) Sickness benefit

(iv) Medical benefit

(v) Dependants' benefit

(vi) Funeral benefit

Maternity Benefit

Section 50 which provides the following with regard to maternity benefit:

1. An insured woman shall be qualified to claim maternity benefit for a confinement occurring or expected to occur during a benefit period, if the contribution in respect of her were payable for not less than half the number of days of the corresponding contribution period.

NOTES

2. Subject to the provisions of this Act, and the regulations, if any, an insured woman who is qualified to claim maternity benefit in accordance with sub-section (1) noted above, shall be entitled to receive it at the daily rate specified in the First Schedule for all days on which she does not work for remuneration during a period of twelve weeks of which not more than six shall precede the expected date of confinement.

   Death may come to an insured woman during her confinement, or during the period of six weeks immediately following her confinement for which she is entitled to maternity benefit. Two other situations may arise: she may expire leaving the surviving child or both the mother and the child may die. In all such contingencies, maternity benefit will be granted. The maternity benefit shall be paid for the whole of that period mentioned above. If the child also dies during the said period, then, the maternity benefit shall be paid for the days upto and including the day of the death of the child, to the person nominated by the insured woman in such manner as may be specified in the regulations; and if there is no such nominee, to her legal representative.

3. An insured woman who is qualified to claim maternity benefit in accordance with sub-section (1) is in case of miscarriage, entitled, on production of such proof as may be required under the regulations, to maternity benefit at the rates specified in the First Schedule for all days on which she does not work for remuneration during a period of six weeks immediately following the date of her miscarriage.

   We may note here that no woman is entitled to claim maternity benefit for miscarriage, the causing of which is punishable under the Indian Penal Code. An intentional miscarriage is an offence under I.P.C. Section 2 (14-B).

4. Sub-section (4) of Section 50 lays down special protection to working women. Sickness arising out of the pregnancy, confinement, premature birth of child or miscarriage entitles her, to maternity benefit at the rates specified in the First Schedule, for all days on which she does not work for remuneration during an additional period not exceeding one month.

Thus the maternity benefit protects the health of the mother and her child and helps in reducing the financial hardship caused by the birth of the child.

Disablement Benefit

Section 51 lays down that:

(a) a person who sustains temporary disablement for not less than three days (excluding the day of accident) shall be entitled to periodical payment in accordance with the provisions of the First Schedule;

(b) a person who sustains permanent disablement, whether total or partial, shall be entitled to periodical payment for such disablement in accordance with the provisions of the First Schedule.

NOTES

But in case the permanent disablement—whether total or partial—has been assessed provisionally for a limited period or finally, the benefit provided under clause (b) shall be payable for that limited period or, as the cause may be, for life.

Presumption as to Accident Arising in the Course of Employment— Section 51-A provides that for the purposes of this Act, an accident arising in the course of an insured person's employment shall be presumed, in the absence of evidence to the contrary, also to have arisen out of that employment.

Accidents happening while acting in breach of regulation, law, and so on, (Section 51-B) accidents happening while travelling in employers transport; and accidents happening while meeting an emergency—all shall be deemed to arise out of employment and in the course of an insured person's employment. (Sections 51-C and 51-D).

Sickness Benefit

According the Section 47 of the Act, a person shall be qualified to claim sickness benefit for sickness occurring during any benefit period if the contribution in respect of him were payable for not less than half the number of days of the corresponding contribution period.

Sickness Benefit—Section 49 provides that subject to the provisions of the Act and the regulations, if any, a person qualified to claim sickness benefit in accordance with Section 47 shall be entitled to receive such benefit for his sickness.

But he shall not be entitled to the benefit for the first two days of sickness in the case of a spell of sickness following at an interval of not more than fifteen days, for which sickness benefit was last paid.

The benefit shall not be paid to any person for more than fifty-six days in any consecutive benefit periods.

Medical Benefit

Section 56 provides that an insured person or where such medical benefit is extended to his family, a member of his family whose condition requires medical treatment and attendance, shall be entitled to receive medical benefit. Such medical benefit may be given either in the form of out-patient treatment and attendance in a hospital or dispensary, clinic or other institution or by visits to the home of the insured person or treatment as in-patient in a hospital or other institution.

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

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

NOTES

Dependant's Benefit

Section 52 lays down that if an insured persons dies as a result of an employment injury sustained as an employee under this Act (whether or not he was in receipt of any periodical payment for temporary disablement in respect of the injury) dependants benefit shall be payable in accordance with the provisions of the First Schedule to his dependants specified in sub-clause (i) and sub-clause (ii) of clause (6-A) of Section 2.

If the insured person dies without leaving behind him the dependants as aforesaid, the dependants benefit shall be paid to the other dependants of the deceased in accordance with the provisions of the First Schedule.

It is clear from these provisions that a dependant's benefit will be payable if the insured employee dies on account of an employment injury or an occupational disease arising out of and in the course of employment.

Funeral Benefit

Under Section 46 (f), funeral expenses are payable to the eldest surviving member of the family or an insured person who has died. If the insured person did not have a family or was not living with his family at the time of his death, it shall be payable to the person who actually incurs the expenditure on the funeral. Such amount shall not exceed ₹ 100. The claim should be made within three months from the date of death or within the extended period.

9.3 EMPLOYEES STATE INSURANCE CORPORATION

Employees State Insurance Corporation (ESIC) was established by the Central Government under the Employees' State Insurance Act, 1948. The major objective behind the establishment of the corporation was to protect the interest of workers in problems like Sickness, Maternity, etc. that result in the loss of wages or earning capacity of the workers. The major function performed by ESIC is to administer the scheme.

The Corporation shall be a body corporate with perpetual succession and a common seal and shall be competent to sue and be sued in its name [Section 3(2)].

Composition

According to Section 4 the Corporation shall consist of the following:

1. A Chairman to be nominated by the Central Government
2. A Vice-chairman to be nominated by the Central Government
3. Five persons to be nominated by the Central Government

4. One person each representing each of the states in which this Act is in force to be nominated by the state government concerned
5. One person representing the Union territories
6. Five persons representing the employers to be nominated by the Central Government in consultation with such organizations of the employees as may be recognized for the purpose by the Central Government
7. Five persons representing the employees to be nominated by the Central Government in consultation with such organizations of employees as may be recognized for the purpose by the Central Government
8. Two persons representing the medical profession to be nominated by the Central Government in consultation with such organization of the medical practitioners as may be recognized for the purpose by the Central Government
9. Three persons to be elected by the Parliament—two by Lok Sabha and one by Rajya Sabha
10. The Director General of the Corporation, ex-officio

Terms

The term of the members of the Corporation, mentioned above at No. 6, 7, 8, 9 and 10, shall be four years. The members of the Corporation referred to above at Nos. 1, 2, 3, 4 and 5, shall hold office during the pleasure of the Government nominating them.

Check Your Progress

1. What are the two benefits granted to insured workers under the Employees State Insurance Act?
2. State the major objective of the Employees State Insurance Corporation (ESIC).

9.4 STANDING COMMITTEE

Under Section 8, a Standing Committee of the Corporation shall be constituted from among its members, consisting of the following members:

(a) A chairman, nominated by the Central Government.

(b) Three members of the Corporation, nominated by the Central Government.

(c) Three members of the Corporation representing such three State Governments thereon as the Central Government may, by notification in the official Gazette, specify from time to time.

NOTES

(d) Eight members elected by the Corporation as follows:

(i) Three members from among the members of the Corporation representing employees,

(ii) Three members from among the members of the Corporation representing the employers,

(iii) One member from among the members of the Corporation representing the medical profession,

(iv) One member from among the members of the Corporation elected by the Parliament.

(e) The Director-General of the Corporation, ex-officio.

According to Section 9 (i), save as otherwise provided expressly in this Act, the term of office of a member of the standing committee other than a member referred to above under Clauses (a), (b), or (c) of Section 8 shall be two years from the date on which his election is notified.

Provided that a member of the Standing Committee shall, notwithstanding the expiry of the said period of two years, continue to the election of his successor is notified.

Provided further that a member of the standing committee shall cease to hold office when he ceases to be a member of the corporation.

Sub-section (2) of section 9 provides that a member of the standing committee referred to above in clause (a), or (b) or clause (c) of section 8 shall hold office during the pleasure of the Central Government.

(b) Powers and functions of the standing committee subject to the general superintendence and control of the Corporation—the standing committee administers the affairs of the Corporation and may exercise any of the powers and perform any of the functions of the Corporation. It shall submit for the consideration and decision of the Corporation all such cases and matters as may be specified in the regulations made in this behalf. The standing committee may in its direction, submit any other case or matter for the decision of the Corporation (Section 18).

9.4.1 Medical Benefit Council

This is constituted under Section 10. It advises the corporation on matters connected with the administration of medical benefits. The Director-General, Health Services will be its chairman, ex-officio.

Composition

Under Section 10(1), the Central Government shall constitute a Medical Benefit Council consisting of the following:

(i) The Director General, Health Services, ex-officio, Chairman

(ii) A Deputy Director General, Health Services, to be nominated by the Central Government

NOTES

(iii) The Medical Commissioner of the corporation, ex-officio

(iv) One member each representing each of the state (other than Union territories in which this Act is in force) to be nominated by the state Government concerned

(v) Three members representing employers to be nominated by the Central Government in consultation with such organizations of employers as may be recognized for the purpose by the Central Government

(vi) Three members representing employees to be nominated by the Central Government in consultation with such organizations of employers as may be recognized for the purpose by the Central Government

(vii) Three members of whom not less than one shall be a woman, representing the medical profession to be nominated by the Central Government in consultation with such organizations of medical practitioners as may be recognized for the purpose by the Central Government.

Under sub-section (2) of Section 10, it is further provided that save as otherwise expressly provided in this Act, the term of office of a member of the Medical Benefit Council, other than a member referred to in any of the clauses above from (i) to (iv), shall be four years from the date on which his nomination is notified, provided that a member of the Medical Benefit Council shall, notwithstanding the expiry of the said period of four years, continue to hold-office until the nomination of his successor is notified. Sub-section (3) of Section 10 provides that a member of Medical Benefit Council referred to above under clause (ii) and (iv) shall hold office during the pleasure of the Government nominating him.

Duties of Medical Benefit Council—Under Section 22, the duties of the Medical Benefit Council area as follows:

(a) Advise the Corporation and the standing committee on matters relating to the administration of Medical Benefit, the Certification for the purposes, 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 attendances.

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

(d) For resignation, cessation, and disqualification of the memberships of the Medical Benefit Council. They are the same as for the membership of the Corporation.

Adjudication of Disputes and Claims

Chapter VI of the Employees' State Insurance Act contains Sections from 74 to 83. The whole chapter is devoted to adjudication of disputes and claims.

NOTES

Constitution of Employees Insurance Court

1. Under Section 74 (1), 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.
2. The court shall consist of such number of Judges as the State Government may think fit.
3. Any person who is or has been a Judicial Officer or is a legal practitioner of five years standing shall be qualified to be a Judge of the Employees' Insurance Court.
4. The State Government may appoint the same Court for two or more local areas or two or more Courts for the same local area.
5. Where more than one Court has been appointed for the same local area, the State Government may by general or special order, regulate the distribution of business between them.

Matters to be decided by Employee's Insurance Court

Under Section 75(1), if any question or dispute arises as to:

(a) whether any person is an employee within the meaning of this Act or whether he is liable to pay the employees' contribution; or

(b) the rate of wages or average daily wages of an employee for the purposes of this Act; or

(c) The rate of contribution payable by a principal employer in respect of any employee; or

(d) The person who is or was the principal employer in respect of any employee; or

(e) The right of any person to any benefit and as to the amount and the duration thereof; or

(f) Any direction issued by the Corporation under section 55-A on a review of any payment of dependants' benefits; or any other matter which is in dispute between a principal employer and the Corporation, or between a principal employer and immediate employer, or between a person and the Corporation or between an employee and a principal or immediate employee and a principal or immediate employer, in respect of any contribution or benefit or other dues payable or recoverable under this Act, or any other matter required to be or which may be decided by the Employees' Insurance Court under this Act, such question or dispute, subject to the provisions of Sub-section (2-A), shall be decided by the Employees' Insurance Court, in accordance with the provision of this Act.

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

(a) Claims for the recovery of contributions from the principal employer

(b) Claims by a principal employer to recover contributions from any immediate employer

(c) Claim against a principal employer under Section 68

(d) Claim under Section 70 for the recovery of the value of amount of the benefits received by a person when he is not lawfully entitled thereto, and

(e) Claim for the recovery of any benefit admissible under this Act.

NOTES

Case Study

Employees State Insurance Act, 1948—Sections 2 (15-A) and 54-A

In ESI Corporation, Kanpur and Others vs. *Lallan, 2006 III LLJ* 595, a workman suffered injury in his right ear and he was hence referred by the Corporation to the Medical Board for medical examination for determination of disablement, if any. The Medical Board held that the test does not reveal hearing loss and there was no disablement injury, and, therefore, the workman was not entitled to any disablement benefit.

However, the workman without appearing before the Medical Appellate Tribunal, got examined himself by a private hospital, which stated that there was approximately loss of 40 dts. of hearing because of the injury. With the report of the private hospital, the workman approached the ESI Court. Accepting the said report, the ESI Court set aside the decision of the Medical Board. The Corporation went in appeal against the decision of the ESI Court before the Allahabad High Court. The High Court upheld the appeal and set aside the decision of the ESI Court, and ruled:

(i) The Act does not provide for the examination of the injured person to decide disablement benefit by any other doctor or hospital except the Medical Board constituted under the Act. If reports from a private doctor or of hospital are allowed, it will open the flood-gates for diverse reports and there will be chaos and confusion and it will be difficult for the Court to decide the matter, since the Act has provided for a Medical Board and also for an appearance before the Medical Appellate Tribunal, it is these two only which have the authority to give Reports, with regard to injury of an employee.

(ii) Where an Act provides procedure and forum, it is only the same which is to be accepted and no other procedure or forum can be sustained. There is no provision in the ESI Act, 1948, about the report of Private Medical Practitioner being admissible, unlike that of the Workmen's Compensation Act, 1923.

(iii) The ESI Court was, therefore, wrong in accepting the private hospital's report. Since the report of the Medical Board constituted under the Act says that there was no disablement of any kind, appeal has to be allowed.

NOTES

9.4.2 Provisions Relating to Contributions

The main sources of finance are the contributions from employers and employees and one-eighth share of expenses by State Governments towards the cost of medical care. Employees' contribution has to be calculated individually for each employee at 1.75 per cent of the wages paid/payable for every wage period. The employers' contribution, however, may be calculated at the rate of 4.75 per cent of the total wages paid to all the employees covered under the ESI Scheme in each wage period, rounded to the next higher multiple of five paise. The total value of the combined employers' and the employees' share has to be deposited in the State Bank of India or in any other authorized bank or branch through a challan in quadruplicate as per the proforma on or before the 21st of the month following the calendar month in which the wages fall due. An employer who fails to pay his contribution within the periods specified shall be liable to pay interest and damages for late payment under Section 85(B) of the Act. The Act has laid down the purposes for which the fund may be expended. The accounts of the corporation shall be audited by auditors appointed by the Central Government.

Employees whose average daily wage is below ₹15 are exempted from payment of their contribution; only the employer's contribution will be payable at 4.75 per cent in respect of such employees.

'Contribution period' and 'benefit period' are fixed for the purpose of paying contributions and deriving benefits under the Act. In respect of the contribution period from 1 April to 30 September, the corresponding benefit period shall be from 1 January of the year following to 30 June, and in respect of the contribution period from 1st October to 31 March of the year following, the corresponding benefit period shall be from 1 July to 31 December of the year following. In the case of a newly employed person, the first contribution period shall commence from the date of his employment, and the corresponding first benefit period shall commence on the expiry of nine months from the said date (Rule 2 and Regulation 4). The daily rate at which sickness benefit is payable to an insured employee during the period of his sickness is called 'standard benefit rate'.

Check Your Progress

3. What is the role of the standing committee?
4. State one duty of the medical benefit council.

9.5 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

NOTES

1. The two benefits granted to all insured workers under the Employees State Insurance Act are Maternity benefit & disablement benefit.
2. The major objective behind the establishment of the corporation was to protect the interest of workers in problems like Sickness, Maternity, etc. that result in the loss of wages or earning capacity of the workers.
3. The standing committee administers the affairs of the Corporation and may exercise any of the powers and perform any of the functions of the Corporation.
4. One duty of the medical benefit council is to advise the Corporation and the standing committee on matters relating to the administration of Medical Benefit, the certification for the purposes, grant of benefit and other connected matters.

9.6 SUMMARY

- The object of the Act is to provide sickness, disablement, medical benefits and maternity benefits to the employees of factories and other industrial establishments as well as to their dependants.
- The Act extends to the whole of India. In the first instance, the Act applies to all factories, including the Government owned factories.
- The term 'employee' as defined under Section 2(9) of the Act, refers to any person employed on wages in, or in connection with, the work of a factory or establishment to which this Act applies.
- The registration of a factory/establishment with the Employees State Insurance Corporation is a statutory responsibility of the employer under Section 2-A of the Act, read the Regulation 10-B.
- The forms for the registration of employees are the declaration form and the return of declaration form (covering letter). The principal employer should get the declaration form filled in by every employee covered under the scheme.
- According the Section 47 of the Act, a person shall be qualified to claim sickness benefit for sickness occurring during any benefit period if the contribution in respect of him were payable for not less than half the number of days of the corresponding contribution period.
- Section 56 provides that an insured person or where such medical benefit is extended to his family, a member of his family whose condition requires medical treatment and attendance, shall be entitled to receive medical benefit.

NOTES

- Employees State Insurance Corporation (ESIC) was established by the Central Government under the Employees State Insurance Act, 1948.
- The major objective behind the establishment of the corporation was to protect the interest of workers in problems like Sickness, Maternity, etc. that result in the loss of wages or earning capacity of the workers.
- The major function performed by ESIC is to administer the scheme.
- According to Section 9 (i), save as otherwise provided expressly in this Act, the term of office of a member of the standing committee other than a member referred to above under Clauses (a), (b), or (c) of Section 8 shall be two years from the date on which his election is notified.
- Medical Benefit Council is constituted under Section 10. It advises the corporation on matters connected with the administration of medical benefits. The Director-General, Health Services will be its chairman, ex-officio.
- The main sources of finance are the contributions from employers and employees and one-eighth share of expenses by State Governments towards the cost of medical care. Employees' contribution has to be calculated individually for each employee at 1.75 per cent of the wages paid/payable for every wage period.
- 'Contribution period' and 'benefit period' are fixed for the purpose of paying contributions and deriving benefits under the Act.

9.7 KEY WORDS

- **Corporation:** It refers to a large company or group of companies authorized to act as a single entity and recognized as such in law.
- **Finance:** It refers to the management of large amounts of money, especially by governments or large companies.
- **Gazette:** It means a journal or newspaper, especially the official one of an organization or institution.

9.8 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. Write a brief introduction of the Employees State Insurance Act, 1948.
2. Briefly mention the maternity benefit facility available under the Employees State Insurance Act, 1948.
3. Write a note on Standing Committee of the ESIC.

Long-Answer Questions

1. Discuss the process of registration of a factory/establishment with the Employees State Insurance Corporation.
2. When was the Employees State Insurance Corporation (ESIC) established? Discuss its composition.
3. What is the composition & duties of the medical benefit council?

NOTES

9.9 FURTHER READINGS

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UNIT 10 EMPLOYEES STATE INSURANCE ACT, 1948-II

NOTES

Structure

10.0 INTRODUCTION

In the previous unit, you studied about the selective provisions of the Employees State Insurance Act, 1948 namely, registration of factories and establishments, the Employees State Insurance Corporation, Standing Committee and Medical Benefit Council and provisions relating to contributions. This unit will further elaborate on the provisions related to inspectors and their functions, disputes and claims. The topic of offences and penalties has also been discussed in this unit.

10.1 OBJECTIVES

After going through this unit, you will be able to:

- Describe the functions of inspectors
- Explain the disputes and claims under the Act
- Assess offences, penalties and other miscellaneous provisions of the Act

10.2 INSPECTORS – THEIR FUNCTIONS

Inspectors—Their Functions

Inspectors [Section 19]

1. If any question arises in any proceedings under this Act as to the liability of any person to pay compensation (including any question as to whether a

person injured is or is not a workman) or as to the amount of duration of compensation (including any question as to the nature or extent of disablement) the question shall in default of agreement be settled by an inspector.

2. No Civil Court shall have jurisdiction to settle decided or deal with any question which is by or under this Act required to be settled decided or dealt with by an inspector or to enforce any liability incurred under this Act.

Appointment of Inspector [Section 20]

1. The State Government may, by notification in the Official Gazette, appoint any person to be a Commissioner for Workmen's Compensation for such area as may be specified in the notification.
2. Where more than one Commissioner has been appointed for any area the State Government may by general or special order regulate the distribution of business between them. 334 (Module - V) Thakur's MBA Third Semester HB (Compensation Management) GTU
3. Any inspector may for the purpose of deciding any matter referred to him for decision under this Act choose one or more persons possessing special knowledge of any matter relevant to the matter under inquiry to assist him in holding the inquiry.
4. Every inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860).

Power of Commissioner to Require Further Deposit in Cases of Fatal Accident [Section 22A]

1. Where any sum has been deposited by an employer as compensation payable in respect of a workman whose injury has resulted in death and in the opinion of the inspector such sum is insufficient the inspector may by notice in writing stating his reasons call upon the employer to show cause why he should not make a further deposit within such time as may be stated in the notice.
2. If the employer fails to show cause to the satisfaction of the inspector, the inspector may make an award determining the total amount payable and requiring the employer to deposit the deficiency.

Powers and Procedure of Inspector [Section 23]

The inspector shall have all the powers of a Civil Court under the Code of Civil Procedure 1908 for the purpose of taking evidence on oath (which such Commissioner is hereby empowered to impose) and of enforcing the attendance of witnesses and compelling the production of documents and material objects and the inspector shall be deemed to be a Civil Court for all the purposes of section 195 and of Chapter XXVI of the Code of Criminal Procedure 1973.

NOTES

10.2.1 Disputes and Claims

Section 10 of the Act prescribes that a claim for compensation shall be entertained by the commissioner only after a notice of the accident has been given to him. Such notice should be given as soon as practicable after the date of the accident. The claim of compensation however be preferred within 2 years form the date of accident or death. In case of deemed accident arising out of occupational disease the date of accident will be recorded as the first day on which the workman starts absenting himself continuously as a consequence of the disease. Failure to give notice shall not bar the entertainment of the claim by the commissioner under the following circumstances, namely:

1. If the death of a workman resulting from the accident occurred on the premises of the employer or at any place where the workman at the time of accident was working under the control of the employer and the workman died at such place or at such premises belonging to the employer and died without having left the vicinity of the premises or the place where the accident occurred; or
2. If the employer or any of the several employers or his manager has knowledge of the accident from any other source at or about the time when it occurred.

Every notice shall be served upon the employer. It may be served by delivering it at or sending it by registered post and addressed to the residence or any of office or place of business of the person on whom it is to be served.

Where a workman has given a notice of accident he should submit himself for medical examination if required by the employer. And such medical examination shall take place within 3 days from the date of service of the notice of accident to the employer Refusal to submit himself for medical examination will result in the suspension of the right of the workman for compensation during the period of refusal During the period of suspension of the right no compensation shall be paid to the workman.

10.2.2 Offences and Penalties

[18A. Penalties.—(1) Whoever—

(a) fails to maintain a notice-book which he is required to maintain under subsection (3) of section 10, or

(b) fails to send to the Commissioner a statement which he is required to send under sub-section (1) of section 10A, or

(c) fails to send a report which he is required to send under section 10B, or

(d) fails to make a return which he is required to make under section 16, shall be punishable with fine which may extend to [five thousand] rupees.

(2) No prosecution under this section shall be instituted except by or with the previous sanction of a Commissioner, and no court shall take cognizance of any offence under this section, unless complaint thereof is made [within six months of the date on which the alleged commission of the offence came to the knowledge of the Commissioner].

10.2.3 Miscellaneous Provisions

The Workmen's Compensation Act, 1923 is one of the important social security legislations. 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. This Act makes it obligatory for the employers brought within the ambit of the Act to furnish to the State Governments/Union Territory Administrations annual returns containing statistics relating to the average number of workers covered under the Act, number of compensated accidents and the amount of compensation paid.

10.2.4 Applicability of the Act

The Act extends to the whole of India except the States/Union Territories of Arunachal Pradesh, Mizoram, Nagaland, Sikkim and Daman & Diu and Lakshadweep. The Act applies to workers employed in any capacity specified in Schedule II of the Act which includes Factories, Mines, Plantations, Mechanically Propelled Vehicles, Construction Work and certain other Hazardous Occupations and specified categories of Railway Servants.

10.2.5 Main Provisions and Scope of the Act

Under the Act, the State Governments are empowered to appoint Commissioners for Workmen's Compensation for (i) settlement of disputed claims, (ii) disposal of cases of injuries involving death, and (iii) revision of periodical payments. Sub-section (3) of Section 2 of the Act, empowers the State Governments to extend the scope of the Act to any class of persons whose occupations are considered hazardous after giving three months notice to be published in the Official Gazette. Similarly, under Section 3(3) of the Act, the State Governments are also empowered to add any other disease to the list mentioned in Parts A and B of Schedule – II and the Central Government in case of employment specified in Part C of Schedule III of the Act.

Check Your Progress

1. Which regions are covered under the applicability of the Employees State Insurance Act, 1948?
2. What are the powers of the State Government under the Act?

10.3 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

NOTES

1. The Act extends to the whole of India except the States/Union Territories of Arunachal Pradesh, Mizoram, Nagaland, Sikkim and Daman & Diu and Lakshadweep.
2. Under the Act, the State Governments are empowered to appoint Commissioners for Workmen's Compensation for (i) settlement of disputed claims, (ii) disposal of cases of injuries involving death, and (iii) revision of periodical payments.

10.4 SUMMARY

- If any question arises in any proceedings under this Act as to the liability of any person to pay compensation (including any question as to whether a person injured is or is not a workman) or as to the amount of duration of compensation (including any question as to the nature or extent of disablement) the question shall in default of agreement be settled by an inspector.
- The State Government may, by notification in the Official Gazette, appoint any person to be a Commissioner for Workmen's Compensation for such area as may be specified in the notification.
- Every inspector shall be deemed to be a public servant within the meaning of the Indian penal code (45 of 1860).
- If the employer fails to show cause to the satisfaction of the inspector, the inspector may make an award determining the total amount payable and requiring the employer to deposit the deficiency.
- If the employer fails to show cause to the satisfaction of the inspector, the inspector may make an award determining the total amount payable and requiring the employer to deposit the deficiency.
- Where a workman has given a notice of accident he should submit himself for medical examination if required by the employer.
- The Workmen's Compensation Act, 1923 is one of the important social security legislations. 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 Act extends to the whole of India except the States/Union Territories of Arunachal Pradesh, Mizoram, Nagaland, Sikkim and Daman & Diu and Lakshadweep.

NOTES

10.5 KEY WORDS

- **Compensation:** It refers to something, typically money, awarded to someone in recognition of loss, suffering, or injury.
- **Legislation:** It refers to a law or set of laws suggested by a government and made official by a parliament.

10.6 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. Write a short note on the appointment of inspector as mentioned under the Employees State Insurance Act, 1948.
2. What are the exceptional circumstances under which the claim for accident is entertained under the Act?
3. Mention the main provisions and scope of the act.

Long-Answer Questions

1. How are the disputes and claims settled under the act?
2. Evaluate the offences and penalties mentioned under the act.
3. Write in your own words the miscellaneous provisions covered under the act.

10.7 FURTHER READING

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UNIT 11 EMPLOYEES PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952-I

Structure

11.0 INTRODUCTION

The previous two units discussed the significant provisions of the Employees State Insurance Act, 1948. This unit will apprise you of the selective provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 such as the history and the beginning of the concept of provident fund, geographical coverage and exemptions of the act. The unit will further throw light upon the mode of payment of contributions to the provident fund and the submission of the contribution cards to the commissioner.

11.1 OBJECTIVES

After going through this unit, you will be able to:

- Define Provident Fund
- Explain the salient features of the Employee Provident Funds Scheme
- Describe the duties of employers under the Employees' Provident Funds Scheme

NOTES

11.2 EMPLOYEES PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952: AN OVERVIEW

The Perspective

Provident Fund is a form of retirement benefits, but unlike gratuity, where all the financial burden falls on the employer, this is contributory in the sense that besides putting in service, a worker also has to contribute a part of his wages. The scheme of Provident Fund has, till now, made headway and a good number of employees have been brought within the purview of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, as also its counterpart for the coal industry, namely, the Coal Mines Provident Fund and Bonus Schemes Act, 1948. The tea plantation workers in Assam receive the benefit of provident Fund under the Assam Tea Plantations Provident Fund Scheme Act, 1955. The seamen receive the benefit under the Seamen's Provident Fund Act, 1966. But still a vast majority of industrial workers have been kept beyond the purview of the Act. Thus, there is a need not only to extend the coverage of the statute, but also to extend the qualitative content of the scheme.

Prior to 1948, there was no compulsory statutory provision for provident fund benefits to industrial workers. The Provident Fund Act, 1925 was restricted in its application. Provident Fund Schemes were followed in some government employments and in the establishment of only some enlightened employers. In 1948, the Coal Mines Provident Fund and Bonus Schemes Act was enacted to provide for a compulsory contributory provident fund for the employees in the coal mines only. Still, a vast majority of industrial employees were not covered under any such schemes.

The experience gained out of the working of this Act and the persistent demand from the employees in other industries led to the passing of the Employees Provident Fund Act in 1952. The Act provides for the institution of provident funds for the employees in factories and other establishments. By Labour Provident Fund Laws (Amendment) Ordinance and Act, 1971, provision has been made for family pension and life insurance benefits as well. The Employees' Family Pension Scheme became effective from 1 March 1971.

In the year 1976, the Act was further amended with a view to introducing yet another social security scheme to provide an insurance cover to the members of the provident fund in covered establishments without payment of any premium of such members, the insurance cover being linked to the deposits in the provident fund to the credit of the deceased employees. The Employees' Deposit Linked Insurance Scheme, thus, came into effect from 1 August 1976.'

NOTES

The Employees Provident Funds and Miscellaneous Provisions Act, 1952 is a piece of social legislation designed to insure workmen against old age and infirmity. It provides for the institution of provident fund for employees in factories and establishments.

The avowed object of the Act is to provide for security to the industrial worker on his retirement and for the benefits of dependants in case of his death.

The Employees' Provident Fund Act is essentially a measure for the welfare of the employees, an establishment and it falls under the purview of the Act, that the employer is bound to make the contribution as provided for under Section 6. There is a statutory liability on the employer to pay the contribution at the rate mentioned in Section 6. Stringent provisions have been made for non-compliance with the requirement of the statute, and very drastic powers have been given to the authorities to recover the contribution due from an employer.

11.2.1 Permissible Area of Operation of the Act

1. Geographical scope

The Provisions Employees' Provident Funds and Miscellaneous Provisions Act, 1952, one of the important statutory measures in the arena of retiral benefits, extends to the whole of India except the state of Jammu and Kashmir.

2. Subjective scope

Sub-section (3) of Section 1 enumerates the subjective scope of the Act. Subject to the provision contained in Section 16, the Act applies to the following:

- Every establishment which a factory is engaged in any industry specified in the Schedule I and in which twenty or more persons are employed.
- 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 the behalf.
- Establishments belonging to the notified category employing twenty or more persons – (five employees in case of cinema\theatre establishments and fifty employees in case of co-operative societies working without power).

Other aspects of the Act include:

- No infancy protection from 23 September 1997 by the Amendment Act 10 of 1998
- Provision for coverage on voluntary basis for non-applicable category
- Empowerment of the Central Government to exempt any class of establishment from the operation of the Act for a specified period

11.2.2 Membership

- Every employee to be enrolled for membership of the fund from day one, (eligibility requirement deleted from November 1990 onwards)

NOTES

- Membership compulsory for all except excluded employees
- Membership for all the schemes necessary—either of the statutory scheme or the exempted scheme
- Assigned responsibility for the employees of contractors

11.2.3 Exemption

An establishment/factory may be granted exemption under Section 17 if

(i) in the opinion of the appropriate government, the rules of its provident fund with respect to the rates of contributions are not less favourable than those specified in Section 6 of the Act, and

(ii) if the employees are also in enjoyment of other provident fund benefits which on the whole are not less favourable than the benefits provided under the Act or any scheme in relation to the employees in any other establishment of a similar character.

While recommending to the appropriate government grant of exemption under this section, the Employees' Provident Fund Organization usually takes into consideration the rate of contribution, the eligibility clause, the forfeiture clause and the rate of interest. Also, the totality of the benefits provided under the rules of the exempted funds is taken into consideration.

The Central Government is empowered to grant exemption to any class of establishments from the operation of the Act for a specified period, on financial or another grounds under Section 16(2). The exemption is granted by issue of notification in the Official Gazette and subject to such terms and conditions as may be specified in the notification. The exemption does not amount to total exclusion from the provisions of the Act. The exempted establishments are required to constitute a Board of Trustees according to the rules governing the exemptions to administer the fund, subject to overall control of the Regional Provident Fund Commissioner.

Check Your Progress

1. Define Provident Fund.
2. Which state is not covered under the Employees Provident Funds and Miscellaneous Provisions Act, 1952?

11.3 THE EMPLOYEES PROVIDENT FUNDS SCHEME, 1952

Let us now study some significant provisions of the Employees Provident Funds Scheme, 1952.

11.3.1 Contributions

The statutory rate of contribution to the provident fund by the employees and the employers, as prescribed in the Act, is 10 per cent of basic wage, dearness allowance, including cash value of food concession and retaining allowance, if any. The Act, however, provides that the Central Government may, after making such enquiries as it deems fit, enhance the statutory rate of contribution to 12 per cent of wages in any industry or class of 'establishments'. Further, the employee may contribute more than 10 per cent or 12 per cent of wages.

The contributions received by the Provident Fund Organization from unexempted establishments as well as by the Board of Trustees from exempted establishments shall be invested after making payments on account of advances and final withdrawals, according to the pattern laid down by the Government of India from time to time. The exempted establishments are required to follow the same pattern of investments as is prescribed for the unexempted establishments. The provident fund accumulations are invested in government securities, negotiable securities or bonds, 7-year national saving certificates or post office time deposits schemes, if any.

Payment of Contribution: The employer shall at the first instance make the payment of the contribution payable by him and also the employee employed directly or through a contractor.

11.3.2 Duties of Employers under the Employees' Provident Funds Scheme

1. Every employer shall send of the Commissioner, within fifteen days of the commencement of his Scheme, a consolidated return in such form as the Commissioner may specify, of the employees required or entitled to become members of the Fund showing the basic wage, retaining allowance (if any) and dearness allowance including the cash value of any food concession paid to each of such employees:

   Provided that if there is no employee who is required or entitled to become a member of the Fund, the employer shall send a 'Nil' return.

2. Every employer shall send to the Commissioner, within fifteen days of the close of each month, a return—

   (a) in Form 5, of the employees qualifying to become members of the Fund for the first time during the preceding month together with the declarations in Form 2 furnished by such qualifying employees; and

   (b) in such form as the Commissioner may specify, of the employees leaving service of the employer during the preceding month.

   Provided that if there is no employee qualifying to become a member of the Fund for the first time or there is no employee leaving service of the employer during the preceding month, the employer shall send a 'Nil' return.

3. Every employer shall maintain an inspection note book in such form as the Commissioner may specify, for an Inspector to record his observations on his visit to the establishment.
4. Every employer shall maintain such accounts in relation to the amounts contributed to the Fund by him and by his employees as the Central Board may, from time to time, direct and it shall be the duty of every employer to assist the Central Board in making such payments from the Fund to his employees as are sanctioned by or under the authority of the Central Board.

Employer to Furnish Particulars of Ownership

Every employer in relation to a factory or other establishment to which the Act applies or is applied shall hereafter furnish to the Commissioner particulars of all the branches and departments, owners, occupiers, directors, partners, managers or any other person or persons who have the ultimate control over the affairs of such factory or establishment and also send intimation of any change in such particulars, within fifteen days of such change, to the Commissioner by registered post.

11.3.3 Mode of Payment of Contributions-submission of Returns/Forms

1. The employer shall, before paying the member his wages in respect of any period or part of period for which contributions are payable, deduct the employee's contribution from his wages which together with his own contribution as well as an administrative charges of such percentage of the pay, basic wages, dearness allowance, retaining allowance, if any, and cash value of food concessions admissible thereon for the time being payable to the employees other than an excluded employee, and in respect of which Provident Fund contributions are payable as the Central Government may fix, he shall within fifteen days of the close of every month pay the same to the Fund by separate bank drafts or cheques on account of contributions and administrative charges.

   Provided that if payment is made by a cheque on an outstation bank, the actual bank collection charges in respect of both the contributions and the administrative charges shall be included in the amount for which the cheque is drawn in respect of the administrative charges.

   Provided further that where there is no branch of the Reserve Bank or the State Bank of India at the station where the factory or other establishment is situated, the employer shall pay to the Fund the amount mentioned above by means of Reserve Bank of India (Government) Drafts at par, separately on account of contributions and administrative charges.
2. The employer shall forward to the Commissioner, within twenty-five days of the close of the month, a monthly consolidated statement, in such form as the Commissioner may specify, showing recoveries made from the wages

of each employee and the amount contributed by the employer in respect of each such employee.

Provided that an employer shall send a 'NIL' return, if no such recoveries have been made from the employees.

Provided that in the case of any such employee who has become a member of the Family Pension Fund under the Employees' Family Pension Scheme, 1971, the aforesaid form shall also contain such particulars as are necessary to comply with the requirements of that Scheme.

3. Notwithstanding anything contained in sub-paragraph (2), in respect of such establishments as are notified by the Commissioner to be annually posted establishments, the employer shall forward to the Commissioner, within twenty-five days of the close of each month, a monthly abstract in such form as the Commissioner may specify showing, *inter alia,* the aggregate amount of recoveries made from the wages of all the members and the aggregate amount contributed by the employer in respect of all such members for the month. The employer shall also send to the Commissioner, within one month of the close of the period of currency, a Consolidated Annual Contribution Statement in Form 6A, showing the total amount of recoveries made during the period of currency from the wages of each member and the total amount contributed by the employer in respect of each such member for the said period. The employer shall maintain on his record duplicate copies of the aforesaid monthly abstract and the Consolidated Annual Contribution Statement for production at the time of inspection by an Inspector.

Submission of Contribution Cards to the Commissioner

Every employer shall, within one month from the date of expiration of the period of currency of the contribution cards employed by him in respect of members, send the contribution cards to the Commissioner together with a statement in Form 6.

Provided that when a member leaves service, the employer shall send the contribution card in respect of such member before the twentieth day of the month following that in which the member left the service.

Provided further that in the case of any such employee who has become a member of the family Pension Fund under the Employees' Family Pension Scheme, 1971, the aforesaid Form shall also contain such particulars as are necessary to comply with the requirements of that Scheme.

Check Your Progress

3. What is the statutory rate of contribution to the provident fund by the employees and the employers, as prescribed in the Act?
4. What is the pattern of investments to be followed by exempted establishments?

11.4 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

NOTES

1. Provident Fund is a form of retirement benefits, but unlike gratuity, where all the financial burden falls on the employer, this is contributory in the sense that besides putting in service, a worker also has to contribute a part of his wages.
2. The Employees Provident Funds and Miscellaneous Provisions Act, 1952, one of the important statutory measures in the arena of retiral benefits, extends to the whole of India except the state of Jammu and Kashmir.
3. The statutory rate of contribution to the provident fund by the employees and the employers, as prescribed in the Act, is 10 per cent of basic wage, dearness allowance, including cash value of food concession and retaining allowance, if any.
4. The exempted establishments are required to follow the same pattern of investments as is prescribed for the unexempted establishments.

11.5 SUMMARY

- Provident Fund is a form of retirement benefits, but unlike gratuity, where all the financial burden falls on the employer, this is contributory in the sense that besides putting in service, a worker also has to contribute a part of his wages.
- Prior to 1948, there was no compulsory statutory provision for provident fund benefits to industrial workers. The Provident Fund Act, 1925 was restricted in its application.
- By Labour Provident Fund Laws (Amendment) Ordinance and Act, 1971, provision has been made for family pension and life insurance benefits as well. The Employees' Family Pension Scheme became effective from 1 March 1971.
- The Employees Provident Funds and Miscellaneous Provisions Act, 1952 is a piece of social legislation designed to insure workmen against old age and infirmity. It provides for the institution of provident fund for employees in factories and establishments.
- The Employees Provident Funds Act is essentially a measure for the welfare of the employees, an establishment and it falls under the purview of the Act, that the employer is bound to make the contribution as provided for under Section 6.
- The Employees Provident Funds and Miscellaneous Provisions Act, 1952, one of the important statutory measures in the arena of retiral benefits, extends to the whole of India except the state of Jammu and Kashmir.

- The Central Government is empowered to grant exemption to any class of establishments from the operation of the Act for a specified period, on financial or another ground under Section 16(2).
- The exemption is granted by issue of notification in the Official Gazette and subject to such terms and conditions as may be specified in the notification.
- The statutory rate of contribution to the provident fund by the employees and the employers, as prescribed in the Act, is 10 per cent of basic wage, dearness allowance, including cash value of food concession and retaining allowance, if any.
- The contributions received by the Provident Fund Organization from unexempted establishments as well as by the Board of Trustees from exempted establishments shall be invested after making payments on account of advances and final withdrawals, according to the pattern laid down by the Government of India from time to time.
- Every employer shall, within one month from the date of expiration of the period of currency of the contribution cards employed by him in respect of members, send the contribution cards to the Commissioner together with a statement in Form 6.

11.6 KEY WORDS

- **Pension:** It is a regular payment made by the state to people of or above the official retirement age and to some widows and disabled people.
- **Exempt:** It means to be free from an obligation or liability imposed on others.
- **Amendment:** It refers to a minor change or addition designed to improve a text, piece of legislation, etc.

11.7 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. Write a short note on the history and the commencement of the provision of provident fund.
2. Describe the permissible area of operation of the Act.
3. Which establishments are granted exemption from the Act?

Long-Answer Questions

1. Give a detailed description of the Employees Provident Funds Scheme, 1952.
2. Discuss the duties of employers under the Employees Provident Funds Scheme.

11.8 FURTHER READINGS

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BLOCK IV
EXEMPTIONS RELATING TO THE ACT

UNIT 12 EMPLOYEES PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952-II

Structure

12.0 INTRODUCTION

The previous unit introduced you to some of the prominent features of the Employees Provident Funds and Miscellaneous Provisions Act, 1952. This unit will further elaborate on the additional features of the act namely, determination and recovery of money due from employer, appointment of inspectors and their duties.

12.1 OBJECTIVES

After going through this unit, you will be able to:

- Explain the determination and recovery of money due from employer
- Describe the concept of gratuity
- Discuss the appointment of inspectors and their duties

12.2 DETERMINATION AND RECOVERY OF MONEY DUE FROM EMPLOYER

NOTES

Let us now study determination and recovery of money due from employer which is in the from of gratuity.

12.2.1 Determination and Payment of Gratuity (Sec. 7)

Application for gratuity: The rules relating to the application for payment of gratuity are as follows:

(a) The employee who has become eligible for payment of gratuity, or his nominee, as the case may be, should send an application to the employer within 30 days from the date of gratuity becoming payable. However, where the date of superannuation or retirement is known, the employee may apply before 30 days of the date of superannuation or retirement.

(b) In case of death of the employee without making nomination, his legal heir, who is eligible for payment of gratuity, may make an application to the employer for the payment of gratuity within one year from the date of gratuity becoming payable.

(c) An application for payment of gratuity filed after the expiry of periods specified above must also be entertained by the employer, if there is sufficient cause for the delay.

Determination of gratuity: As soon as gratuity becomes payable to an employee, his employer has to determine the amount of gratuity, irrespective of the fact whether an application for payment of gratuity has been made or not. He has to give notice in writing to the person to whom the gratuity is payable as well as to the controlling authority of the area specifying the amount of gratuity so determined.

Moreover, the employer shall arrange to pay the amount of gratuity within 30 days from the date it becomes payable to the person to whom the gratuity is payable. If the amount of gratuity payable by the employer is not paid within a period of 30 days, the employer shall pay, for the date on which the gratuity becomes payable to the date on which it is paid, simple interest at the rate of 10% p.a. (or at such rate as notified by the Government from time to time for repayment of long-term deposits) on the amount of gratuity. No such interest shall, however, be payable if the delay in the payment is due to the default of the employee and the employer has obtained permission from the controlling authority for the delayed payment on this ground.

12.2.2 Disputed Claim of Gratuity

If there is any dispute:

- As to the amount of gratuity payable to an employee, or
- As to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, *or*

- As to the person entitled to receive the gratuity, the employer must deposit with the Controlling Authority such amount as he admits to be payable by him as gratuity.

Where there is a dispute with regard to any matter or matters specified above, the employer or employee or any other person raising the dispute may make an application to the Controlling Authority for deciding the dispute. After making necessary enquiries and giving to the parties reasonable opportunity to be heard in determining the matter or matters in dispute, if the Controlling Authority finds that any amount in excess to the amount deposited by the employer is payable, he will direct the employer to pay such amount.

The Controlling Authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto.

Appeal: Any person aggrieved by the order of the Controlling Authority can prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government for this purpose, within 60 days of receiving the order. This time limit may be extended by a further period of 60 days for a sufficient cause. But no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the Controlling Authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited, or deposits with the Appellate Authority such amount.

The appropriate Government or the Appellate Authority, as the case may be, after hearing the parties, may confirm, modify or reverse the decision of the Controlling Authority.

12.2.3 Recovery of Gratuity (Sec. 8)

If the amount of gratuity payable is not paid by the employer, within the prescribed time, to the person entitled thereto, the aggrieved person shall raise an application to the Controlling Authority. Thereupon the Controlling Authority shall issue a certificate for that amount to the Collector, after giving the employer a reasonable opportunity of showing cause against the issue of such certificate. The Collector shall recover the amount together with compound interest thereon at the rate 15% per annum (or at such rate as notified by the Government from time to time) 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 amount of interest payable must not exceed the amount of gratuity.

Nomination. In case of death of the employee, nomination facility naming legal heirs to receive gratuity is necessary. The provisions of the Act are presented below.

1. Each employee, who has completed one year of service, shall make, within such time, in such form and in such manner, as may be prescribed, nomination for the purpose of the second proviso to sub- section (1) of section 4.

2. An employee may, in his nomination, distribute the amount of gratuity payable to him under this Act amongst more than one nominee.
3. If an employee has a family at the time of making a nomination, the nomination shall be made in favour of one or more members of his family, and any nomination made by such employee in favour of a person who is not a member of his family shall be void.
4. If at the time of making a nomination the employee has no family, the nomination may be made in favour of any person or persons but if the employee subsequently acquires a family, such nomination shall forthwith become invalid and the employee shall make, within such time as may be prescribed, a fresh nomination in favour of one or more members of his family.
5. A nomination may, subject to the provisions of sub- sections (3) and (4), be modified by an employee at any time, after giving to his employer a written notice in such form and in such manner as may be prescribed, of his intention to do so.
6. If a nominee predeceases the employee, the interest of the nominee shall revert to the employee who shall make a fresh nomination, in the prescribed form, in respect of such interest.
7. Every nomination, fresh nomination or alteration of nomination, as the case may be, shall be sent by the employee to his employer, who shall keep the same in his safe custody.

12.2.4 Application of Gratuity by a Nominee

To

[Give here name or description of the establishment with full address]

Sir/Gentlemen,

I beg to apply for payment of gratuity to which I am entitled under sub-section (1) of section 4 of the Payment of Gratuity Act, 1972 as a nominee of late…… [name of the employee] who was an employee of your establishment and died on the ……. The gratuity is payable on account of the death of the aforesaid employee while in service/superannuation of the aforesaid employee on …… retirement of/resignation of the aforesaid employee on …… after completion of …… years of service/total disablement of the aforesaid employee due to accident or disease while in service with effect from the …… Necessary particulars relating to my claim given in the statement below:

Statement

1. Name of applicant nominee.
2. Address of full in applicant nominee.

3. Marital status of the applicant nominee (unmarried/married/widow/widower)
4. Name in full of the employee.
5. Marital status of employee.
6. Relationship of the nominee with employee.
7. Total period of service of the employee.
8. Date of appointment of the employee.
9. Date and cause of termination of service of the employee.
10. Department/Branch/Section where the employee last worked.
11. Post last held by the employee with Ticket or Serial No., if any.
12. Total wages last drawn by the employee.
13. Date of death and evidence/witness as proof of death of the employee.
14. Reference No. of recorded nomination, if available.
15. Total gratuity payable to the employee.
16. Share of gratuity claimed.

1. I declare that the particulars mentioned in the above statement are true and correct to the best of my knowledge and belief.
2. Payment may please be made in cash/crossed or open bank cheque
3. As the amount payable is less than Rupees one thousand, I shall request you to arrange for payment of the sum due to me by Postal Money Order at the address mentioned above after deducting Postal Money Order commission therefrom.

Yours faithfully,
Signature/Thumb impression of
the applicant nominee.

Place
Date

12.2.5 Penalties

Section 9 deals with punishments for contravention of the provisions of the Act. It provides as follows:

(a) For false representation: It provides for penalty for knowingly making or causing to be made any false statement or false representation for avoiding any payment to be made by himself under this Act or of enabling any other person to avoid such payment. The penalty is imprisonment for a term upto six months, or fine upto ₹10,000, or both.

(b) For contravention of the Act: Sub-section (2) provides for punishment to the employer who *c*ontravenes or makes default in complying with any of the provisions of this Act or any rule or order made thereunder. The punishment may be in the form of imprisonment for a term which shall not be less than 3 months but which may extend to 1 year, or with fine which shall not be less than ₹10,000 but which may extend to ₹20,000 or with both.

(c) For non-payment of gratuity: Where the offence relates to non-payment of any gratuity payable, the minimum punishment is imprisonment for a term of 6 months, which may extend to 2 years. But if the Court trying the offence is of the opinion that a lesser term of imprisonment or the imposition of fine would meet the ends of justice, it may reduce the punishment.

Miscellaneous

- Gratuity amount cannot be attached in execution of any decree or order of any civil, revenue or criminal court
- Notwithstanding anything contained in any other enactment, instrument or contract, the provisions of this Act would prevail
- The Act confers power on the appropriate government to make rules for the purpose of carrying out the provisions of this Act.
- The Act also empowers the appropriate government to appoint inspectors with various powers to inspect documents and ensure the payment of gratuity to the employees as prescribed under the Act.

12.2.6 Case Study

1. *Gujarat State Road Transport Corporation vs. Ramesh Kumar Kantilal, (2002) III LLJ 227*

Payment of Gratuity Act, 1972–Section 6(4)

An employee of the Gujarat State Road Transport Corporation retired from service after serving the Corporation for a period of about 35 years. As he was not paid gratuity, he approached the Controlling Authority under the Payment of Gratuity Act who directed the Corporation to release the gratuity amount with 10 percent simple interest. The Appellate Authority also confirmed the same. The Corporation challenged the orders of both the authorities before the Gujarat High Court, stating that a departmental inquiry was pending against the said workman for certain irregularities which resulted in loss to the Corporation of a certain amount and under the circumstances if the gratuity amount is released, it would be difficult for the Corporation to recover the amount, when the guilt is proved in the inquiry.

The High Court, however, dismissed the petition of the Corporation and directed that the gratuity amount should be paid without any further delay and ruled:

1. Sub-section (6) of Section 4 of the Act gives power to the employer to withhold the amount of gratuity when service has been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of property, belonging to employer. But in this case there are no similar facts. The Corporation has not terminated the services of the workman and no decision of termination has been taken by the Corporation.
2. On the contrary, the workman retired from service as permitted by the Corporation. The Corporation has issued no due certificate from each

department of the Corporation. Therefore, considering the provision of the Section, the Corporation is not authorized to forfeit or withhold the amount of gratuity till the departmental inquiry against the workman is over.

3. The Controlling Authority as well as the Appellate Authority have rightly come to the conclusion that because of the pendency of departmental inquiry, the amount of gratuity could not be withheld by the Corporation. This Court has taken a similar view in *GSRTC* vs. *Devendra Mulvantri Vaidya* 2006 I LLJ 324, where it stated that the employer was not entitled to forfeit the gratuity of the employee in cases where criminal prosecution was pending or a departmental inquiry was pending.

Payment of Gratuity Act, 1972 – Section 2(e)

2. *General Manager, Yellamma Cotton, Woollen and Silk Mills, Davangere vs Regional Labour Commissioner (Central) and Appellate Authority and Others, 2006 III LLJ 607)*

Some individuals joined Mills as 'Trainees' and later they were confirmed as permanent employees. They opted for voluntary retirement under a Scheme announced by the management and claimed gratuity on retirement, for the period they worked as trainees also. A question arose whether such trainees were entitled to the payment of gratuity. The Karnataka High Court answered the questions in the negative and ruled:

1. There is ample authority to support the proposition that a trainee cannot be held to be entitled to gratuity. A trainee, could, at best be, considered as a 'workman' in terms of the definition under Section 2(s) of the Industrial Disputes Act, 1947, but in the absence of any statutory provision under the Payment of Gratuity Act, 1972, which could be pressed into service, a trainee cannot be held entitled to gratuity.
2. It is not possible to subscribe to the view in *S. Arunachalam* vs *the Managing Director, Southern Structurals, Madras and Others* 2001 II LLJ 1457 (Mad). On the other hand, the several decided cases under the Apprentices Act, 1961 where apprentices are held to be 'trainees' and hence not entitled to wages like regular employee – would render the tenor of Section 2(e) of the Payment of Gratuity Act entirely unfavourable to the claimants.
3. Further, in the light of the judgment of the Supreme Court in the case of *Lalappa Lingappa and Others* vs *Laxmi Vishnu Textile Mills Ltd, Sholapur* AIR 1981 SC 852 =1981 (2) *SCC* 238 = 1981 I LLJ 308, that there can be no claim towards gratuity for the years during which the employee remains absent without leave and had actually worked for less than 240 days and also to the effect that Badli employees are not covered

by the substantive part of the definition of continuous service and are not entitled to payment of gratuity for the Badli period, the same has to be held against the claimants.

12.3 APPOINTMENT OF INSPECTORS AND THEIR DUTIES

Under Section 13 of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 the Inspector is appointed by the appropriate Government for the purpose of the Act and the Scheme. Under sub-section (2) of the said section, the Inspector has the following duties:

1. To collect information and require the employer or any contractor from whom any amount is recoverable under section 8A to furnish such information, as he may consider necessary.
2. To enter and search any establishment or any premises connected therewith.
3. To require any one found in charge of the above-mentioned establishment or premises to produce before him for examination any accounts, books, registers or other documents.
4. To examine the employer or contractor from whom any amount is recoverable.
5. To make copies of or take extract from any book, register or any other document maintained in relation to the establishment and also to seize such documents as he may consider relevant.
6. To exercise such other powers as the scheme may provide.

Check Your Progress

1. Who is responsible for determining gratuity?
2. State one duty of an Inspector.

12.4 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. As soon as gratuity becomes payable to an employee, his employer has to determine the amount of gratuity, irrespective of the fact whether an application for payment of gratuity has been made or not.
2. One duty of the Inspector is to collect information and require the employer or any contractor from whom any amount is recoverable under section 8A to furnish such information, as he may consider necessary.

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12.5 SUMMARY

- The employee who has become eligible for payment of gratuity, or his nominee, as the case may be, should send an application to the employer within 30 days from the date of gratuity becoming payable. However, where the date of superannuation or retirement is known, the employee may apply before 30 days of the date of superannuation or retirement.
- As soon as gratuity becomes payable to an employee, his employer has to determine the amount of gratuity, irrespective of the fact whether an application for payment of gratuity has been made or not.
- Moreover, the employer shall arrange to pay the amount of gratuity within 30 days from the date it becomes payable to the person to whom the gratuity is payable.
- Where there is a dispute with regard to any matter or matters specified above, the employer or employee or any other person raising the dispute may make an application to the Controlling Authority for deciding the dispute.
- If the amount of gratuity payable is not paid by the employer, within the prescribed time, to the person entitled thereto, the aggrieved person shall raise an application to the Controlling Authority.
- Thereupon the Controlling Authority shall issue a certificate for that amount to the Collector, after giving the employer a reasonable opportunity of showing cause against the issue of such certificate.
- In case of death of the employee, nomination facility naming legal heirs to receive gratuity is necessary.
- For false representation: It provides for penalty for knowingly making or causing to be made any false statement or false representation for avoiding any payment to be made by himself under this Act or of enabling any other person to avoid such payment.
- Under Section 13 of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 the Inspector is appointed by the appropriate Government for the purpose of the Act and the Scheme.

12.6 KEY WORDS

- **Contravention:** It refers to an action which offends against a law, treaty, or other ruling.
- **Nominee:** It refers to a person or entity who is requested or named to act for another, such as an agent or trustee.

12.7 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. Write a short note on recovery of gratuity.
2. State the rules of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 with respect to nomination feature of gratuity.
3. Who appoints inspectors? What are their duties?

Long-Answer Questions

1. Discuss the punishments levied for contraventions of the provisions of the act.
2. Explain the process of determination and payment of gratuity.
3. Give example to illustrate the application of gratuity by a nominee to avail the gratuity amount.

12.8 FURTHER READINGS

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UNIT 13 EMPLOYEES PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952-III

Structure

13.0 INTRODUCTION

In the previous unit, you studied in detail various features of the Employees Provident Funds and Miscellaneous Act, 1952. This unit will deal with the transfer of accounts and liabilities in case of transfer of establishment exemption under the same act. The unit will also introduce you to the coverage of the Industrial Employment (Standing Orders) Act, 1946.

13.1 OBJECTIVES

After going through this unit, you will be able to:

- Discuss transfer of accounts and liabilities under Section 17 A and B of the Employees Provident Funds and Miscellaneous Act, 1952
- Explain the coverage of the Industrial Employment (Standing Orders) Act, 1946

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13.2 TRANSFER OF ACCOUNTS AND LIABILITIES IN CASE OF TRANSFER

Let us now study about the provisions relating to transfer of accounts and liability in case of transfer of establishment exemption under the Employees Provident Funds and Miscellaneous Provisions Act, 1952.

13.2.1 Transfer of Accounts and Liabilities in Case of Transfer (Section 17-A)

Transfer of Accounts: (Section 17-A)

Section I7A of the Act provides for the transfer of accounts of an employee in case if his leaving the employment and taking up employment in another establishment and to deal with the case of an establishment to which the Act applies and also to which it does not apply. The option to get the amount transferred is that of the employee. Where an employee of an establishment to which the Act applies leaves his employment and obtains re-employment in another establishment to which the 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 in the establishment left by him shall be transferred to tile 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. This transfer has to be made with in such time as may be specified by the Central Government in this behalf. Conversely, when an employee of an establishment to which this Act does not apply leaves his employment and obtains re-employment in another establishment to which this Act applies, the amount of accumulations to the credit of such employee in the provident fund of the establishment left by him, if the employee so desires that the rules in relation to such provident fund permit, may 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.

13.2.2 Liability of a Transferee Employer in Case of Transfer of Establishment by the Employer (Section 17-B)

Where an employer in relation to an establishment, transfers that establishment in whole or in part by sale, gift, lease or licence or in any other manner whatsoever, the employer and the person to whom the establishment is so transferred shall Jointly or severally be liable to pay the contribution and other sums due from the employer under any provisions of the Act of the Scheme or the Pension Scheme, as the case may be, in respect of the period up to the date of such transfer. It is provided that the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer.

Section 17-B deals with the liability of transferor and transferee in regard to the money due under-

(a) the Act: or

(b) the Scheme;

(c) Pension Scheme.

in the case of transfer of the establishment brought in by sale, gift, lease, or any other manner whatsoever, the liability of the transferor and the transferee is joint and several, but is limited with respect to the period upto the date of the transferor. Also the liability of the transferee is further limited to the assets obtained by him from the transfer of the establishment.

13.2.3 Court's Power under the Act

1. Where an employer is convicted of an offence of making default in the payment of any contribution to the Fund the Pension Fund or the Insurance Fund or in the transfer of accumulations required to be transferred by him under sub-section (2) of section 15 or sub-section (5) of section 17 the court may in addition to awarding any punishment by order in writing require him within a period specified in the order (which the court may if it thinks fit and on application in that behalf from time to time extend) to pay the amount of contribution or transfer the accumulations as the case may be in respect of which the offence was committed.
2. Where an order is made under sub-section (1) the employer 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 employer shall be deemed to have committed a further offence and shall be punished with imprisonment in respect thereof under section 14 and shall also be liable to pay fine which may extend to one hundred rupees for every day after such expiry on which the order has not been complied with.

13.3 INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946

The Act applies to every industrial establishment wherein one hundred or more workmen are employed, or were employed on any day of the preceding twelve months. Several States have extended the application of the Act to establishments employing fifty or more persons. The (second) National Commission on Labour has recommended that establishments employing twenty or more workers should have standing orders or regulations. There is no need to delimit the issues on which standing orders can or need to be framed. As long as the two parties agree,

all manner of things including multi-skilling, production, job enrichment, productivity, and so on, can also be added. These standing orders will be prepared by the employer(s) in consultation with the recognized unions/federations/centres, depending upon the coverage, and where there is any disagreement between the parties, the disputed matter will be determined by the certifying authority having jurisdiction, to which either of the parties may apply. Any amendment to the Standing Orders Act can be asked for by either party and agreed to by both parties or referred to the certifying authority or the Labour Court for determination. However, no demand for amendment can be made until at least a year has elapsed. The appropriate government may prescribe a separate Model Standing Order for units employing less than fifty workers. The employer will have to append a copy of the Model Standing Orders or the Standing Orders, mutually agreed upon with the workers, to the appointment letter of every employee.

The problem connected with the aforesaid provision is whether the fall in the number of workmen below 100 at any time would make the Act inapplicable. The Division Bench of the Bombay High Court in *Balakrishna Pillai* v *Anant Engineering Works Pvt. Ltd* answered it in the negative. The Court gave three reasons in support of its conclusion: First, the provisions of Section 1 (3) 'relate to the initial application of the Act as the condition precedent viz., the number of workmen'. 'There ... was nothing in the provisions of the Act providing for cessation or discontinuance of the application of the Act to an establishment on account of fall in the number of workmen or on any other account'. Second, the Act is a beneficial social legislation enacted for the purpose of defining with certainty the terms of contract of employment and thus guaranteeing the workmen their conditions of service. Finally, 'an interpretation which promotes the objects and purposes of the Act will have to be preferred to one which will only defeat the same.'

The other issue connected with the aforesaid provision is what is the scope of 'industrial establishment'? Section 2(e) defines 'Industrial establishment' to mean the following:

(i) An industrial establishment as defined in clause (ii) of Section 2 of the Payment of Wages Act, 1936; or

(ii) A factory as defined in Clause (m) of Section 2 of the Factories Act, 1948

(iii) A railway as defined in Clause (4) of Section 2 of the Railways Act, 1890.

(iv) The establishment of a person who, for the purpose of fulfilling a contract with the owner of any industrial establishment, employs workmen.

The scope of the aforesaid definition has been delineated in a number of decided cases. Conflicting views have, however, been expressed on the issue of whether 'industrial establishment' covers the State Electricity Board. While the

Allahabad and Patna High Courts included the same, the Madras High Court excluded it. The Supreme Court has, however, approved the view of Allahabad and Patna High Courts. Further Employees' State Insurance Corporation has been excluded by the aforesaid definition; therefore, the provisions of IESOA do not apply to them. Decisions also indicate that the Standing Orders framed in an industrial establishment by an electrical undertaking do not cease to be operative on the purchase of the undertaking by the Board or enframing the regulation under Section 79 of the Electricity Supply Act, 1948. Courts have also held that the definition of 'industrial establishment' under IESOA having been incorporated from the definition of that term in the Payment of Wages Act, 1936, the position of the latter Act at the time of the enactment of the 1948-legislation above would be immaterial and any other subsequent addition or amendment to the 1936-Act would be of no avail.

The appropriate government is empowered to extend the provisions of the Act to an industrial establishment employing less than 100 workmen by giving two months' notice and issuing notification in the Official Gazette and specifying the number in the notification.

13.3.1 Establishments Excluded

The Act is, however, not applicable to:

(i) any industry to which the provisions of Chapter VII of the Bombay Industrial Relations Act, 1946, apply; or

(ii) any industrial establishment to which the provisions of the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961, apply.

Provided that notwithstanding anything contained in the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961, the provisions of this Act shall apply to all industrial establishments under the control of the Central Government. Exempted Establishment

Nothing in this Act shall apply to an 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 Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Service (Classification, Control and Appeal Rules or the Indian Railways Establishment Code of any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.

The opening words of Section 13-B namely 'nothing in the Act shall apply' have been interpreted by the Supreme Court in *U.P. State of Electricity Board* vs. *Hari Shankar Jain* to exclude the applicability of the Act to the extent to which the rule or regulation covers the field. According to the Court, to give any

other construction would be unjust and would once again place workmen at the mercy of the employer and would promote industrial strife. The view is in conformity with the Directive Principles of State Policy enshrined in Articles 42 and 43 of the Constitution. Further, the expression 'workmen ... to whom ... any other rules or regulations that may be notified in this behalf' occurring in Section 13-B means 'workmen enjoying a statutory status, in respect of whose conditions of service the relevant statute authorizes the making of rules or regulation.' The expression cannot be construed so narrowly as to mean Government servants only; nor can it be construed so broadly as to mean workmen employed by whomsoever including private employers, so long their conditions of service are notified by the Government under Section 13-B. The mere fact that the Electricity Board had adopted the rules and regulations of the Government of Madras as its transitory rules and regulations did not bring the workmen employed in industrial establishments under the Board within the mischief of Section l3B of the IESA. Government's Power to Exempt

The appropriate government is empowered to exempt conditionally or unconditionally (*i*) any industrial establishment, or (*ii*) class of establishment from all or any of the provisions of the Act. This should be done by notification in the Official Gazette. In exercise of this power, the following industrial establishments in Central sphere have been exempted from the provisions of the Act as on 31 December, 1978:

1. All major ports of Bombay, Calcutta, Madras, Cochin, Vishakapatnam and Kandala including their own railways
2. Government of India Presses (excluding security presses)
3. Training establishments in connection with the re-settlement training schemes in Vocational Training Centres under the control of the Directorate General of Employment and Training
4. Map production and Printing Offices known as Hathibarkala Litho Office and Photolitho Office, Dehradun and Photolitho Office at Calcutta
5. Delhi Road Transport Authority
6. Mechanical Workshop at Hirakund
7. Industrial establishments of the Zonal Railways including the Integral Coach Factory, Perambur and Chittranjan Locomotive Works
8. The Indian Veterinary Research Institute, Izatnagar/Makteshwar
9. Industrial establishment owned by the Port Trust Authority administering Port at Paradip.

An analysis of the aforesaid provisions reveals that the coverage of the Act is inadequate and needs to be broadened. In this connection it is relevant to note that Section 72 of the Industrial Relations Bill, 1978, *inter alia*, provided:

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The provisions of this Chapter shall not apply to any industrial establishment or undertaking which:

(a) ordinarily employs less than fifty employees; or

(b) during the period of twelve months immediately preceding the commencement of this Act, ordinarily employed less than fifty employees.

The Bill could have provided relief to workers not covered under the IESOA, but as stated earlier, the Bill could not find the colour of the Act and so it lapsed.

13.3.2 Workers Covered

Section 2 (i) of the Industrial Employment (Standing Orders) Amendment Act, 1982, provides that the 'workman' has the meaning assigned to it in the clause(s) of Section 2 of the Industrial Disputes Act, 1947.

13.3.3 Employer Under the Act

Section 2 (d) of the IESOA defined 'employer' to mean the owner of an industrial establishment to which this Act for the time being applies, and includes:

(i) in a factory, any person named under clause (*f*) of sub-section (1) of Section 7 of the Factories Act, 1948 (Act 63 of 1948), as manager of the factory;

(ii) in any industrial 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 industrial establishment, any person responsible to the owner for the supervision and control of the industrial establishment. In *Hari Shankar Jain* vs. *Executive Engineer, Rural Electricity Division*, the Allahabad High Court held that the employer would include the State Electricity Board since it was the owner of the industrial establishment by virtue of its compulsory purchase. It also held that 'unless there was any other provision to the contrary, even the State Government, if it happened to be the owner of an industrial establishment, would fall within the ambit of the definition of 'employer.'

Check Your Progress

1. Who all come under the Industrial Employment (Standing Orders) Act, 1946?
2. Which establishments are excluded from the Act?

13.4 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

NOTES

1. The Industrial Employment (Standing Orders) Act, 1946 applies to every industrial establishment wherein one hundred or more workmen are employed or were employed on any day of the preceding twelve months.
2. The Act is not applicable to: (i) any industry to which the provisions of Chapter VII of the Bombay Industrial Relations Act, 1946, apply; or (ii) any industrial establishment to which the provisions of the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961, apply.

13.5 SUMMARY

- Section I7A of the Act provides for the transfer of accounts of an employee in case if his leaving the employment and taking up employment in another establishment and to deal with the case of an establishment to which the Act applies and also to which it does not apply.
- The option to get the amount transferred is that of the employee.
- Where an employee of an establishment to which the Act applies leaves his employment and obtains re-employment in another establishment to which the 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 in the establishment left by him shall be transferred to tile 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.
- This transfer has to be made with in such time as may be specified by the Central Government in this behalf.
- Where an employer in relation to an establishment, transfers that establishment in whole or in part by sale, gift, lease or licence or in any other manner whatsoever, the employer and the person to whom the establishment is so transferred shall Jointly or severally be liable to pay the contribution and other sums due from the employer under any provisions of the Act of the Scheme or the Pension Scheme, as the case may be, in respect of the period up to the date of such transfer.
- The Act applies to every industrial establishment wherein one hundred or more workmen are employed or were employed on any day of the preceding twelve months.

- Several States have extended the application of the Act to establishments employing fifty or more persons. The (second) National Commission on Labour has recommended that establishments employing twenty or more workers should have standing orders or regulations.
- These standing orders will be prepared by the employer(s) in consultation with the recognized unions/federations/centres, depending upon the coverage, and where there is any disagreement between the parties, the disputed matter will be determined by the certifying authority having jurisdiction, to which either of the parties may apply.
- The problem connected with the aforesaid provision is whether the fall in the number of workmen below 100 at any time would make the Act inapplicable.
- The appropriate government is empowered to exempt conditionally or unconditionally (*i*) any industrial establishment, or (*ii*) class of establishment from all or any of the provisions of the Act. This should be done by notification in the Official Gazette.
- Section 2 (i) of the Industrial Employment (Standing Orders) Amendment Act, 1982, provides that the 'workman' has the meaning assigned to it in the clause(s) of Section 2 of the Industrial Disputes Act, 1947.

13.6 KEY WORDS

- **Dispute:** It refers to an argument or disagreement, especially an official one between, for example, workers and employers.
- **Re-employment:** It is the act or an instance of employing or being employed again.

13.7 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. Write a note on Court's power under the Employees Provident Funds and Miscellaneous Provisions Act, 1952.
2. Discuss the role of 'employer' under the Industrial Employment (Standing Orders) Act, 1946.

Long-Answer Questions

1. Give a detailed description of transfer of accounts and liabilities in case of transfer covered under the Employees Provident Funds and Miscellaneous Provisions Act, 1952.
2. Explain Industrial Employment (Standing Orders) Act, 1946. Discuss its coverage and exclusions in detail.

13.8 FURTHER READINGS

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UNIT 14 CONTRACT LABOUR REGULATIONS AND ABOLITION ACT, 1970

Structure

14.0 INTRODUCTION

This unit will introduce the salient provisions of the Contract Labour Regulations and Abolition Act, 1970 namely, the advisory boards, registration of establishments employing contract labour, licensing of contractors, welfare and health of contract labour, penalties and procedure and other miscellaneous provisions.

14.1 OBJECTIVES

After going through this unit, you will be able to:

- Discuss the Contract Labour (Regulation and Abolition) Act, 1970
- Explain the scope and applicability object of the Act

14.2 CONTRACT LABOUR (REGULATION AND ABOLITION) ACT, 1970

The object of the Act is to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances.

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14.2.1 Preliminary

1. ***Short title, extent, commencement and application.*** **-** (1) This Act may be called the Contract Labour (Regulation and Abolition) Act, 1970.

(2) It extends to the whole of India.

(3) It shall come into force on such date 1* as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act.

(4) It applies—

(a) To every establishment in which twenty or more workmen are employed or were employed on any day of the preceding twelve months as contract labour;

(b) to every contractor who employees or who employed on any day of the preceding twelve months twenty or more workmen:

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 to any establishment or contractor employing such number of workmen less than twenty as may be specified in the notification.

(5) (a) It shall not apply to establishments in which work only of an intermittent or casual nature is performed.

(b) 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.

2. Definitions.- (1) In this Act, unless the context otherwise requires,—

[(a) "appropriate Government" means,—

(i) in relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947 (14 of 1947), is the Central Government, the Central Government;

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(ii) in relation to any other establishment, the Government of the State in which that other establishment is situated;]

(b) 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;

(c) "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 of 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;

(d) "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;

(e) "establishment" means—

(i) any office or department of the Government or a local authority, or

(ii) any place where any industry, trade, business, manufacture or occupation is carried on;

(f) "prescribed" means prescribed by rules made under this Act; (g) "principal employer" means—

(i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the Government or the local authority, as the case may be, may specify in this behalf,

(ii) in a factory, the owner or occupier of the factory and where a person has been named as the manager of the factory under the Factories Act, 1948 (63 of 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.

Explanation.—For the purpose of sub-clause (iii) of this clause, the expressions "mine", "owner" and "agent" shall have the meanings respectively assigned to them in clause (j), clause (l) and clause (c) of sub- section (1) of section 2 of the Mines Act, 1952 (35 of 1952);

(h) "wages" shall have the meaning assigned to it in clause (vi) of section 2 of the Payment of Wages Act, 1936 (4 of 1936);

(i) "workman" means any person employed in or in connection with the work of any establishment to do any skilled, semiskilled or un-skilled

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manual, supervisory, 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 or 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.

(2) Any reference in this Act to a law, which is not in force in the State of Jammu and Kashmir, shall, in relation to that State, be construed as a reference to the corresponding law, if any, in force in that State.

14.2.2 The Advisory Boards

3. Central Advisory Board.- (1) The Central Government shall, as soon as may be, constitute a board to be called the Central Advisory Contract Labour Board (hereinafter referred to as the Central Board) to advise 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.

(2) 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, the opinion of the Central Government, ought to be represented on the Central Board.

(3) The number of persons to be appointed as members from each of the categories specified in sub-section (2), the term of office and other conditions

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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.

4. State Advisory Board.- (1) The State Government may constitute a board to be called the State Advisory Contract Labour Board (hereinafter referred to as the State Board) to advice 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.(2) 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 number of members, 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.

(3) The number of persons to be appointed as members from each of the categories specified in sub-section (2), 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:

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.

5. Power to constitute committees.- (1) 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.

(2) The committee constituted under sub-section (1) shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed.

(3) 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.

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14.2.3 Registration of Establishments Employing Contract Labour

6. Appointment of registering officers.- 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.

7. Registration of certain establishments.- (1) Every principal employer of an establishment to which this Act applies shall, within such period as the appropriate Government may, by notification in the Official Gazette, fix in this behalf with respect to establishments generally or with respect to any class of them, make an application to the registering officer in the prescribed manner for registration of the establishment:

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.

(2) 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.

8. Revocation of registration in certain cases.- 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 for any other reason the registration has become useless or ineffective and, therefore, requires to be revoked, the registering officer may, after giving an opportunity to the principal employer of the establishment to be heard and with the previous approval of the appropriate Government, revoke the registration.

9. Effect of non-registration.- No principal employer of an establishment, to which this Act applies, shall—

(a) in the case of an establishment required to be registered under section 7, but which has not been registered within the time fixed for the purpose under that section,

(b) in the case of an establishment the registration in respect of which has been revoked under section 8, employ contract labour in the establishment after the expiry of the period referred to in clause (a) or after the revocation of registration referred to in clause (b), as the case may be.

10. Prohibition of employment of contract labour.- (1) Notwithstanding anything contained in this Act, 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.(2) Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, 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 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.

14.2.4 Licensing of Contractors

11. Appointment of licensing officers.— 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.

12. Licensing of contractors.- (1) 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 in accordance with a licence issued in that behalf by the licensing officer.

(2) Subject to the provisions of this Act, a licence under sub-section (1) may contain such conditions including, in particular, conditions as to hours of work, fixation ofwages 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

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the deposit of such sum, if any, as security for the due performance of the conditions as may be prescribed.

13. Grant of licences.- (1) Every application for the grant of a licence under sub-section (1) of 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.

(2) The licensing officer may make such investigation in respect of the application received under sub-section (1) and in making any such investigation the licensing officer shall follow such procedure as may be prescribed.

(3) 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.

14. Revocation, suspension and amendment of licences.- (1) 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, without prejudice to any other penalty to which the holder of the licence may be liable under this Act, the licensing officer may, after giving the holder of the licence an opportunity of showing cause, 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.

(2) Subject to any rules that may be made in this behalf, the licensing officer may vary or amend a licence granted under section 12.

15. Appeal.- (1) 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:

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.

(2) On receipt of an appeal under sub-section (1), the appellate officer shall, after giving the appellant an opportunity of being heard dispose of the appeal as expeditiously as possible.

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14.2.5 Welfare and Health of Contract Labour

16. Canteens.- (1) The appropriate Government may make rules requiring that 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 contractor, one or more canteens shall be provided and maintained by the contractor for the use of such contract labour.

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

(a) the date by which the canteens shall be provided;

(b) the number of canteens that shall be provided, and the standards in respect of construction, accommodation, furniture and other equipment of the canteens; and

(c) the foodstuffs which may be served therein and the charges which may be made thereof.

17. Rest-rooms.- (1) 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 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.(2) The rest rooms or the alternative accommodation to be provided under sub- section (1) shall be sufficiently lighted and ventilated and shall be maintained in a clean and comfortable condition.

18. Other facilities. - 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.

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19. First-aid facilities.- 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.

20. Liability of principal employer in certain cases.- (1) 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 thereof, such amenity shall be provided by the principal employer within such time as may be prescribed.

(2) 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.

21. Responsibility for payment of wages.- (1) A contractor shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed.

(2) Every principal employer shall nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.

(3) It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer.

(4) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

14.2.6 Penalties and Procedure

22. Obstructions.- (1) Whoever obstructs an inspector in the discharge of his duties under this Act or refuses or willfully neglects to afford the inspector any reasonable facility for making any inspection, examination, inquiry or investigation authorized 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.

(2) Whoever willfully refuses to produce on the demand of an inspector any register or other document kept in pursuance of this Act or prevents or attempts to prevent or does anything which he has reason to believe is likely to prevent any person

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from appearing before or being examined by an inspector acting in pursuance of his duties under this Act, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

23. Contravention of provisions regarding employment of contract labour.- Whoever 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, 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, 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.

24. Other offences.- 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.

25. Offences by companies.- (1) If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of any director, manager, managing agent or any other officer of the company, such director, manager, managing agent or such other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.— For the 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.

26. Cognizance of offences.- 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.

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27. Limitation of prosecutions.- No court shall take cognizance of an offence punishable under this Act unless the complaint thereof is made within three months from the date on which the alleged commission of the offence came to the knowledge of an inspector:

Provided that where the offence consists of disobeying a written order made by an inspector, complaint thereof may be made within six months of the date on which the offence is alleged to have been committed.

14.2.7 Miscellaneous

28. Inspecting staff.- (1) The appropriate Government may, by notification in the Official Gazette, appoint such persons as it thinks fit to be inspectors for the purposes of this Act, and define the local limits within which they shall exercise their powers under this Act.

(2) Subject to any rules made in this behalf, an inspector may, within the local limits for which he is appointed—

(a) enter, at all reasonable hours, with such assistance (if any), being 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 or take copies of such register, record of wages or notices or portions thereof as he may consider relevant in respect of an offence under this Act which he has reason to believe has been committed by the principal employer or contractor; and

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

(3) Any person required to produce any document or thing or to give any information required by an inspector under sub-section (2) shall be deemed to be legally bound to do so within the meaning of section 175 and section 176 of the Indian Penal Code (45 of 1860).

(4) The provisions of the Code of Criminal Procedure, 1898 (5 of 1898), shall, so far as may be, apply to any search or seizure under sub-section (2) as they apply to any search or seizure made under the authority of a warrant issued under section 98 of the said Code.

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29. Registers and other records to be maintained.- (1) 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.

(2) 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.

30. Effect of laws and agreements inconsistent with this Act.- (1) The provisions of this

Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any agreement or contract of service, or in any standing orders applicable to the establishment whether made before or after the commencement of this Act:

Provided that where under any such agreement, contract of service or 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 labour shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that they receive benefits in respect of other matters under this Act.

(2) Nothing contained in this Act shall be construed as precluding any 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.

31. Power to exempt in special cases.- The appropriate Government 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.

32. Protection of action taken under this Act.- (1) 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.

(2) 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.

33. Power to give directions.- The Central Government may give directions to the Government of any State as to the carrying into execution in the State of the provisions contained in this Act.

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34. Power to remove difficulties.- 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 appears to it to be necessary or expedient for removing the difficulty.

35. Power to make rules.- (1) The appropriate Government may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act.(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the number of persons to be appointed as members representing various interests on the Central Board and the State Board, 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;

(b) the times and places of the meetings of any committee constituted under this Act, the procedure to be followed at such meetings including the quorum necessary for the transaction of business, and the fees and allowances that may be paid to the members of a committee;

(c) the manner in which establishments may be registered under section 7, the levy of a fee thereof and the form of certificate of registration;

(d) the form of application for the grant or renewal of a licence under section 13 and the particulars it may contain;

(e) the manner in which an investigation is to be made in respect of an application for the grant of a licence and the matters to be taken into account in granting or refusing a licence;

(f) the form of a licence which may be granted or renewed under section 12 and the conditions subject to which the licence may be granted or renewed, the fees to be levied for the grant or renewal of a licence and the deposit of any sum as security for the performance of such conditions;

(g) the circumstances under which licences may be varied or amended under section 14;

(h) the form and manner in which appeals may be filed under section 15 and the procedure to be followed by appellate officers in disposing of the appeals;

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(i) the time within which facilities required by this Act to be provided and maintained may be so provided by the contractor and in case of default on the part of the contractor, by the principal employer;

(j) the number and types of canteens, rest rooms, latrines and urinals that should be provided and maintained;

(k) the type of equipment that should be provided in the first-aid boxes;

(l) the period within which wages payable to contract labour should be paid by the contractor under sub-section (1) section 21;(m) the form of registers and records to be maintained by principal employers and contractors;

(n) the submission of returns, forms in which, and the authorities to which, such returns, may be submitted;

(o) the collection of any information or statistics in relation to contract labour; and

(p) any other matter which has to be, or may be, prescribed under this Act.

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

Check Your Progress

1. State the object of the Act.
2. State one example of persons not covered under the Act.

14.3 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. The object of the Act is to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances.
2. Persons who are not covered under this Act are persons who are employed mainly in a managerial or administrative capacity,

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14.4 SUMMARY

- The object of the Act is to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances.
- As the title itself indicates, the Act 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 Act applies to (a) every establishment wherein twenty or more workmen are employed or were employed on any day in preceding twenty months as contract labour [Section 1(4) (a)] and (b) every contractor who employs or employed twenty or more workmen or any day of the preceding twelve months. [Section 1(4)(6)].
- Under Section 2(2)(b) of the Contract Labour (Regulation an Abolition) Act, 1970, '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.'

14.5 KEY WORDS

- **Regulation:** It is a rule or directive made and maintained by an authority.
- **Abolition:** It is the act of officially ending a system, practice, or institution.

14.6 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. Write a short note on the establishment of advisory boards under the Contract Labour Regulations and Abolition Act, 1970.
2. Mention the appointment of licensing officers under the act.
3. What are the miscellaneous provisions of the act?

Long-Answer Questions

1. Discuss the scope and object of the Contract Labour Regulations and Abolition Act, 1970.

2. Explain the meaning of principle employer under the act.
3. Analyse the provisions with reference to the welfare and health of contract labour as mentioned in the act.

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14.7 FURTHER READINGS

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