

ALAGAPPA UNIVERSITY

COURSE MATERIAL ON

LABOUR WELFARE AND INDUSTRIAL RELATIONS

(34934C)

(MSW - PG LEVEL)

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LABOUR WELFARE AND INDUSTRIAL RELATIONS (34934C)

UNIT - I

1. LABOUR WELFARE

1. 1. Meaning of Labour Welfare

Labour welfare means the voluntary efforts made by the employer to provide better conditions of employment in their own industries. Its main object is to secure an improved standard of living for the workers, which effects on the worker's psychology and results in an increase in their productive efficiencies.

Labour welfare improves physical, mental and moral conditions of worker. Labour welfare includes housing, medical, educational, rest rooms, recreation, canteen, games and sports club facilities, adequate wages, reasonable working hours, insurance etc.

By providing these facilities to the workers, efficiency increases considerably. These facilities create confidence in the worker; he feels happy and thus takes more interest in the work. It also provides goodwill and the relation between worker and employer becomes good, which reduces indiscipline and helps to maintain industrial peace. When worker has full facilities, he will be free from worries and will therefore work in the factory with full efforts and interest.

Insurance facility and good working conditions create atmosphere of security and feeling of insecurity is removed from the mind of the worker and thus he takes more interest in his work. In present days workers are very much worried due to their housing problems, inadequate wages and expensive education.

If these problems are removed then a major part of worries of the workers will be removed and if his cultural uplift by providing recreation facilities and adding cultural and social activities are looked after, then worker will work with full heartedness and more interest devoting more physical and mental efforts.

1.1.2. Introduction on Indian Constitution

The term welfare brings in many ideas, meaning to state well being, good health , happiness, prosperity and the development of human resources. The concept of welfare has been a total concept involving physical, mental, moral and emotional well being of individual.

The social concept of welfare implies the welfare of man, his family and his community. It is an interconnection of three three aspects in the sense that all these work together and individually supplement one another.

The Concept

Welfare is called as a relative concept for it is related to time and space. Changes in it have an impact on the system. As a result the potential changes in the welfare content keep changing with time and space. It is also been observed that the welfare as a concept differs from country to country and from place to place.

Secondly, welfare is a positive concept, as to establish a minimum standard of living, it would demand certain minimum acceptable conditions of existence in both biological and social. Thus, when this is defined it is necessity for the components of welfare in terms of health, food, clothing, housing, medical assistance, insurance so on are to be taken care of.

Further, labour welfare as a concept has both positive and negative sides like, it deals with the provision of opportunities which enable the worker and his family to lead a good life, socially and personally and on the negative side it provides opportunities for un desirable consequences and labour problems.

The concept of labour differs from country to country, industry to industry and from time to time and region to region. Further it also depends on the kind of problems with which the society is confronted that is moulded according to the age group, sex, soci cultural background, economic status and educational level of the employees in various industries.

The utilization philosophy of the labour welfare work as a motivating force towards every labour and for those interested in it.

Definition

There could not be just one single definition to find universal acceptance. The simplest of all could be to understand that labour welfare as “ efforts to make life worth living for worker “.

The Encyclopedia of social sciences welfare is termed as voluntary efforts of the employers to establish within the existing industrial system, working and sometimes living and cultural conditions of the employees beyond what is required by law, the custom of the industry and the conditions of the market.”

Another definition on labour welfare states that “anything done for the comfort and improvement, intellectual and social of the employees over and above the wages paid, which is not a necessity of the industry.”

It could also be defined as “such services, facilities, amenities, which may be established in or in the vicinity of undertakings to enable persons employed therein to perform their work in healthy and congenial surroundings and to provide them with amenities conducive to good health and good morals.”

Labour welfare is also defined as “ anything done for the intellectual, physical, moral and economic betterment of the workers, whether by employers, by government or by other agencies over and above what is laid down by law or what is normally expected as part of the contractual benefits for which the workers may have bargained”.

Another definition on labour welfare defines it as “ that cover all the efforts which employers make for the benefit of their employees over and above the minimum standard of working conditions fixed by the factories act and over and above the provision of social legislation providing against accident, old age, unemployment and sickness.”

Another definition on labour welfare states that “ such services, facilities and amenities as adequate canteens, rest and recreation facilities, sanitary and medical facilities, arrangements for travel to and from work and for the accommodation of the workers employed at a distance from their security measures, as contribute to an improvement in the conditions under which workers are employed .”

Thus these definitions enables us to understand as one “ in which much can be done to combat the sense of frustration of the industrial workers, to relive them of personal and family worries, to improve their health, to afford them means of self expression, to offer them some sphere in which they can excel others and to help them to a wider conception of life. “

The most significant definitions describes labour welfare work as “ the voluntary effort of the employer to improve the living and working conditions of his employees, the underlying assumption of course being that the first essentials to the welfare of the employees are steady work, a fair wage and reasonable hours of labour “.

Of all these definitions, it is very much transparent to note that none of these definition is complete or comprehensive. There is no precise, definitive outline or demarcation in this subject and thus they may give overlap and ambiguity in certain areas of action.

However, it is a well known fact that labour welfare promotes the wellbeing of the workers in a variety of ways. Any kind of voluntary service will come under the purview of labour welfare if it aims at helping the worker to work better and in more congenial surroundings and also to live better physically, socially, morally, economically and intellectually.

Objectives of Labour Welfare

In the beginning humanitarianism and social awareness motivated labour welfare activities. Driven by the desire for greater efficiency and out put from workers and with a view to attract better workers, employers lured them into their Organisation through labour welfare measures.

Further, some of the few issues tackled by labour welfare measures are as stated below.

Such labour welfare measures persuade workers to accept mechanization and some times labour welfare measures were used by the employers as a tool to combat the outside agencies on their employees.

Labour welfare measures are often undertaken to avoid paying of tax on surplus and simultaneously building up good relations with the employee.

Some times labour welfare measures are undertaken to meet the minimal requirements that is followed by other organisations in the industry.

Theories of Welfare

The Police Theory – is based on the contention that a minimum standard of welfare is necessary for labourers. The theory assumes that without compulsion , periodical supervision and fear of punishment, employers will not be ready to provide even the minimum welfare amenities.

Further, the theory is based on the conclusion that man is self centered and selfish and always tries to achieve his own ends even at the cost of the welfare of others. If wealth, authority are at his ends, he would take advantage of the same and exploit the work force for his individual sake.

Therefore the theory postulate that the welfare state has to step in to prevent these atrocities and exploitation and force industrialists to offer minimum standard of welfare to their workers. Thus various laws are promulgated in order to compel every organisation to provide the minimum standard welfare measures leading to

The passing of laws relating to the provision of minimum welfare for workers, Periodical supervision to ascertain that these welfare measures are provided and implemented and Punishment of employers who evade or disobey these laws.

It is seen from the above that the emphasis by the theory is on the fear and not on the true spirit of welfare. As such many big industrialists do not undertake the welfare measures that are not backed by law, even though these may bring in some good relief to the workers and improve their life.

While the others in spite of being capable to carry out, they are not interested to carry out any welfare Programmes while the others try to find loopholes in the law and convince the factory inspectors they have duly carried out the legal requirements.

The Religious Theory – is propounded on the concept that a man is essentially a religious animal. Even today many acts of man are related to religious sentiments and beliefs. Hence

these religious feelings sometimes prompt an employer to take up welfare activities in the expectation of future benefits either in his life or in some future life.

According to the theory, any good work is considered an investment both the benefactor and the beneficiary are rewarded, based on this philosophy many charitable and other religious institutions have come into existence.

Another aspect of the religious theory is the atonement aspect , as some people take up welfare work in a spirit of atonement for their sins and any welfare act is treated either as an investment or an atonement.

Further, according to this theory man is primarily concerned with his own welfare and only secondarily with the welfare of the others. The religious basis of welfare cannot be rational, nor universal or continuous.

Philanthropic Theory – is based on mans love for mankind. In Greek philos means loving and anthropes mean man and hence loving mankind becomes the key factory for the theory.

Man is believed to have an instinctive urge by which he strives to remove the suffering of others and promote the well being and this being very powerful drive it impels him to perform noble sacrifices. Thus the labour welfare movement began in the early years of the industrial revolution with support of Robert Owen and in India the movement began with the ardent support of Mahatma Gandhi, who strove for the welfare of the labour.

Trusteeship Theory – also called as paternalistic theory of labour welfare says that the industrialist or employer holds the total industrial estate, properties and profits accruing from them in trust. Hence he uses them for himself and for the benefit of his workers and for the society.

Here the workers are treated as minors and they are ignorant because they lack in education and they are not able to look after themselves. Therefore employers have the moral responsibility to look after the interest of their wards who are the workers. Here there is no binding or obligation legally but only morality issues are raised.

Here, the welfare of the labour depends on the initiative of the top management and more related to moral conscience of the industrialists and hence may create a good will between the labour and management.

The Placating Theory –is based on the act that labour groups are becoming demanding and militant. They are more conscious of their rights and privileges than ever before. Their demand for higher wages and better standards cannot be ignored and hence it said that the timely and periodical acts of labour welfare can appease the workers.

Public Relations Theory – provides the basis for an atmosphere of goodwill between labour and management and also between management and the public. Labour welfare programmes under this theory work as a sort of an advertisement and help an industrialist to build up good and healthy public relations. The theory is based on the assumption that the labour welfare movement may be utilized to improve relations between management and labour. Thus an advertisement of the industrialist in promoting labour welfare schemes may improve his relations with the public and at the same time these kind of programmes may lack sincerity and continuity as such programmes when loses its advertisement value may become redundant and be withdrawn or even abandoned may become only a publicity stint rather than labour welfare.

The Functional Theory – also known as efficiency theory, welfare work is used as a means to secure, preserve and develop the efficiency and productivity of labour. It is obvious that if an employer takes good care of these workers, they will tend to become more efficient and will thereby step up production. Thus this depends on the healthy relationship between the union and management and their mutual concern for the growth and development of the industry.

Thus higher the production is of benefit to both management and labour, as the labourer will get better and higher wages and also to share profits. This concept would work well when both the parties have identical aim.

In India it is said that the industrial system clings largely to the paternalistic approach and some management try to achieve this through police control. Either way workers start expecting too much from employers as a result of which employers provide welfare measures

in a somewhat half-hearted manner. Thus the theory works more effectively by reason of an intelligent and willing participation of workers.

Principles of Labour Welfare

Principle of Adequacy of Wages – labour welfare measures cannot be a substitute for wages, workers have a right to adequate wages, but high rate of wages alone cannot create a healthy environment nor would bring in commitment on the part of the workers. A combination of social welfare, emotional welfare and economic welfare together would achieve good results.

Principle of Social Responsibility – according to this principle, industry has an obligation towards its employees to look after their welfare and this is also backed by the constitution of India in its directive principles of the state policy.

Principles of Efficiency – plays an important role in welfare services and is based on the relationship between welfare and efficiency, though it is difficult to measure this relationship. Whether one accepts the social responsibility of industry or not, the employer quite often accepts the responsibility for increasing such labour measures as would increase efficiency. For eg. Diet planning in canteens.

Principle of Re-personalisation - the development of human personality is found to be the goal of industrial welfare and this principle should counteract the baneful effects of the industrial system. Therefore it is necessary to implement labour welfare services, both inside and outside the factory.

Principle of Totality of Welfare – emphasizes that the concept of labour welfare must spread throughout the hierarchy of an Organisation and employees at all levels must accept this total concept of labour welfare without which the labour welfare would not be implemented.

Principle of Co-ordination – is a concept of co-ordinated approach that will promote a healthy development of the worker in his work, home and community. This is essential for the sake of harmony and continuity in labour welfare services.

Principle of Democratic Values – cooperation of the worker is the basis of this principle and thus consultation and the agreement of the workers in the formulation and implementation of the labour welfare services are very necessary for their success.

Moreover workers allowed to participate in planning these programmes get keenly interested in their proper implementation. This principle is based on the assumption that the worker is a mature and rational individual and industrial democracy is the driving force here and workers also develop a sense of pride when they are made to feel that labour welfare programmes are created by them and for them.

Principles of Responsibility – recognises the fact that both employers and workers are responsible for labour welfare. Trade unions too are involved in these programmes in a healthy manner, for basically labour welfare belongs to the domain of the trade union activity.

Further, when responsibility is shared by different groups, labour welfare work becomes simpler and easier. Accordingly various committees are elected or nominated and various powers and responsibilities in the welfare field are delegated to them. For Eg. Safety committee, the canteen supervision committee etc.,

Principle of Accountability – is also known as principle of evaluation. Here one responsible person gives an assessment or evaluation of existing welfare services on a periodical basis to a higher authority. In this criteria one judge the success of labour welfare programmes.

Principle of Timeliness – The timeliness of any service helps in its success. To identify the labour problem and to discover what kind of help is necessary so solve it and when to provide this help are all very necessary in planning labour welfare programmes.

Principle of Self Help – is the facts that labour welfare must aim at helping workers to help themselves in the long run. This helps them to become more responsible and more efficient.

Need and Scope of Labour Welfare

Labour welfare has become essential because of the very nature of the industrial system and the approaches to this system differ from country to country. Since our country is still going through the process of economic development, it is of great consequence and somewhat

easier to counteract the baneful effects of the industrial revolution that has adversely affected the people all over the world.

Thus the need for labour welfare was strongly felt by the committee of the Royal Commission on Labour as far as back as in 1931, primarily to protect every industrial worker from the hands of their employers.

Further, the above commissions mission to protect labour was emphasized in the state directive principles of the following article.

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

Article 42 – The state shall make provision for securing just and humane conditions of work and for maternity relief.

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

Some of the necessities for the Labour Welfare Measures to introduced

- There were only 25 million during the initial period of industrial growth, while the strength of the workers is increasing year after year and hence, need for a mechanism to look into the welfare of the labour.
- Workers put in long hours of work in unhealthy surrounding and the drudgery of the factory work continues to have adverse effect. To counter these welfare measures were felt necessary.
- As a result of hardwork, they fall prey to alcoholism, fambling and other immoral activities results in absenteeism and other problems in the organisation. Hence the need was felt.

- Good education and training facilities for workers were also felt necessary as there was high rate illiteracy and lack of proper education background.
- Good training provided will reduce industrial accidents, increases workers efficiency and create a sense of commitment among the workers.
- Welfare activities like family planning, child welfare facilities and maternity care assist workers in a variety of ways, which would reduce the mortality rate and maintain good health of the spouse and children of the family, which would create a confident note in the workers.
- Promoting welfare activities lead to better working conditions and standards for industrial workers.

Scope of Labour Welfare

Contribute to the productivity of labour and efficiency of the enterprise

Raise the standard of living of workers by indirectly reducing the burden on their purse Be in tune and harmony with similar services obtaining in a neighbouring community where an enterprise is situated.

Be based on an intelligent prediction of the future needs of industrial work and be so designed as to offer a cushion to absorb the shock of industrialization and urbanization Be administratively viable and essentially development in outlook.

However no labour welfare activities can be limited to facilities, within or near the undertaking nor can it be comprehensive as embrace the whole range of social welfare or social services. It therefore follows all the extra mural and intra mural welfare activities as statutory or non statutory welfare measures undertaken by employers.

It bring under its purview all welfare activities and amenities related to canteen, rest and recreation facilities, medical assistance, better health, nutrition and sanitation, travel to and from work, education, housing, holiday facilities and so on.

Growth of Labour Welfare in India – Pre – Independence

The origin of labour welfare activity in India goes back to 1837, following the abolition of slavery in the year 1833 and British colonies started importing Indian labour. Then the labour welfare activity was mainly controlled by legislation and the earliest act in this regard was the Apprentices Act of 1850, that was passed to protect the orphaned children to learn various trades with the help of experienced craftsmen.

The next act was the Fatal Accidents Act of 1853 aimed at providing compensation to the families of workmen who lost their lives as a result of any actionable wrong at workplace. This act was followed by the Merchant shipping act of 1859, which intended to regulate the employment of seamen and provided for their health, accommodation and protection.

The review of all these early enactments shows that they were drawn up with specific objectives and that they do not indicate any planned policy or approach to the labour welfare. Thus they were only attempting to regulate employment rather than improve their working conditions of labour.

22 years elapsed after the shipping act before the first Indian factories was passed in 1881, which marked the beginning of a series of labour laws that brought improvements in the working conditions of labour. The conditions of the labour that worked in the textile mills in Bombay in the 1870 onwards were the immediate cause for this act to be enacted.

Some of the conditions of the workers during those time were , children below the age of 08 years were employed, the hours of work was between sunrise to sunset, there were no fixed holidays and under all normal conditions the mills were working for not less than 320 days in a year and the conditions inside the working area were not fit for humans to work and the levels of safety was inadequate.

Thus the Indian Factories Act of 1881 was made applicable to all the factories using mechanical power employing not less than 100 persons and working more than 04 months in a year. Further the following is highlighted of the act.

Children below the age of 07 could not be employed, while those between the age of 07 and 12 were not work for more than 09 hours a day.

They were also to get 04 holidays every month

State was empowered to appoint factory inspectors to oversee the functions of the factories

Dangerous machineries were to be properly fenced and every accident need to be reported to the factory inspector.

Following the international conference on labour at Berlin, and on the advice of the special commission on labour the following amendments were made in the year 1891 to the factories act of 1881.

It applied to all the factories employing 50 persons or more and could be extended to those who have 20 workers.

A mid day break for half an hour was made compulsory A weekly off day was prescribed

Women were allowed to work for a maximum of 11 hours with a break for 1 and half hours.

The lower age limit for the worker was raised from 09 years to 14 years and were not allowed to work for more than 07 hours a day.

Local governing bodies were empowered to make rules regarding sanitation and other amenities for workers

Provisions were made for inspection and penalties for breach of any provision of Factory Act.

This act could also not come of certain drawbacks like

It did not apply for those factories that did not work for more than 120 days in a year Safety provisions in the act were also found to be inadequate and legally the manager of the factory was not an occupier and could not therefore be punished for breach of the provisions of the act.

During these periods various voluntary actions in the fields of labour welfare also made considerable progress. Group efforts came to the forefront. The amalgamated society of railway servants of India and Burma, formed in the year 1897 started a number of friendly benefit schemes, the printers union in Calcutta and the postal union in Bombay were

respectively organised in 1905 and 1907. They introduced mutual insurance schemes, night schools, educational stipends and funeral allowance. In the year 1910 the Kamgar Hitwardhak Sabha was established with the aim to help workers in a variety of ways and the most important being the labour welfare functions.

After Independence

The labour welfare movement acquired new dimensions. For the requirement of massive investments in industry during this period, it was felt necessary that labour welfare played a positive role in increasing productivity and reducing industrial tensions. The state too seriously took its social responsibility to the weaker and working sections of the population. Thus the factories act of 1948 was enacted that replaced all previous legislations.

Factories Act of 1948.

The factories act of 1948 is a milestone in the factory legislation and the main provisions of the act are as follows.

Provisions regarding safety guarding machines, health and cleanliness, drinking water, washing and latrine facilities, lunch rooms and restrooms, sitting arrangements, first and dispensary facilities in all the factories employing more than 500 workmen, crèches where more than 50 women workers are employed, welfare officer where more than 500 workmen are employed, provisions for spittoons, holidays with wages at the rate of one day for every 20 days worked, weekly hours like 48 hours for adults and 27 hours for younger persons, rate of payment for overtime work, rest for half an hour after maximum 05 hours of work and weekly holiday.

The act provided for development of labour welfare movement in two streams. One movement through voluntary effort to develop programmes with a view to minimizing hardship and the other an agitational movement for better legislation. Thus the government is playing a triple role of legislator, administrator and promoter.

The Indian constitution makes a specific mention of duties the state owes to labour apart from the factories act of 1948. The government of India also passed the welfare act known as

employees state insurance act, which provides for benefits to workers in case of sickness, maternity, employment injury, hospitalization etc.,

Welfare practices in India

Many welfare amenities described in the main report of the labour investigation committee have become a part of the statutory obligations. The different welfare amenities are under the various heading as follows.

Sanitary and Hygiene Facilities

The maintenance of a clean, sanitary and hygienic working environment is now accepted as an important basic welfare amenity that would include toilets, water for drinking and washing.

The factories act requires that every factory must be kept clean and free from effluvia flowing from any drain, that a sufficient supply of wholesome drinking water must be made available at suitable and convenient points and separate latrines and urinals for male and female workers be provided and spittoons and washing facilities be provided .

Rest facilities

This amenity prescribes a prescribed number of seats on the shop floor and in rest rooms or shelters in order to reduce fatigue as it enables a worker to take a break. Further the act also makes provisions for lunch rooms to be provided if there are more than 150 workers and these places be clean, well lighted and ventilated and provided with adequate furniture and drinking water wherever necessary.

Feeding facilities

Every factory employing 150 or more workers should provide a lunch room with provision for drinking water to enable workers to eat the meals brought by them and where over 250 or more workers are employed, there should be a canteen or canteens.

In fulfilling the objectives of an industrial canteen, several points like the following should be kept in mind.

It should be managed on a non profit basis.,

The canteen has to be roomy, clean, bright and well placed in the factory Should have comfortable and friendly atmosphere

The food supplied in the canteen should be adequate and of good quality. The three ways of administering the industrial canteens are

Directly by the employers

By a contractor and by a co-operative society of workers. Medical Facilities

Since the Second World War, the importance of preventive and curative medical care has increased and it is now accepted theory that health care for workers will help to reduce the incidence of sickness and therefore absenteeism among them and will increase productivity.

The factories act of 1948 provided for cleanliness, disposal of wastes and effluents, ventilation and temperature control, dust and fume, artificial humidification, restriction regarding overcrowding, lighting, drinking water arrangements, latrines and urinals and spittoons etc.,

Statutory medical facilities were also provided under the Employees State Insurance Act 1948, with subsequent amendments. This act extends such benefits to industrial workers as maternity benefits, disablement benefits, dependants' benefits, sickness benefits and medical benefits, while medical care and cash benefits were also provided for workers.

Apart from the medical and health facilities provided by legislation and by some employers on a voluntary basis, other similar services have been organised by workers by labour welfare centre and some trade unions.

Occupational Health Services

These are essentially preventive, very common in the industrially advanced countries of the west and it is gaining importance and recognition in the large sized undertakings in our country. One of the main functions under this service is to protect workers against the health hazards arising out of the nature of their work or the work environment. This service includes

carrying out periodical medical checks for categories of workers to detect early signs of ill health and prevent them from serious health complaints.

Family Planning

Increasing population has increased the strength of the labour force and created a number of economic problems, including the problem of unemployment and industrial unrest. A great deal of attention has therefore been paid to family planning programmes for industrial workers. Various committees that were formed to look into the welfare measures under labour welfare activities was of the opinion that family planning programme for industrial workers should be a part of labour welfare.

Creche

This is a welfare facility which is provided for women workers. This is a place where babies of working mother are taken care of while the mother is at work. The provision for this facility was made in the factories act of 191934 and the need was emphasized in the 1948 enactment stating that it is mandatory for an Organisation which has around 30 women workers, and should be adequately lighted and ventilated with clean sanitary condition.

Social Security Measures

The concept of social security has been mentioned in the early Vedic hymn which wishes everyone to be happy free from ill health and enjoy bright future and suffer no sorrow. In total it is based on the ideal of human dignity and social justice.

Social security is defined as “the security that society furnishes, through appropriate Organisation, against certain risks to which its members are exposed” These risks are essentially contingencies against which the individual, who has small means, cannot protect himself. These contingencies include employment injury, sickness, invalidism or disablement, industrial disease, maternity, old age, burial, widow hood, orphan hood and unemployment.

Social security is also defined as “the securing of an income to take the place of earnings when they are interrupted by unemployment, sickness or accident, to provide for retirement

through old age, to provide against loss of support by the death of another person and to meet exceptional expenditure connected with birth, death or marriage... The purpose of social security is to provide an income up to a minimum and also medical treatment to bring the interruption of earnings to an end as soon as possible “.

Friedlander defined social security as “ a programme of protection provided by society against these contingencies of modern life – sickness, unemployment, old age, dependency, industrial accidents and invalidism – against which the individual cannot be expected to protect himself and his family by his own ability and foresight”.

Thus Article 41 of the constitution of India says that “ The state shall within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment , old age, sickness and disablement and in other cases of undeserved want.”

Thus, the social security measures would help man to face the contingencies as such it is difficult for him either to work or to get work and support himself and his family. Thus social security measure provides a self balancing social insurance or assistance from public funds.

The three major ways of providing social security are

Social Insurance – is described as the giving in return for contribution, benefits up to subsistence level, as of right and without a means test, so that an individual may build freely upon it. Thus social insurance implies that it is compulsory and that men stand together with their fellows.”

The features of social insurance are - It is financed entirely by or mainly from the common monetary contributions of workers, employers and the state. This fund takes care of all the benefits paid in cash or kind.

Second the state and the employers make a major contribution to the fund, while the employees pay only a nominal amount, according to their capacity to pay.

Third, when there is a total or partial loss income, these benefits within limits, ensure the maintenance of the beneficiaries minimum standard of living.

Fourth, social insurance benefits are granted without without an examination of an individuals needs and without any means test, without affecting the sense of self respect of the beneficiary.

Fifth these benefits are so planned as to cover, on compulsory basis all those who are sought to be covered.

Lastly, social insurance reduces the suffering arising out of the contingencies faced by an individual contingency which he cannot prevent.

Social Assistance – is provided as an supplement to social insurance for those needy persons who cannot get social insurance payments and is offered after a means test. The general revenues of the government provide the finance for social assistance payments, which is made available as a legal right to those workers who fulfill given conditions.

Social assistance and social insurance go side by side. Social assistance programmes cover such programmes as unemployment assistance, old age assistance, public assistance and national assistance.

Thus social security is a combination of the principle of social assistance and social insurance. Social insurance however falls in midway between the two for it is financed by the state as well as by the insured and their employers, whereas social assistance is given grants to the needy by the state or the community. Commercial insurance is entirely a private contract.

Public Service –is a programme constituting the third main type of social security. They are financed directly by the government from its general revenues in form of cash payments or services to every member of the community falling within a defined category.

Some of the services being rendered under this scheme is, national health service providing medical care for every person in the country, old age pension, pension for invalidism,

survivors pension to every widow or orphan and a family allowance to every family having a given number of children.

Apart for the state, there are many other agencies which provide security against contingencies. In many other countries, the trade unions have their own sickness, old age and unemployment schemes. Savings funds, sickness benefits and old age pensions have also been provided by a large number of Organisations for their employees. “ The underlying idea of social security measures is that a citizen who has contributed or is likely to contribute to his country’s welfare should be given protection against certain hazards.”

Indian Social Security System

In India, the social security system was in a crude form of social protection that was made available to the needy and the un fortunate under the joint family system, while additional help was rendered by the community panchayats, orphanages and widows home and also by individuals offering alms and charity.

With the joint family system problems like unemployment or any other economic hardships, old age and other contingencies were not suffered by the individuals, since there were not in isolation. Similarly members of a particular cast were offered security and benefits such as medical aid, financial help to widows and orphans, educational assistance in the form of scholarships and free ships were offered. However these assistance were offered only to the members of their community and there was no definite law or principle towards these.

During the time of urbanization and industrialization both these systems of social security system lost its hold on the society and the concept of secular state in India has further eroded the continuance of the system.

Modern industrialization has created anew class of industrial portrait of the country with its rural background and with very little social and material resources, is in great need of systematized help through social security agencies. The social security system in India has evolved in obedience to the impact of western influence and of the modern urban industrial system.

Thus social reformers, labour welfare Organisations and many progressive employers persuaded the government to undertake social security measures as a protection for the workers at least against a few contingencies. Social security is a major aspect of public policy today and the extent of its prevalence is a measure of the progress made by a country towards the idea of a welfare state.

The following major enactments have been made by the Government of India to provide social security to industrial

Workmens Compensation Act 1923 – was put into effect on 1st July 1924 and was amended several times. It was extended and enforced by the Indian Independence Order of 1948 and adaptation of laws order in 1958, war time injuries were also covered by the act.

Employees State Insurance Act 1948 – The Government of India could not adopt the health insurance schemes due to financial difficulties and hence after several conferences, the health insurance for the workers was recommended as compulsory and contributory in August 1944 and the Employees State Insurance Act was enacted in the year 1948 that would cover the cash benefit in contingencies of sickness, maternity and employment injury but did not provide security in such contingencies as unemployment and old age.,

The ESI schemes offer both direct and indirect medical care. The direct method is called the service system by which the ESI corporation provides medical care either through its own employees state insurance hospital or through reservation of beds in state government hospitals. The indirect method is know as panel method under which medical care is provided through private doctors selected by the state government with the approval of the ESI corporation that would cover

Sickness benefit Maternity Benefit Disablement Benefit Dependants Benefit

Funeral Benefit and Medical benefit.

Employees Provident Fund Act 1952 – applied to all factories mines and other coal mines and commercial establishments employing more than 20 workers and their earning not exceeding Rs. 3,500/-. The provide nt fund act of 1q952 was amended following which the

employees family pension scheme has been enforced from March 1 1971 with a view to protect the family after the workers death.

Maternity Benefit Act 1961 – following the enactment, it provided for better and more far reaching benefits and hence the state act of maternity benefit that were enacted earlier lost its importance and gradually the central act was adopted.

Industrial Dispute Act 1947 - was the act that provides for workers unemployment due to layoff. This relief was given by way of compensation to the affected workers at a certain specified rates. The compensation in case of retrenchment cases amounts to 15 days average earnings for every completed year of service or part thereof. In the event of closure of undertaking, the retrenched workers receive compensation at the same rate, however it is limited to a maximum of 03 months average earnings.

Employer's family pension scheme 1971 – was notified by the Government of India under the employee's provident fund and family pension act. Here the family pension means a regular monthly amount payable to a person belonging to the family of a member of the pension fund scheme in the event of his death during the period of reckonable service. The definition of the word, family covers wife or husband, minor sons, and un married daughters of a member of the family pension fund.

Payment of Gratuity act 1972 – according to the act, gratuity shall be payable to an employee

On termination of his employment after he has rendered continuous service for not less than five years.

- On his superannuation
- On his retirement or resignation
- On his death or disablement due to accident or disease

1.2.1. Unorganized Labour Sector in Industry and Agriculture

Definition and meaning of the concept

In India, the terms 'unorganized sector' and 'informal sector' are used interchangeably in research literature. The term 'unorganized sector' is used commonly in all official records

and analysis. The literature regarding this sector is so vast and so there is a multitude of conceptualizations and definitions relating to this concept. Keith Hart is the first person to introduce the term 'Informal sector' and distinguished formal and informal income opportunities on the basis of whether the activity entailed wage or self employment (Hart, 1973).

The term 'informal sector' came in a broader sense in the academic literature only after the visit of International Labour organization (ILO) Employment Mission to Kenya in 1972. Since then, the informal sector has been the subject of several studies and seminars covering various aspects like its size, employment potential, its relationship with the formal sector, technological levels, etc. According to UN Economic and Social Council (ECOSOC), informal workers are defined "to include persons whose employment relationship is not subject to labour legislation, social protection and certain employment benefit".

The first National Commission on Labour (1966-69) defined unorganized sector as that part of the workforce "who have not been able to organize in pursuit of a common objective because of constraints such as casual nature of employment, ignorance and illiteracy, small and scattered size of establishments and superior strength of the employer operating singly or in combination". The Commission listed illustrative categories of unorganized labour consisting of 1) construction workers 2) labourers employed in small scale industry 3) casual labour 4) handloom/ power loom workers 5) beedi and cigar workers 6) employees in shops and commercial establishments 7) sweepers and scavengers 8) workers in tanneries 9) tribal labour and other unprotected labour.

The National Commission on Self Employed Women set up in 1987 under the chairmanship of Ella R Bhatt defined unorganized sector as "one in which women do arduous work as wage earners, piece rate workers, casual labour, paid and unpaid family labour whose economic and social conditions are dismal". The Commission Report observed that this sector is characterized by a high incidence of casual labour mostly doing intermittent jobs at extremely low wages or doing their own account work at very uneconomical returns. There is a total lack of job security and social security benefits. The areas of exploitation are high, resulting in long hours, unsatisfactory work conditions and occupational health hazards.

The National Council of Applied Economic Research–Self Employed Women’s Association (NCAER-SEWA) workshop proposed a definition for the informal sector based on employment and stated that this sector included all workers in informal enterprises, some workers in formal enterprises, self – employed workers and those doing contract work for informal or formal sector enterprises and contractors (Kantor 1997). A similar approach is given by NCEUS (2007, P.3). It stated that “Unorganized workers consists of those working in the unorganized enterprises or households, excluding regular workers with social security benefits, and the workers in the formal sector without any employment and social security benefits provided by the employers”. Thus, all workers, who are not covered by the existing social security laws like Employees State Insurance Act, Employees Provident Fund and Miscellaneous Provisions Act, Payment of Gratuity Act and Maternity Benefit Act, can be considered as part of the unorganized sector.

The National Sample Survey Organization (NSSO) which has been conducting surveys of unorganized enterprises at periodical interval generally adopted the following criteria for the identification of unorganized sector.

- 1) In the case of manufacturing industries, the enterprises not covered under the Annual Survey of Industries (ASI) are taken to constitute the unorganized sector.
- 2) In the case of service industries, all enterprises except those run by the government (Central, State and Local Bodies) and in the public sector are regarded as unorganized.

Major characteristics and categories of unorganized workers

The unorganized sector is in no way an independent and exclusive sector. It is linked to or in many cases, dependent on the organized sector and the rest of the economy through a variety of linkages such as for raw materials and other output requirements, generation of employment, marketing facilities and so on. Some specific characteristic of unorganized workers are the following.

- 1) The unorganized labour is overwhelming in terms of its number and range and therefore, they are omnipresent throughout India.

- 2) As the unorganized sector suffers from cycles of excessive seasonality of employment, majority of the workers does not have stable and durable avenues of employment.
- 3) As the work place is scattered and fragmented, the workers do the same kind of jobs in different habitations and may not work and live together in compact geographical areas.
- 4) There is no formal employer-employee relationship existing in the unorganized sector.
- 5) In rural areas, the unorganized labour force is highly stratified on caste and community considerations while in urban areas, such considerations are much less because bulk of them are basically migrant workers.
- 6) They are usually subject to a lot of fads, taboos and outmoded social customs like child marriage, excessive spending on ceremonial festivities, etc which lead to indebtedness and bondage.
- 7) The workers are subject to severe exploitation by the rest of the society. They work under poor working conditions, get wage much below than in the formal sector and even for closely comparable jobs where labour productivity is not different. The work status is of inferior quality in terms of both remuneration and employment.
- 8) Primitive production technologies and feudal production relations are rampant in the unorganized sector and they do not permit or encourage the workers to imbibe and assimilate higher technologies and better production relations. Large scale ignorance and illiteracy are also responsible for such poor absorption.
- 9) The unorganized workers do not receive sufficient attention or protection from the trade unions.

Unorganized workers can be categorized broadly under the following four heads namely

1. In terms of occupation

Small and marginal farmers, landless agricultural labourers, fishermen, leather workers, weavers, artisans, those engaged in animal husbandry, beedi rolling, labeling and packing, building and construction, brick kilns and stone quarries, sawmills, oil mills, etc come in this category.

2. In terms of nature of employment

Agricultural labourers, bonded labourers, migrant workers, contract and casual labourers come under this category.

3. In terms of specially distressed categories

Toddy tappers, scavengers, carriers of head loads, drivers of animal driven vehicles, loaders and unloaders belong to this category.

4. In terms of service categories

Midwives, domestic workers, fishermen and women, barbers, vegetable and fruit vendors, news paper vendors, etc come under this category.

1.2.2. Problems Faced By Unorganized Sector

90% workforces are engaged in huge informal sectors. They, by and large, face various types of problems in their regular life like they stay very close to their workplace; extending working hours is a regular practice, exploitation and hazardous workplace are very common.

1. Very low wages is the main problem for unorganized workers: – Minimum wage act in most of the time applies for labours working under the purview of organized sectors or formal sectors.

2. Maximum workers do not have any perfect living areas near to their work place: Maximum workers working in organized sectors avail house rent allowance, in addition to that they get house from housing board and also get bank loan from various statutory banks for making their own particular house yet, unfortunately the workers from unorganized sectors are deprived form all these facilities, subsequently they have a propensity to make cluster inside the restricted space in their living region where they do not have appropriate washing facilities, because of that they regularly deal with the unbalanced circumstance particularly women workers. They likewise battle with various unhygienic conditions sewer seepage frameworks, overflowing drainage systems flooding amid storm.

3. They do not have any knowledge about work hazardous and occupational safety:

Introduction of different hazardous machinery, high rise in construction, unguarded machinery, various toxic chemical, coal dust, lime dust, blazes crude materials for synthetic generation leads quantities of tragic deaths of many unorganized labors because the working condition is more severe as compared to that organized sectors furthermore the knowledge of occupational health and safety is negligible of the workers of unorganized sectors.

4. Overtime, paid holiday or sick leave are not provided to them:

In spite of the fact that the overtime, paid holiday and sick leave go under the domain of labour laws still may casual laborers are denied from that rights however the use of those laws are normal in formal segments.

5. They do not have idea on Trade Union/ labour union:

Maximum numbers of informal workers do not have any knowledge about the existence and rules of labour union. Many workers of unorganized sectors, like union of agricultural workers, brick workers, hosiery workers, construction rakes, fish and forest workers, domestic workers, biri rollers,sex workers, liquor shop employees have joined Shramajivi Swikriti Manch and Asanghathit Kshetra Shramik Sangrami Manch a with unorganised sector assembled them under in one platform.

6. High level job insecurity is a common phenomenon unorganized sector:

Social Security can be defined as “the provision of benefits to households and individuals through public or collective arrangements to protect against low or declining standard of living arising from a number of basic risks and needs. (Erewise .com)

7. Women and child workers are vulnerable and draw very low wages:

It has observed that women and child labour are most vulnerable amongst the unorganized labour. A developing wonder is utilizing children and women as household laborers as a part of urban territories. The conditions in which children and women work is totally unregulated and they are regularly made to work without nourishment, and low wages, looking like circumstances of subjection. They are being paid wages low as compare to adult male labour despite their commitment of same working hours There are instances of physical, sexual and psychological mistreatment of women and child household laborers.

8. Maximum workers are leaving in a very deplorable condition: So far as living condition is concerned; they leave in cluster in a very unhygienic condition. They normally stay by making hut in a row.

9. Lack of quality employment due to fraudulent acting of contractor: Many unorganized sectors are not registered with the government and the employment term of workers is not regular. No act like Bonus act, Pension act, Provident fund act, Maternity act, Factories act are followed in unorganized sectors. Unorganized segment is not managed by the legal system and subsequently taxes are not collected. The working hours of workers are not settled. In addition, now and again they need to chip away at Sundays and occasions. They get day by day compensation for their work, which is nearly not exactly the compensation recommended by the Government.

10. Loss of employment due to silly reason is a natural incident: There are innumerable illustrations of losing employment in unorganized sectors because of immaterial reason. There are numerous lawful commitments have been outlined to stop the embarrassment in the occupation although the majority of those lawful conventions are connected only in organized sectors.

11. Numbers of harassment issues at work place for working Women: Issues of harassment are very frequent of women workers working in unorganized sectors. For illustration, five female salespersons at Kalyan Sarees in Thrissur had gone on strike in December 2013, demanding better working conditions. Management used to cut their salaries with very silly reason. Women workers are not allowed to sit and even not allowed to go to toilet for more than ten hours. A safe workplace is a woman's legal right but unfortunately, still many working women in the unorganized sectors experience a wide range of physical and psychological ailments due to eve teasing and sexual harassment.

12. Susceptible to diseases: Health problem is a very common happening of workers working in unorganized sectors. Occupational diseases like pneumoconiosis, tuberculosis, and asthmatic are out of control in informal sectors. In addition to that, problem in digestive system, circulatory system, urinary tract, blood pressure and affect on various sensory organs (like loss of eye sight, hearing etc.) are also very common happenings. They do not get proper facilities for treatment except the health center of Employees' State Insurance Scheme.

13. Bonded labor (Dadan): Bonded labour is an obligatory bond between an employer and an employee. This type of relationship had begun since king's dynasty in India. There was a myth of slave traders in the history of world also but it had no proper reason except the muscle power. But in bonded labour, the force is derived from outstanding debt. Occasionally, few labours do not get job in unorganized sector so alternately they prefer to incline toward the security of any work once someone offers in bonded labour form. Though the bonded labour system is unlawful still it is making functional by force by few people. Sometime, it is also made live with help of different customs.

1.2.3. Constitutional Safeguards to Unorganized Labour

The provisions of some of the important laws in this respect are briefly described below. It will be noticed that all these laws have a minimum size of employment restriction and apply to particular employments only.

1. Equal Remuneration Act, 1976 The Act is applicable to the women workers and provides for the payment of equal remuneration to men and women workers and for the prevention of discrimination, on the ground of sex, against women in matters of employment. Under the Act, the employer has to pay equal remuneration to men and women workers for same work or work of a similar nature. By same work or work of a similar nature is meant work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions. The Act also provides against discrimination made while recruiting men and women workers.

2. The Bonded Labour System (Abolition) Act, (1976) Forced labour violates the fundamental rights guaranteed to all citizens by the Indian Constitution. Article 23(1) in Part III relating to Fundamental Rights, states "Traffic in human beings and begar and other forms of forced labour are prohibited and any contravention of the provision shall be an offence, punishable by law". The Bonded Labour System (Abolition) Act, (1976) dealing with bonded and forced labour was legislated by Indian Parliament in 1976 in view of the above provision. The Act is applicable to bonded labour and provides for the abolition of bonded labour system with a view to preventing the economic and physical exploitation of the weaker sections of the people. The Act defines 'bonded labour' as a service rendered under the 'bonded labour system'. This is a system of forced, or partly forced, labour under which the

debtor enters into an agreement, oral or written, with the creditor. According to this agreement, in consideration of an 'advance' obtained by the debtor or by any of his lineal ascendants and in consideration of interest on such an advance or in pursuance of any customary obligation or by reason of his birth in any particular caste or community, the debtor agrees to render, by himself or through any member of his family, labour for the creditor for a specified or unspecified period of time either without wages or for nominal wages, or forfeits the freedom of employment or other means of livelihood, or forfeits the right to move freely throughout India, or forfeits the right to appropriate or sell at market value any of his property or the product of his own or any of his family members'. It may be noted that the Supreme Court in the case of 'Bandhua Mukti Morcha, 1983 has held that the burden of proof that a worker is not a bonded labour is on the employer and that the court would presume the existence of bonded labour unless it is rebutted by satisfactory evidence.

3. The Minimum Wages Act, 1948 The Act is applicable to the workers engaged in the scheduled employments and provides for fixing minimum rates of wages in certain employments. It is applicable both to agricultural, non-agricultural and to rural as well as urban workers. The Government may, however, increase the scope of this Act by adding schedules. Units employing even one worker are covered by the Act. Thus, the Act covers wage worker, homemaker but not the self-employed. Supreme Court in the case of Bandhua Mukti Morcha (1984) SCC 389 held that even a piece rated worker is entitled for minimum wages. Under the Act, the appropriate government shall fix the minimum rates of wages payable to employees in a specified employment and review the rates at such intervals as it may think fit, such intervals not exceeding five years. The Government also fixes a minimum rate of wages for time rated work, a minimum rate of wages for piece work, a minimum rate of remuneration to apply in the case of employees on piece work for the purpose of securing to such employees a minimum rate of wages on a time work basis, a minimum rate (whether a time rate or a piece rate) to apply in substitution for the minimum rate which would otherwise be applicable, in respect of overtime work done by employees. Different minimum rates of wages may be fixed for different scheduled employments; different classes of work in the same scheduled employment; adults, adolescents, children and apprentices; or different localities. Similarly, minimum rates of wages may be fixed by the hour, day, month, or by such other larger wage period as may be prescribed. Any minimum rate of wages fixed or revised by the government in respect of the scheduled employments may consist of a basic

rate of wages and cost of living allowance; or a basic rate of wages with or without the cost of living allowance, and the cash value of the concessions in respect of supplies of essential commodities at concessional rates, or, an all inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions. Minimum wages are generally payable in cash unless authorised by the Government considering the prevailing custom or practice. Further, the Government may fix the number of hours of work which shall constitute a normal working day, inclusive of one or more specified intervals; provide for a day of rest in every period of seven days which shall be allowed to all employees or to any specified class of employees and for the payment of remuneration in respect of such days of rest; and provide for payment for work on a day of rest at a rate not less than the overtime rate. Under the Rules, ordinarily Sunday is the weekly day of rest. For an adult nine hours and for a child 4 ½ hours constitute a normal working day. Overtime is payable at 1½ times the wage in agriculture and double the rate in other cases of scheduled employment. The Act helps unorganized workers who are working in the scheduled employments. But nearly 60% of the workforce in the unorganized sector is self employed or homebased. Thus they remain outside the purview of The Minimum Wages Act, 1948, although they constitute the majority in the sector

3. Child Labour (Regulation and Prohibition) Act, 1986 The Act is applicable to child labour (person who has not completed fourteen years of age) and prohibits the engagement of children in certain occupations as specified in Part A of the Schedule or processes as specified in Part B of the Schedule. The Central Government may, if considered appropriate, add any occupation or process to the Schedule. Besides in Part III, the Act contains provisions for regulation of conditions of work of children in establishments or a class of establishments in which none of the occupations or processes referred to above is carried on. The Act provides for prohibition of work by children beyond certain number of hours, period of work and interval of breaks, prohibits work between 7 p.m. and 8 a.m, prohibits overtime and weekly holidays. The Government is empowered to frame rules for the health and safety of the children employed or permitted to work in any establishment or class of establishments. 11.20 Thus, this Act is applicable both to agricultural and non- agricultural workers, covers wage worker, homemaker and is applicable to rural as well as urban workers.

4. Dangerous Machines (Regulation) Act, 1983 The Act is applicable to the operators engaged on the dangerous machines and provides for the regulation of trade and commerce in and production supply, distribution and use of, the product of any industry producing dangerous machines with a view to securing the welfare of labour operating any such machine and for payment of compensation for the death or bodily injury suffered by any labourers while operating any such machine. It is only applicable to machines intended to be used in rural or agricultural sector.

5. The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 The Act is applicable to the manual scavengers and provides for the prohibition of employment of manual scavengers as well as construction or continuance of dry latrine and provides for the regulation of construction and maintenance of water-seal latrines. Under the Act, no person shall engage in or employ for or permit to be engaged in or employed for any other person for manually carrying human excreta; or to construct or maintain a dry latrine.

6. Inter - State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 The Act is applicable to every establishment in which five or more inter-state migrant workmen are employed and to every contractor who employs five or more inter-state migrant workmen. The establishments engaging less than five interstate migrant workmen are not covered under this act. For the purposes of this Act, "workman" means any person employed in or in connection with the work of any establishment to do any skilled, semi - skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, but does not include any person who is employed mainly in a managerial or administration capacity; or who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per month.

7. Motor Transport Workers Act, 1961 The Act applies to every motor transport undertaking employing five or more motor transport workers. The state government may however extend the applicability of this Act to undertaking employing less than five motor transport workers. The Act provides for provision of canteens, rest rooms, uniforms, raincoats or other like amenities for protection from rain or cold, washing allowance, medical and firstaid facilities. The Act also specifies the hours of work for adult workers and adolescents.

Adolescents are prohibited to work from 10 P.M. to 6 A.M. It also contains provisions regarding daily intervals for rest (at least half-an-hour), spreadover, split duty, etc.

8. Sales Promotion Employees (Conditions of Services) Act, 1976 The Act is applicable to the sales promotion employees engaged in pharmaceutical industry and regulates certain conditions of service in certain establishments. The Central Government may apply the provision of this Act to any other establishment engaged in any notified industry. The Act provides for leave in addition to holidays, casual leave or other kinds of leave, namely, earned leave on full wages for not less than one-eleventh of the period spent on duty; and leave on medical certificate etc. It also provides for cash compensation when the sales promotion employee voluntarily relinquishes his post or retires from service, or when his services are terminated for any reason whatsoever (not being termination as punishment).

9. The Trade Unions Act, 1926 The Act is applicable to the trade unions and provides for the registration of trade unions and in certain respect defines the law relating to register trade unions. Any seven or more members of a trade union may by subscribing their names to the rules of the trade union and by otherwise complying with the provisions of this Act with respect to registration, apply for registration of the trade union. However, vide the Trade Unions (Amendment) Act, 2001, it is provided that at least 10 percent of the members or 100 workmen (which ever is less) engaged or employed in the industry with which the trade union is connected should be the members of the trade union. The Act provides for the objects, on which general funds of the trade union may be spent, constitution of a separate fund for political purposes, immunity to office bearers from criminal conspiracy in trade disputes if it is for furthering the objects of the trade union and provides for immunity from civil suit to certain cases.

10. Beedi and Cigar Workers (Conditions of Employment) Act, 1966 The Act is applicable to the workers engaged in Beedi and Cigar establishments. It provides for the welfare and regulates the conditions of their work. It applies to wage workers and homeworkers but not the self employed workers/persons in private dwelling houses. The Act provides for cleanliness of industrial premises free from effluvia arising from any drain, privy or other nuisance. It seeks to maintain cleanliness including white washing, colour washing, varnishing, or painting. In order to prevent injury to the health of the persons, the industrial premise has to maintain proper lighting, ventilation and temperature. To prevent

overcrowding, the Act prescribes at least four and a quarter cubic metres of space for every person in the workroom. It also provides for sufficient supply of wholesome drinking water, sufficient latrine and urinal accommodation, adequate washing facilities, crèches, adequate first aid facilities and canteens. It also provides for working hours in any one day and in any week, overtime, interval for rest, spread over in any day, weekly holidays, substituted holiday etc. There is prohibition of employment of children altogether and prohibition of employment of women or young persons during hours except between 6 a.m. and 7 p.m. It also contains provisions regarding annual leave with wages and wages during the leave period.

11. Payment of Wages Act, 1936 The Act is applicable to the workers engaged in factories and industries or other establishments as specified in the Act and regulates the payment of wages to certain class of employed persons. The class of persons or the list of such industries or establishments may be extended by the Government. This Act applies to wages payable to an employed person in respect of a wage period if such wages for that wage period do not exceed Rs.6500 per month or such other higher sum notified by the Central Government. Thus, this Act covers certain specified classes of both agricultural and non-agricultural workers (including contract labour) who are wage earners with wage a limit of less than Rs.6500/- per month only.

12. Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996 The Act is applicable to the establishments engaging ten or more building and other constructions workers. It seeks to regulate the employment and conditions of service of building and other construction workers and provides for their safety health and other welfare measures. The establishments engaging less than ten workers are not covered under this Act. The Act provides for fixing hours for normal working day inclusive of one or more specified intervals; provides for a day to rest in every period of seven days, payment of work on a day of rest at a rate not less than the overtime rate, wages at the rate twice his ordinary rate of wages for overtime work. The Act prohibits a person who is deaf or has defective vision to undertake such work. It also provides for adequate drinking water, latrines and urinals and accommodation for workers, crèches, first-aid and canteens. The appropriate government is empowered to make rules for the safety and health of building workers. The special feature is the Act is that it covers all private residential buildings if the cost of construction is more than Rupees ten lakhs. In actual practice, the provisions of this Act are

beneficial only to the skilled workers and those who work continuously in the industry. Unskilled workers, who do not work with a construction establishment continuously, may not get the benefits available under the Act. It will not be possible for those unskilled, uneducated and purely casual workers to make regular, timely contributions to fund as per the provisions of the law.

13. Contract Labour (Regulation and Abolition) Act, 1970 This Act is applicable 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 and to every contractor who employs or who employed twenty or more workmen on any day preceding twelve months. However, the appropriate government may, after giving not less than two months' notice and by notification in the Official Gazette, apply the provisions of this Act to any establishment or contractor employing less than twenty workmen. This Act does not apply to establishments in which work of only an intermittent or casual nature is performed. Workman means any person employed in or in connection with the work of any establishment to do any skilled, semi-skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied. It does not include any person employed mainly in a managerial or administrative capacity; or a person employed in a supervisory capacity drawing wages exceeding five hundred rupees per month or an out-worker (home worker).

14. Maternity Benefits Act, 1961 The Act is applicable to the women workers and seeks to regulate employment of women in certain establishments for certain periods before and after childbirth and provides for maternity and certain other benefits. It applies to every establishment, being a factory, mine or plantation including any such establishment belonging to Government. This Act is not applicable to the establishments engaging less than 10 persons. The Government may however extend its applicability to any other establishment or class of establishments. This Act does not apply to any factory or other establishments to which the provisions of the Employees' State Insurance Act, 1948, (34 of 1948) apply. The Act prohibits employment of, or work by, women during the six weeks immediately following the day of her delivery or miscarriage. Women worker are entitled to maternity benefit at specified rates for specified periods. It also provides for payment of maternity benefit to the nominee in case of death, payment of medical bonus, and leave for miscarriage

for a period of six weeks immediately following the day of her miscarriage, leave for illness arising out of pregnancy, delivery, premature childbirth, or miscarriage, nursing breaks etc.

15. Workmen's Compensation Act, 1923 The Act is applicable to workmen and provides for the payment by certain classes of employers to their workmen of compensation for injury by accident. This Act is applicable to both agricultural and non agricultural workers. "Workman" means any person (other than a person whose employment is of a casual nature and who is employed for purposes other than of the employer's trade or business) as specified in the Act and its Schedule. However, the Central Government or the state government may add to the Schedule any class of persons employed in any occupation which, it is satisfied, is a hazardous occupation.

16. Weekly Holidays Act, 1942 The Act provides for the grant of weekly holiday to persons employed in shops, restaurants and theatres. Every shop shall remain entirely closed on one day of the week, which shall not be altered by the shop-keeper more often than once in three months. Every person (employed other than in a confidential capacity or in a position of management) in any shop, restaurant or theatre shall be allowed in each week a holiday of one whole day for which there shall be no deductions from wages, with certain specified exceptions. The state government may also provide for additional half-day holiday in specified establishments.

1.3.1. Judicial Activisms (Case Laws)

“It is true that on some occasions, courts have overstepped their limits. But, by and large, judicial activism has done a great service to society [1].” The goal of the Indian Constitution, articulated by our worthy founding fathers in its Preamble, is to secure to the people of India “Justice — Social, Economic and Political; Liberty of Thought, Expression, Belief, Faith and Worship; (and) Equality of Status and [of] Opportunity.” For attaining this goal, the Constitution has created three state organs, the Legislature, the Executive and the Judiciary, besides autonomous institutions such as the Election Commission, and the Comptroller and Auditor-General. One must say Parliament and the State Legislatures have, by and large, discharged their duty fairly satisfactorily; they have enacted many laws touching upon and regulating activities in the social, economic, educational and health spheres — certainly all activities touching the lives of the citizens, particularly the weak and vulnerable sections.

The other type of 'judicial activism' is the branch of interpretation of fundamental rights, in particular the right to equality (Articles 14 to 16), the several freedoms in Article 19 and the right to life and personal liberty in Article 21. While interpreting these Articles, there is freedom for judges to read their personal philosophies into the provisions. It is quite true that on some occasions, the courts might have trespassed their limits. For example, orders directing the construction of roads or bridges, orders seeking to lay a timetable for the running of trains, orders directing beautification of a railway station and so on. But these again are mere delusions. To repeat, one must view at the generality of the picture and not draw conclusions from a few wrong examples. Judged from this point, judicial activism has done a great service to society.

Definition of judicial activism

According to Justice P.N.Bhagwati judicial activism is — “The judge infuses life & blood into the dry Skelton provided by legislature & creates a living organism appropriate & adequate to meet the needs of the society. The Indian judiciary has adopted an activist goal oriented approach in the matter of interpretation of fundamental rights. The judiciary has expanded the frontiers of fundamental rights and the process rewritten in some part of the Constitution through a variety of techniques of judicial activism. The Supreme Court of India has undergone a radical change in the last few years and it is now increasingly identified by the justice as well as people's last resort for the purpose bewildered.

According to Justice J.S.Verma, Judicial Activism means “The active process of implementation of the rule of law is essential for the preservation of a functional democracy.” According to former Chief Justice of India A.M.Ahamadi, —”Judicial activism is a necessary adjunct of the judicial function since the protection of public interest as opposed to private interest happens to be main concern.

Origin of judicial activism in India

For a very protracted time, the Indian judiciary had taken an orthodox attitude to the very concept of judicial activism. However, it would be wrong to say that there have been no occasions of judicial activism in India. Some scattered and random incidents of judicial activism took place from time to time. But they did not come to the limelight as the very

concept was not known to India. However, the history of judicial activism can be traced back to 1893 when Justice Mehmood of the Allahabad High Court delivered a dissenting decision which sowed the seed of activism in India. It was a case of an under-trial who could not have wherewithal for engaging a lawyer. So the question was whether the court could decide his case by barely looking at his papers. Justice Mehmood held that the prerequisite of the case being heard (as opposed to merely being read) would be fulfilled only when somebody speaks. So he has the broadest possible interpretation of the relevant law and laid the foundation stone of judicial activism in India.

The Supreme Court of India started off as a technocratic Court in the 1950's but slowly started gaining more power through constitutional interpretation. In fact the roots of judicial activism are to be seen in the Court's early averment regarding the nature of judicial review. In *A.K.Gopalan v. State of Madras*, although the Supreme Court conceived its role in a narrow manner, it asserted that its power of judicial review was inherent in the very nature of the written constitution. The Constitution appears to be a matter of abundant caution. Even in their absence, if any of the fundamental rights was infringed by any legislative enactment, the Court has always the power to declare the enactment to the extent it transgresses the limits, invalid. The posture of the Supreme Court as a technocratic Court was slowly interchanged to an activist Court.

Recent legislations enacted through judicial activism Judicial activism has done a great service to society which can be inferred through following decisions:

Sexual intercourse with own wife below 18 years: *Rape In Independent thought v. Union of India* (11th october2017) [9] the Supreme Court criminalized sexual intercourse by a husband with his wife who is below 18 years of age. It will henceforth will be considered as rape. In effect, the Judgment has done away with the protection that husbands enjoyed under Section 375 exception 2 of the Indian Penal Code that allows husband to have sexual intercourse with a minor wife, provided that she is not below 15 years of age.

Right to privacy – A fundamental right In *Justice K.S.Puttuswamy v. Union of India and others* (24th august 2017) [10] the Supreme Court has declared that the Right to Privacy is protected as a fundamental right under Articles 14, 19 and 21 of the Constitution.

Declaring instant triple talaq invalid In Shayara Bano v. Union of India (22nd august 2017) [11] the Supreme Court has declared the practice of “triple talaq” (talaq-e-biddat) as unconstitutional by 3:2 majority.

Passive Euthanasia – making of living wills In Common Cause v. Union of India (9th march 2018) the 5 constitutional bench while recognizing passive euthanasia, the Supreme Court has allowed “advance directive or living will”, by which patients can spell out whether treatment can be withdrawn if they fall terminally ill or are incompetent to express their opinion.

Right to marriage – Fundamental Right In Shakti Vahini v. Union of India and others (27th march 2018) the Supreme Court held that the consent of the family or community is not necessary once the two adult individuals agree to enter into a wedlock. It is their fundamental right to marry of their own choice

UNIT – II

2.1. Labour Welfare The Concept

Welfare is called as a relative concept for it is related to time and space. Changes in it have an impact on the system. As a result the potential changes in the welfare content keep changing with time and space. It is also been observed that the welfare as a concept differs from country to country and from place to place.

Secondly, welfare is a positive concept, as to establish a minimum standard of living, it would demand certain minimum acceptable conditions of existence in both biological and social. Thus, when this is defined it is necessity for the components of welfare in terms of health, food, clothing, housing, medical assistance, insurance so on are to be taken care of.

Further, labour welfare as a concept has both positive and negative sides like, it deals with the provision of opportunities which enable the worker and his family to lead a good life, socially and personally and on the negative side it provides opportunities for un desirable consequences and labour problems.

The concept of labour differs from country to country, industry to industry and from time to time and region to region. Further it also depends on the kind of problems with which the society is confronted that is moulded according to the age group, sex, soci cultural background, economic status and educational level of the employees in various industries.

The utilization philosophy of the labour welfare work as a motivating force towards every labour and for those interested in it.

2.2.1. Scope of Labour Welfare:

A persual of the definitions indicate that the term labour welfare is a very comprehensive concept and is wide in its scope. It includes in its fold all efforts in the form of amenities and activities which vary from place to place, industry to industry and time to time. Labour welfare activities are broadly classified as (i) statutory, (ii) non-statutory or voluntary and (iii) mutual.

2.2.2. Principles of Labour Welfare

Principle of Adequacy of Wages – labour welfare measures cannot be a substitute for wages, workers have a right to adequate wages, but high rate of wages alone cannot create a healthy environment nor would bring in commitment on the part of the workers. A combination of social welfare, emotional welfare and economic welfare together would achieve good results.

Principle of Social Responsibility – according to this principle, industry has an obligation towards its employees to look after their welfare and this is also backed by the constitution of India in its directive principles of the state policy.

Principles of Efficiency – plays an important role in welfare services and is based on the relationship between welfare and efficiency, though it is difficult to measure this relationship. Whether one accepts the social responsibility of industry or not, the employer quite often accepts the responsibility for increasing such labour measures as would increase efficiency. For eg. Diet planning in canteens.

Principle of Re-personalisation - the development of human personality is found to be the goal of industrial welfare and this principle should counteract the baneful effects of the industrial system. Therefore it is necessary to implement labour welfare services, both inside and outside the factory.

Principle of Totality of Welfare – emphasizes that the concept of labour welfare must spread throughout the hierarchy of an Organisation and employees at all levels must accept this total concept of labour welfare without which the labour welfare would not be implemented.

Principle of Co-ordination – is a concept of co-ordinated approach that will promote a healthy development of the worker in his work, home and community. This is essential for the sake of harmony and continuity in labour welfare services.

Principle of Democratic Values – cooperation of the worker is the basis of this principle and thus consultation and the agreement of the workers in the formulation and implementation of the labour welfare services are very necessary for their success.

Moreover workers allowed to participate in planning these programmes get keenly interested in their proper implementation. This principle is based on the assumption that the worker is a mature and rational individual and industrial democracy is the driving force here and workers also develop a sense of pride when they are made to feel that labour welfare programmes are created by them and for them.

Principles of Responsibility – recognises the fact that both employers and workers are responsible for labour welfare. Trade unions too are involved in these programmes in a healthy manner, for basically labour welfare belongs to the domain of the trade union activity.

Further, when responsibility is shared by different groups, labour welfare work becomes simpler and easier. Accordingly various committees are elected or nominated and various powers and responsibilities in the welfare field are delegated to them. For Eg. Safety committee, the canteen supervision committee etc.,

Principle of Accountability – is also known as principle of evaluation. Here one responsible person gives an assessment or evaluation of existing welfare services on a periodical basis to a higher authority. In this criteria one judge the success of labour welfare programmes.

Principle of Timeliness – The timeliness of any service helps in its success. To identify the labour problem and to discover what kind of help is necessary so solve it and when to provide this help are all very necessary in planning labour welfare programmes.

Principle of Self Help – is the facts that labour welfare must aim at helping workers to help themselves in the long run. This helps them to become more responsible and more efficient.

2.3. Origin And Growth Of Labour Welfare In India

The origin of labour welfare activity in India goes back to 1837, following the abolition of slavery in the year 1833 and British colonies started importing Indian labour. Then the labour welfare activity was mainly controlled by legislation and the earliest act in this regard was the Apprentices Act of 1850, that was passed to protect the orphaned children to learn various trades with the help of experienced craftsmen.

The next act was the Fatal Accidents Act of 1853 aimed at providing compensation to the families of workmen who lost their lives as a result of any actionable wrong at workplace. This act was followed by the Merchant shipping act of 1859, which intended to regulate the employment of seamen and provided for their health, accommodation and protection.

The review of all these early enactments shows that they were drawn up with specific objectives and that they do not indicate any planned policy or approach to the labour welfare. Thus they were only attempting to regulate employment rather than improve their working conditions of labour.

22 years elapsed after the shipping act before the first Indian factories was passed in 1881, which marked the beginning of a series of labour laws that brought improvements in the working conditions of labour. The conditions of the labour that worked in the textile mills in Bombay in the 1870 onwards were the immediate cause for this act to be enacted.

Some of the conditions of the workers during those time were , children below the age of 08 years were employed, the hours of work was between sunrise to sunset, there were no fixed holidays and under all normal conditions the mills were working for not less than 320 days in a year and the conditions inside the working area were not fit for humans to work and the levels of safety was inadequate.

Thus the Indian Factories Act of 1881 was made applicable to all the factories using mechanical power employing not less than 100 persons and working more than 04 months in a year. Further the following is highlighted of the act.

Children below the age of 07 could not be employed, while those between the age of 07 and 12 were not work for more than 09 hours a day.

They were also to get 04 holidays every month State was empowered to appoint factory inspectors to oversee the functions of the factories Dangerous machineries were to be properly fenced and every accident need to be reported to the factory inspector.

Following the international conference on labour at Berlin, and on the advice of the special commission on labour the following amendments were made in the year 1891 to the factories act of 1881.

It applied to all the factories employing 50 persons or more and could be extended to those who have 20 workers.

A mid day break for half an hour was made compulsory A weekly off day was prescribed Women were allowed to work for a maximum of 11 hours with a break for 1 and half hours. The lower age limit for the worker was raised from 09 years to 14 years and were not allowed to work for more than 07 hours a day.

Local governing bodies were empowered to make rules regarding sanitation and other amenities for workers Provisions were made for inspection and penalties for breach of any provision of Factory Act.

This act could also not come of certain drawbacks like

It did not apply for those factories that did not work for more than 120 days in a year Safety provisions in the act were also found to be inadequate and legally the manager of the factory was not an occupier and could not therefore be punished for breach of the provisions of the act.

During these periods various voluntary actions in the fields of labour welfare also made considerable progress. Group efforts came to the forefront. The amalgamated society of railway servants of India and Burma, formed in the year 1897 started a number of friendly benefit schemes, the printers union in Calcutta and the postal union in Bombay were respectively organised in 1905 and 1907. They introduced mutual insurance schemes, night schools, educational stipends and funeral allowance. In the year 1910 the Kamgar Hitwardhak Sabha was established with the aim to help workers in a variety of ways and the most important being the labour welfare functions.

After Independence

The labour welfare movement acquired new dimensions. For the requirement of massive investments in industry during this period, it was felt necessary that labour welfare played a positive role in increasing productivity and reducing industrial tensions. The state too seriously took its social responsibility to the weaker and working sections of the population. Thus the factories act of 1948 was enacted that replaced all previous legislations.

Factories Act of 1948.

The factories act of 1948 is a milestone in the factory legislation and the main provisions of the act are as follows.

Provisions regarding safety guarding machines, health and cleanliness, drinking water, washing and latrine facilities, lunch rooms and restrooms, sitting arrangements, first and dispensary facilities in all the factories employing more than 500 workmen, crèches were more than 50 women workers are employed, welfare officer where more than 500 workmen are employed, provisions for spittoons, holidays with wages at the rate of one day for every 20 days worked, weekly hours like 48 hours for adults and 27 hours for younger persons, rate of payment for overtime work, rest for half an hour after maximum 05 hours of work and weekly holiday.

The act provided for development of labour welfare movement in two streams. One movement through voluntary effort to develop programmes with a view to minimizing hardship and the other an agitational movement for better legislation. Thus the government is playing a triple role of legislator, administrator and promoter.

The Indian constitution makes a specific mention of duties the state owes to labour apart from the factories act of 1948. The government of India also passed the welfare act known as employees state insurance act, which provides for benefits to workers in case of sickness, maternity, employment injury, hospitalization etc.,

Welfare practices in India

Many welfare amenities described in the main report of the labour investigation committee have become a part of the statutory obligations. The different welfare amenities are under the various heading as follows.

Sanitary and Hygiene Facilities

The maintenance of a clean, sanitary and hygienic working environment is now accepted as an important basic welfare amenity that would include toilets, water for drinking and washing.

The factories act requires that every factory must be kept clean and free from effluvia flowing from any drain, that a sufficient supply of wholesome drinking water must be made available at suitable and convenient points and separate latrines and urinals for male and female workers be provided and spittoons and washing facilities be provided .

Rest facilities

This amenity prescribes a prescribed number of seats on the shop floor and in rest rooms or shelters in order to reduce fatigue as it enables a worker to take a break. Further the act also makes provisions for lunch rooms to be provided if there are more than 150 workers and these places be clean, well lighted and ventilated and provided with adequate furniture and drinking water wherever necessary.

Feeding facilities

Every factory employing 150 or more workers should provide a lunch room with provision for drinking water to enable workers to eat the meals brought by them and where over 250 or more workers are employed, there should be a canteen or canteens.

In fulfilling the objectives of an industrial canteen, several points like the following should be kept in mind.

It should be managed on a non profit basis.,

The canteen has to be roomy, clean, bright and well placed in the factory Should have comfortable and friendly atmosphere

The food supplied in the canteen should be adequate and of good quality. The three ways of administering the industrial canteens are

Directly by the employers

By a contractor and by a co-operative society of workers. Medical Facilities Since the Second World War, the importance of preventive and curative medical care has increased and it is now accepted theory that health care for workers will help to reduce the incidence of sickness and therefore absenteeism among them and will increase productivity.

The factories act of 1948 provided for cleanliness, disposal of wastes and effluents, ventilation and temperature control, dust and fume, artificial humidification, restriction regarding overcrowding, lighting, drinking water arrangements, latrines and urinals and spittoons etc.,

Statutory medical facilities were also provided under the Employees State Insurance Act 1948, with subsequent amendments. This act extends such benefits to industrial workers as maternity benefits, disablement benefits, dependants' benefits, sickness benefits and medical benefits, while medical care and cash benefits were also provided for workers.

Apart from the medical and health facilities provided by legislation and by some employers on a voluntary basis, other similar services have been organised by workers by labour welfare centre and some trade unions.

Occupational Health Services

These are essentially preventive, very common in the industrially advanced countries of the west and it is gaining importance and recognition in the large sized undertakings in our country. One of the main functions under this service is to protect workers against the health hazards arising out of the nature of their work or the work environment. This service includes carrying out periodical medical checks for categories of workers to detect early signs of ill health and prevent them from serious health complaints.

Family Planning

Increasing population has increased the strength of the labour force and created a number of economic problems, including the problem of unemployment and industrial unrest. A great deal of attention has therefore been paid to family planning programmes for industrial workers. Various committees that were formed to look into the welfare measures under labour welfare activities was of the opinion that family planning programme for industrial workers should be a part of labour welfare.

Creche

This is a welfare facility which is provided for women workers. This is a place where babies of working mother are taken care of while the mother is at work. The provision for this facility was made in the factories act of 191934 and the need was emphasized in the 1948 enactment stating that it is mandatory for an Organisation which has around 30 women workers, and should be adequately lighted and ventilated with clean sanitary condition.

Social Security Measures

The concept of social security has been mentioned in the early Vedic hymn which wishes everyone to be happy free from ill health and enjoy bright future and suffer no sorrow. In total it is based on the ideal of human dignity and social justice.

Social security is defined as “the security that society furnishes, through appropriate Organisation, against certain risks to which its members are exposed” These risks are essentially contingencies against which the individual, who has small means, cannot protect himself. These contingencies include employment injury, sickness, invalidism or disablement, industrial disease, maternity, old age, burial, widow hood, orphan hood and unemployment.

Social security is also defined as “the securing of an income to take the place of earnings when they are interrupted by unemployment, sickness or accident, to provide for retirement through old age, to provide against loss of support b y the death of another person and to meet exceptional expenditure connected with birth, death or marriage... The purpose of social security is to provide an income up to a minimum and also medical treatment to bring the interruption of earnings to an end as soon as possible “.

Friedlander defined social security as “ a programme of protection provided by society against these contingencies of modern life – sickness, unemployment, old age, dependency, industrial accidents and invalidism – against which the individual cannot be expected to protect himself and his family by his own ability and foresight”.

Thus Article 41 of the constitution of India says that “ The sate shall within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment , old age, sickness and disablement and in other cases of undeserved want.”

Thus, the social security measures would help man to face the contingencies as such it is difficult for him either to work or to get work and support himself and his family. Thus social security measure provides a self balancing social insurance or assistance from public funds.

The three major ways of providing social security are

Social Insurance – is described as the giving in return for contribution, benefits up to subsistence level, as of right and without a means test, so that an individual may build freely upon it. Thus social insurance implies that it is compulsory and that men stand together with their fellows.’

The features of social insurance are - It is financed entirely by or mainly from the common monetary contributions of workers, employers and the state. This fund takes care of all the benefits paid in cash or kind.

Second the state and the employers make a major contribution to the fund, while the employees pay only a nominal amount, according to their capacity to pay.

Third, when there is a total or partial loss income, these benefits within limits, ensure the maintenance of the beneficiaries minimum standard of living.

Fourth, social insurance benefits are granted without without an examination of an individuals needs and without any means test, without affecting the sense of self respect of the beneficiary.

Fifth these benefits are so planned as to cover, on compulsory basis all those who are sought to be covered.

Lastly, social insurance reduces the suffering arising out of the contingencies faced by an individual contingency which he cannot prevent.

Social Assistance – is provided as an supplement to social insurance for those needy persons who cannot get social insurance payments and is offered after a means test. The general revenues of the government provide the finance for social assistance payments, which is made available as a legal right to those workers who fulfill given conditions.

Social assistance and social insurance go side by side. Social assistance programmes cover such programmes as unemployment assistance, old age assistance, public assistance and national assistance.

Thus social security is a combination of the principle of social assistance and social insurance. Social insurance however falls in midway between the two for it is financed by the state as well as by the insured and their employers, whereas social assistance is given grants to the needy by the state or the community. Commercial insurance is entirely a private contract.

Public Service –is a programme constituting the third main type of social security. They are financed directly by the government from its general revenues in form of cash payments or services to every member of the community falling within a defined category.

Some of the services being rendered under this scheme is, national health service providing medical care for every person in the country, old age pension, pension for invalidism, survivors pension to every widow or orphan and a family allowance to every family having a given number of children.

Apart for the state, there are many other agencies which provide security against contingencies. In many other countries, the trade unions have their own sickness, old age and unemployment schemes. Savings funds, sickness benefits and old age pensions have also been provided by a large number of Organisations for their employees. “ The underlying idea of social security measures is that a citizen who has contributed or is likely to contribute to his country’s welfare should be given protection against certain hazards.”

Indian Social Security System

In India, the social security system was in a crude form of social protection that was made available to the needy and the un fortunate under the joint family system, while additional help was rendered by the community panchayats, orphanages and widows home and also by individuals offering alms and charity.

With the joint family system problems like unemployment or any other economic hardships, old age and other contingencies were not suffered by the individuals, since there were not in

isolation. Similarly members of a particular cast were offered security and benefits such as medical aid, financial help to widows and orphans, educational assistance in the form of scholarships and free ships were offered. However these assistance were offered only to the members of their community and there was no definite law or principle towards these.

During the time of urbanization and industrialization both these systems of social security system lost its hold on the society and the concept of secular state in India has further eroded the continuance of the system.

Modern industrialization has created anew class of industrial portrait of the country with its rural background and with very little social and material resources, is in great need of systematized help through social security agencies. The social security system in India has evolved in obedience to the impact of western influence and of the modern urban industrial system.

Thus social reformers, labour welfare Organisations and many progressive employers persuaded the government to undertake social security measures as a protection for the workers at least against a few contingencies. Social security is a major aspect of public policy today and the extent of its prevalence is a measure of the progress made by a country towards the idea of a welfare state.

The following major enactments have been made by the Government of India to provide social security to industrial

Workmens Compensation Act 1923 – was put into effect on 1st July 1924 and was amended several times. It was extended and enforced by the Indian Independence Order of 1948 and adaptation of laws order in 1958, war time injuries were also covered by the act.

Employees State Insurance Act 1948 – The Government of India could not adopt the health insurance schemes due to financial difficulties and hence after several conferences, the health insurance for the workers was recommended as compulsory and contributory in August 1944 and the Employees State Insurance Act was enacted in the year 1948 that would cover the cash benefit in contingencies of sickness, maternity and employment injury but did not provide security in such contingencies as unemployment and old age.,

The ESI schemes offer both direct and indirect medical care. The direct method is called the service system by which the ESI corporation provides medical care either through its own employees state insurance hospital or through reservation of beds in state government hospitals. The indirect method is known as panel method under which medical care is provided through private doctors selected by the state government with the approval of the ESI corporation that would cover

- Sickness benefit Maternity Benefit Disablement Benefit Dependents Benefit
- Funeral Benefit and Medical benefit.

Employees Provident Fund Act 1952 – applied to all factories mines and other coal mines and commercial establishments employing more than 20 workers and their earning not exceeding Rs. 3,500/-. The provide nt fund act of 1q952 was amended following which the employees family pension scheme has been enforced from March 1 1971 with a view to protect the family after the workers death.

Maternity Benefit Act 1961 – following the enactment, it provided for better and more far reaching benefits and hence the state act of maternity benefit that were enacted earlier lost its importance and gradually the central act was adopted.

Industrial Dispute Act 1947 - was the act that provides for workers unemployment due to layoff. This relief was given by way of compensation to the affected workers at a certain specified rates. The compensation in case of retrenchment cases amounts to 15 days average earnings for every completed year of service or part thereof. In the event of closure of undertaking, the retrenched workers receive compensation at the same rate, however it is limited to a maximum of 03 months average earnings.

2.4. Types of Welfare

Some of the major categories of labour welfare are: (1) Intra-mural Facilities (2) Extra-mural Facilities (3) Statutory Facilities (4) Mutual Facilities and (5) Voluntary.

It is very difficult to classify the welfare activities into certain broad categories.

(1) Intra-mural Facilities:

The facilities provided inside the factory are known as intra-mural facilities. These facilities include activities relating to minimisation of industrial fatigue, provision of safety measures like fencing and covering of machines, good layout of the plant and machinery, sufficient lighting conditions, provision of first aid appliances etc.

(2) Extra-mural Facilities:

Facilities offered to the workers outside the factory are known as extra-mural facilities. They include better housing accommodations, indoor and outdoor recreation sports, educational facilities etc. The provision of these facilities is voluntary. Earlier, due attention was not given to the provision of extra-mural facilities to the workers but now it is realised that these facilities are very important for the general welfare and upliftment of the workers.

(3) Statutory Facilities:

Under this category, welfare facilities are provided according to the labour legislations passed by the Government. The nature and coverage of these facilities vary from country to country. Again these facilities may be either intra-mural facilities or extra-mural facilities. These facilities must be provided by all the employers and cannot be ignored. Any contravention of the statutory provisions shall render the employer punishable under the Act concerned.

The National Commission of Labour has divided all the statutory measures under two distinct heads:

1. Facilities which have to be provided irrespective of the size of the establishment e.g., drinking water.
2. Facilities which are to be provided subject to the employment of a specified number of persons, e.g., creches.

(4) Mutual Facilities:

These facilities are usually outside the scope of the statutory facilities. These activities are voluntarily undertaken by the workers themselves for their own interest. As such the employer has no say in it.

(5) Voluntary:

The facilities which are voluntarily provided by the employers come under this category. Hence these are not statutory. No doubt, the activities under this category ultimately lead to increase in the efficiency of workers.

UNIT - III

3.1. LABOUR PROBLEMS

3.1.1. Absenteeism

Employee Absenteeism is the absence of an employee from work. Its a major problem faced by almost all employers of today. Employees are absent from work and thus the work suffers. Absenteeism of employees from work leads to back logs, piling of work and thus work delay. There are various laws been enacted for safeguarding the interest of both Employers and Employees but they too have various constraints.

Absenteeism is of two types -

- **Innocent absenteeism** - Is one in which the employee is absent from work due to genuine cause or reason. It may be due to his illness or personal family problem or any other real reason
- **Culpable Absenteeism** - is one in which a person is absent from work without any genuine reason or cause. He may be pretending to be ill or just wanted a holiday and stay at home. The employers have got every right to enquire as to why an employee is absent from work. If an employee is absent because of illness he should be able to produce a doctor's letter as and when demanded.

There are various reasons for Employees to remain absent from work -

Reasons from the side of organisation

1. Lack of satisfaction from present work
2. Poor working conditions
3. longer working hours
4. Dominating Boss & Seniors
5. Non Cooperating peers
6. Higher expectation
7. No growth prospects in present Company
8. Excess Work Stress

Reasons from the side of employee

1. bad health condition of employee or his family members like spouse, children and parents.
2. family concern disputes and problems.
3. on occasions of this family relatives.
4. demise of close family members or relatives.
5. appearing for examination if he is pursuing further education for career development or promotions.
6. sometimes due to financial problems.
7. going on vacation is visiting other places.
8. exceeds number of late comings limit fixed by the organisation. (say for example, any organisations marks absent for an employee who comes late continuously for three times. For this reason most of employees gets absent if they were late to office for third time.)
9. on the Day of sports events especially cricket.

3.1.2. Indebtedness

Indebtedness is a multi-faceted problem. It is very interesting to understand this problem among different occupations of rural households. In this paper, an attempt has been made to study the incidence and extent of indebtedness among rural households of different occupations. For this, we have used the sixth decennial All-India Rural Debt and Investment Survey (AIDIS) carried out by the National Sample Survey Organization (NSSO) during the 59th NSS round. It is found that there is low risk and high extent of indebtedness among the households having self-employed in agricultural and non-agricultural occupations in the country. These two occupational groups are on top of the asset and income distribution ladders in rural India. Scheduled caste household self-employed as cultivators, artisans, trading, etc. seems to have drawn substantial benefit from affirmative actions that resulted in their lesser risk of sinking into indebtedness. On the contrary, there may be some location disadvantage of being settled in remote areas and ownership of low quality land may be responsible for pushing scheduled tribe cultivators more into the risk of indebtedness. The occupational group wise analysis also rejects the oft-cited reason of consumptive nature as one of the main reasons for indebtedness in the rural household but holds true regarding the

extent of indebtedness. Similarly, the occupation wise analysis confirms the thesis of debt and prosperity going together but it seems to be more relevant for the cultivator group of household.

Indebtedness is one of the major problems of India. Though it is very common of all rural households in India, however, it would be very interesting to comparing this problem among all rural households with different occupational groups of rural households.

3.1.3. Family Distress

Balancing work and family roles has become a key personal and family issue for many societies. Work and family are the two most important aspects in people's lives and, contrary to the initial belief that they are distinct parts of life; these domains are closely related (Ford et al., 2007). In all countries the economic development requires an integration of both male and female labor forces. That is men and women both have to contribute to development process of the country as the labor of women contributes to economic growth and poverty reduction.

difficult situation caused by occupational stress, there are many mothers that would like nothing more than to give up work and spend their time raising their family as best they can. However, financial problems can create a real obstacle here and many mothers find themselves having to go back to work in order to help maintain the family budget. For single mothers in particular, a return to work after having a child is often a necessity.

There are a number of problems that working mothers can face: Difficulties with finances, Getting to spend time with the kids, Keeping on top of the housework, Dealing with sickness, Quality time for yourself, Personal illness and stress. Several researches have indicated that work-family difficulties can make negative influence for individual mentality and physiology. Studies have shown that, compared with their male counterparts, women report higher level of stress in work/family conflicts, gender barriers and career development. Zhang (2010) studied the sources of work stress among women academics in research universities of China. Based on the results of her study, firstly, women academics perceived the demands for career development as highly stressful. The main career challenges for them include the need for renewing knowledge, lack of research productivity and slow career progress. Secondly, gender related barriers increased pressure on women academics. Finally, women academics

experienced more difficulties in fulfilling both academic work and family roles. The main conflict situations pertained to “performing both work and family roles very well,” “children’s education and future” and “lack of time to satisfy personal interests and hobbies.”

3.1.3. Social Work intervention on Unorganised workers

“Migration is one of the defining features of our contemporary world, [yet] it remains one of the most misunderstood issues of our time. Gaone Dixon” (Parker, 2012).

Social work intervention in industrial sector can be at micro and macro level. At micro level, the social worker can provide treatment to the worker and his family, employer and union members. Help may be given in relation to problems related to work, self and others around them, such as job performance, job satisfaction, absenteeism, conflict situations, etc. Further problems, such as anxiety, depression, phobia, mental disturbance, substance abuse, marital and family conflict, may also be attended to. At the macro level, it can be organisational intervention where the social worker can provide individual and group consultation to supervisors and managers at all levels regarding understanding of human behaviour.

The intervention may be in the form of proposing a new job design. Organising and planning of the services at the preventive, developmental and curative levels requires a basic study of the organisation. It is through an open and sensitive approach, rather than a predetermined blue print that the intuitive social worker can positively integrate the social work objectives with the management objectives. However, the scope of social work in business and industry would, in real terms, depend upon:

- 1) the attitude of the management;
- 2) the quality of the goodness of bet between needs of business and the extent to which these needs can be addressed by social work;
- 3) cost effectiveness of the services provided.

Social Casework - Social casework can be effectively used in situations of individual problems, such as alcoholism, depression, drug abuse, anxiety, marital and family difficulties, etc. Further in induction, grievance situations, transfer cases, leave needs, absentee situations,

problems due to job loss, retirement, etc., it can find much use. In accident cases, cases of indiscipline, it is also very useful. This primary method of social work can be effectively applied at two levels: 1) Difficulties and problems arising due to adjustment to family life due to any psychological, economic and cultural factors. 2) Difficulties arising out of adjustment to work life due to environment, personality problems, organisation structure and programs, etc.

Social Group Work - Group interaction can be used as an effective tool for helping employees to understand themselves and improve their relations with those around. Group work techniques can be used in certain group situations to help the group to attain their efficiency and objectives through a harmonious development of the group work process. It can be used in point consultation situations, such as labour management council, various committees, meetings, collective bargaining contexts, development implementations of several welfare programs inside and outside the workplace, building of group morale, etc. It can be used in educational programs and workshops for at risk employees related to areas, such as coping with job related stress, family and marital stress, anxiety, drug abuse, etc.

Community Organisation - Here the social worker can help business to understand the total community in which they live and utilize its resources to benefit the community on one hand and the organisation on the other. The problems, such as lack of educational facilities, proper recreation, medical facilities within the workers community, can be attended to by the social worker. Community consciousness and development are being given importance by the management where the skills of the professional social worker can be effectively used.

Social Action Social action method would be useful when the social worker gives services to the unions. Unions can today use the social worker's knowledge and specialized skills in putting forth demands, negotiating peaceful strikes, serving and enforcing labour legislations etc. Research Social research is being used in industrial settings. The purpose is to collect and ascertain facts pertaining to a variety of issues and problems in industry. It will help business to understand the realities in management-employee relation. Many a times, management takes piecemeal measures to counteract the inefficiency of the workers and may fail. But an integrated approach of social work may produce better results.

UNIT – IV

4.1. LABOUR WELFARE PROGRAMMES IN INDIA

Social Security

The following legislative measures have been adopted by the government of India by way of social security schemes for industrial workers.

I. Workmen's Compensation Act 1923 Under the Act, compensation is payable by the employer to workmen for all personal injuries caused to him by accident arising out of and in the course of his employment which disable him for more than three days. If the workman dies, the compensation is to be paid to his dependents.

II. Employee's State Insurance Act, 1948 Under the Act, an insured person is entitled to receive benefits such as medical benefit, sickness benefit, maternity benefit, disablement benefit, dependents benefit, funeral benefit etc.

III. The Employees Provident Funds and Miscellaneous Provisions Act, 1952 The Act has made schemes for three types of benefits namely, provident fund, family person and deposit linked insurance.

IV. The Payment of Gratuity Act, 1962 Under (he Act gratuity is payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years. The completion of continues service of five years is, however, not necessary where the termination of the employment is due to death or disablement.

V. The Industrial Dispute Act 1947 Under the Act, a retrenched worker is entitled to compensation at the rate of 15 days average earning for every completed years of service or part thereof. When the closure of the undertaking is due to circumstances beyond the control of the employer, compensation is limited to the maximum of three months average earnings.

VI. Maternity Benefits Acts, 1961 The Act applies to women in factories, mines and other establishments. This Act replaced the Mines Act and it was adopted by most of the states, h does not apply to those covered by the ESI schemes.

VII. Coal Mines Provident Fund Bonus Scheme Act 1948 It applies to workers employed in the coal mines (including the National Coal Development Corporation) earning less than Rs.300 per month, The Bonus scheme applies to all those earning less than Rs.730/- per month in coal mines other than the NCDC and is paid entirely by the employers.

VIII. The Seaman's Provident Fund Act 1966 Under this workers contribution of 8 percent with an equal contribution from the employers and are entitled to a full refund on retirement or after 15 years of membership.

IX. The Plantation Labour Act 1951 The benefits statutorily provided under this Act include the provision of drinking water and its conservancy, medical facilities, canteen in the case of 150 or more workers, crèches in case of 50 or more women workers, recreational facilities, umbrellas, blankets and rain coats. Cash benefits in the case of sickness and maternity are also available to the workers as per rules prescribed by the state governments which also lay down qualifying conditions

Welfare Programmes for Organized Sectors:

1. **Sanitary and Hygiene facilities** - The maintenance of a clean, sanitary and hygiene work environment is now accepted as an important basic welfare amenity. These include toilets and water for drinking and washing. The factories Act requires that every factory must be kept clean and free from effective flowing from any drain or privy; that a sufficient supply of wholesome drinking water must be made available at suitable and convenient points; that separate latrine and urinals for male and female workers must be provided; that spittoons must be kept in convenient places in clean and hygienic conditions, and that adequate, suitable, clean, conveniently accessible and separately screened washing facilities must be provided for male and female workers.
2. **Rest Facilities** - This amenity provides a prescribed number of seats on the shop floor and rest rooms or shelters. This facility helps to reduce fatigue, as it enables a worker to sit down occasionally without any break in his work and contribute to his comfort and efficiency. The factories Act provides that, for the purpose of rest, suitable sitting arrangements have to be made and maintained for all workers who are obliged to

work standing and rest rooms and lunch rooms in a factory with more than 150 workers.

3. **Feeding Facilities** - Mess rooms are an elementary feeding facility, where with a few chairs, and tables and in some cases lockers, workers can sit and eat in comfort, the food they have brought from home. Presently, greater and increasing importance is attached to the provision of industrial canteens all over the world. The construction of canteens is compulsory as per the Factories Act (1948), the Mines Act (1952), Motor Transport Workers Act (1961) and the Plantation Labour Act (1951).
4. **Medical Facilities** - Health care for workers will help to reduce the incidence of sickness and, absenteeism among them and increase productivity. The importance of industrial health care in general has also been emphasized by the international labour organization. In 1931, the Royal Commission on Labour and the Labour Investigation Committee (1946) underlined the necessity for providing basic health and welfare amenities. The importance of industrial health service is greater in India than elsewhere because of the adverse effects of unhealthy work environment in many factories and also due to the incidence of tropical diseases, long hours of work, low wages causing malnutrition and poor stamina; illness of workers due to ignorance and poverty and urban whitens of life which do not agree with migrated workers.
5. **Occupational Health Services** - These are essentially preventive schemes very common in the industrially advanced western countries and are gaining in importance and recognition in large sized understandings in India. One of the main functions of these health services is to protect workers against the health hazards arising out of the nature of their work or the work environment. The service includes carrying out of periodical medical checks of certain categories of workers to detect early signs of ill-health and prevent the outbreak of serious health complaints. Section 87 of the Factories Act refers to dangerous occupations and states that the state government is empowered to make rules in respect of any or all classes of factories in which any operation exposes persons to serious risks of bodily, injury, poisoning or disease.
6. **Family planning** - Tremendous growth in population has increased the strength of the labour force and created a number of economic problems, including the problem of unemployment and industrial unrest. A great deal of attention has, therefore, been paid to family planning programmes for industrial workers. The ILO Resolution of 1947 has included family planning as an integral part of labour welfare. The

importance of this programme at international level was brought out by the international labour conference at its Geneva session in 1966.

7. **Crèche's** - The Factories Act lays down that in any factory with more than 50 women workers; a crèche should be provided and maintained for children less than six years in a clean and sanitary condition. The Act states that the crèche should be under the care of women trained in child care and should have adequate accommodation, lighting and ventilation. The state government is empowered to make rules in respect of standards, equipment and facilities.
8. **Housing** - Housing is an integral part of worker's welfare Recommendation 115 of the ILO states that housing should be a matter of national policy. Both the industrial Commission (1918) and the Royal Commission (1913) realized the importance and necessity of improving housing conditions of industrial workers and made recommendations for the purpose.
9. **Transport facilities** - Transport facilities to and from the place of work are given to workers as one of the desirable welfare amenities. This facility is gaining in popularity because of growing urbanization, location of industries, transport loads and traffic congestion. The main purpose of this amenity is to enable workers reach their place of work without undue delay or fatigue.
10. **Recreation and Cultural Facilities** - Recreation is a leisure time activity which is a healthy diversion and a spare-time occupation. It refreshes an individual mentally, lessens the monotony and drudgery of his every day work, and develops his personality on a wholesome basis.
11. **Education Facilities** - Education facilities form another important welfare programme for industrial workers. Education would improve the quality of the labour force, for it would provide opportunities for a proper training for the acquisition of skills and techniques which are essential for workers in an industry and which will enable them to adjust themselves to their particular way of life, and to enable them to acquire broader values of life, personally, industrially and socially.
12. **Co-operative and Saving Facilities** - In the context of spiraling prices and the rising cost of living, the importance of fair price shops and supply schemes cannot be over-emphasized. Though these supply schemes and shops can be operated by the employer himself, it is the co-operative method which has been found to be desirable and has been recommended again and again by various committees and conventions.

The co-operative credit societies also help the worker to save for unforeseen domestic crises.

13. **Personal Counselling** - By means of this service workers are able to receive advice and counsel on some of the personnel and sometimes also on personal problems inside and outside their place of work. A trained social worker is usually appointed for this purpose. Counseling helps a worker to overcome his anxiety and troubles.
14. **Distress Relief and Cash Benefits** - There are many non-statutory welfare amenities available to industrial workers, depending on the importance the employer attaches to these benefits. One is an ex-gratis payment called Distress Relief and cash benefits paid in case of death, injury, sickness, marriage or as a felicitation grant. It is a gift made by the employer to his workers. The C.L.W. has recommended that workers and employers should work out a mutually acceptable formula for such benefits and that State Labour Welfare Board should earmark a portion of their fund to help small-scale units.
15. Canteens 10.25 & 10.35.(a) Even after years of development, canteen and rest shelters have not received adequate attention from management, (b) The present employment limit for making the employer set up a canteen compulsorily should be brought down to 200 in units where there is an established demand for a canteen from a majority of workers. (c) It should be automatically obligatory on the employer to provide a canteen whenever the employment exceeds the prescribed limit. The need for notifying the establishment should be done away with. (d) Establishments which operate over a wide area should consider the running of a mobile canteen (e) Canteens should provide at least one balanced meal a day.

UNIT – V

5.1. LABOUR WELFARE OFFICER (Sec.49).

The welfare officer has to be a maintenance engineer on the human side; he does not have job satisfaction at present, since welfare is not accorded 15 adequate importance in an industrial unit. His presence is treated more as a statutory requirement to be tolerated. The officer should not be made to handle, on behalf of management, disputes between management and workers.

The Factories Act, 1948 has provision for appointment of welfare offices where 500 or more workers including contract workers are employed. The State government has the discretion to prescribe duties, qualification and condition of service of the welfare officers.

5.2. Duties and Functions

- Supervision of health, safety and welfare programmes in factories.
- Counseling workers on personal and professional issues.
- Advice management regarding workers welfare and training programmes.
- Liaison between workers, management and agencies like Factory Inspectorate, Central labour institute and welfare agencies.
- Suggesting measures to maintain harmonious Industrial Relations.

The Malaviya Committee's Report on Labour Welfare in 1969, following the model rules framed under the Factories Act of 1948, has specified the following duties of welfare officers: 1. Supervision 2. Advice 3. Liaison 4. Counselling.

1. SUPERVISION:

- Safety, health and welfare programmes like housing, recreation and
- sanitation services, as provided under the law
- Working of joint committees;

- Grant of leave with wages as provided; and
- Redress of workers' grievances

2. ADVICING MANAGERS IN THE MATTERS OF :

- Formulating welfare policies;
- Apprenticeship training programs;
- Complying with statutory obligations to workers
- Developing fringe benefits;
- Workers' education

3. LIAISON WITH MANAGEMENT SO THAT THEY MAY:

- appreciate the worker's view point on various matters connected with the plant;
- meet their obligations under the Act;
- maintain harmonious industrial relations in the plant;
- Suggest measures for the promotion of the general well-being of workers.

Liaisoning: .1. Liaison with workers so that they may - • Appreciate the need for harmonious industrial relations in the plant; • Resolve disputes, if any; • Understand the limitations under which they operate; and • Interpret company policies correctly.

Liaison with inside factory agencies such as the factory inspector, medical officers, and other inspectors with a view to securing a proper enforcement of the various Acts as applicable to the plant;

4. COUNSELLING: The latest trend catching up in the corporate HR across the world is 'Employee Counselling at Workplace'. In the world of ever increasing complexity and the stress in the lives, especially the workplaces of the employees, employee counselling has emerged as the latest HR tool to attract and retain its best employees and also to increase the quality of the workforce.

5.3. Labour Welfare Agencies In India And International

The main agencies engaged in labour welfare include (a) Central Government, (b) State Government, (c) Employers, and (d) Workers organisations. The contribution of these agencies can be stated as under.

(a) Central Government : A number of Acts have been passed by the Central Government for the welfare of different types of workers. It also administers the implementation of industrial and labour laws. The important Acts which incorporate measures for the welfare of the workers are : Factories Act, Indian Mines Act, Employment of Children Act, Maternity Benefits Act, Plantation Labour Act etc. Under these Acts, employers are bound to provide certain basic welfare facilities to the workers. For example, under the Factories Act, 1948, employer has to provide canteen, rest and lunch rooms, creches, medical aid, proper lighting, ventilation, drinking water, etc. at the work place. The Welfare Officer is compulsorily required to be appointed e.g. Coal mines. The Coal Mines Labour Welfare Fund. This fund is to be utilised for providing housing, medical, educational and recreation facilities to the workers in mines. Under the Mica Mines Labour Welfare Fund Act, 1946. In the case of dock workers the Government also provides housing, medical care, canteens, educational aid to children and workers. Similarly, under different statutes the workers of other industries are provided with welfare facilities.

(b) State Governments : The State Governments have to implement many provisions of various labour laws. The State Governments run health centres, educational centres, etc. for the welfare of the workers. They also keep a vigil on the employers that they are operating the welfare schemes made obligatory by the Central or State Government . The State Government have been empowered to prescribe rules for the welfare of workers and appoint appropriate authorities for the enforcement of welfare provisions under various laws.

(c) Trade Unions Trade unions have to took after the welfare of the workers and thus they are expected to provide welfare facilities to their members. Unions can provide educational, cultural and other facilities to their members. In Mumbai some unions provide sport and educational facilities. Co-operative stores are also run by

some unions. Some trade unions like the Rashtriya Mill Mazdoor Sangh are doing good work in the field of labour welfare. In addition to this, Textile Labour Association, Ahmedabad provide certain facilities like schools, social centres, libraries, legal aid, etc. to the textile workers. Thus, Textile Labour Association of Ahmedabad is doing remarkable work in the labour welfare field.

Welfare Activities of Trade Unions : Labour welfare activities of trade unions include the different types of services or programmes developed by them for their members. Obviously, these services are developed by unions out of their own resources and are administered by them. The activities of trade unions include the following : 1. Consumer's co-operative, co-operative credit societies, producer's co-operatives etc. 2. Health and Family Planning Programmes. 3. Literacy, adult education and social education classes. 4. Workers Education and Leadership training courses. 5. Social Cultural and Recreational activities. 6. Welfare centres / Workers Institutes . 7. Vocational guidance services. 8. Safety education. 9. Participating in or campaigning for civic social services for members such as schooling of children and transport. 10. Building houses for workers through co-operatives. 11. National Savings Schemes. 12. Civil Defence, and campaigns for the national integration, communal harmony etc.

EMPLOYERS

Many employers provide voluntarily welfare facilities along with the statutory welfare facilities. These include residential accommodation to the employees medical and transport facilities, reading rooms, scholarships to children of the workers, patronise teams of the employees for hockey, football, etc. Employers can provide welfare facilities individually or collectively i.e. through their associations. Employers have to play a major role in providing welfare facilities to industrial workers. The welfare facilities offered by the employers on their own are called voluntary welfare facilities. Some associations of employers also provide welfare facilities collectively, for e.g. Indian Jute Mills Association.

CHARITABLE TRUSTS :

Charitable Trusts conduct social welfare activities which are useful to all sections of the society including industrial workers. These agencies provide educational facilities medical facilities, scholarships, etc. However, the contribution of such organization in labour welfare is insignificant.

UNIT – VI

6.1. Labour Legislation in India

The term 'Labor Legislation' is used to cover all the laws which have been enacted to deal with employment and non-employment, wages, working conditions, industrial relations, social security and welfare of persons employed in industries. Thus 'Labor Legislation' refers to all laws of the government to provide social and economic security to the workers. These acts are aimed at reduction of production losses due to industrial disputes and to ensure timely payment wages and other minimum amenities to workers.

Legislative history

The history of labour legislation in India is naturally interwoven with the history of British colonialism. Considerations of British political economy were naturally paramount in shaping some of these early laws. In the beginning it was difficult to get enough regular Indian workers to run British establishments and hence laws for indenturing workers became necessary. This was obviously labour legislation in order to protect the interests of British employers.

Then came the Factories Act. It is well known that Indian textile goods offered stiff competition to British textiles in the export market and hence in order to make India labour costlier the Factories Act was first introduced in 1883 because of the pressure brought on the British parliament by the textile magnates of Manchester and Lancashire. Thus we received the first stipulation of eight hours of work, the abolition of child labour, and the restriction of women in night employment, and the introduction of overtime wages for work beyond eight hours. While the impact of this measure was clearly welfarist the real motivation was undoubtedly protectionist!

To date, India has ratified 39 International Labour Organisation (ILO) conventions of which 37 are in force. Of the ILO's eight fundamental conventions, India has ratified four - Forced Labour 1930, Abolition of Forced Labour 1957, Equal Remuneration 1951, and Discrimination (employment and occupation) 1958.

6.2. The Factories Act 1948

Objectives:

- To ensure adequate safety measures and to promote the health and welfare of the workers employed in factories.
- To prevent haphazard growth of factories through the provisions related to the approval of plans before the creation of a factory.

Scope and coverage:

- Regulates working condition in factories.
- Basic minimum requirements for ensuring safety, health and welfare of workers.
- Applicable to all workers.
- • Applicable to all factories using power and employing 10 or more workers, and if not using power, employing 20 or more workers on any day of the preceding 12 months.

Main provisions:

- Compulsory approval, licensing and registration of factories.
- Health measures.
- Safety measures.
- Welfare measures.
- Working hours.
- Employment of women and young persons.
- Annual leave provision.
- Accident and occupational diseases.
- Dangerous operations.
- Penalties.
- Obligations and rights of employees.

6.3. The Plantation Labour Act, 1951 (NO.LXIX OF 1951) [2nd November,1951]

An Act to provide for the welfare of labour, and to regulate the conditions of work, in plantations. BE it enacted by Parliament as follows:--

CHAPTE I PRELIMINARY

1. Short title, extent, commencement and application.--(1) This Act may be called the Plantations Labour Act, 1951.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
- (4) It applies in the first instance to all tea, coffee, rubber and cinchona plantations, but any State Government may, subject to the previous approval of the Central Government, by notification in the Official Gazette, apply it to any other class of plantations within that State.

2. Definitions.-- In this Act, unless the context otherwise requires,--

- (a) "adolescent" means a person who has completed his fifteenth year but has not completed his eighteenth year;
- (b) "adult" means a person who has completed his eighteenth year;
- (c) "child" means a person who has not completed his fifteenth years";
- (d) "day" means a period of twenty-four hours beginning at midnight;
- (e) "employer" when used in relation to a plantation means the person who has the ultimate control over the affairs of the plantations, and where the affairs of any plantation are entrusted to any other person (whether called a managing agent, manager, superintendent or by any other name) such other person shall be deemed to be the employer in relation to that plantation;
- (f) "plantation" means any land used or intended to be used for growing tea, coffee, rubber or cinchona which admeasures twenty- five acres or more and whereon thirty or more persons are employed, or were employed on any day of the preceding twelve months, and in any State where the provisions of this Act have been applied by notification under sub-section (4) of section 1 to any other class of plantations,

means also any land used or intended to be used for growing the plant mentioned in such notification and whereon thirty or more persons are employed, or were employed on any day of the preceding twelve months;

- (g) "prescribed" means prescribed by rules made under this Act;
 - (h) "qualified medical practitioner" means a person having a certificate granted by an authority specified in the Schedule to the Indian Medical Degrees Act, 1916 (VII of 1916), or in the Schedules to the Indian Medical Council Act, 1933 (XXVII of 1933) and also persons having certificates granted under the different State (Provincial) Medical Council Acts;
 - (i) "wages" has the meaning assigned to it in clause (h) of section 2 of the Minimum Wages Act, 1948 (XI of 1948);
 - (j) "week" means period of seven days beginning at midnight on Saturday night or such other night as may be fixed by the State Government in relation to plantation in any area after such consultation as may be prescribed with reference to the plantations concerned in that area;
 - (a) "worker" means a person employed in a plantation for hire or reward, whether directly or through any agency, to do any work, skilled, unskilled, manual or clerical, but does not include -- a medical officer at the plantations;
 - (b) any person whose monthly wages exceed three hundred rupees; or
 - (c) a person employed in a plantation primarily in a management capacity notwithstanding that his monthly wages do not exceed rupees three hundred;
- (l) "young person" means a person who is either a child or an adolescent.

3. Reference to time of day.--In this Act, reference to time of day are references to Indian Standard time being five and a half hours ahead of Greenwich Mean time:

Provided that for any area in which the Indian Standard time is not ordinarily observed, the State Government may make rules --

- (a) specifying the area;
- (b) defining the local mean time ordinarily observed therein and

- (c) permitting such time to be observed in all or any of the plantations situated in that area.

CHAPTER II INSPECTING STAFF

- 4. Chief inspector and inspectors.--(1) The State Government may, by notification in the Official Gazette, appoint for the State a duly qualified person to be the chief inspector or plantations and so many duly qualified persons to be inspectors or plantations subordinate to the chief inspector as it thinks fit.
 - (2) Subject to such rules as may be made in this behalf by the State Government, the chief inspector may declare the local area or areas within which, or the plantations with respect to which, inspectors shall exercise their powers under this Act, and may himself exercise the powers of an inspector within such limits as may be assigned to him by the State Government.
 - (3) The chief inspector and all inspectors shall be deemed to be public servants within the meaning of the Indian Penal Code (Act XLV of 1860).
- 5. Powers and functions of inspectors.--Subject to any rules made by the State Government in this behalf, an inspector may within the local limits for which he is appointed--
 - (a) make such examination and inquiry as he thinks fit in order to ascertain whether the provisions of this Act and of the rules made thereunder are being observed in the case of any plantation;
 - (b) with such assistants, if any, as he thinks fit, enter, inspect and examine any plantation or part thereof at any reasonable time for purpose of carrying out the objects of this Act;
 - (c) examine the crops grown in any plantation or any worker employed therein or require the production of any register or other document maintained in pursuance of this Act, and take on the spot or otherwise statements of any person which he may consider necessary for carrying out the purposes of this Act;
- (2) exercise such other powers as may be prescribed:

- (3) Provided that no person shall be compelled under this section to answer any question or make any statement tending to incriminate himself.
- (4) Facilities to be afforded to inspectors.--Every employer shall afford the inspector all reasonable facilities for making any entry , inspection , examination or inquiry under this Act.
- (5) Certifying surgeons.- (1) The State Government may appoint qualified medical practitioners to be certifying surgeons for the purposes of this Act within such local limits or for such plantation or class of plantations as it may assign to them respectively.
- (6) The certifying surgeon shall carry out such duties as may be prescribed in connection with-
- (7) the examination and certification of workers;
- (8) the exercise of such medical supervisions as may be prescribed where adolscents and children are, or are to be, employed in any work in any plantation which is likely to clause injury to their health.

CHAPTER III PROVISIONS AS TO HEALTH

- (9) Drinking water.--In every plantation effective arrangements shall be made by the employer to provide and maintain at convenient places in the plantation a sufficient supply of wholesale drinking water for all workers.
- (10) Conservancy.--(1) There shall be provided separately for makes and females in every plantation a sufficient number of latrines and urinals of prescribed type so situated as to be convenient and accessible to workers employed therein.
- (2) All latrines and urinals provided under sub-section (1) shall be maintained in a clean and sanitary condition.
- (11) Medical facilities.--(1) In every plantation there shall be provided and maintained so as to be readily available such medical facilities for the workers as may be prescribed by the State Government.
- (12) If in any plantation medical facilities are not provided and maintained as required by sub-section (1) the chief inspector may cause to be provided and maintained therein such medical facilities, and recover the cost thereof from the defaulting employer.
- (13) For the purposes of such recovery the chief inspector may certify the costs to be recovered to the collector, who may recover the amount as an arrear of land-revenue.

CHAPTER IV WELFARE

- (14) Canteens.--(1) The State Government may make rules requiring that in every plantation wherein one hundred and fifty workers, are ordinary employed, one or more canteens shall be provided and maintained by the employer for the case of the workers.
- (15) Without prejudice to the generality of the foregoing power, such rules provide for--
- (16) the date by which the canteen shall be provided;
- (17) the number of canteens that shall be provided and the standards in respect of construction, accommodation, furniture and other equipment of the canteens;
- (18) the food-stuffs which may be served therein and the charges which may be made therefor;
- (19) the constitution of a managing committee for the canteen and the representation of the workers in the management of the canteen;
- (20) the delegation to the chief inspector, subject to such conditions as may be prescribed, of the power to make rules under clause (c).
- (21) Creches.--(1) In every plantation wherein fifty or more women workers are employed or were employed on any day of the preceding twelve months, there shall be provided and maintained by the employer suitable rooms for the use of children of such women who are below the age of six years.
- (22) Such rooms shall--
- (23) provide adequate accommodation;
- (24) be adequately lighted and ventilated;
- (25) be maintained in a clean and sanitary condition; and
- (26) be under the charge of a woman trained in the care of children and infants.
- (27) The State Government may make rules prescribing the location and the standards of such rooms in respect of their construction and accommodation and the equipment and amenities to be provided therein.
- (28) Recreational facilities.--The State Government may make rules requiring every employer to make provisions in his plantation for such recreational facilities for the workers and children employed therein as may be prescribed.
- (29) Educational facilities.--Where the children between the ages of six and twelve of workers employed in any plantation exceed twenty-five in number, the State

Government may make rules requiring every employer to provide educational facilities for the children in such manner and of such standard as may prescribed.

- (30) Housing facilities.-- It shall be the duty of every employer to provide and maintain for every worker and his family residing in the plantation necessary housing accommodation.
- (31)
- (32) Power to make rules relating to housing.-- The State Government may make rules for the purpose of giving effect to the provisions of section 15 and, in particular providing for--
- (33) the standard and specification of the accommodation to be provided;
- (34) the selection and preparation of sites for the construction of houses and the size of such plot;
- (35) the constitution of advisory boards consisting of representatives of the State Government, the employer and the workers for consultation in regard to matters connected with housing and the exercise by them of such powers, functions and duties in relation thereto as may be specified;
- (36) the fixing of rent, if any, for the housing accommodation provided for workers;
- (37) the allotment to workers and their families of housing accommodation and of suitable strips of vacant land adjoining such accommodation for the purpose of maintaining kitchen gardens, the definition of what constitutes the family of a worker for the purposes of section 15, and for the eviction of workers and their families from such accommodation;
- (38) access to the public to those parts of the plantation wherein the workers are housed.
- (39) provide the workers with such number and type of umbrellas, blankets, rain coats or other like amenities for the protection of workers from rain or cold as may be prescribed.
- (40) Welfare officers.--(1) In every plantation wherein three hundred or more workers are ordinarily employed the employer shall company such number of welfare officers as may be prescribed.
- (41) (2) The State Government may prescribe the duties, qualifications and conditions of service of officers employed under sub-section (1).
- (42) CHAPTER V - HOURS AND LIMITATION OF EMPLOYMENT
- (43) Weekly hours.-- Save as otherwise expressly provided in this Act, no adult worker shall be required or allowed to work on any plantation in excess of fifty-four hours a week and no adolescent or child for more than forty hours a week.

18. Weekly holidays.-- (1) The State Government may by rules made in this behalf--
- (a) provide for a day of rest in every period of seven days which shall be allowed to all workers;
 - (b) provide for payment for work done on a day of rest at a rate not less than the overtime rate prevailing in the area, and where there is no such rate as may be fixed by the State Government in this behalf.

(2) Notwithstanding anything contained in clause (a) of sub-section (1) Where a worker is willing to work on any day of rest which is not a closed holiday in the plantation, nothing contained in this section shall prevent him from doing so:

Provided that in so doing a worker does not work for more than ten days consecutively without a holiday for a whole day intervening.

Explanation 1.-- Where on any day a worker has been prevented from working in any plantation by reason of tempest, fire, rain or other natural causes, that day, may, if he so desires, be treated as his day of rest for the relevant period of seven days within the meaning of sub-section (1).

Explanation 2.--Nothing contained in this section shall apply to any worker whose total period of employment including any day spent on leave is less than six days.

19. Daily intervals for rest.-- The period of work on each day shall be so fixed that no period shall exceed five hours and that no worker shall work for more than five hours before he has had an interval for rest for at least half an hour.
20. Spread-over.--The period of work of an adult worker in a plantation shall be so arranged that inclusive of this interval for rest under section 19 it shall not spread-over more than twelve hours including the time spent in waiting for work on any day.
21. Notice of period of work.--(1) There shall be displayed and correctly maintained in every plantation a notice of periods of work in such form and manner as may be prescribed showing clearly for every day the periods during which the workers may be required to work.

- (2) Subject to the other provisions contained in this Act, no worker shall be required or allowed to work in any plantation otherwise than in accordance with the notice of periods of work displayed in the plantation.
- (3) An employer may refuse to employ a worker for any day if on that day he turns up for work more than half an hour after the time fixed for the commencement of the day's work.

Prohibition of employment of young children.--No child who has not completed his twelfth years shall be required or allowed to work in any plantation.

22. Night work for women and children.-- Except with the permission of the State Government, no woman or child worker shall be employed in any plantation otherwise than between the hours of 6 A.M.and 7 P.M.:

Provided that nothing in this section shall be deemed to apply to midwives and nurses employed as such in any plantation.

23. Non-adult workers to carry tokens.-- No child who has completed his twelfth year and no adolescent shall be required or allowed to work in any plantation unless-
 - (a) a certificate of fitness granted with reference to him under section 27 is in the custody of the employer; and
 - (b) such child or adolescent carries with him while he is at work a token giving a reference to such certificate.
24. Certificate of fitness.-- (1) A certifying surgeon, shall on the application of any young person or his parent or guardian accompanied by a document signed by the employer or any other person on his behalf that such person will be employed in the plantation if certified to be fit for work, or on the application of the employer or any other person on his behalf with reference to any young person intending to work, examine such person and ascertain his fitness for work either as a child or as an adolescent.
 - (2) A certificate of fitness granted under this section shall be valid for a period of twelve months from the date thereof, but may be renewed.

- (3) Any fee payable for a certificate under this section shall be paid by the employer and shall not be recoverable from the young person, his parents or guardian.
25. Power to require medical examination.--An inspector may, if he thinks necessary so to do, cause any young person employed in a plantation to be examined by a certifying surgeon.

CHAPTER VI - LEAVE WITH WAGES

26. Application of Chapter.-- (1) The provisions of this Chapter shall not operate to the prejudice of any rights to which a worker may be entitled under any other law or under the terms of any award, agreement, or contract of service:

Provided that where such agreement or contract of service provides in section 30, include weekly holidays or holidays for festivals or other similar occasions.

Explanation.- For the purposes of this Chapter leave shall not , except as provided in section 30, include weekly holidays or holidays for festivals or other similar occasions.

27. Annual leave with wages.--(1) Every worker shall be allowed leave with wages for a number of days calculated at the rate of--
- (a) if an adult, one day for every twenty days of work performed by him, and
 - (b) if a young person, one day for every fifteen days of work performed by him:

Provided that a period of leave shall be inclusive of any holiday which may occur during such periods.

- (2) If a worker does not in any one period of twelve months take the whole of the leave allowed to him under sub- section (1).any leave not taken by him shall be added to the leave t be allowed to him under that sub-section in succeeding period of twelve months.
- (3) A worker shall cease to earn any leave under this section when the earned leaved due to him amounts to thirty days.

28. Wages during leave period.--(1) For the leave allowed to a worker under section 30 he shall be paid at the rate equal to the daily average of his total full-time wages, exclusive of any overtime earnings and bonus, if any, but inclusive of dearness allowances and the cash equivalent of any advantages accruing by the concessional supply by the employer of foodgrains for the day on which he worked.

(2) A worker who has been allowed leave for any period less, than four days in the case of an adult and five days in the case of a young person under section 30 shall, before his leave begins, be paid his wages for the period of the leave allowed.

29. Sickness and maternity benefits.--(1) Subject to any rules that may be made in this behalf, every worker shall be entitled to obtain from his employer.--

(a) in the case of sickness certified by a qualified medical practitioner, sickness allowance, and

(b) if a woman, in the case of confinement or expected confinement, maternity allowance. at such rate, for such period and at such intervals as may be prescribed.

(2) The State Government may make rules regulating the payment of sickness or maternity allowance and any such rules may specify the circumstances in which such allowance shall not be payable or shall cease to be payable, and in framing any rules under this section the State Government shall have due regard to the medical facilities that may be provided by the employer in any plantation.

CHAPTER VII - PENALTIES AND PROCEDURE

30. Obstruction.-- (1) Whoever obstructs an inspector in the discharge of his duties under this Act or refuses or wilfully neglects to afford the inspector any reasonable facility or making any inspection, examination or inquiry authorised by or under this Act in relation to any plantation, 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 wilfully refuses to produce on the demand of an inspector any register or other document kept in pursuance of this Act or prevents or attempts to prevent or does anything which he has reason to believe is likely to prevent any person from appearing before or being

examined by an inspector acting in pursuance of his duties under this Act, shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees, or with both.

31. Use of false certificate of fitness.-- Whoever knowingly uses or attempts to use as a certificate of fitness granted to himself under section 27 a certificate to another person under that section, or having been granted a certificate of fitness to himself, knowingly allows it to be used, or allows an attempt to use it to be made by another person, shall be punishable with imprisonment which may extend to one month, or with fine which may extend to fifty rupees, or with both.

32. Contravention of provisions regarding employment of labour.-- Whoever, except at otherwise permitted by or under this Act, contravenes any provision of this Act or of any rules made thereunder, prohibiting, restricting or regulating the employment of persons in a plantation, shall be punishable with imprisonment for a term which may extend to three months or with the fine which may extend to five hundred rupees, or with both.

33. Other offences.--Whoever contravenes any of the provisions of this Act or of any rules made thereunder for which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

34. Enhanced penalty after previous conviction.-- If any person who has been convicted of any offence punishable under this Act is again guilty of an offence involving a contravention of the same provision, he shall be punishable on a subsequent conviction with imprisonment which may extend to six months or with fine which may extend to one thousand rupees, or with both:

Provided that for the purposes of this section no cognizance shall be taken of any conviction made more than two years before the commission of the offence which is being punished.

35. Exemption of employer from liability in certain cases.-- Where an employer charged with an offence under this Act, alleges that another person is the actual offender, he shall be entitled upon complaint made by him in this behalf, to have, on giving to the prosecutor in this behalf three clear days notice in writing of his intention so to do, that other person brought before the court on the day appointed for the hearing of the case and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the court that--

- (a) he has used due diligence to enforce the execution of the relevant provisions of this Act; and
- (b) that the other person committed the offence in question without his knowledge, consent or connivance:

the said other person shall be convicted of the offence and shall be liable to the like punishment as if he were the employer and the employer shall be acquitted:

Provided that---

- (a) the employer may be examined on oath his evidence and that of any witness whom he calls in his support shall be subject to cross-examination on behalf of the person he charges to be the actual offender and by the prosecutor, and
- (b) if, in spite of due diligence, the person alleged as the actual offender cannot be brought before the court on the day appointed for the hearing of the case, the court shall adjourn the hearing thereof from time to time so, however, that the total period of such adjournment does not exceed three months, and if, by the end of the said period, the person alleged as the actual offender cannot still be brought before the court, the court shall proceed to hear the case against the employer.

36. Cognizance of offences.- No court shall take cognizance of any offence under this Act except on complaint made by, or with the previous sanction in writing of, the chief inspector and no court inferior to that of a presidency magistrate or a magistrate of the second class shall try any offence punishable under this Act.

37. Limitation of prosecutions.--No court shall take cognizance of an offence punishable under this Act unless the complaint thereof has been made or 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.

CHAPTER VIII - MISCELLANEOUS

38. 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.

39. Power to exempt The State Government may, by order in writing, exempt, subject to such conditions and restrictions as it may think fit to impose, any employer or class of employers from all or any of the provisions of this Act:

Provided that no such exemption shall be granted except with the previous approval of the Central Government.

40. General power to make rules.---(1) The State Government may, subject to the condition of previous publication, make rules to carry out the purposes of this Act:

Provided that the date to be specified under clause (3) of section 23 of the General Clauses Act, 1897 (X of 1897) shall not be less than six weeks from the date on which the draft of the proposed rules was published.

(2) In particular and without prejudice to the generality of the foregoing power, any such rules may provide for---

- (a) the qualifications required in respect of the chief inspector and inspector;
- (b) the powers which may be exercised by inspectors and the areas in which and the manner in which such powers may be exercised;
- (c) the medical supervision which may be exercised by certifying surgeons;
- (d) the examination by inspectors or other persons of the supply and distribution of drinking water in plantations;
- (e) appeals from any order of the chief inspector or inspector and the form in which, the time within which and the authorities to which, such appeals may be preferred;
- (f) the time within which housing, recreational, educational or other facilities required by this Act to be provided and maintained may be so provided;
- (g) the types of laterines and urinals that should be maintained in plantations;
- (h) the medical recreational and educational facilities that should be provided in plantations;

- (i) the form and manner in which notices of period or work shall be displayed and maintained.
 - (j) the registers which should be maintained by employers and the returns, whether occasional or periodical, as in the opinion of the state Government may be required for the purposes of this Act; and
 - (k) the hours of work for a normal working day for the purpose of wages and the overtime.
- (3) All rules made under this Act shall, if made by any Government, other than the Central Government, be subject to the previous approval of the Central Government.

THE FACTORIES ACT – 1948

Object and Scope of the Act

The main object of the Factories Act, 1948 is to ensure adequate safety measures and to promote the health and welfare of the workers employed in factories. The Act also makes provisions regarding employment of women and young persons (including children and adolescents), annual leave with wages etc. The Act extends to whole of India including Jammu & Kashmir and covers all manufacturing processes and establishments falling within the definition of ‘factory’ as defined under Section 2(m) of the Act. Unless otherwise provided it is also applicable to factories belonging to Central/State Governments. (Section 116).

IMPORTANT DEFINITIONS

Adult

“Adult” means a person who has completed his eighteenth year of age. [Section 2(a)]

Adolescent

“Adolescent” means a person who has completed his fifteenth year of age but has not completed his eighteenth year. [Section 2(b)]

Calendar Year

“Calendar Year” means the period of twelve months beginning with the first day of January in any year. [Section 2(bb)]

Child

“Child” means a person who has not completed his fifteenth year of age. [Section 2(c)]

Competent Person

“Competent Person” in relation to any provision of this Act, means a person or an institution recognised as such by the Chief Inspector for the purposes of carrying out tests, examinations and inspections required to be done in a factory under the provisions of this Act having regard to

- (i) the qualifications and experience of the person and facilities available at his disposal; or
- (ii) the qualifications and experience of the persons employed in such institution and facilities available therein. With regard to the conduct of such tests, examinations and inspections and more than one person or institution can be recognised as a competent person in relation to a factory. [Section 2(ca)]

Hazardous Process

“Hazardous Process” means any process or activity in relation to an industry specified in the First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, bye products, wastes or effluents thereof would

- (i) cause material impairment to the health of the persons engaged in or connected therewith, or
- (ii) result in the pollution of the general environment;

Provided that the State Government may, by notification in the Official Gazette amend the First Schedule by way of addition, omission or variation of any industry specified in the said Schedule. [Section 2(cb)]

Young Person

“Young Person” means a person who is either a child or an adolescent. [Section 2(d)]

Day

“Day” means under Section 2(e), a period of twenty-four hours beginning at mid-night. [Section 2(e)]

Week

“Week” means a period of seven days beginning at mid-night on Saturday night or such other night as may be approved in writing for a particular area by the Chief Inspector of Factories. [Section 2(f)]

Power

“Power” means electrical energy or any other form of energy which is mechanically transmitted and is not generated by human or animal agency. [Section 2(g)]

Prime Mover

“Prime” Mover means any engine, motor or other appliance which generates or otherwise provides power. [Section 2(h)]

Transmission Machinery

“Transmission” Machinery means any shaft, wheel, drum, pulley, system of pulleys, coupling, clutch, driving belt or other appliance or device by which the motion of a prime-mover is transmitted to or received by any machinery or appliance. [Section 2(i)]

Machinery

The term includes prime-movers, transmission machinery and all other appliances whereby power is generated, transformed, transmitted or applied. [Section 2(j)]

Factory

“Factory” includes any premises including the precincts thereof

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

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

But does not include a mine subject to the operation of the Mines Act, 1952 or a mobile unit belonging to the armed forces of the Union or a railway running shed, or a hotel, restaurant or eating place. [Section 2(m)]

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

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

(i) Essential elements of a factory:

(1) There must be a premises.

(2) There must be a manufacturing process which is being carried on or is so ordinarily carried on in any part of such a premises.

(3) There must be ten or more workers who are/were working in such a premises on any day of the last 12 months where the said manufacturing process is carried on with the aid of power. But where the manufacturing process is carried on without the aid of power, the required number of workers working should be twenty or more.

The following are not covered by the definition of factory:

(i) Railway running sheds, (ii) mines, (iii) mobile units of armed forces, (iv) hotels, eating places or restaurants.

(ii) Meaning of words “premises and precincts”

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

The Supreme Court in *Ardeshir H. Bhiwandiwalla v. State of Bombay*, AIR 1962 S.C. 29, observed that the legislature had no intention to discriminate between workers engaged in a manufacturing process in a building and those engaged in such a process on an open land and held that the salt works, in which the work done is of conversion of sea water into crystals of salt, come within the meaning of the word ‘premises’.

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

The word ordinarily came up for interpretation in the case of *Employers Association of Northern India v. Secretary for Labour U.P. Govt.* The question was whether a sugar factory ceases to be a factory when no manufacturing process is carried on during the off-season. It

was observed that the word 'ordinarily' used in the definition of factory cannot be interpreted in the sense in which it is used in common parlance. It must be interpreted with reference to the intention and purposes of the Act. Therefore, seasonal factories or factories carrying on intermittent manufacturing process, do not cease to be factories within the meaning of the Act.

(iv) Ten or twenty workers

The third essential content of 'factory' is that ten or more workers are employed in the premises using power and twenty or more workers are employed in the premises not using power. Where seven workers were employed in a premises where the process of converting paddy into rice by mechanical power was carried on and in the same premises, three persons were temporarily employed for repairs of part of the machinery which had gone out of order but the manufacturing was going on, it was held that since three temporary persons were workers, consequently there were ten workers working in the 'premises' and the premises is a factory (AIR 1959, AII. 794).

According to explanation to Section 2(m), all the workers in different relays in a day shall be taken into account while computing the number of workers. Bombay High Court held that the fact that manufacturing activity is carried on in one part of the premises and the rest of the work is carried on in the other part of the premises cannot take the case out of the definition of the word 'factory' which says that manufacturing process can be carried on in any part. The cutting of the woods or converting the wood into planks is essentially a part of the manufacturing activity (*Bharati Udyog v. Regional Director ESI Corpn.*, 1982 Lab. I.C. 1644).

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

Manufacturing Process

It means any process for (i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise, treating or adopting any

article or substance with a view to its use, sale, transport, delivery or disposal; or (ii) pumping oil, water or sewage or any other substance; or (iii) generating, transforming, transmitting power; or (iv) composing types for printing, printing by letter-press, lithography, photogravure or other similar process, or book-binding; or

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or

(vi) preserving or storing any article in cold storage. [Section 2(k)]

The definition is quite important and it has been the subject of judicial interpretation in large number of cases:

(i) What is manufacturing process

The definition of manufacturing process is exhaustive. Under the present definition even transporting, washing, cleaning, oiling and packing which do not involve any transformation as such which is necessary to constitute manufacturing process in its generic sense, are nonetheless treated as manufacturing process.

Following processes have been held to be manufacturing processes:

(1) Sun-cured tobacco leaves subjected to processes of moistening, stripping, breaking up, adaption, packing, with a view to transport to companys main factory for their use in manufacturing cigarette (*V.P. Gopala Rao v. Public Prosecutor*, AIR 1970 S.C. 66).

(2) The operation of peeling, washing etc., of prawns for putting them in cold storage is a process with a view to the sale or use or disposal of the prawns (*R.E.DSouza v. Krishnan Nair*, 1968 F.J.R. 469).

(3) Stitching old gunny bags and making them fit for use.

(4) In paper factory, bankas grass packed into bundles manually and despatched to the factory.

(5) Work of garbling of pepper or curing ginger.

- (6) Process carried out in salt works in converting sea water into salt.
- (7) Conversion of latex into sheet rubber.
- (8) A process employed for the purpose of pumping water.
- (9) The work done on the bangles of cutting grooves in them which later would be filled with colouring, is clearly a stage in ornamentation of the bangle with view to its subsequent use for sale.
- (10) Preparation of soap in soap works.
- (11) The making of bidies.
- (12) The raw film used in the preparation of movies is an article or a substance and when by the process of tracing or adapting, after the sound are absorbed and the photos imprinted, it is rendered fit to be screened in a cinema theatre, then such a change would come within the meaning of the term treating or adapting any article or substance with a view to its use.
- (13) Composing is a necessary part of printing process and hence it is a manufacturing process. It cannot be said that the definition should be confined to the process by which impression is created on the paper and to no other process preceding or succeeding the marking of the impression on the paper to be printed. Everything that is necessary before or after complete process, would be included within the definition of the word 'manufacturing process'. The definition takes in all acts which bring in not only some change in the article or substance but also the act done for the protection and maintenance of such article by packing, oiling, washing, cleaning, etc. (*P.Natrajan v. E.S.I. Corporation* (1973) 26 FLR 19).
- (14) Preparation of food and beverages and its sale to members of a club (*CCI v. ESIC*, 1992 LAB IC 2029 Bom.).
- (15) Receiving products in bulk, in packing and packing as per clients requirements (LLJ I 1998 Mad. 406).

(16) Construction of railway - use of raw materials like sleepers, bolts, loose rails etc. to adaptation of their use for ultimately for laying down railway line (LAB IC 1999 SC 407; *Lal Mohmd. v. Indian Railway Construction Co. Ltd.*).

(ii) What is not a manufacturing process

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

Following processes are not manufacturing processes:

(1) Exhibition of films process.

(2) Industrial school or Institute imparting training, producing cloth, not with a view to its sale.

(3) Receiving of news from various sources on a reel in a teleprinter of a newspaper office, is not a manufacturing process in as much as news is not the article or substance to which Section 2(k)(i) has referred.

(4) Any preliminary packing of raw material for delivering it to the factory (AIR 1969 Mad. 155).

(5) Finished goods and packing thereof: *F. Hare v. State* AIR 1955, 2710.

Worker

“Worker” means a person employed directly or by or through any agency (including a contractor) with or without knowledge of the principal employer, whether for remuneration or not, in any manufacturing process, or in any other kind or work incidental to, or connected

with, the manufacturing process or the subject of the manufacturing process but does not include any member of the armed forces of the Union. [Section 2(1)]

The definition contains following ingredients :

(i) There should be an ‘employed person’

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

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

In *Shankar Balaji Waje v. State of Maharashtra*, AIR 1963 Bom. 236, the question arose whether bidi roller is a worker or not. The management simply says that the labourer is to produce bidies rolled in a certain form. How the labourer carried out the work is his own concern and is not controlled by the management, which is concerned only with getting bidies rolled in a particular style with certain contents. The Supreme Court held that the bidi roller is not a worker. The whole conception of service does not fit in well with a servant who has full liberty to attend to his work according to his pleasure and not according to the orders of his master. Where the employer did retain direction and control over the workers both in manner of the nature of the work as ‘also its details they will be held as workers.

A day labourer, where there was no evidence to show that he was free to work for such period as he likes, free to come and go whenever he chose and free to absent himself at his own sweet will, was held to be a worker. Similarly, women and girls employed in peeling, washing etc., of consignment of prawns brought on the premises at any time of the day or night, without any specified hours of work and without any control over their attendance or the nature, manner or quantum of their work and who after finishing the work go to other

premises in the locality where similar consignment of prawns are received, are not Workers (*State of Kerala v. R.E.DSouza*).

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

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

(d) The partners of a concern, even though they work on premises in the factory cannot be considered to be workers within Section 2(1): (1958 (2) LLJ 252 SC).

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

Management and the person employed. There should be a privity of contract between them and the management. Only such person can be classified as worker who works either directly

or indirectly or through some agency employed for doing his works of any manufacturing process or cleaning, etc., with which the factory is concerned. It does not contemplate the case of a person who comes and that too without his intervention either directly, or indirectly, and does some work on the premises of factory.

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

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

(a) *Employed in cleaning any part of machinery etc.:* If a person is employed in cleaning any part of the machinery premises which is used for manufacturing process, he will be held as worker.

(b) *Employed in work incidental to process:* This clause is very important because it enlarges the scope of the term, manufacturing process. Following illustrative cases will clarify the meaning of this clause:

(1) In *Shinde v. Bombay Telephones*, 1968 (11) LLJ 74, it was held that whether the workman stands outside the factory premises or inside it, if his duties are connected with the business of the factory or connected with the factory, he is really employed in the factory and in connection with the factory.

(2) In *Works Manager, Central Rly. Workshop Jhansi v. Vishwanath and others*, it was held that the definition of worker does not exclude those employees who are entrusted solely with clerical duties, if they otherwise fall within the definition of ‘worker. Timekeepers employed to maintain attendance of the staff, job cards particularly of the various jobs under operation, and time- sheets of the staff engaged in production of spare parts, repairs, etc.; and head time-keeper who supervise the work of the time-keepers, perform work which is incidental to or connected with the manufacturing process carried on in the factory and would therefore, fall within the definition of the worker in the Act.

- (3) Munim in a factory is a worker.
- (4) Workmen in canteen attached to a factory are employees.
- (5) A person employed by a gas manufacturing works as a coolie for excavating and digging trenches outside the factory for laying pipes for transporting gas to consumers, cannot be held to be a worker (AIR 1961 Bomb. 184).
- (6) Person employed to supply material to a mason engaged in construction of furnace will be deemed to be employed by the factory to a work incidental to or connected with manufacturing process.
- (7) In a soap-works, a carpenter preparing the packing cases is a worker because he might legitimately be considered to be engaged in a kind of work incidental to or connected with the subject of the manufacturing process, viz., packaging of soap for being sent out for sale.
- (8) In the case of *Rohtas Industries Ltd. v. Ramlakhan Singh and others*, A.I.R. 1971 SC 849, a person was employed in a paper factory. He was engaged in supervising and checking quality and weightment of waste papers and rags which are the basic raw material for the manufacture of paper. He used to deal with receipts and maintain records of stock and pass the bill of the supplier of waste paper and rags. He used to work in the precincts of the factory and in case of necessities had to work inside the factory. The Supreme Court held that he was working in the factory premises or its precincts in connection with the work of the subject of the manufacturing process, namely the raw material.

(iv) Employment may be for remuneration or not

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

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

(vi) Whether all employees are workers?

Since the word employee has not been defined in the Act it follows that all the workers within the ambit of the definition under the Act would be employees, while all employees would not be workers (*Harbanslal v. State of Karnataka*, (1976)1 Karnt.J.111). All persons

employed in or in connection with a factory whether or not employed as workers are entitled to the benefits of the Act (*Union of India v. G.M. Kokil*, 1984 SCC (L&S) 631).

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

Occupier

Section 2(n) of the Act defines the term “occupier” as a person who has ultimate control over the affairs of the factory: Provided that

(i) in the case of a firm or other association of individuals, any one of the individual partners or members thereof shall be deemed to be the occupier;

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

(iii) in the case of a factory owned or controlled by the Central Government or any State Government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority, as the case may be, shall be deemed to be the occupier. 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) Sections 6, 7, 7A, 7B, 11 or 12; (b) Section 17 in so far as it relates to the providing the maintenance of sufficient and suitable lighting in or around the dock; (c) Sections 18, 19, 42, 46, 47 or

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 occupier for the purposes of any matter provided for by or under Sections 13, 14, 16 or 17 (save as otherwise provided in this proviso) or Chapter IV (except Section 27) or Sections 43, 44, or 45, Chapter VI, VII, VIII or

IX or Sections 108, 109 or 110, in relation to (a) the workers employed directly by him, or by or through any agency, and (b) the machinery, plant or premises in use for the purpose of carrying out such repair or maintenance work by such owner, agent, master or other officer-in-charge or person.

Therefore an employee of company or factory cannot be occupier. Proviso (ii) to Section 2(n) does not travel beyond scope of main provision and is not violative of Article 14 of Constitution of India. Proviso (ii) is not *ultra vires* main provisions of Section 2(n). No conflict exists between main provisions of Section 2(n) and proviso (ii). Further, proviso (ii) to Section 2(n) read with Section 92, does not offend Article 21. Under Section 2(n)(iii), for the purpose of deciding who is an occupier of the factory, the test to be applied is who has ultimate control over its affairs in a government company, in fact the ultimate control lies with government though the company is separate legal entity by having right to manage its affairs. Persons appointed by central government to manage its affairs of factories (of government companies) were therefore deemed to be appointed as occupiers under the Act (*IOC v. CIF, LLJ II SC 1998 604*).

Exemption of occupier or manager from liability in certain cases

Section 101 provides exemptions from liability of occupier or manager. It permits an occupier or manager of a factory who is charged with an offence punishable under the Act to bring into the Court any other person whom he charges actual offender and also proves to the satisfaction of the Court that:

(a) he has used due diligence to enforce the execution of this Act; and

(b) that the offence in question was committed without his knowledge, consent or connivance, by the said other person. The other person shall be convicted of the offence and shall be liable to the like punishment as if he were the occupier or manager of the factory. In such a case occupier or manager of the factory is discharged from liability. The Section is an exception to principles of strict liability, but benefit of this would be available only when the requirements of this section are fully complied with and the court is fully satisfied about the proof of facts contemplated in (a) and (b) above.

The State Governments carry out the administration of the Act through:

- (i) Inspecting Staff
- (ii) Certifying Surgeons
- (iii) Welfare Officers
- (iv) Safety Officers.

(i) The Inspecting Staff

Appointment: Section 8 empowers the State Government to appoint Inspectors, Additional Inspectors and Chief Inspectors, such persons who possess prescribed qualifications.

Section 8(2) empowers the State Government to appoint any person to be a Chief Inspector. To assist him, the government may appoint Additional, Joint or Deputy Chief Inspectors and such other officers as it thinks fit [Section 8(2A)].

Every District Magistrate shall be an Inspector for his district. The State Government may appoint certain public officers, to be the Additional Inspectors for certain areas assigned to them [Section 8(5)].

The appointment of Inspectors, Additional Inspectors and Chief Inspector can be made only by issuing a notification in the *Official Gazette*.

When in any area, there are more inspectors than one, the State Government may by notification in the *Official Gazette*, declare the powers which such Inspectors shall respectively exercise and the Inspector to whom the prescribed notices are to be sent. Inspector appointed under the Act is an Inspector for all purposes of this Act. Assignment of local area to an inspector is within the discretion of the State Government. A Chief Inspector is appointed for the whole State. He shall in addition to the powers conferred on a Chief Inspector under this Act, exercise the powers of an Inspector throughout the State. Therefore, if a Chief Inspector files a complaint, the court can legally take cognizance of an offence. Even assignment of areas under Section 8(6) does not militate in any way against the view that the Chief Inspector can file a complaint enabling the court to take cognizance. The Additional, Joint or Deputy Chief Inspectors or any other officer

so appointed shall in addition to the powers of a Chief Inspector, exercise the powers of an Inspector throughout the State.

Powers of Inspectors

Section 9 describes the powers of the Inspectors subject to any rules made in this behalf for the purpose of the Act. An Inspector may exercise any of the following powers within the local limits for which he is appointed:

1. He can enter any place which is used or which, he has reasons to believe, is used as a factory.
2. He can make examination of the premises, plant, machinery, article or substance. 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.
3. Require the production of any prescribed register or any other document relating to the factory. Seize, or take copies of any register, record of other document or any portion thereof.
4. Take measurement and photographs and make such recordings as he considers necessary for the purpose of any examination.
5. In case of any article or substance found in any premises, being an article or substance which appears to him as having caused or is likely to cause danger to the health or safety of the workers, direct it to be dismantled or subject it to any process or test (but not so as to damage or destroy it unless the same is in the circumstances necessary, for carrying out the purposes of this Act) and take possession of any such article or substance or a part thereof, and detain it for so long as is necessary for such examination.

Production of documents

The Factories Act requires the maintenance of certain registers and records. Inspectors have been empowered to ask for the production of any such documents maintained under law, and the non-compliance of this has been made an offence.

(ii) Certifying Surgeons

Section 10 provides for the appointment of the Certifying Surgeons by the State Government for the purpose of this Act to perform such duties as given below within such local limits or for such factory or class or description of factories as may be assigned to Certifying Surgeon:

- (a) the examination and certification of young persons under this Act;
- (b) the examination of persons engaged in factories in such dangerous occupations or processes as may be prescribed;
- (c) the exercising of such medical supervision as may be prescribed for any factory or class or description of factories.

(iii) Welfare Officer

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

(iv) Safety Officer

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

APPROVAL, LICENSING AND REGISTRATION OF FACTORIES

Section 6 empowers the State Government to make rules with regard to licensing and registration of factories under the Act on following matters:

- (i) submission of plans of any class or description of factories to the Chief Inspector or the State Government;
- (ii) obtaining previous permission of the State Government or the Chief Inspector, for the site on which factory is to be situated and for construction or extension of any factory or class or description of factories. However, replacement or addition of any plant or machinery within prescribed limits, shall not amount to extension of the factory, if it

does not reduce the minimum safe working space or adversely affect the environmental conditions which is injurious to health;

- (iii) considering applications for permission for the submission of plans and specifications;
- (iv) nature of plans and specifications and the authority certifying them;
- (v) registration and licensing of factories;
- (vi) fees payable for registration and licensing and for the renewal of licences;
- (vii) licence not to be granted or renewed unless notice specified under Section 7 has been given

6.4. INDIAN MINES ACT – 1952

CHAPTER I PRELIMINARY

1. Short title, extent and commencement – (1) This Act may be called the Mines Act, 1952. (2) It extends to whole of India

(3) It shall come into force on such date or dates as the Central Government may, by notification in the official Gazette, appoint, and different dates may be appointed for different provisions of this Act and for different states but not later than 31st December, 1953.
2. Definitions : - (1) In this Act, unless the context otherwise requires :
 - (a) omitted
 - (b) “adult” means a person who has completed his eighteenth year.
 - (c) “agent”, when used in relation to a mine, means every person, whether appointed as such or not, who, acting or purporting to act on behalf of the owner, takes part in the management, control, supervision or direction of the mine or of any part thereof.
 - (d) “Chief Inspector” means the Chief Inspector of Mines appointed under this Act;

- (e) “Committee” means a committee constituted under section 12:
 - (f) “day” means a period of twenty-four hours beginning at mid-night;
 - (g) “district magistrate” means, in a presidency-town, the person appointed by the Central Government to perform the duties of a district magistrate under this Act in that town;
 - (h) a person is said to be “employed” in a mine who works as the manager or who works under appointment by the owner, agent or manager of the mine or with knowledge of the manager, whether for wages or not.
 - (i) in any mining operation (including the concomitant operations of handing and transport of minerals up to the point of despatch and of gathering sand and transport thereof to the mine)
 - (j) in operations or services relating to the development of the mine including construction of plant therein but excluding construction of buildings, roads, wells and any building work not directly connected with any existing or future mining operations:
 - (k) in operating, servicing, maintaining or repairing any part or any machinery used in or about the mine;
 - (l) in operations, within the premises of the mine of loading for despatch of minerals;
 - (m) in any office of the mine:
 - (n) in any welfare, health, sanitary or conservancy services required to be provided under this Act, or watch and ward, within the premises of the mine excluding residential area; or
 - (o) in any kind of work whatsoever which is preparatory or incidental to, or connected with mining operations;
- (i) “Inspector” means an Inspector of Mines appointed under this Act, and includes a district magistrate when exercising any power or performing any duty of an Inspector which is empowered by this Act to exercise or perform;
- (i) “mine” means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on and includes -

- (i) all borings, bore holes, oil wells and accessory crude conditioning plants, including the pipe conveying mineral oil within the oilfields:
 - (ii) all shafts, in or adjacent to and belonging to a mine, where in the course of being sunk or not:
 - (iii) all levels and inclined planes in the course of being driven;
 - (iv) all opencast workings;
 - (v) all conveyors or aerial ropeways provided for the bringing into or removal from a mine of minerals or other articles or for the removal of refuse therefrom;
 - (vi) all adits, levels, planes, machinery works, railways, tramways and sidings in or adjacent to and belonging to a mine;
 - (vii) all protective works being carried out in or adjacent to a mine;
 - (viii) all workshop and store situated within the precincts of a mine and the same management and used primarily for the purposes connected with that mine or a number of mines under the same management;
 - (ix) all power stations, transformer sub-stations converter stations : rectifier stations and accumulator storage stations for supplying electricity solely or mainly for the purpose of working the mine or a number of mines under the same management;
 - (x) any premises for the time being used for depositing sand or other material for use in a mine or for depositing refuse from a mine or in which any operations in connection with such and refuse or other material is being carried on, being premises exclusively occupied by the owner of the mine:
 - (xi) any premises in or adjacent to and belonging to a mine or which any process ancillary to the getting, dressing or operation for sale of minerals or of coke is being carried on;
- (jj) “minerals” means all substances which can be obtained from the earth by mining, digging, drilling, dredging, hydraulicing, quarrying, or by any other operation and includes mineral oils (which in turn include natural gas and petroleum):
- (jjj) (k) “office of the mine” means any office at the surface of the mine concerned;
- (kk) “Open cast working” means a quarry, that is to say an excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on, not being a shaft or an excavation which extends below superjacent ground.

(i) “owner” when used, in relation to a mine, means any person who is the immediate proprietor or lessee or occupier of the mine or of any part thereof and in the case of a mine the business whereof is being carried on by liquidator or receiver, such liquidator or receiver but does not include a person who merely receives a royalty rent or fine from the mine, subject to any lease grant or licence for the working thereof, or is merely the owner of the soil and not interested in the minerals of the mine; but (any contractor or sub- lessee for the working of a mine or any part thereof shall be subject to this Act in like manner as if he were an owner, but not so as to exempt the owner from any liability;

(m) “Prescribed” means prescribed by rules, regulation or byelaws, as the case may ;

(n) “qualified medical practitioner” means a medical practitioner who possesses any recognised medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1959 and who is enrolled on a state medical register as defined in clause (k) of that section:)

(o) “regulations” “rules” and “bye-laws” means respectively regulations, rules and bye- laws made under this Act;

(p) where work of the same kind is carried out by two or more sets of persons working during different periods of the day each of such sets is called a “relay” (and each of such periods is called a “shift”,)

(pp) “reportable injury” means any injury other than a serious bodily injury which involves, or in all probability will involve, the enforced absence of the injured persons from work for a period of seventy-two hours or more.

(q) “serious bodily injury” means any injury which involves; or in probability will involve the permanent loss of any part or section of a body or the use of any part or section of a body, or the permanent loss of or injury to the sight or hearing or any permanent physical incapacity or the fracture of any bone or one or more joints or bones of any phalanges of hand or foot.

(r) “week” means a period of seven days beginning at midnight on Saturday night or such other night as may be approved in writing for a particular area by the Chief Inspector or an Inspector.

(2) A person working or employed or employed in or in connection with a mine is said to

be working or employed –

- (a) “below ground” if he is working or employed –
 - (i) in a shaft which has been or is in the course of being sunk; or
 - (ii) in any excavation which extends below superjacent ground; and
- (b) “above ground” if he is working in open cast working or any other manner not specified in clause (a)

3. (1) Act not apply in certain cases – The provisions of this Act, except those contained in

sections 7,8,9, 40,45 and 46 shall not apply to –

- (b) any mine or part thereof in which excavation is being made for prospecting purposes only and not for the purpose of obtaining minerals for use or sale :

Provided that –

- (i) not more than twenty persons are employed on any one day in connection with any such excavation.
- (ii) the depth of the excavation measured from its highest to its lowest point nowhere exceeds six, metres or, in the case of an excavation for coal fifteen metres: and
- (iii) no part of such excavation extends below superjacent ground; or

(b) any mine engaged in the extraction of kankar, murrum laterite, boulder, gravel, shingle, ordinary sand (excluding moulding sand, glass sand and other mineral sands), ordinary clay (excluding kaolin, china clay, white clay or fire clay), building stone, slate, road metal, earthy fullers earth, marl chalk and lime stone.

Provided that –

- (i) the working do not extend below superjacent ground: or (ii) where it is an open cast working –
 - (a) the depth of the excavation measured from its highest to its lowest

point nowhere exceeds six metres;

(b) the number of persons employed on any one day does not exceed fifty; and

(c) explosives are not used in connection with the excavation.

(2) Notwithstanding anything contained in sub-section (1) the Central Government may, if it is satisfied that, having regard to the circumstances obtaining in relation to mine or part thereof or ground or class of mines, it is necessary or desirable so to do by notification in the official Gazette, declare that any of the provisions of this Act, not set out in sub-section (1), shall apply to any such mine or part thereof or group of class of mines or any class of persons employed therein.

(3) Without prejudice to the provisions contained in sub-section (2), if at any time any of the conditions specified in the provision to clause (a) or clause (b) of sub-section (1) is not fulfilled in relation to any mine referred to in that sub-section the provisions of this Act not set out in sub-section (1), shall become immediately applicable, and it shall be the duty of the owner, agent or manager of the mine to inform the prescribed authority in the prescribed manner and within the prescribed time about the non-fulfilment.

(4) Reference to time of day – In this Act, reference to time of day are reference to Indian standard time, being five and a half hours ahead of Greenwich mean time:

Provided that, for any area in Indian standard time is not ordinarily observed, the Central Government may make rules –

(a) specifying the area;

(b) defining the local mean time ordinarily observed therein; and

(c) permitting such time to be observed in all or any of the mines situated in the area.

CHAPTER – III ‘COMMITTEES’

5. Committees :-

(1) The Central Government shall, with effect from such date as that Government may by notification in the official Gazette, specify in this behalf constitute for the

purposes of this Act, a Committee consisting of -

- (a) a person in the service of the Government, not being the Chief Inspector or an Inspector, appointed by the Central Government to as Chairman;
- (b) the Chief Inspector of mines;
- (c) two persons to represent the interests of miners appointed by the Central Government;
- (d) two persons to represent the interests of owners of mines appointed by the Central Government;
- (e) two qualified mining engineers not directly employed in the mining industry, appointed by Central Government :

Provided that one at least of the persons appointed under clause (c) shall be for representing the interests of workers in coal mines and one at least of the persons appointed under clause (d) shall be for representing the interests of owners of coal mines.

(2) Without prejudice to generality of sub-section(1), the Central Government may constitute one or more Committees to deal with specific matters relating to any part of the territories to which this Act extends or to a mine or a group of mines and may appoint members thereof and the provisions of sub-section(1) (except the provision thereto) shall apply for the constitution of any Committee under this sub-section as they apply for the constitution of a Committee under that sub-section.

(3) No act or proceeding of a Committee shall be invalid by reason only of the existence of any vacancy among its members or any defect in the constitution thereof.

6. Functions of the committee –

(1) The Committee constituted under sub-section (1) of section 12 shall –

- (a) consider proposal for making rules and regulations under this Act and make appropriate recommendations to the Central Government;
- (b) enquiry into such accidents or other matters as may be referred to it by the Central Government from time to time and make reports thereon; and
- (c) subject to the provisions of such-section(2), hear and decide any appeals or objections against notices or orders under this Act or the regulations, rules or bye-laws thereunder as are required to be referred to it by this Act or as may be prescribed.

- (2) The Chief Inspector shall not take part in the proceedings of the Committee with respect to any appeal or objection against an order on notice made or issued by him or act in relation to any matter pertaining to such appeal or objection as a member of the Committee.
7. Powers, etc. of the Committees –
- (1) A Committee constituted under section 12 may exercise such of the powers of an Inspector under this Act as it thinks necessary or expedient to exercise for the purposes of discharging its functions under this Act.
- (2) A committee constituted under section 12 shall, for the purposes of discharge its functions have the same powers as are vested in a court under the Code of Civil Procedure, 1908 when trying a suit in respect of the following matters, namely :--
- (a) discovery and inspections;
 - (b) enforcing the attendance of any person and examining him on oath;
 - (c) compelling the production of documents; and
 - (d) such other matters as may be prescribed.”
8. Recovery of expenses –

The Central Government may direct that the expenses of any inquiry conducted by a committee constituted under section 12 shall be borne in whole or in part by the owner or agent of the mine concerned, and the amount so directed to be paid may, on application by the Chief Inspector or an Inspector or to a magistrate having jurisdiction at the place where the mine is situated or where such owner or agent is for the time being resident, be recovered by the distress and sale of any movable property within the limits of the magistrates jurisdiction belonging to such owner or agent.

Provided that the owner or his agent has not paid the amount within six weeks from the date of receiving the notice from the Central Government or the Chief Inspector of Mines.

CHAPTER - IV

Mining Operations And Management Of Mines

9. Notice to be given of mining operations –

- (1) The owner, agent or manager of a mine shall, before the commencement of any mining operation, give to the Chief Inspector, the Controller, Indian Bureau of Mines and the District Magistrate of the district in which the mine is situated, notice in writing in such form and containing such particulars relating to the mine, as may be prescribed.
 - (2) Any notice given under sub-section (1) shall be so given as to reach the persons concerned at least one month before the commencement of any mining operation.
10. (1) Managers- Save as may be otherwise prescribed, every mine shall be under a sole manager who shall have the prescribed qualifications and the owner or agent of every mine shall appoint a person having such qualifications to be the manager:

Provided that the owner or agent may appoint himself as manager if he possesses the prescribed qualifications.

- (2) Subject to any instruction given to him by or on behalf of the owner or agent of the mine, the manager shall be responsible for the overall management, control, supervision and direction of the mine and all such instructions when given by the owner or agent shall be confirmed in writing forthwith.
 - (3) Except in case of an emergency, the owner or agent of a mine or anyone on his behalf shall not give otherwise than through the manager, instructions affecting the fulfilment of his statutory duties, to a persons, employed in a mine, who is responsible to the manager.
11. Duties and responsibilities of owners, agents and managers :-
- (1) the owner and agent of every mine shall each be responsible for making financial and other provisions and for taking such other steps as may be necessary for compliance with the provisions of this Act and the regulations, rules, bye-laws and orders made thereunder.
 - (2) The responsibility in respect of matters provided for in the rules made under clauses (d), (e) and (p) of section 58 shall be exclusively carried out by the owner and agent of the mine and by such person (other than the manager) whom the owner or agent may appoint for securing compliance with the aforesaid provisions.
 - (3) If the carrying out of any instructions given under sub-section (2) or given otherwise than through the manager under sub-section(3) of section 17 results in the

contravention of the provisions of this Act or of the regulations, rules, bye-laws or orders made thereunder, every person giving such instructions shall also be liable for the contravention of the provision concerned.

(4) Subject to the provisions of sub-sections(1), (2) and (3) the owner, agent and manager of every mine shall each be responsible to see that all operations carried on in connection with the mine are conducted in accordance with the provisions of this Act and of the regulations, rules, bye-laws and orders made thereunder.

(5) In the event of any contravention by any person whatsoever of any of the provisions of this Act or of the regulations; rules, bye-laws or orders made thereunder except those which specifically require any person to do any act or thing, or prohibit any person from doing an act or thing, besides the person who contravenes, each of the following persons shall also be deemed to be guilty of such contravention unless he proves that he had used due diligence to secure compliance with the provisions and had taken reasonable means to prevent such contravention:

(i) the official or officials appointed to perform duties of supervision in respect of the provisions contravened;

(ii) the manager of the mine;

(iii) the owner and agent of the mine;

(iv) the person appointed, if any, to carry out the responsibility under sub-section (2). Provided that any of the persons aforesaid may not be proceeded against if it appears on enquiry and investigation that he is not prima facieliable.

(6) It shall not be a defence in any proceedings brought against the owner or agent of a mine under this section that the manager and other official have been appointed in accordance with the provisions of this Act or that a person to carry the responsibility under sub-section (2) has been appointed."

CHAPTER – V

PROVISION AS TO HEALTH AND SAFETY

19. Drinking water ---

- a. In every mine effective arrangement shall be made to provide and maintain at suitable points conveniently situated a sufficient supply of coal and wholesome drinking water for all persons employed therein:

Provided that in case of persons employed below ground the Chief Inspector may, in lieu of drinking water being provided and maintained at suitable points, permit any other effective arrangements to be made for such supply.

- b. All such points shall be legibly marked 'DRINKING WATER' in a language understood by a majority of the persons employed in the mine and no such point shall be situated within six metres of any washing place, urinal or latrine, unless a shorter distance is approved in writing by the Chief Inspector.
- c. In respect of all mines or any class or description of mines, the Central Government may make rules for securing compliance with the provisions of sub-sections

(1) and (2) and for the examination by prescribed authorities of the supply and distribution of drinking water.

20. Conservancy –

- a. There shall be provided, separately for males and females in every mine, a sufficient number of latrines and urinals of prescribed types so situated as to be convenient and accessible to persons employed in the mine at all times.
- b. All latrines and urinals provided under sub-section (1) shall be adequately lighted, ventilated and at all times maintained in a clean and sanitary condition.
- c. The Central Government may specify the number of latrines and urinals to be provided in any mine, in proportion to the number of males and females employed in the mine and provide for such other matters in respect of sanitation in mines (including the obligations in this regard of persons employed in the mine) as it may consider necessary in the interests of the health of the persons employed,

21. Medical appliance :

- a. In every mine there shall be provided and maintained so as to be readily accessible during all working hours such number of first-aid boxes or cupboards equipped with such contents as may be prescribed.
- b. Nothing except the prescribed contents shall be kept in a first-aid box or cupboard or room.

- c. Every first-aid box or cupboard shall be kept in the charge of a responsible person who is trained in such first-aid treatment as may be prescribed and who shall always be readily available during the working hours of the mine.
 - d. In every mine there shall be made to as to be readily available such arrangements as may be prescribed for the conveyance to hospitals or dispensaries of persons who, while employed in the mine suffer bodily injury or become ill.
 - e. In every mine wherein more than one hundred and fifty persons are employed there shall be provided and maintained a first-aid room of such size with such equipment and in the charge of such medical and nursing staff as may be prescribed.
22. Powers of Inspectors when causes of danger not expressly provided against exist or when employment of persons is dangerous:-
- a. If, in respect of any matter for which no express provision is made by or under this Act, it appears to the Chief Inspector or an Inspector that any mine or part thereof or any matter, thing or practice in or connected with the mine, or with the control, supervision, management or defective so as to threaten, or tend to, the bodily injury of any person, he may give notice, in writing thereof to the owner, agent or manager of the mine and shall state in the notice the particulars in respect of which he considers the mine or part thereof or the matter, thing or practice to be dangerous or defective and require the same to be remedied within such time and in such manner as he may specify in the notice.

(1A) Where the owner, agent or manager of a mine fails to comply with the terms of a notice given under sub-section (1) within the period specified therein, the Chief Inspector or the Inspector, as the case may be, may by order in writing, prohibit the employment in or about the mine or any part thereof any person whose employment is not in his opinion reasonably necessary for securing compliance with the terms of the notice.

(1) Without prejudice to the provisions contained in sub-section (10) the Chief Inspector or the Inspector as the case may be, by order in writing addressed to the owner, agent or manager of a mine prohibit the extraction or reduction of pillars or blocks of

minerals in any mine or part thereof, if, in his opinion such operation is likely to cause the crushing of pillars or blocks of minerals or the premature collapse of any part of the working or otherwise endanger the mine or the life or safety of persons employed therein or if, in his opinion, adequate provision against the outbreak of fire or flooding has not been made by providing for the sealing off and isolation of the part of the mine in which such operation is contemplated and for restricting the area that might be affected by fire or flooding.

(3) If the Chief Inspector, or an Inspector authorised in this behalf by general or special order in writing by the Chief Inspector, is of opinion that there is urgent and immediate danger to the life or safety of any person employed in any mine or part thereof, he may, by order in writing containing a statement of the grounds of his opinion, prohibit, until he is satisfied that the danger is removed the employment in or about the mine or any part thereof of any person whose employment is not in his opinion reasonably necessary for the purpose of removing the danger.

(3A) Every person whose employment is prohibited under sub-section (1A) of sub-section

(3) shall be entitled to payment of full wages for the period for which he would have been, but for the prohibition in employment and the owner agent or manager shall be liable for payment of such full wages of that person:

Provided that the owner, agent or manager may instead of paying such full provide such person with an alternative employment at the same wages which such person was receiving in the employment which was prohibited.”

(4) Where notice has been given under sub-section (1) or an order made under sub-section (1A), sub-section (2) or sub-section (3) by an Inspector, the owner, agent or manager of the mine may within ten days after the receipt of the notice or order, as the case may be appeal against the same to the Chief Inspector who may confirm, modify or cancel the notice or order.

(5) The Chief Inspector or the Inspector sending a notice under sub-section (1) or making an order under sub-section (1A), sub-section(2) or sub-section (3) and

the Chief Inspector making an order (other than an order of cancellation in appeal) under sub-section (4) shall forthwith report the same to the Central Government.

(6) If the owner, agent or manager of the mine objects to a notice sent under sub-section(1) by the Chief Inspector or to an order made by the Chief Inspector under sub-section (1A) or sub-section(2) or sub-section (3) or sub-section (4), he may, within twenty days after the receipt of the notice containing the requisition or of the order or after the date of the decision on appeal, as the case may be, send his objection in writing stating the grounds thereof to the Central Government which shall, ordinarily within a period of two months from the date of receipt of the objection, refer the same to a Committee.

(7) Every notice under sub-section(1) or order under sub-section (1A), sub-section(2) or sub-section(3) or sub-section (4) to which objection is made under sub-section(6) shall be complied with, pending the receipt at the mine of the decision of the Committee.

Provided that the Committee may, on the application of the owner, agent or manager, suspend the operation of a notice under sub-section (1) pending its decision on the objection.

(8) Nothing in this section shall affect the powers of a magistrate under section 144 of the Code of Criminal procedure 1896. Act V of 1898).

22A Power to prohibit employment in certain cases:

(1) Where in respect of any matter relating to safety for which express provision is made by or under this Act, the owner, agent or manager of mine fails to comply with such provisions, the Chief Inspector may give notice in writing requiring some to be complied with within such time as he, may specify in the notice or within such extended period of time as he may, from time to time, specify thereafter.

(2) Where the owner, agent or manager fails to comply with the terms of a notice given under sub-section(1) within the period specified in such notice or, as the

case may be, within the extended period of time specified under that sub-section, the Chief Inspector may, by order in writing, prohibit the employment in or about the mine or any part thereof of any person whose employment is not, in his opinion reasonably necessary for securing compliance with the terms of the notice.

- (3) Every person whose employment is prohibited under sub-section(2), shall be entitled to payment of full wages for the period for which he would have been, but for the prohibition, in employment, and the owner, agent or manager shall be liable for payment of such full wages of that person.

Provided that the owner, agent or manager may, instead of paying such full wages, provide such person with an alternative employment at the same wages which such person was receiving in the employment which was prohibited under sub-section(2).

- (4) The provisions of sub-section (5), (6) and (7) of section 22 shall apply in relation to a notice issued under sub-section (1) or an order made under sub-section(2) of this section as they apply in relation to a notice under sub-section (1) or an order under sub-section (1A) of that section.”

23. Notice to be given of accidents :-

a. Whenever there occurs in or about a mine:-

- i. an accident causing loss of life or serious bodily injury, or
- ii. an explosion, ignition, spontaneous heating, outbreak of fire or irruption or inrush of water or other liquid matter, or
- iii. an influx of inflammable or noxious gases, or
- iv. a breakage of ropes, chains or other gear by which persons or materials are lowered or raised in a shaft or an incline, or
- v. an overwinding of cages of other means of conveyance in any shaft while persons or materials are being lowered or raised, or
- vi. a premature collapse of any part of the workings, or
- vii. any other accident which may be prescribed, the owner, agent or manager of the mine shall give notice of the occurrence to such authority in such form and within such time as may be prescribed, and he shall simultaneously post one copy of the notice on a special notice-

board in the prescribed manner at a place where it may be inspected by trade union officials, and shall ensure that the notice is kept on the board for not less than fourteen days from the date of such posting.

(1A) Whenever there occurs in or about a mine an accident causing reportable injury to any person, the owner, agent or manager of the mine shall enter in a register such occurrence in the prescribed form and copies of such entries shall be furnished to the Chief Inspector once in quarter.”

- b. Where a notice given under sub-section(1) relates to an accident causing loss of life, the authority shall make an inquiry into the occurrence within two months of the receipt of the notice and, if the authority is not the Inspector, he shall cause the Inspector to make an inquiry within the said period.
- c. The Central Government may, by notification in the Official Gazette, direct that accidents other than those specified in sub-sections(1) and (1A) which cause bodily injury resulting in the enforced absence from work of the person injured for a period exceeding twenty-four hours shall be entered in a register in the prescribed form or shall be subject to the provision of sub-section(1) or sub-section (1A), as the case may be.”
- d. A copy of the entries in the register referred to in sub section (3) shall be sent by the owner, agent or manager of the mine, on or before the 20th day of January in the year following that to which the entries relate to the Chief Inspector.
- e. Whenever there occurs in or about a mine an accident causing loss of life or serious bodily injury to any person, the place of accident shall not be disturbed or altered before the arrival or without the consent of the Chief Inspector or the Inspector to who notice of the accident is required to be given under sub-section(1) of section 23, unless such disturbances of alteration is necessary to prevent any further accident to remove bodies of the deceases; or to rescue any person from danger, or unless discontinuance of work at the place of accident would seriously impede the working of the mine;

Provided that where the Chief Inspector or the said Inspector fails to inspect the place of accident, within seventy-two hours of the time of the accident, work may be resumed at the place of the accident.”

24. Power of Government to appoint court of enquiry in cases of accidents:-
- a. When any accident of the nature referred to in any of the clauses of sub-section(1) of sections 23 occurs in or about a mine, the Central Government may if it is of opinion that a formal inquiry into the causes of and circumstances attending the accident ought to be held, appoint a competent person to hold such inquiry and may also appoint one or more persons possessing legal or special knowledge to act as assessor or assessors in holding the inquiry.
 - b. The person appointed to hold such an inquiry shall have all the powers of a civil court under the Code of Civil Procedure 1908 (Act V of 1908), for the purpose of enforcing the attendance of witnesses and compelling the production of documents and material objects.
 - c. Any person holding an inquiry under this section may exercise such of the powers of an Inspector under this Act as he may think it necessary or expedient to exercise for the purposes of the inquiry.
 - d. The person holding an inquiry under this section shall make a report to the Central Government stating the causes of the accident and its circumstances, and adding any observations which he or any of the assessors may think fit to make.
25. Notice of certain diseases :-
- a. Where any person employed in a mine contacts any disease notified by the Central Government in the official Gazette as a disease connected with mining operations the owner , agent or manager of the mine, as the case may be, shall send notice thereof to the Chief Inspector and to such other authorities in such form and within such time as may be prescribed.
 - b. If any medical practitioner attends on a person who is or has been employed in a mine and who is or is believed by the medical practitioner to be suffering from any disease notified under sub-section(1) the medical

practitioner shall without delay send a report in writing to the Chief Inspector stating --

- i. the name and address of the patient.
 - ii. The disease from which the patient is or is believed to be suffering, and
 - iii. The name and address of the mine in which the patient is or was last employed.
- c. Where the report under sub-section(2) is confirmed to the satisfaction of the Chief Inspector by the certificate of a certifying surgeon or otherwise that the person is suffering from a disease notified under sub-section (1), the Chief Inspector shall pay to the medical practitioner such fee as may be prescribed, and the fee so paid shall be recoverable as an arrear of land revenue from the owner, agent or manager of the mine in which the person contracted the disease.
- d. If any medical practitioner fails to comply with the provisions of sub-section(2), he shall be punishable with fine which may extend to fifty rupees.

26. Power to direct investigation of causes of diseases :--

- a. The Central Government may, if it considers it expedient to do so, appoint a competent person to inquire into and report it on any case where a disease notified under sub-section(1) of section 25 has been or suspected to have been contracted in a mine, and may also appoint one or more persons possessing legal or special knowledge to act as assessors in such inquiry.
- b. The provisions of sub-section (2) and (3) of section 24 shall apply to an inquiry under this section in the same manner as they apply to any inquiry under that section.

27. Publication of reports :-

The Central Government may cause any report submitted by a Committee under section 12 or any report or extracts from report submitted to it under section 26, and shall cause every report submitted by a Court of Inquiry under section 14 to be published at such time and in such manner as it may think fit.

CHAPTER – VI
HOURS AND LIMITATION OF EMPLOYMENT

28. Weekly day of rest :-

No person shall be allowed to work in a mine for more than six days in any one week.

29. Compensatory days of rest :-

- a. Where in pursuance of action under section 38 or as a result of exempting any mine or the persons employed therein is from the provisions of section 28, any person employed therein deprived of any of the weekly days of rest for which provision is made in section 28, he shall be allowed, within the month in which such days of rest was due to him or within the two months immediately following that month, compensatory days of rest equal in number to the days of rest of which he has been deprived.
- b. The Central Government may prescribe the manner in which the days of rest for which provision is made in sub-section (1) shall be allowed.

30. (1) No adult employed above ground in a mine shall be required or allowed to work for more than forty-eight hours in any week or for more than nine hours in any day:

Provided that, subject to the previous approval of the Chief Inspector, the daily maximum hours specified to this sub-section may exceed in order to facilitate the change of shifts.

(2) The periods of work of any such adult shall be so arranged that along with his interval for rest, they shall not in any day spread over more than twelve hours, and that he shall

not work for more than five hours continuously before he has had an interval for rest of at least half an hour:

Provided that the Chief Inspector may, for reasons to be recorded in writing and subject to such conditions as he may deem fit to impose, permit the spread over to extend over a period not exceeding fourteen hours in any day.

(3) Persons belonging to two or more shifts shall not be allowed to do work of the same kind above ground at the same time:

Provided that, for the purpose of this sub-section persons shall not be deemed to belong to separate shifts by reason only of the fact that they receive their intervals for rest at different times,

31. Hours of work below grounds:-

- a. No person employed below ground in a mine shall be allowed to work for more than forty-eight hours in any week or for more than eight hours in any day;

Provided that, subject to the previous approval of the Chief Inspector, the daily maximum hours specified in this sub-section may be exceeded in order to facilitate the change of shifts.

- b. No work shall be carried on below ground in any mine except by a system of Shifts so arranged that the period of work for each shift is not spread-over more than the daily maximum hours stipulated in sub-section (1)
- c. No person employed in a mine shall be allowed to be present in any part of a mine below ground except during the periods of work shown in respect of him in the register maintained under sub-section (4) of section 48.

32. Night shifts :-

Where a person employed in a mine works on a shift which extends beyond midnight –

- (a) for the purposes of sections 28 and 29, a weekly day of rest shall mean in his case a period of twenty-four consecutive hours beginning when his shift ends.

- (b) the following day for him shall be deemed to be the period of twenty four hours beginning when such shifts ends, and the hours he khas worked after midnight shall be counted in the previous day.

33. Extra wages for overtime:-

- a. Where in a mine a person works above ground for more than nine hours in any day or works below ground for more than eight hours in any day or works for more than forty-eight hours in any week. Whether above ground or below ground, he shall in respect of such overtime work be entitled to wages at the rate of twice his ordinary rate of wages the period of overtime work being calculated on a daily basis or weekly basis whichever is more favourable to him.
- b. Where any person employed in a mine is paid on piece rate basis, the time-rate shall be taken as equivalent to the daily average of his full-time earning for the days on which he actually worked during the week immediately preceeding the week in which overtime work has been done, exclusive of any overtime, and such time-rate shall be deemed to be the ordinary rate of wages of such person;

Provided that if such person has not worked in the preceeding week on the same or identical job, the time rate shall be based on the average for the day he had worked in the same week excluding the overtime or on the daily average of his earnings in any preceding week whichever is higher.

Explanation - For the purpose of this section. "ordinary rate of wages" shall have the same meaning as in the Explanation to sub-section (3) of section 8A."

c.

- d. The Central Government may prescribed the register to be maintained in a mine for the purpose of securing compliance with provisions of this section.

34. Prohibition of employment of certain persons :

No person shall be required or allowed to work in a mine if he has already been working in any other mine within the preceding twelve hours.

35. Limitation of daily hours of work including over-time work:

Save in respect of cases falling within clause (a) and clause (e) of section 39 no person employed in a mine shall be required or allowed to work in the mine for more than ten hours in any day inclusive of overtime

36. Notices regarding hours of work:

- a. The manager of every mine shall cause to be posted outside the office of the mine a notice in the prescribed form stating the time of the commencement and of the end of work at the mine and, if it is proposed to work by a system of relays, the time of the commencement and of the end of work for each relay.
- b. In the case of a mine at which mining operations commence after the commencement of this Act, the notice referred to in sub-section(1) shall be posted not less than seven days before the commencement of work.
- c. The notice referred to in sub-section(1) shall also state the time of the commencement and of the intervals for rest for persons employed above ground and a copy thereof shall be sent to the Chief Inspector, if he so requires.
- d. Where it is proposed to make any alteration in the time fixed for the commencement or for the end of work in the mine generally or for any relay or in the rest intervals fixed for persons employed above ground, an amended notice in the prescribed form shall be posted outside the office of the mine not less than seven days before the change is made, and a copy of such notice shall be sent to the Chief Inspector not less than seven days before such change.
- e. No person shall be allowed to work in a mine otherwise than in accordance with the notice required by sub-section (1).

37. Supervising staff :-

Nothing in section 28, section 30, section 31, section 34 or sub-section (5) of section 6 shall

apply to persons who may by rules be defined to be persons holding positions of supervision or management or employed in a confidential capacity.

38. Exemption from provisions regarding employment:-

- a. In case of an emergency involving serious risk to the safety of the mine or of persons employed therein or in case of an accident, where actual or apprehended, or in case of any act of God or in case of any urgent work to be done to machinery, plant or equipment of the mine as the result of break-down of such machinery, plant or equipment, the manager may, subject to the provisions of section 22 and section 22A and in accordance with the rules under section 39, permit persons to be employed in contravention of section 28, section 30, section 31, section 34 or sub-section(5) of section 36, work as may be necessary to protect the safety of the mine or of the persons employed therein:

Provided that in case of any urgent work to be done to machinery, plant or equipment under this section, the manager may take the action permitted by this section, although the production of mineral would thereby be incidentally affected, but any action so taken shall not exceed the limits necessary for the purpose of avoiding serious interference with the ordinary working of the mine.

- b. Every case in which action has been taken by the manager under sub-section(1), shall be recorded together with the circumstances relating thereto and a report thereof shall also be made to the Chief Inspector or the Inspector.

39. Power to make exempting rules:-

The Central Government may make rules providing for the exemption to such extent, in such circumstances and subject to such conditions as may be specified from (5) the provisions of sections 28, 30, 31, 34 or sub-section 50 of section 36 -

- (a) of all or any of the persons employed in a mine, where an emergency involving serious risk to the safety of the mine or of the persons employed therein is apprehended;
- (b) of all or any of the persons so employed in case of an accident, actual or

apprehended.

- (c) Of all or any of the persons engaged in work of a preparatory or complementary nature, which must necessarily be carried on for the purpose of avoiding serious interference with the ordinary working of the mine.
- (d) Of all or any of the persons engaged in urgent repairs and
- (e) Of all or any of the persons employed in any work, which for technical reasons must be carried on continuously.

40. Employment of persons below eighteen years of age :-

- a. After the commencement of the Mine (Amendment) Act, 1983, no person below eighteen years of age shall be allowed to work in any mine or part thereof.
- b. Notwithstanding anything contained in sub-section (1), apprentices and other trainees, not below sixteen years of age, may be allowed to work, under proper supervision, in a mine or part thereof by the manager:

Provided that, in the case of trainees, other than apprentices prior approval of the Chief Inspector or an Inspector shall be obtained before they are allowed to work.

Explanation - In this section and in section 43, "apprentice" means an apprentice as defined in clause (a) of section 2 of the Apprentices Act, 1961.

41. ***

42. ***

43. Power to require medical examination :-

- (1) Where an Inspector is of opinion that any person employed in a mine otherwise than as apprentice or other trainee is not an adult or that any person employed in a mine as an apprentice or other trainee is either below sixteen years of age or is no longer fit to work, the Inspector may serve on the manager of the mine a notice requiring that such person shall be examined by a certifying surgeon and such person shall be examined by a certifying surgeon and such person shall not, if the Inspector so directs, be employed or permitted to work in any mine until this has been so examined and has been certified that he is an adult or, if such

person is an apprentice or trainee that he is not below sixteen years of age and is fit to work.

- (2) Every certificate granted by a certifying surgeon on a reference under sub-section(1), shall, for the purpose of this Act, be conclusive evidence of the matters referred therein.

44.

45. Prohibition of the presence of persons below eighteen years of age in a mine :-

Subject to the provisions of sub-section(2) of section 40, after such date as the Central Government may by notification in the official Gazette, appoint in this behalf, no person below eighteen years of age shall be allowed to be present in any part of a mine above ground where any operation connected with or incidental to any mining operation is being carried on”

46. Employment of women :-

- (1) No woman shall, notwithstanding anything contained in any other law, be employed-
- (a) in any part of a mine which is below-ground.
 - (b) In any mine above ground except between the hours 6 am and 7 am.
- (2) Every woman employed in a mine above ground shall be allowed an interval of not less than eleven hours between the termination of employment on any one day and the commencement of the next period of employment.
- (3) Notwithstanding anything contained in sub-section(1) the Central Government may, by notification in the official Gazette, vary the hours of employment above ground of women in respect of any mine or class or description of mine, so however that no employment of any woman between the hours 10 am and 5 am is permitted thereby.

47. Disputes as to age Rep. By the Mine (Amendment) Act 1959 (62 of 1959), S.28.

48. Register of persons employed:-

- (1) For every mine there shall be kept in the prescribed form and place Register of all persons employed in the mine showing in respect of each such person –
- (a) the name of the employee with the name of his father or, of her husband, as the case may be, and such other particulars may be necessary for purpose of

- identification,
- (b) the age and sex of the employee;
 - (c) the nature of employment (whether above ground or below ground, and if above ground, whether in opencast working or otherwise) and date of commencement thereof;
 - (d)
 - (e) Such other particulars as may be prescribed, and the relevant entries shall be authenticated by the signature or the thumb impression of the person concerned,
- (2) The entries in the register prescribed by sub-section(1) shall be such that workers working in accordance there with would not be working in contravention of any of the provisions of this Chapter.
- (3) No person shall be employed in a mine until the particulars required by sub-section
- (1) have been recorded in the register in respect of such person and no person shall be employed except during the period of work shown in respect of him in register.
- (4) For every mine other than a mine which for any special reason to be recorded, is exempted by the Central Government by general or special order, there shall be kept in the prescribed form and place separate registers showing in respect of each person employed in the mine:-
- (a) below ground
 - (b) above ground in opencast workings, and
 - (c) above ground in other cases :- (i) the name of the employees;
 - (ii) the class or kind of his employment
 - (iii) where work is carried on by a system of relays, the shift to which he belongs and the hours of the shift.
- (5) The register of persons employed below ground referred to in-sub section (4) shall show at any moment the name of every person who is then present below ground in the mine.

- (6) No person shall enter any opencast working or any working below ground unless he has been permitted by the manager or is authorised under this Act or any other law to do so.

CHAPTER – VII LEAVE WITH WAGES

49. Application of Chapter

The provisions of this Chapter shall not operate to the prejudice of any right to which a person employed in a mine may be entitled under any other law or under the terms of any award, agreement or contract of service.

Provided that if such award, agreement or contract of service, provides for a longer annual leave with wages than that provided in this Chapter, the quantum of leave, which the person employed shall be entitled to, shall be in accordance with such award, agreement or contract of service but leave shall be regulated in accordance with the provisions of section 50 to 56 (both inclusive) with respect of matters not provided for in such award, agreement or contract of service.”

50. Leave defined :

For the purposes of this Chapter leave shall not include weekly days of rest or holidays or festivals or other similar occasions whether occurring during or at either end of the period.

51. Calendar year defined :

For the purpose of this Chapter a calendar year shall mean the period of twelve months beginning with the first day of January in any year.

52. Annual leave wages :-

- (1) Every person employed in a mine who has completed a calendar year's service therein shall be allowed, during the subsequent calendar year leave with wages, calculated –
- (a) in the case of a person employed below ground, at the rate of one day for every fifteen days of work performed by him, and

- (b) in any other case, at the rate of one day for every twenty days of work performed by him.
- (2) A calendar year's service referred to in sub-section(1) shall be deemed to have completed:-
- (a) in the case of a person employed below ground in a mine, if he has during the calendar year put in not less than one hundred and ninety attendances at the mine; and
 - (b) in the case of any other person, if he has during the calendar year put in not less than two hundred and forty attendances at the mine.

Explanation – For the purpose of this sub-section :-

- (a) any days of lay-off by agreement or contract or as per missible under the standing order:
- (b) in the case of a female employee, maternity leave for any number of days not exceeding twelve weeks; and
- (c) the leave earned in the year prior to that in which the leave is enjoyed:

shall be deemed to be the days on which the employee has worked in mine for the purpose of computation of the attendances but he shall not earn leave for these days.

- (3) A person whose service commences otherwise than on the first day of January shall be entitled to leave with wages in the subsequent calendar year at the rates specified in sub-section(1), if –
- (a) in the case of a person employed below ground in a mine, he has put in attendances for not less than one half of the total number of days during the remainder of the calendar year: and
 - (b) in any other case, he has put in attendances for not less than two-thirds of the total number of days during the remainder of the calendar year.
- (4) Any leave not taken by a person to which he is entitled in any one calendar year under sub-section(1) or sub-section(3) shall be added to the leave to be allowed to him under sub-section(1) during the succeeding calendar year.

Provided that the total number of days of leave which may be accumulated by any such person shall not at any one time exceed thirty days in all.

Provided further than any such person who has applied for leave with wages but has not been given such leave in accordance with sub-section(6) shall be entitled to carry forward the unavailed leave without any limit.

- (5) Any such person may apply in writing to the manager of the mine not less than fifteen days before the day on which he wishes his leave to begin, for all leave or any portion thereof then allowable to him under sub-section (1), (3) and (4).

Provided that the number of times in which leave may be taken during any one calendar year shall not exceed three.

- (6) An application for such leave made in accordance with sub-section (5) shall not be refused unless the authority empowered to grant the leave is of opinion that owing to the exigencies of the situation the leave should be refused.
- (7) If a person employed in a mine wants to avail himself of the leave with wages due to him to cover a period of illness he shall be granted such leave even if the application for leave is not made within the time specified in sub-section(5).
- (8) If the employment of a person employed in a mine is terminated by the owner, agent or manager of the mine before he has taken the entire leave to which he is entitled up to the day of termination of his employment, or if such person having applied for and having not been granted such leave, quits his employment before he has taken the leave, the owner, agent or manager of the mine shall pay him the amount payable under section 53 in respect of the leave not taken and such payment shall be made where the employment of the person is terminated by the owner, agent or manager, before the expiry of the second working day after such termination, and where a person himself quits his employment, on or before the next pay day.
- (9) The unavailed leave of a person employed in mine shall not be taken into consideration in computing the period of any notice required to be given before the termination of his employment.
- (10) Where the person employed in a mine is discharged or dismissed from service

or quits his employment or is superannuated or dies while in service, he or his heirs or wages in lieu of leave due to him calculated at the rate specified in sub-section (1), if-

- (a) in the case of a person employed below ground in a mine, he has put in attendance for not less than one-half of the total number of days from the date of his employment to the date of his discharge or dismissal or quitting of employment or superannuation or death, and
- (b) in any other case, he has put in attendance for not less than two thirds of the total number of days from the date of his employment to the date of his discharge or dismissal or quitting of employment or superannuation or death, and payment of such wages shall be made by the owner, agent or manager of the mine at the rate specified in section 53, where the person is discharged or dismissed from service or quits employment or is superannuated, before the expiry of the second working day after such discharge dismissal, quitting of employment or superannuation, as the case may be and where the person employed dies while in service within a period of two months of his death.”

Explanation – For the purpose of sub-section (1), and (10), any fraction of leave of half day or more, half a day shall be omitted.

53. Wages during leave period :-

For the leave allowed to a person employed in a mine under section 52, he shall be paid at a rate equal to the daily average of his total full-time earnings for the days on which he was employed during the month immediately preceding his leave, exclusive of any overtime wages and bonus but inclusive of any dearness allowance and compensation in cash including such compensation, if any accruing through the free issue of foodgrains and other articles as persons employed in the mine may, for the time being, be entitled to:

Provided that if no such average earnings are available, then the average shall be computed on the basis of the daily average of the total full time earnings of all persons similarly employed for the same months.

54. Payment in advance in certain cases:-

Any person employed in a mine who has been allowed leave for not less than four days shall before his leave begins be paid the wages due for the period of the leave allowed.

55. Mode of recovery of unpaid wages –

Any sum required to be paid by the owner, agent or manager of a mine under this Chapter but not paid by him shall be recoverable as delayed wages under the provisions of the payment of Wages Act. 1936.

CHAPTER – VIII

REGULATIONS, RULES AND BYE-LAWS

56. Power to exempt mines:-

Where the Central Government is satisfied that the leave rules applicable to persons employed in any mine provide benefits which in its opinion are not less favourable than those provided for in this Chapter it may, by order in writing and subject to such conditions as may be specified therein exempt the mine from all or any of the provisions of the Chapter.

57. Power of Central Government to make regulations:-

The Central Government may, by notification in the official Gazette make regulations consistent with this Act for all or any of the following purposes, namely:

- (a) for prescribing the qualifications required for appointment as Chief Inspector or Inspector;
- (b) for prescribing and regulating the duties and powers of the Chief Inspector and of Inspectors in regard to the inspection of mines under this Act;
- (c) for prescribing the duties of owners, agents and managers of mines and persons acting under them and for prescribing the qualifications (including age) of agents and managers of mines and of persons acting under them.
- (d) for requiring facilities to be provided for enabling managers of mines and

- other persons acting under them to efficiently discharge their duties.
- (e) for regulating the manager of ascertaining, by examination or otherwise, the qualification of managers of mines and persons acting under them and the granting and renewal of certificates of competency.
 - (f) for fixing the fees, if any, to be paid in respect of such examinations and of the grant and renewal of such certificates.
 - (g) For determining the circumstances in which and the conditions in respect to which it shall be lawful for more mines than one to be under a single manager, or for any mine or mines to be under a manager not having the prescribed qualifications.
 - (h) For providing for inquiries to be made under this including any inquiry relating to misconduct or incompetence on the part of any person holding a certificate under this Act and for the suspension or cancellation of any such certificate and for providing where ever necessary, that the person appointed to hold an inquiry shall have all the powers of a civil court under the Code of Civil Procedure 1908, (V of 1908) for the purpose of enforcing the attendance of witnesses and compelling the production of documents and material objects.
 - (i) For regulating, subject to the provisions of the Indian Explosives Act, 1884, (IV of 1884) and of any rules made thereunder, the storage, conveyance and use of explosive,
 - (j) For prohibiting, restricting or regulating the employment of women in mines or in any class of mines of on particular kind of labour which are attended by danger to the life, safety, or health of such persons and for limiting the weight of any single load that may be carried by any such person;
 - (k) For providing for the safety of the persons employed in a mine, their means of entrance thereinto and exit therefrom the number of shafts or outlets to be furnished; and the fencing of shafts, pits, outlets, pathway and subsidences;
 - (l) For prohibiting the employment in a mine either as manager or in any other specified capacity of any person except persons paid by the owner

- of the mine and directly answerable to the owner or manager of the mine;
- (m) For providing for the safety of the roads and working places in mines, including the sitting; maintenance and extraction or reduction of pillars or blocks of minerals and the maintenance of sufficient barriers between mine and mine;
 - (n) For the inspection of workings and sealed off fire-areas in a mine, and for the restriction of workings in the vicinity of the sea or any lake or river or any other body of surface water, whether natural or artificial, or of any public road or building and for requiring due precaution to be taken against the irruption or inrush of water or other matter into, outbreak of fire in or premature collapse of any workings;
 - (o) For providing for the ventilation of mines and the action to be taken in respect of dust fire, and inflammable and noxious gases, including precautions against spontaneous combustion, under ground fire and coal dust;
 - (p) For regulating subject to the provisions of the Indian Electricity Act, 1910(X of 1910) and of any rules made thereunder, the generation, storage, transformation transmission and use of electricity in mines and for providing for the care and the regulation of the use of all electrical apparatus and electrical cables in mines and of all other machinery and plant therein.
 - (q) For regulating the use of machinery in mines, for providing for the safety of persons employed on or near such machinery and on haulage roads and for restricting the use of certain classes of locomotives underground;
 - (r) For providing for proper lighting of mines and regulating the use of safety lamps therein and for the search of persons entering a mine in which safety lamps are in use;
 - (s) For providing against explosions or ignitions of inflammable gas or dust or irruption or accumulations of water in mines and against danger arising therefrom and for prohibiting restricting or regulating the extraction of minerals in circumstances likely to result in the premature collapse of workings or to result in or to aggravate collapse of workings or irruption of water or ignitions in mines;

- (t) For prescribing under clause(g) of sub-section(1) of section 2, the types of accidents and for prescribing the notices of accidents and dangerous occurrences and the notices reports and returns of mineral output; persons employed and other matters provided for by regulations to be furnished by owners, agents and managers of mines, and for prescribing the forms of such notices, returns and reports, the persons and authorities to whom they are to be furnished the particulars to be contained in them and the time within which they are to be submitted;
- (u) For requiring owners, agents and managers of mines to have fixed boundaries for the mine, for prescribing the plans and sections and field notes connected therewith to be kept by them and the manager and places in which such plans, section and field notes are to be kept for purposes of record for the submission of copies thereof to the Chief Inspector; and for requiring making of fresh surveys and plans by them and in the event of non-compliance, for having the survey made and plans prepared through and other agency and for the recovery of expenses thereof in the same manner as an arrear of land revenue:
- (v) For regulating the procedure on the occurrence of accidents or accidental explosions or ignitions in or about mines for dealing effectively with the situation.
- (w) For prescribing the form of, and the particulars to be contained in the notice to be given by the owner, agent or manager of a mine under section 16;
- (x) For prescribing the notice to be given by the owner, agent or manager of mining before mining operations are commenced at or extended to any point within forty-five metres of any railway subject to the provisions of the Indian Railways Act, 1890, (IX of 1890) of any public roads or other works, as the case may be which are maintained by the Government or any local authority.

- (y) For the protection from injury, in respect of any mine when the workings are discontinued, property vested in the Government or any local authority or railway company as defined in the Indian Railways Act, 1890.
- (yy) for requiring protective works to be constructed by the owner, agent or manager or a mine before the mine is closed, and in the event of non-compliance, for getting such works executed by any other agency, and for recovering the expenses, thereof from such owner in the same manner as an arrear of land revenue;
- (z) for providing for the appointment of Courts of Inquiry under quarry, incline, shaft pit or outlet, whether the same is being worked or not or any dangerous or prohibited area, subsidence haulage, tramline or pathway, where such fencing is necessary for the protection of the public; and
- (zz) any other matter which has to be or may be prescribed

58. Power of Central Government to make rules –

The Central Government may, by notification in the official Gazette, make rule consistent with this Act for all or any of the following purposes, namely -

- (a) for providing the term of office and other conditions of service of and the manner of filling vacancies among, the members of a Committee and for regulating the procedure to be followed by a Committee for transacting its business.”
- (b) For prescribing the form of the register referred to in sub-section (3) of section 23;
- (c) For providing for the appointment of Courts of Inquiry under section 24, for regulating the procedure and powers of such Courts for the payment of travelling allowance to the members, and for the recovery of the expenses of such courts including any other expenses connected with the inquiry in the same manner as an area of land revenue from the manager, owner or agent of the mine concerned;
- (cc) for providing the inspection of mines to be carried out on behalf of the persons employed therein by a technical expert (not less than an overman in

status) the facilities therefore, the frequency at which and the manner in which such inspections are to be carried out and the manner in which reports of such inspections are to be made.

(d) for requiring the maintenance of the mines wherein any women employed or were employed on any day of the preceding twelve months of suitable rooms to be reserved for the use of children under the age of six years belonging to such women, and for prescribing, either generally or with particular reference to the number of women employed in the mine, the number of standards of such rooms, and the nature and extent of the amenities to be provided and the supervision to be exercised therein;

(e) for requiring the maintenance at or near pitheads of bathing places equipped with shower baths and of locker rooms for the use of men employed in mines and of similar and separate places and rooms for the use of women in mines where women are employed and for prescribing either generally or with particular reference to the numbers of men and women ordinarily employed in a mine, the number and standards of such places and rooms.

(f) For prescribing the standard of sanitation to be maintained and the scale of latrine and urinal accommodation to be provided at mines, the provision to be made for the supply of drinking water.

(ff) for providing for the supply and maintenance of medical appliances and comforts and for prescribing the contents and number of first-aid boxes and cupboards, the training in first-aid work, the size and equipment of first-aid rooms and staff in charge thereof and the arrangements for conveyance of injured persons to hospitals or dispensaries;

(fff)for requiring the imparting of practical instruction to, or the training of, persons employed or to be employed in mines otherwise than in a position of such instruction and training;

(g) for prohibiting the possession or consumption of intoxicating drinks or drugs in a mine and the entry or presence therein of any person in a

- drunken state;
- (h) for prescribing the form of notices required under section 36, and for requiring such notices to be posted also in specified languages;
 - (i) for defining the person who shall, for the purpose of section 37, be deemed to be persons holding positions of supervision of management employed in a confidential capacity;
 - (j) for prohibiting the employment in mines of persons or any class of persons who have not been certified by a qualified medical practitioner to have completed their fifteenth year, and for prescribing the manner and the circumstances in which such certificates may be granted and revoked;
 - (k)
 - (kk) for requiring persons employed or seeking employment at mines to submit themselves for medical examination and for prohibiting on medical grounds the employment of any person at a mine either absolutely or in a particular capacity or in particular work;
 - (l) for prescribing the form of registers required by section 48 and the maintenance and form of registers for the purposes of Chapter VII;
 - (m) for prescribing abstracts of this Act and of the regulations and rules and the language in which the abstracts and bye-laws shall be posted as required by section 61 and 62;
 - (n) for requiring notices, returns and reports in connection with any matters dealt with by rules to be furnished by owners; agents and managers of mines and for prescribing the forms of such notices returns and reports, the persons and authorities to whom they are to be furnished, the particulars to be contained in them, and the times within which they are to be submitted;
 - (o) for requiring the provision and maintenance in mines; wherein more than fifty persons are ordinarily employed, of adequate and suitable shelters for taking food with provisions for drinking water.
 - (p) For requiring the provision and maintenance in any mine specified in this behalf by the Chief Inspector or Inspector wherein more than two hundred and fifty persons are ordinarily employed of a canteen or

- canteen for the use of such persons;
- (q) For requiring the employment in every mine wherein five hundred or more persons are ordinarily employed of such number of welfare officers as may be specified and for prescribing the qualifications and the terms and conditions of, and the duties to be performed by, such welfare officers;
 - (r) For requiring the establishment of rescue stations for specified mines or groups of specified mines or for all mines in a specified area and for prescribing how and by whom such stations shall be established;
 - (s) For providing for the management of rescue stations
 - (sa) for providing for the standards of physical fitness and other qualifications of the persons constituting rescue brigades;
 - (sb) prescribing the places of residence of the persons constituting rescue brigades;
 - (t) for prescribing the position, equipment, control, maintenance and functions of rescue stations;
 - (u) for providing for the levy and collection of a duty of excise (at a rate not exceeding twenty five paise per tonne) on coke and coal produced in and despatched from mines specified under clause (r), the creation of a rescue stations fund for such mines, the crediting to such fund of such sums of money as the Central Government may, after due appropriation made by Parliament by law in this behalf, provide from out of the proceeds of such cess credited to the Consolidated Fund of India, the manner in which the money from such fund shall be utilised and the administration of such fund;
 - (v) for providing for the formation, training composition and duties of rescue brigades and generally for the conduct of rescue work in mines;
 - (vv) for providing for the constitution of safety Committees for specified mine or groups of specified mines or for all mines in a specified area for promoting safety and for laying down the composition, manner of formation and functions of such safety Committees and, “
 - (w) generally to provide for any matter not provided for by this Act or the regulations, provision for which is required in order to give effect to this

Act.

59. Prior publication of regulations and rules –

- (1) The power to make regulations and rules conferred by section 57 and 58 is subject to the condition of the regulations and rules being made after previous publication.
- (2) The date to be specified in accordance with clause (3) of section 23 of the General Clauses Act, 1897, (IX of 1897) as that after which a draft of regulations or rules proposed to be made will be taken under consideration, shall not be less than three months from the date on which the draft of the proposed regulations or rules published for general information.
- (3)
- (4) no regulation or rule shall be made unless the draft thereof has been referred to the Committee constituted under-sub-section(1) of section 12 and unless that Committee has had a reasonable opportunity of reporting as to the expediency of making the same and as to the suitability of its provisions;
- (5) Regulation and rules shall be published in the official Gazette and, on such publication, shall have effect as if enacted in this Act.
- (6) The provisions of sub-section (1), (2) and (4) shall not apply to the first occasion on which rules referred to in clause (d) or clause (e) section 58 are made.
- (7)

60. Power to make regulations without previous Publications –

Notwithstanding anything contained in sub-section (1), (2) and (4) of section 59, regulations under section 57 may be made without previous publication and without reference to the Committee, constituted under sub-section (1) of section 12, of the Central Government is satisfied that for the prevention of apprehended danger or the speedy remedy of conditions likely to cause danger it is necessary in making such regulations to dispense with the delay that would result from such publication and reference:

Provided that any regulation so made shall be send to the said committee for information and shall not remain in force for more than one year from the making thereof.

- (1) The owner, agent or manager of a mine may, and shall, if called upon to do so by the Chief Inspector or Inspector, frame and submit to the Chief Inspector or

Inspector a draft of such bye-laws, not being inconsistent with this Act or any regulations or rules for the time being in force, governing the use of any particular machinery or the such adoption of a particular method of working the mine as owner, agent or manager may deem necessary to prevent accidents and provide for the safety, convenience and discipline of the persons employed in the mine.

- (2) If any such owner, agent or manager –
 - (a) falls to submit within two months a draft of bye-laws after being called upon to do so by the Chief Inspector or Inspector, or
 - (b) submits a draft of bye-laws which is not in the opinion of the Chief Inspector or Inspector sufficient, the Chief Inspector or Inspector may –
 - (i) propose a draft of such bye-laws as appear to him to be sufficient, or
 - (ii) propose such amendment in any draft submitted to him by the owner, agent or manager as will, in his opinion, render it sufficient, and shall send such draft or bye-laws or draft amendment to the owner agent or manager as the case may be, for consideration.
- (3) If within a period of two months from the date on which any draft bye-laws or draft amendments are sent by the Chief Inspector or Inspector to the owner, agent or manager under the provisions of sub-section(2), the Chief Inspector or Inspector and the owner, agent or manager are unable to agree as to the terms of the bye-laws to be made under sub-section(1) the Chief Inspector or Inspector shall refer the draft bye-laws for settlement to the Committee constituted under sub-section(1) of section 12,
- (4) (a) When such draft bye-laws have been agreed to by the owner, agent or manager and the Chief Inspector or Inspector or, which they are unable to agree, have been settled by the Committee constituted under sub-section (1) of section 12, a copy of the draft bye-laws shall be sent by the Chief Inspector or Inspector to the Central Government for approval.
 - (b) The Central Government may make such modification of the draft bye-laws as it thinks fit.
 - (c) Before the Central Government approves the draft bye-laws, whether with or without modifications there shall be published in such manner as the Central Government may think best adopted for informing the persons affected, notice

to the proposal to make the bye-laws and of the place where copies of the draft bye-laws may be obtained, and of the time (which shall not be less than thirty days within which any objections with reference to the draft bye-laws, made by or on behalf of persons affected should be sent in writing and shall state –

(d) Every objection shall be in writing and shall state –

(i) the specific grounds of objections and

(ii) the omissions, additions or modifications asked for

(e) The Central Government shall consider any objection made within the required time by or on behalf of persons appearing to it to be affected and may approve the bye-laws either in the form in which they were published or after making amendments thereto as it thinks fit.

(5) The bye-laws, when so approved by the Central Government shall have effect as if enacted in this Act, and the owner, agent or manager of the mine shall cause a copy of the bye-laws, in English and in such other language or languages as may be prescribed, to be posted up in some conspicuous place at or near the mine, where the bye laws may be conveniently read or seen by the persons employed; as often as the same become defaced obliterated or destroyed, shall cause them to be renewed with all reasonable despatch.

(6) The Central Government may, order in writing rescind the whole or in part, any bye-laws so made, and thereupon such bye-laws shall cease to have effect accordingly.

61 A. Laying of regulations, rules and bye-laws before parliament.

Every regulation made under section 57, every rule made under section 58 and every bye-law made under section 61d shall be laid as soon as may be after it is made before each house of parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session aforesaid, both houses agree in making any modification in the regulation, rule or bye-law should not be made, the regulation, rule or bye-law shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or amendment shall be without prejudice to the

validity of anything previously done under that regulation, rule or bye-law, as the case may be.”

62. Posting of abstracts from Act, regulations etc.

There shall be kept posted up at or near every mine in English and in such other language or languages as may be prescribed, the prescribed abstracts of the Act and of the regulations and rules.

CHAPTER – IX PENALTIES AND KPROCEDURE

63. Obstruction –

- (1) Whoever obstructs the Chief Inspector and inspector or any person authorised under section 8 in the discharge of his duties under this Act. refuses or wilfully neglects to afford the Chief Inspector, Inspector or such person any reasonable facility for making any entry, inspection, examination or inquiry authorised by or under this Act in relation to any mine shall be punishable with imprisonment of a term which may extend to three months, or with fine which may extend to five hundred rupees, or both.
- (2) Whoever refuses to produce on the demand of the Chief Inspector or any registers or other documents kept in pursuance of this Act. or prevents or attempts to prevent or does any thing which he has reason to believe to be likely to prevent any person from appearing before or being examined by an inspecting officer acting in pursuance of his duties under this Act, shall be punishable with fine which may extend to three hundred rupees.

64. Falsification of records –

Whoever –

- (a) counterfoils, or knowingly makes a false statement in any certificate, or any official copy of a certificate, granted under this Act, or
- (b) knowingly uses as true any such counterfeit or false certificate, or
- (c) makes or produces or uses any false declaration, statement or evidence knowing the same to be false for the purpose of obtaining for himself or for any other person a certificate or the renewal of a certificate under this Act, or any employment in a mine, or
- (d) falsifies any plan, section, register or record, the maintenance of which is required

by or under this Act or produces before any authority such false plan, section, register or record, knowing the same to be false or;

- (e) makes, gives or delivers any plan, return, notice, record or report containing a statement, entry or detail which is not to the best of his knowledge or belief true, 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.

65. Use of false certificates of fitness -

Whoever knowingly uses or attempts to use as a certificate of fitness granted to himself under section 43 a certificate granted to another person under that section, or having been granted a certificate of fitness to himself under that section, knowingly allows it to be used, or allows an attempt to use it to be made by another person shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

66. Omission to furnish plans etc.

Any person who, without reasonable excuse the burden of providing which shall lie upon him, omits to make or furnish in the prescribed form or manner or at or within the prescribed time any plan, section return, notice, register; record or report required by or under this Act to be made or furnished shall be punishable with fine which may extend to one thousand rupees.

67. Contravention of provisions regarding employment of labour -

Whoever, save as permitted by section 38, contravenes any provision of this Act or of any regulation rule, bye-law or of any order made thereunder prohibiting restricting or regulating the employment or presence of persons in or about a mine shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

68. Penalty for employment of persons below eighteen years of age-

If a person below eighteen years of age is employed in a mine in contravention of section 40, the owner, agent or manager of such mine shall be punishable with fine which may extend to five hundred rupees.

69. Failure to appoint manager -

Whoever, in contravention of the provisions of section 17, fails to appoint a manager shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to two thousand and five hundred rupees, or both.

70. Notice of accidents :

- (1) Whoever in contravention of the provision of sub-section (1) of section 23 fails to give notice of any accidental occurrence or to post a copy of the notice on the special notice board referred to in that sub-section and to keep in there for the period specified shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupee or with both.
- (2) Whoever in contravention of a direction made by the Central Government under sub-section (3) fails to record in the prescribed register to give notice of any accidental occurrence shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to three months or with fine which may extend to five hundred rupees, or with both.

71. Owner etc. to report to Chief Inspector in certain cases-

Where the owner, agent or manager of a mine, as the case may be, has taken proceeding under this Act against any person employed in or about a mine in respect of an offence under this Act, he shall within twenty-one days from the date of the judgement or order of the court report the result thereof to the Chief Inspector.

72. Obligations of persons employed in a mine

– No person employed in a mine shall --

- (a) willfully interfere with or misuse any appliance convenience of other thing provided in a mine for the purpose of securing the health, safety or welfare of the person employed therein.
- (b) willfully and without reasonable cause do any thing likely to endanger himself of others;
- (c) willfully neglect to make us of any appliance or other thing provided in the mine for the purpose of securing the health or safety of the persons employed therein.

72A. Special provision for contravention of certain regulations -

Whoever contravenes any provision of any regulations or of any bye-law or any order made thereunder, relating to matters specified in clauses (d),(l),(m),(n),(o),(p),(r), (s) and (u) of section 7 shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to two thousand rupees or with both.

72B. Special provision of contravention of order under section 22.

Whoever continues to work a mine in contravention of any order issued under sub-section (1A), sub-section (2) or sub-section(3) of section 22 or under sub-section (2) of section 22 shall be punishable with imprisonment for a term which may extend to two years and shall also be liable to fine which may extend to two years and shall also be liable to fine which may extend to five thousand rupees.

Provided that in the absence of special and adequate reasons to the contrary to be recorded in writing in the judgement of the court, such fine shall not be less than two thousand rupees.

72C. Special provision for contravention of law with dangerous results-

(1) Whoever contravenes any provision of the Act or of regulation, rule or bye-law or of any order made under (1A) or sub-section (2) of section (3) of section 22 for under sub-section (2) of section 22A shall be punishable -

- (a) If such contravention results in loss of life, with imprisonment which may extend to two years, or with fine which may extend to five thousand rupees, or with both, or
- (b) If such contravention results in serious bodily injury with imprisonment which may extend to one years, or with fine which may extend to three thousand rupees, or with both; or
- (c) If such contravention otherwise causes injury or danger to persons employed in the mine or other persons in or about the mine, with imprisonment which may extend to three months or with fine which may extend to one thousand rupees, or with both.

Provided that in the absence of special and adequate reasons to the contrary to be recorded in writing in the judgement of the court, such fine, in the case of a

contravention referred to in clause (a), shall not be less than three thousand rupees.

(2) Where a person having been convicted under this section is again convicted thereunder, shall be punishable with double the punishment provided by sub-section (1).

(3) Any court imposing or confirming in appeal, revision or otherwise a sentence of fine passed under this section may, when passing judgement, order the whole or any part of the fine recovered to be paid as compensation to the person injured or, in the case of his death, to his legal representative;

Provided that if the fine is imposed in a case which is subject to appeal no such payment shall be made before the period allowed for presenting the appeal has elapsed of, if an appeal has been presented, before the decision of the appeal.

73. General provision of disobedience of others.

Whoever contravenes any provision of this Act or of any regulation, rule or bye-laws or of any order made thereunder for the contravention of which no penalty is herein before provided shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

74. Enhanced penalty after previous conviction -

If any person who has been convicted for an offence punishable under any of the foregoing provisions (other than section 72B and 72C) is again convicted for an offence committed within two years of the previous conviction and involving a contravention of the same provision, he shall be punishable for each subsequent conviction with double the punishment to which he would have been liable for the first contravention of such provision.

75. Prosecution of owner, agent or manager -

No prosecution shall be instituted against any owner, agent or manager for any offence under this Act except at the instance of the Chief Inspector or of the District Magistrate or of an Inspector authorised in this behalf by general or special order in writing by the Chief Inspector.

Provided that the Chief Inspector or the District Magistrate or the Inspector as so authorised

shall, before instituting such prosecution, satisfy himself that the owner, agent or manager had failed to exercise all due diligence to prevent the commission of such offence.

Provided further that in respect of an offence committed in the course of the technical direction and management of a mine, the District Magistrate shall not institute any prosecution against an owner, agent or manager without the approval of the Chief Inspector.

76. Determination of owner in certain cases -

Where the owner of a mine is firm or other association of individuals, all, or any of the partners or members thereof or where the owner of a mine is a company; all or any of the directors thereof where the owner of a mine is a Government or any local authority, as the case may be, to manage the affair of the mine, may be prosecuted and punished under this Act for any offence for which the owner of a mine is punishable:

Provided that where a firm, association or company has given notice in writing to the Chief Inspector that it has nominated -

- (a) in the case of a firm, any of its partners or managers;
- (b) in the case of an association, any of its members or managers;
- (c) in the case of a company any of its directors or managers.

Who is resident in each case in any place to which this act extends and who is in each case either in fact in charge of the management or holds the largest number of shares in such firm, association or company, to assume the responsibility of the owner or the mine for the purposes of this Act, such partner, member, director or manager, as the case may be, shall, so long as he continues to so reside and be in charge or hold the largest number of shares as aforesaid, be deemed to be the owner of the purposes of this Act unless a notice in writing canceling his nomination or stating that he has ceased to be a partner, member, director or manager as the case may be, is received by the Chief Inspector.

Explanation :- Where firm, association or company has different establishment or branches or different units in any establishment or branch, different persons may be nominated under this proviso in relation to different establishment or branches or units and the person so nominated shall, with respect only to the

establishment, branch or unit in relation to which he has been nominated, deemed to be the owner of the mine.

77. Exemption of owner, agent or manager in certain cases -

Where the owner, agent or manager of a mine, accused of an offence under this Act, alleges that another person is the actual offender, he shall be entitled, upon complaint made by him in this behalf and on his furnishing the known address of the actual offender and on giving to the prosecutor not less than three clear days notice in writing of his intention to do so, to have that other persons brought before the court on the date appointed for the hearing of the case; and if after the commission of the offence has been proved, the owner, agent or manager of the mine, as the case may be proves to the satisfaction of the court -

- (a) that he has used due diligence to enforce the execution of the relevant provisions of this act, and
- (b) that the owner person committed the offence in question without his knowledge, consent or connivance, the said other person shall be convicted of the offence and shall be liable to the like punishment as if he were the owner, agent or manager of the mine and the owner, agent or manager, as the case may be, shall be acquitted,

Provided that –

- (a) the owner, agent or manager of the mine as the case may be, may be examined on oath and his evidence and that of any witness who he calls in support shall be subject to cross examination by or on behalf of the person he alleges as the actual offender and by the prosecutor.
- (b) If in spite of due diligence the person alleged as the, actual offender cannot be brought before the court on the date appointed for the hearing of the case, the court shall adjourn from the hearing thereof from time to time so however that the total period of such adjournments does not exceed three months, and if by the end of the said period the person alleged as the actual offender cannot be brought before the court, the court shall proceed to hear the case against the owner, agent or manager as the case may be.

78. Power of court to make orders -

- (1) Where the owner, agent or manager of mine is convicted of an offence punishable under this act, the court may in addition to awarding him any punishment by order in writing require him within a period specified in the order which may be extended by the court from time to time on application made in this behalf to take such measures as may be so specified for remedying the matters in respect of which the offence was committed.
- (2) Where an order is made under sub-section(1), the owner, agent or manager of the mine, as the case may be, shall not be liable under this Act in respect of the continuance of the offence during the period or extended period, if any but if on the expiry of such period or extended period the order of the court has not been fully complied with the owner, agent or manager, as the case may be, shall be deemed to have committed a further offence and shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one hundred rupees for every day after such expiry on which the order has not been complied with, or with both.

79. Limitation of prosecutions -

No court shall take cognizance of any offence under this Act, unless complaint thereof has been made –

- (i) within six months of the date on which the offence is alleged to have been committed, or
- (ii) within six months of the date on which the alleged commission of the offence came to the knowledge of the Inspector, or
- (iii) In any case in which the accused is or was a public servant and previous sanction of the Central Government or of the State Government or of any other authority is necessary for taking cognizance of the offence under any law for the time being in force, within three months of the date on which such sanction is received by the Chief Inspector; or
- (iii) in any case where a Court of inquiry has been appointed by the Central Government under section 24, within one year after the date of the publication of the report referred to in sub-section(4) of that section, whichever is later.

Explanation - For the purposes of this section –

- (a) In the case of continuing offence, the period of limitation shall be computed

- with reference to every point of time during which the offence continues,
- (b) Where for the performance of any act time has been extended under this Act, the period of limitation shall be computed from the expiry of the extended period.

80. Cognizance of offences –

No court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the first class shall try any offence under this Act which is alleged to have been committed by any owner, agent or manager of a mine or any offence which is by this Act made punishable with imprisonment.

80A.

81. Reference to Committee in lieu of prosecution in certain cases -

- (1) If the court trying any case instituted at the instance of the Chief Inspector or the District Magistrate or of an Inspector under this Act is of opinion that the case is one which should, in lieu of a prosecution, be referred to a Committee it may stay the criminal proceedings and report the matter to the Central Government with a view to such reference being made.
- (2) On receipt of a report under sub-section(1) the Central Government may refer the case to a Committee or may direct the court to proceed with the trial.

CHAPTER - X MISCELLANEOUS

62. Decision of question whether a mine is under this Act –

If any question arises as to whether any excavation or working or premises in or adjacent to and belonging to a mine on which any process ancillary to the getting, dressing or preparation for sale or minerals or of coke is being carried on in a mine within the meaning of this Act, the Central Government may decide the question, and a certificate signed by a Secretary to the Central Government shall be conclusive on the point.

63. Power to exempt from operation of Act.

- (1) The Central Government may by notification in the official Gazette, exempt either absolutely or subject to any specified conditions any local area or any mine or group or class of mines or any part of a mine or any class of persons

from the operation of all or any of the provisions of this Act or the regulations, rules or bye-laws;

Provided that no local area or mine or group or class of mines shall be exempted from the provisions of section 40 and 45 unless it is also exempted from the operation of all the other provisions of this Act.

(2) The Central Government may, by general or special order and subject to such restrictions as it may think fit to impose authorise the Chief Inspector or any other authority to exempt, subject to any specified conditions, any mine or part thereof from the operation of any of the provisions of the regulations, rules or bye-laws if the Chief Inspector or such authority is of opinion that the conditions in any mine or part thereof are such as to render compliance with such provision unnecessary or impracticable.

64. Power to alter or rescind any orders -

- (1) The Central Government may reverse or modify any order passed under this Act.
- (2) The Chief Inspector may for reasons to be recorded in writing, reverse or modify any order passed by him under this Act or under any regulation, rule or bye-law.
- (3) No order prejudicial to the owner, agent or manager of a mine shall be made under this section unless such owner, agent or manager has been given a reasonable opportunity of making representation.

65. Application of Act to mines belonging to Government -

This Act shall also apply to mines belonging to the Government.

85A. Persons required to give notice etc. legally bound to do so.

Every person required to give any notice or to furnish any information to any authority under this Act shall be legally bound to do so within the meaning of section 176 of the Indian Penal Code. (Act 45 of 1860)

85B. Signing of returns, notices etc. -

All returns and notices required to be furnished or given or communications sent by or on behalf of the owner of a mine in connection with the provisions of this Act or any regulation, rule, bye-law or any order made thereunder shall be signed by the owner, agent

or manager of the mine or by any person to whom power in this behalf has been delegated by the owner by a power of attorney.

85C. No fee or charge to be realised for facilities and conveniences -

No fee or charge shall be realised from any person employed in a mine in respect of any protective arrangements or facilities to be provided, or any equipment or appliances to be supplied under the provisions of this Act.

66. Application of certain provision of Act 63 of 1948 to mines -

The Central Government may by notification in the official Gazette, direct that the provisions of Chapter III and IV of the Factories Act, 1948 (63 of 1948) shall specified in the notification apply to all mines and the precincts thereof.

67. Protection of action taken in good faith -

No suit, prosecution or other legal proceeding whatever shall lie against any person for anything which is in good faith done or intended to be done under this Act.

68. Repeal of Act 4 of 1923 Rep by the Repealing and Amending Act. 1959 (36 of 1957) S.2 and Sch.1.

Transitory provision –

(1) As from the date of constitution of the Committee under sub-section(1) of section 12 of the principal Act as amended by this Act –

(i) any Mining Board constituted under section 12 of the principal Act and functioning as such on the aforesaid date shall stand dissolved;

(ii) the Chairman and members of any such Board, who on the aforesaid date are members of that Mining Board shall cease to hold office as such;

(iii) all proceedings pending on the aforesaid date in any Mining Board shall stand transferred to the said Committee which shall deal with them as if they had been pending therein,

(2) Anything done or any action taken before the aforesaid date by any Mining Board shall, so far as it is not inconsistent with any of the provisions of the Principal Act as amended by this Act be as valid and effective as if it had been done or taken by the Committee.

6.5. APPRENTICES ACT 1961

Learning Objectives

Industrial development of any nation depends on development of its human resource. Enhancement of skills is an important component of Human Resource Development. Training of apprentices in the actual workplace is necessary for the up gradation and acquisition of skills. The Apprentices Act, 1961 was enacted to regulate and control the programme of training of apprentices. The term apprentice means a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship. While, apprenticeship training means a course of training in any industry or establishment undergone in pursuance of a contract of apprenticeship and under prescribed terms and conditions which may be different for different categories of apprentices. The Act makes it obligatory on part of the employers both in public and private sector establishments having requisite training infrastructure as laid down in the Act. Every employer shall have the obligations in relation to an apprentice to provide the apprentice with training in his/ her trade in accordance with the provisions of the Act, and the rules made there under.

OBJECT AND SCOPE OF THE ACT

The Apprentices Act, 1961 was enacted with the objectives to regulate the programme of training of apprentices in the industry so as to conform to the prescribed training standards as laid down by the Central Apprenticeship Council; and to utilize fully the facilities available in industry for imparting practical training with a view to meeting the requirements of skilled manpower for industry. It extends to whole of India.

DEFINITIONS

Section 2 of the Act defines various terms used in the Act; Some of the definitions are given here under:

Apprentice means a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship. { Section 2(aa)}

Apprenticeship training means a course of training in any industry or establishment undergone in pursuance of a contract of apprenticeship and under prescribed terms and conditions which may be different for different categories of apprentices. { Section 2 (aaa)}

Designated trade means any trade or occupation or any subject field in engineering or technology or any vocational course which the Central Government, after consultation with the Central Apprenticeship Council, may, by notification in the Official Gazette, specify as a designated trade for the purposes of this Act. { Section 2 (e)}

Employer means any person who employs one or more other persons to do any work in an establishment for remuneration and includes any person entrusted with the supervision and control of employees in such establishment. {Section 2 (f)}

Establishment includes any place where any industry is carried on and where an establishment consists of different departments or have branches, whether situated in the same place or at different places, all such departments or branches shall be treated as part of that establishment. { Section 2 (g)}

Graduate or technician apprentice means an apprentice who holds, or is undergoing training in order that he may hold a degree or diploma in engineering or technology or equivalent qualification granted by any institution recognised by the Government and undergoes apprenticeship training in any such subject field in engineering or technology as may be prescribed. { Section 2 (j)}

Industry means any industry or business in which any trade, occupation or subject field in engineering or technology or any vocational course may be specified as a designated trade. {Section 2 (k)}

Technician (vocational) apprentice means an apprentice who holds or is undergoing training in order that he may hold a certificate in vocational course involving two years of study after the completion of the secondary stage of school education recognised by the All-India Council and undergoes apprenticeship training in any such subject field in any vocational course as may be prescribed. { Section 2 (pp)}

Trade apprentice means an apprentice who undergoes apprenticeship training in any such trade or occupation as may be prescribed. {Section 2 (q)}

Worker means any person who is employed for wages in any kind of work and who gets his wages directly from the employer but shall not include an apprentice . { Section 2 (r)}

Qualification for being engaged as an apprentice

A person shall be qualified for being engaged as an apprentice to undergo apprenticeship training in any designated trade, if such person –

Contract of apprenticeship

No person shall be engaged as an apprentice to undergo apprenticeship training in a designated trade unless such person or, if he is a minor, his guardian has entered into a contract of apprenticeship with the employer.

The apprenticeship training shall be deemed to have commenced on the date on which the contract of apprenticeship has been entered into and every contract of apprenticeship may contain such terms and conditions as may be agreed to by the parties to the contract.

Obligations of employers

Every employer shall have the following obligations in relation to an apprentice, namely:–

- to provide the apprentice with the training in his trade in accordance with the provisions of the Act and the rules made thereunder;
- if the employer is not himself qualified in the trade, to ensure that a person who possesses the prescribed qualifications is placed in charge of the training of the apprentice;
- to provide adequate instructional staff, possessing such qualifications as may be prescribed for imparting practical and theoretical training and facilities for trade test of apprentices;
- to carry out his obligations under the contract of apprenticeship.

Obligations of apprentices

Every trade apprentice undergoing apprenticeship training shall have the following obligations, namely :-

- to learn his trade conscientiously and diligently and endeavor to qualify himself as a skilled craftsman before the expiry of the period of training;

- to attend practical and instructional classes regularly;
 - to carry out all lawful orders of his employer and superiors in the establishment; and
 - to carry out his obligations under the contract of apprenticeship.
- Every graduate or technician apprentice, technician (vocational) apprentice undergoing apprenticeship training shall have the obligations to learn his subject field in engineering or technology or vocational course conscientiously and diligently at his place of training; to attend the practical and instructional classes regularly; to carry out all lawful orders of his employer and superiors in the establishment; to carry out his obligations under the contract of apprenticeship.

Apprentices are trainees and not workers

Every apprentice undergoing apprenticeship training in a designated trade in an establishment shall be a trainee and not a worker and the provisions of any law with respect to labour shall not apply to or in relation to such apprentice.

Records and Returns

Every employer required to maintained records of the progress of training of each apprentice undergoing apprenticeship training in his establishment in such form as may be prescribed and also furnish such information and returns in such prescribed form to such authorities and at such intervals.

Payment to apprentices

Section 13 provides that the employer shall pay to every apprentice during the period of apprenticeship training such stipend at a rate specified in the contract of apprenticeship and the stipend so specified shall be paid at such intervals and subject to such conditions as may be prescribed. An apprentice shall not be paid by his employer on the basis of piece work nor shall he be required to take part in any output bonus or other incentive scheme.

Hours of work, overtime, leave and holidays

As per section 15 the weekly and daily hours of work of an apprentice while undergoing practical training in a workshop shall be such as may be prescribed and no apprentice shall be required or allowed to work overtime except with the approval of the Apprenticeship Adviser who shall not grant such approval unless he is satisfied that such overtime is in the interest of the training of the apprentice or in the public interest. An apprentice shall be entitled to such leave as may be prescribed and to such holidays as are observed in the establishment in which he is undergoing training.

Conduct and discipline

Section 17 of the Act provides that in all matters of conduct and discipline, the apprentice shall be governed by the rules and regulations applicable to employees of the corresponding category in the establishment in which the apprentice is undergoing training.

Settlement of disputes

As per section 20 any disagreement or dispute between an employer and an apprentice arising out of the contract of apprenticeship shall be referred to the Apprenticeship Adviser for decision.

Any person aggrieved by the decision of the Apprenticeship Adviser may, within thirty days from the date of communication to him of such decision, prefer an appeal against the decision to the Apprenticeship Council and such appeal shall be heard and determined by a Committee of that Council appointed for the purpose. The decision of the Committee and subject only to such decision, the decision of the Apprenticeship Adviser shall be final.

Authorities under the Act

In addition to the Government, there are the following authorities under the Act, namely : –

- (a) The National Council, (b) The Central Apprenticeship Council,
- (c) The State Council,
- (d) The State Apprenticeship Council,

- (e) The All India Council,
- (f) The Regional Boards,
- (g) The Boards or State Councils of Technical Education
- (h) The Central Apprenticeship Adviser,
- (i) The State Apprenticeship Adviser.

Offences and penalties

Section 30 provides that if any employer engages as an apprentice a person who is not qualified for being so engaged, or fails to carry out the terms and conditions of a contract of apprenticeship, or contravenes the provisions of the Act relating to the number of apprentices which he is required to engage under those provisions, he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both. If any employer or any other person required to furnish any information or return, refuses or neglects to furnish such information or return, or furnishes or causes to be furnished any information or return which is false and which he either knows or believes to be false or does not believe to be true, or refuses to answer, or gives a false answer to any question necessary for obtaining any information required to be furnished by him, or refuses or wilfully neglects to afford the Central or the State Apprenticeship Adviser or such other person, not below the rank of an Assistant Apprenticeship Adviser, as may be authorised by the Central or the State Apprenticeship Adviser in writing in this behalf any reasonable facility for making any entry, inspection, examination or inquiry authorised by or under this Act, or requires an apprentice to work overtime without the approval of the Apprenticeship Adviser, or employs an apprentice on any work which is not connected with his training, or makes payment to an apprentice on the basis of piecework, or requires an apprentice to take part in any output bonus or incentive scheme, he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

Offences by companies

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

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

UNIT – VII

7.1. LABOUR RELATIONS LEGISLATION

Meaning

Labour law (also known as labor law or employment law) mediates the relationship between workers, employing entities, trade unions and the government. Collective labour law relates to the tripartite relationship between employee, employer and union. Individual labour law concerns employees' rights at work also through the contract for work. Employment standards are social norms (in some cases also technical standards) for the minimum socially acceptable conditions under which employees or contractors are allowed to work. Government agencies (such as the former US Employment Standards Administration) enforce labour law (legislature, regulatory, or judicial).

Industrial Relations

1. The Industrial Disputes Act, 1947
2. The Industrial Disputes (Central) Rules, 1957
3. The Plantation Labour Act, 1951
4. The Industrial Employment (Standing Orders) Act, 1946
5. The Trade Unions Act, 1926

7.2. TRADE UNIONS ACT, 1926

Number of Registered Trade unions in operation in the factory and its affiliations to any All India Organisations of Trade Unions.

Introduction

Trade Unions Act, 1926 deals with the registration of trade unions, their rights, their liabilities and responsibilities as well as ensures that their funds are utilised properly. It gives legal and corporate status to the registered trade unions. It also seeks to protect them from civil or criminal prosecution so that they could carry on their legitimate activities for the benefit of the working class. The Act is applicable not only to the union of workers but also to the association of employers. It extends to whole of India.

Definition

Section 2 of the Act defines various terms used in the Act, some of the definitions are given here under:

Executive means the body, by whatever name called, to which the management of the affairs of a trade union is entrusted.[Section 2 (a)]

Office-bearer in the case of a trade union, includes any member of the executive thereof, but does not include an auditor.[Section 2 (b)]

Registered office means that office of a trade union which is registered under this Act as the head office thereof. [Section 2 (d)]

Registered trade union means a trade union registered under this Act.[Section 2 (e)]

Trade dispute means any dispute between employers and workmen, or between workmen and workmen, or between employers and employers which is connected with the employment or non-employment, or the terms of employment or the conditions of labor, of any person, and “workmen” means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises.[Section 2 (g)]

Trade union means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more trade unions. [Section 2 (h)]

Mode of registration

Section 4 provides that any seven or more members of a Trade Union may by subscribing their names to the rules of the Trade Union and by otherwise complying with the provisions of this Act with respect to registration, apply for registration of the Trade Union .

However, no Trade Union of workmen shall be registered unless at least ten per cent. or one hundred of the workmen, whichever is less, engaged or employed in the establishment or

industry with which it is connected are the members of such Trade Union on the date of making of application for registration.

Application for registration

Section 5 stipulates that every application for registration of a Trade Union shall be made to the Registrar and shall be accompanied by a copy of the rules of the Trade Union and a statement of the following particulars, namely:

- the names, occupations and address of the members making application;
- in the case of a Trade Union of workmen, the names, occupations and addresses of the place of work of the members of the Trade Union making the application;
- the name of the Trade Union and the address of its head office; and
- the titles, names, ages, addresses and occupations of the office-bearers of the Trade Union.

Where a Trade Union has been in existence for more than one year before the making of an application for its registration, there shall be delivered to the Registrar, together with the application, a general statement of the assets and liabilities of the Trade Union prepared in such form and containing such particulars as may be prescribed.

Provisions contained in the rules of a Trade Union

A Trade Union shall not be entitled to registration under the Act, unless the executive thereof is constituted in accordance with the provisions of the Act, and the rules thereof provide for the following matters, namely:—

- the name of the Trade Union;
- the whole of the objects for which the Trade Union has been established;
- the whole of the purposes for which the general funds of the Trade Union shall be applicable, all of which purposes shall be purposes to which such funds are lawfully applicable under this Act;

- the maintenance of a list of the members of the Trade Union and adequate facilities for the inspection thereof by the office-bearers and members of Trade Union;
- the admission of ordinary members who shall be persons actually engaged or employed in an industry with which the Trade Union is connected, and also the admission of the number of honorary or temporary members as office-bearers required under section 22 to form the executive of the Trade Union;
- the payment of a minimum subscription by members of the Trade Union
- the conditions under which any member shall be entitled to any benefit assured by the rules and under which any fine or forfeiture may be imposed on the members;
- the manner in which the rules shall be amended, varied or rescinded;
- the manner in which the members of the executive and the other office-bearers of the Trade Union shall be elected and removed;
- the duration of period being not more than three years, for which the members of the executive and other office-bearers of the Trade Union shall be elected;
- the safe custody of the funds of the Trade Union, an annual audit, in such manner as may be prescribed, of the accounts thereof, and adequate facilities for the inspection of the account books by the officebearers and members of the Trade Union; and
- the manner in which the Trade Union may be dissolved

Certificate of Registration

The Registrar, on being satisfied that the Trade Union has complied with all the requirements of the Act in regard to registration, shall register the Trade Union by entering in a register, to be maintained in such form as may be prescribed, the particulars relating to the Trade Union contained in the statement accompanying the application for registration. The Registrar, on registering a Trade Union under section 8, shall issue a certificate of registration in the prescribed form which shall be conclusive evidence that the Trade Union has been duly registered under the Act.

Incorporation of registered Trade Union

Every registered Trade Union shall be a body corporate by the name under which it is registered, and shall have perpetual succession and a common seal with power to acquire and hold both movable and immovable property and to contract, and shall by the said name sue and be sued.

Cancellation of registration

A certificate of registration of a Trade Union may be withdrawn or cancelled by the Registrar on the following grounds –

- on the application of the Trade Union to be verified in such manner as may be prescribed;
- if the Registrar is satisfied that the certificate has been obtained by fraud or mistake or that the Trade Union has ceased to exist or has wilfully and after notice from the Registrar contravened any provision of this Act or allowed any rule to continue in force which is inconsistent with any such provision or has rescinded any rule providing for any matter provision for which is required by section 6;
- if the Registrar is satisfied that a registered Trade Union of workmen ceases to have the requisite number of members:

Returns

Section 28 of the Act provides that there shall be sent annually to the Registrar, on or before such date as may be prescribed, **a general statement**, audited in the prescribed manner, of all receipts and expenditure of every registered Trade Union during the year ending on the 31st day of December next preceding such prescribed date, and of the assets and liabilities of the Trade Union existing on such 31st day of December. The statement shall be prepared in such form and shall comprise such particulars as may be prescribed.

Together with the general statement there shall be sent to the Registrar a statement showing changes of officebearers made by the Trade Union during the year to which the general statement refers together also with a copy of the rules of the Trade Union corrected upto the

date of the despatch thereof to the Registrar. **A copy of every alteration** made in the rules of a registered Trade Union shall be sent to the Registrar within fifteen days of the making of the alteration.

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

7.3. THE INDUSTRIAL DISPUTES ACT, 1947

INTRODUCTION

The first enactment dealing with the settlement of industrial disputes was the Employers' and Workmen's Disputes Act, 1860. This Act weighed much against the workers and was therefore replaced by the Trade Disputes Act, 1929. The Act of 1929 contained special provisions regarding strikes in public utility services and general strikes affecting the community as a whole. The main purpose of the Act, however, was to provide a conciliation machinery to bring about peaceful settlement of industrial disputes. The Whitely Commission made in this regard the perceptive observation that the attempt to deal with unrest must begin rather with the creation of an atmosphere unfavourable to disputes than with machinery for their settlement.

The next stage in the development of industrial law in this country was taken under the stress of emergency caused by the Second World War. Rule 81-A of the Defence of India Rules was intended to provide speedy remedies for industrial disputes by referring them compulsorily to conciliation or adjudication, by making the awards legally binding on the parties and by prohibiting strikes or lock-outs during the pendency of conciliation or adjudication proceedings and for two months thereafter. This rule also put a blanket ban on strikes which did not arise out of genuine trade disputes.

With the termination of the Second World War, Rule 81-A was about to lapse on 1st October, 1946, but it was kept alive by issuing an Ordinance in the exercise of the Government's

Emergency Powers. Then followed the Industrial Disputes Act, 1947. The provisions of this Act, as amended from time to time, have furnished the basis on which industrial jurisprudence in this country is founded.

OBJECT AND SIGNIFICANCE OF THE ACT

The Industrial Disputes Act, 1947 makes provision for the investigation and settlement of industrial disputes and for certain other purposes. It ensures progress of industry by bringing about harmony and cordial relationship between the employers and employees. Definitions of the words 'industrial dispute, workmen and industry' carry specific meanings under the Act and provide the framework for the application of the Act.

In the case of Workmen of Dimakuchi Tea Estate v. Dimakuchi Tea Estate, AIR 1958 S.C. 353, the Supreme Court laid down following objectives of the Act:

(i) Promotion of measures of securing and preserving amity and good relations between the employer and workmen.

(ii) Investigation and settlement of industrial disputes between employers and employers, employers and workmen, or workmen and workmen with a right of representation by registered trade union or federation of trade unions or an association of employers or a federation of associations of employers.

(iii) Prevention of illegal strikes and lock-outs.

(iv) Relief to workmen in the matter of lay-off and retrenchment.

(v) Promotion of collective bargaining.

This Act extends to whole of India. The Act was designed to provide a self-contained code to compel the parties to resort to industrial arbitration for the resolution of existing or apprehended disputes without prescribing statutory norms for varied and variegated industrial relating norms so that the forums created for resolution of disputes may remain unhampered by any statutory control and devise rational norms keeping pace with improved industrial relations reflecting and imbibing socio-economic justice. This being the object of the Act, the Court by interpretative process must strive to reduce the field of conflict and expand the area

of agreement and show its preference for upholding agreements sanctified by mutuality and consensus in larger public interest, namely, to eschew industrial strife, confrontation and consequent wastage (*Workmen, Hindustan Lever Limited v. Hindustan Lever Limited*, (1984) 1 SCC 728).

wastage (*Workmen, Hindustan Lever Limited v. Hindustan Lever Limited*, (1984) 1 SCC 728).

Test your knowledge

Choose the correct answer

Which was the first enactment that dealt with the settlement of industrial disputes?

- (a) Employers' and Workmen's Disputes Act, 1850
- (b) Employers' and Workmen's Disputes Act, 1860
- (c) Trade Disputes Act, 1860
- (d) Trade Disputes Act, 1929

Correct answer: (b)

The Act applies to an existing and not to a dead industry. It is to ensure fair wages and to prevent disputes so

that production might not be adversely affected. It applies to all industries irrespective of religion or caste of

parties. It applies to the industries owned by Central and State Governments too (*Hospital Employees Union v. Christian Medical College*, (1987) 4 SCC 691).

IMPORTANT DEFINITIONS

(i) Industry

“Industry” means any business, trade, undertaking, manufacture or calling of employers and includes any calling service, employment, handicraft, or industrial occupation or avocation of workmen. [Section 2(j)]

The Supreme Court carried out an indepth study of the definition of the term industry in a comprehensive manner in the case of *Bangalore Water Supply and Sewerage Board v. A Rajappa*, AIR 1978 SC 548 (hereinafter referred to as Bangalore Water Supply case), after considering various previous judicial decisions on the subject and in the process, it rejected some of them, while evolving a new concept of the term “industry”.

Tests for determination of “industry”

After discussing the definition from various angles, in the above case, the Supreme Court, laid down the following tests to determine whether an activity is covered by the definition of “industry” or not. It is also referred to as the triple test.

I. (a) Where there is (i) systematic activity, (ii) organised by co-operation between employer and employee,

(iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss e.g., making, on a large scale, prasada or food) prima facie, there is an “industry” in that enterprise.

(b) Absence of profit motive or gainful objective is irrelevant wherever the undertaking is whether in the public, joint, private or other sector.

(c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

(d) If the organisation is a trade or business, it does not cease to be one because of philanthropy animating the undertaking.

Criteria for determining dominant nature of undertaking

The Supreme Court, in *Bangalore Water Supply* case laid down the following guidelines for deciding the dominant nature of an undertaking:

(a) Where a complex of activities, some of which qualify for exemption, others not, involves the employees on the total undertaking. Some of whom are not “workmen” or some departments are not productive of goods and services if isolated, nature of the department will be the true test. The whole undertaking will be “industry” although those who are not “workmen” definition may not be benefit by the status.

(b) Notwithstanding with previous clause, sovereign functions strictly understood alone qualify for exemption and not the welfare activities or economic adventures undertaken by Government or statutory bodies.

(c) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(j).

(d) Constitutional and competently enacted legislative provisions may well remove an undertaking from the scope of the Act.

The above decision of the Supreme Court has a wide sweep. The triple test along with dominant nature criteria will cover almost the entire labour force in the country. The charitable or missionary institutions, hospital, educational and other research institutions, municipal corporations, firms of chartered accountants, solicitors’ firms, etc., which were not held to be “industry” earlier will now are covered by the definition of “industry”.

Now let us see whether the following activities would fall under industry or not:

1. Sovereign functions: Sovereign functions strictly understood alone qualify for exemption, not the welfare activities or economic adventures undertaken by Government or statutory bodies. Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable then they can be considered to come within Section 2(j). (*Bangalore Water Supply case*). If a department of a municipality discharged

many functions, some pertaining to “industry” and other non-industrial activities, the predominant function of the department shall be the criterion for the purposes of the Act (*Corpn. of City of Nagpur v. Employees*, AIR 1960 SC 675).

2. Municipalities: Following Departments of the municipality were held, to be “industry” (i) Tax (ii) Public Conveyance (iii) Fire Brigade (iv) Lighting (v) Water Works (vi) City Engineers (vii) Enforcement (Encroachment) (viii) Sewerage

(ix) Health (x) Market (xi) Public Gardens (xii) Education (xiii) Printing Press (xiv) Building and (xv) General administration. If a department of a municipality discharges many functions some pertaining to industry and others non-industrial, the predominant function of the department shall be the criterion for the purpose of the Act.

3. Hospitals and Charitable institutions: Exemptions to charitable institutions under Section 32(5) of Payment of Bonus Act is not relevant to the construction of Section 2(j), *FICCI v. Workmen*, (1972) 1 SCC 40, there is an industry in the enterprise, provided the nature of the activity, namely the employer-employee basis bears resemblance to what is found in trade or business. This takes into the fold of industry undertakings, callings, services and adventures ‘analogous to the carrying on of trade or business’. Absence of profit motive or gainful objective is irrelevant for “industry”, be the venture in the public, joint, private or other sector. The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

4. Clubs: A restricted category of professions, clubs, co-operatives and even Gurukulas may qualify for exemption if, in simple ventures, substantially and going by the dominant nature criterion substantively, no employees are entertained, but in minimal matters marginal employees are hired without destroying the non-employee character of the unit. But larger clubs are “industry” (*as per Bangalore Water Supply case*).

5. Universities, Research Institutions etc.: As regards institutions, if the triple tests of systematic activity, cooperation between employer and employee and production of goods and services were to be applied, a university, a college, a research institute or teaching institution will be “industry”. The following institutions were held to be “industry”: Ahmedabad Textile Industries Research Association, Tocklai Experimental Station. Indian

Standard Institute, and Universities. However Physical Research Laboratory, Ahmedabad was held not to be an Industry by the Supreme Court (1997 Lab. IC 1912 SC). Since it is carrying on research not for the benefit of others and moreover, it is not engaged in commercial or industrial activity.

6. Professional Firms: A solicitors establishment can be an “industry” (as per *Bangalore Water Supply case*). Regarding liberal professions like lawyers, doctors, etc., the test of direct cooperation between capital and labour in the production of goods or in the rendering of service or that cooperation between employer and employee is essential for carrying out the work of the enterprise. The personal character of the relationship between a doctor or a lawyer with his professional assistant may be of such a kind that requires complete confidence and harmony in the productive activity in which they may be cooperating.

7. Voluntary services: If in a pious or altruistic mission, many employ themselves free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the Holiness, divinity or Central personality and the services are supplied free or at a nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then the institution is not an industry even if stray servants manual or technical are hired. Such eleemosynary or like undertakings alone are exempted. (*Bangalore Water Supply case*)

Following are held to be “industry”: Co-operative Societies, Federation of Indian Chamber of Commerce, Company carrying on agricultural operations, Bihar Khadi Gramodyog Sangh, Indian Navy Sailors Home, Panchayat Samiti, Public Health Department of the State Government, Forest Department of Govt., Zoo; Primary Health Centres, and Indian Institute of Petroleum. Some other instances of ‘Industry are: Rajasthan Co-operative Credit Institutions Cadre Authority (1985 Lab IC 1023 (Raj.)), A trust for promoting religious, social and educational life but also undertaking commercial activities (1987) 1 LLJ 81, M.P. Khadi and Village Industries Board, Housing Board, Dock Labour Board, Management of a private educational institution (*R.C.K. Union v. Rajkumar College*, (1987) 2 LLN 573).

But the following are held to be not “Industry”: Posts and Telegraphs Department (*Union of India v. Labour Court*, (1984) 2 LLN 577), Telecom Deptt. (*Bombay Telephones Canteen Employees Association v. Union of India*),

Central Institute of Fisheries (*P. Bose v. Director, C.I.F.*, 1986 Lab IC 1564), and Construction and maintenance of National and State Highways (*State of Punjab v. Kuldip Singh and another*, 1983 Lab IC 83), Trade Unions (*RMS v. K.B. Wagh*, 1993(2) CLR 1059).

Section 2(j) shall stand amended by Amendment Act of 1982.

Section 2(j) under Amendment Act, 1982 [date of effect is yet to be notified]

2(j) “Industry” means any systematic activity carried on by co-operation between an employer and his workmen (Whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not:

(i) any capital has been invested for the purpose of carrying on such activity; or

(ii) such activity is carried on with a motive to make any gain or profit, and includes:

(a) any activity of the Dock Labour Board established under Section 5A of the Dock Workers (Regulations of Employment) Act, 1948, (9 of 1948);

(b) any activity relating to the promotion of sales or business or both carried on by an establishment,

but does not include:

(1) any agricultural operation except where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this clause) and such other activity is the predominant one.

Explanation: For the purpose of this sub-clause, “agricultural operation” does not include any activity carried on in a plantation as defined in clause (f) of Section 2 of the Plantations Labour Act, 1951; or

(2) hospitals or dispensaries; or

(3) educational, scientific, research to training institutions; or

(4) institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service; or

(5) khadi or village industries; or

(6) any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defence research atomic energy and space; or

(7) any domestic service; or

(8) any activity, being a profession practised by an individual or body of individuals, if the number of persons employed by the individuals or body of individuals in relation to such profession is less than ten; or

(9) any activity, being an activity carried on by a co-operative society or a club or any other like body of individuals, if the number of persons employed by the co-operative society, club or other like body of individuals in relation to such activity is less than ten.

7.4. THE TAMILNADU SHOPS AND ESTABLISHMENTS ACT, 1947

(ACT XXXVI OF 1947)

[Received the assent of the Governor General on 2nd February, 1948, first published in the Fort St. George Gazette on the 10th February, 1948]

An Act to provide for the regulation of conditions of work in shops, commercial establishments, restaurants, theatres and other establishments, and for certain other purposes.

WHEREAS it is expedient to provide for the regulation of conditions of work in shops, commercial establishments and for certain other purposes; it is hereby enacted as follows:

1. Short title, extent and commencement

(1) This Act may be called the Tamil Nadu Shops and Establishments Act, 1947

(2) It extends to the whole of the 1[State] of Tamil Nadu.

2[(3) (a) It shall come into force in the following areas on such date as the State Government may, by notification, appoint:

(i) the City of Madras,

(ii) all the municipalities constituted under the Madras District Municipalities Act, 1920 (Madras Act V of 1920), and

iii) all areas within the jurisdiction of panchayats which, under rule 2 of Schedule III to the Madras Village Panchayats Act, 1950 (Madras Act X of 1950), should be deemed to be constituted under that Act, and which immediately before the commencement of that Act ,were classified by the State Government as major panchayats and all areas within the jurisdiction of panchayats constituted or reconstituted under that Act which, for the time being, are classified by the State Government as Class I Panchayats under section 5 (1) (a) of that Act.]

b) The 1[State] Government may, by notification, direct that all or any of the provisions of this Act shall come in to force in any other area on such date as may be specified in such notification

CHAPTER-1

PRELIMINARY

2. Definitions- In this Act, unless there is anything repugnant in the subject or context-

(1) ‘child’ means a person who has not completed fourteen years.

(2) 'closed' means not open for the service of any customer or open to any business connected with the establishment.

(3) 'commercial establishment' means an establishment which is not a shop but which carries on the business of advertising, commission, forwarding or commercial agency, or which is a clerical department of a factory or industrial undertaking or which is an insurance company, joint stock company, bank, broker's office or exchange and includes such other establishments as the State Government may by notification declare to be a commercial establishment for the purposes of this Act.

(4) 'day' means the period of twenty-four hours beginning at midnight:

Provided that in the case of a person employed, whose hours of work extend beyond midnight, day means the period of twenty-four hours beginning from the time when such employment commences.

(5) 'employer' means a person owning or having charge of, the business of an establishment and includes the manager, agent or other persons acting in the general management or control of an establishment;

(6) 'establishment' means a shop, commercial establishment, restaurant, eating-house, residential hotel, theatre or any place of public amusement or entertainment and includes such establishment as the 1[State] Government may by notification declare to be an establishment for the purposes of this Act;

2[(7) 'factory' means any premises which is a factory within the meaning of the Factories Act, 1948.]

(8) 'inspector' means an Inspector appointed under section 42;

(9) 'notification' means a notification in the Fort St. George Gazette;

(10) 'opened' means opened for the service of any customer.

(11) 'periods of work' means the time during which a person employed is at the disposal of the employer;.

(12) 'person employed' means—

(i) In the case of a shop, a person wholly or principally employed therein in connection with the business of the shop;

(ii) In the case of a factory or an industrial undertaking, a member of the clerical staff employed in such a factory or undertaking;

(iii) In the case of a commercial establishment other than a clerical department of a factory or an industrial undertaking, a person wholly or principally employed in connection with the business of the establishment, and includes a peon;

(iv) In the case of a restaurant or eating house, a person wholly or principally employed in the preparation or the serving food or drink or in attendance on customers or in cleaning utensils used in the premises or as a clerk or cashier;

(v) In the case of a theatre, a person employed as an operator, clerk, door-keeper, usher or in such capacity as may be specified by the 1[State] Government by general or special order;

(vi) In the case of an establishment not falling under paragraphs (i) to (v) above, a person wholly or principally employed in connection with the business of the establishment and includes a peon;

(vii) In the case of all establishments, a person wholly or principally employed in cleaning any part of the premises;

but does not include the husband, wife, son, daughter, father, mother, brother or sister of an employer who lives with and is dependent on such employer;

(13) 'prescribed' means prescribed by rules made under this Act;

(14) 'residential hotel' means any premises in which business is carried on bona fide for the supply of dwelling accommodation and meals on payment of a sum of money to a traveller or any member of the public or class of the public;

(15) 'restaurant' or 'eating house' means any premises in which is carried on wholly or principally the business of the supply of refreshments or meals to the public or a class of the public for consumption on the premises but does not include a restaurant attached to a theatre.

(16) 'shop' means any premises where any trade or business is carried on or where services are rendered to customers and includes offices, store rooms, godowns and warehouses, whether in the same premises or otherwise, used in connection with such business but does not include a restaurant, eating-house or commercial establishment;

(17) 'theatre' includes any place intended principally or wholly for the representation of moving pictures or for dramatic performances;

(18) 'wages' means any remuneration, capable of being expressed in terms of money, which would if the terms of the contract of employment, express or implied, were fulfilled, be payable, whether conditionally upon the regular attendance, good work or conduct or other behaviour of the person employed, or otherwise, to a person employed in respect of his employment or of work done in such employment, and includes any bonus or other additional remuneration of the nature aforesaid which would be so payable and any sum payable to such person by reason of the termination of his employment, but does not include—

(a) the value of any house-accommodation, supply of light, water, medical attendance or other amenity or of any service excluded by general or special order of the 1[State] Government ;

(b) any contribution paid by the employer to any pension fund or provident fund;

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

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

e) any gratuity payable on discharge;

(19) 'week' means a period of seven days beginning at midnight on Saturday;

(20) 'young person' means a person who is not a child and has not completed seventeen years.

3. References to time of day-- References to time of day in this Act are references to Indian Standard Time which is five and a half hours ahead of Greenwich Mean Time.

4. Exemption: (1) Nothing contained in this Act shall apply to—

(a) persons employed in any establishment in a position of management;

(b) persons whose work involves travelling: and persons employed as canvassers and caretakers;

(c) establishments under the Central and 1[State] Governments, local authorities, the Reserve Bank of India, 2[a railway administration operating any railway as defined in clause (20) of article 366 of the Constitution] and cantonment authorities;

(d) establishments in mines and oil fields;

(e) establishments in bazaars in places where fairs or festivals are held temporarily for a period not exceeding fifteen days at a time;

(f) establishments which, not being factories within the meaning of the Factories Act, 1948, are in respect of matters dealt with in this Act, governed by a separate law for the time being in force in the 1[State].

(2) Nothing contained in section 7 or section 13, as the case may be, shall apply to—

(a) hospitals and other institutions for the treatment or care of the sick, the infirm, the destitute or the mentally unfit;

(b) such chemists' or druggists' shops as the 1[State] Government may, by general or special order, specify;

(c) clubs and residential hotels, hostels attached to schools or colleges, and establishments maintained in boarding schools in connection with the boarding and lodging of pupils and residents masters;

(d) stalls and refreshment rooms at railway stations, docks, wharves or ports.

5. Power of Government to apply Act to exempted persons or establishments--

Notwithstanding anything contained in section 4, the 1[State] Government may, by notification apply all or any of the provisions of this Act to any class of persons or establishments mentioned in that section, other than those mentioned in clauses (c) and (f) of sub-section (1), and modify or cancel any such notification.

6. Exemptions-- The 1[State] Government may, by notification, exempt either permanently or for any specified period, any establishment or class of establishments, or person or class of persons, from all or any of the provisions of this Act, subject to such conditions as the 1[State] Government deem fit.

CHAPTER II

SHOPS

7. Opening and closing hours of shops-- (1) Save as provided by or under any other enactment for the time being in force, no shop shall on any day be opened earlier or closed later than such hours as may be fixed by the 1[State] Government, by a general or special order in that behalf:

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

(2) Before passing an order under sub-section (1), the 1[State] Government shall hold an inquiry in the prescribed manner.

(3) The 1[State] Government may, for the purposes of this section, fix different hours for different shops or different classes of shops or for different areas or for different times of the year.

8. Selling outside shops prohibited after closing hour-- Save as provided by or under any other enactment for the time being in force, no person shall carry on, in or adjacent to a street or public place, the sale of any goods after the hour fixed under section 7 for the closing of

shops dealing in the same class of goods in the locality in which such street or public place is situated:

Provided that nothing in this section shall apply to the sale of newspapers.

9. Daily and weekly hours of work in shops-- (1) Subject to the provisions of this Act, no person employed in any shop shall be required or allowed to work therein for more than eight hours in any day and forty eight hours in any week:

Provided that any such person may be allowed to work in such shop for any period in excess of the limit fixed under this sub section subject to payment of overtime wages, if the period of work including overtime work, does not exceed ten hours in any day and in the aggregate fifty-four hours in any week:

(2) No person employed in any shop shall be required or allowed to work therein for more than four hours in any day unless he has had an interval for rest of at least one hour.

10. Spread over of periods of work-- The periods of work of a person employed in a shop shall be so arranged that, along with his intervals for rest, they shall not spread over more than twelve hours in any day.

11. Closing of shops and grant of holidays-- (1) Every shop shall remain entirely closed on one day of the week which day shall be specified by the shopkeeper in a notice permanently exhibited in a conspicuous place in the shop; and the day so specified shall not be altered by the shopkeeper more often than once in three months.

(2) Every person employed in a shop shall be allowed in each week a holiday of one whole day:

Provided that nothing in this sub-section shall apply to any person whose total period of employment in the week, including any days spent on authorized leave, is less than six days, or entitle a person who has been allowed a whole holiday on the day on which the shop has remained closed in pursuance of sub-section (1), to an additional holiday

(3) (a) The 1[State] Government may, by notification, require in respect of shops or any specified class of shops, that they shall, in addition to the day provided for by sub-section(1),

be closed at such hour in the afternoon of one week-day in every week at such hour as may be fixed by the 1[State] Government.

(b) Every person employed in any shop to which a notification under clause (a) applies, shall be allowed in each week an additional holiday of one half day commencing at the hour in the afternoon fixed for the closing of the shop under clause (a).

(4) The 1[State] Government may, for the purpose of sub-section (3), fix different hours for different shops or different classes of shops or for different areas or for different times of the year.

(5) The weekly day on which a shop is closed in pursuance of requirement under sub-section (3) shall be specified by the shop-keeper in a notice permanently exhibited in a conspicuous place in the shop, and shall not be altered by the shopkeeper more often than once in three months.

(6) No deduction shall be made from the wages of any person employed in a shop on account of any day or part of a day on which it has remained closed or a holiday has been allowed in accordance with this section; and if such person is employed on the basis that he would not ordinarily receive wages for such day or part of a day, he shall nonetheless be paid for such day or part of a day the wages he would have drawn, had the shop not remained closed, or had the holiday not been allowed, on that day or part of a day.

CHAPTER III

ESTABLISHMENTS OTHER THAN SHOPS

12. Application of this chapter to establishments other than shops-- The provisions of this Chapter shall apply only to establishments other than shops.

13. Opening and closing hours-- (1) Save as provided by or under any other enactment for the time being in force ,no establishment shall on any day be opened earlier or closed later than such hour as may be fixed by the 1[State] Government, by general or special order in that behalf:

Provided that in the case of a restaurant or eating house, any customer who was being served or was waiting to be served therein at the hour fixed for the closing may be served during the quarter of an hour immediately following such hour.

(2) Before passing an order under sub- section (1), the 1[State] Government shall make an inquiry in the prescribed manner.

(3) The 1[State] Government may, for the purposes of this section, fix different hours for different establishments or different classes of establishments or for different areas or for different times of the year.

14. Daily and weekly hours of work-- (1) Subject to the provisions of this Act, no person employed in any establishment shall be required or allowed to work for more than eight hours in any day and forty- eight hours in any week:

Provided that any such person may be allowed to work in such establishment for any period in excess of the limit fixed under this sub- section subject to payment of overtime wages, if the period of work, including overtime work, does not exceed ten hours in any day and in the aggregate fifty- four hours in any week.

(2) No person employed in any establishment shall be required or allowed to work in such establishment for more than four hours in any day unless he has had an interval for rest of at least one hour.

15. Spread over of periods of work-- The periods of work of a person employed in an establishment shall be so arranged that along with his intervals for rest, they shall not spread over more than twelve hours in any day.

16. Holidays-- (1) Every person employed in an establishment shall be allowed in each week a holiday of one whole day:

Provided that nothing in this sub-section shall apply to any person whose total period of employment in the week, including any days spent on authorized leave, is less than six days.

(2) The 1[State] Government may, by notification, require in respect of any establishment or any specified class of establishments, that every person employed therein shall be allowed in

each week an additional holiday of one half day commencing at such hour in the afternoon as may be fixed by the 1[State] Government.

(3) The 1[State] Government may, for the purposes of sub-section (2), fix different hours for different establishments or different classes of establishments or for different areas or for different times of the year.

(4) No deduction shall be made from the wages of any person employed in an establishment on account of any day or part of a day on which a holiday has been allowed in accordance with this section; and if such person is employed on the basis that he would not ordinarily receive wages for such day or part of a day, he shall nonetheless be paid for such day or part of a day the wages he would have drawn, had the holiday not been allowed on that day or part of a day.

CHAPTER IV

8. 3. EMPLOYMENT OF CHILDREN AND YOUNG PERSONS

17. Children not to work in establishments-- No child shall be required or allowed to work in any establishment.

18. Young persons to work only between 6 a.m. and 7 p.m.-- No young person shall be required to work in any establishment before 6a.m. and after 7 p.m.

19. Daily and weekly hours of work for young persons-- Notwithstanding anything contained in this Act, no young person shall be required or allowed to work in any establishment for more than seven hours in any day and forty- two hours in any week nor shall such person be allowed to work overtime.

CHAPTER V

HEALTH AND SAFETY

20. Cleanliness-- 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 cleansed at such times

and by such methods as may be prescribed; and these methods may include lime washing, colour washing, painting, varnishing, disinfecting and deodorising.

21. Ventilation-- The premises of every establishment shall be ventilated in accordance with such standards and by such methods as may be prescribed.

22. Lighting-- (1) The premises of every establishment shall be sufficiently lighted during all working hours.

(2) If it appears to an Inspector that the premises of any establishment within his jurisdiction is not sufficiently lighted or ventilated, 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.

23. Precautions against fire-- In every establishment, such precautions against fire shall be taken as may be prescribed.

24. Appeal-- Against any order of the Inspector under this Chapter, an appeal shall lie to such authority and within such time as may be prescribed; and the decision of the appellate authority shall be final.

CHAPTER VI

HOLIDAYS WITH WAGES

25. Holidays and sick leave-- (1) Every person employed in any establishment shall be entitled, after twelve months' continuous service, to holidays with wages for a period of 12 days, in the subsequent period of twelve months:

Provided that such holidays with wages may be accumulated up to a maximum of 1[forty-five days].

Explanation— For the purposes of this sub-section any continuous period of service preceding the date on which this Act applies to any establishment shall also count, subject to a maximum period of twelve months.

(2) Every person employed in any establishment shall also be entitled during his first twelve months of continuous service after the commencement of this Act, and during every subsequent twelve months of such service, (a) to leave with wages for a period not exceeding 12 days, on the ground of any sickness incurred or accident sustained by him and (b) to casual leave with wages for a period not exceeding 12 days on any reasonable ground.

(3) If a person entitled to any holidays under sub-section (1) is discharged by his employer before he has been allowed the holidays, or if having applied for and been refused the holidays, he quits his employment before he has been allowed the holidays, the employer shall pay him the amount payable, under this Act in respect of the holidays.

(4) If a person entitled to any leave under sub-section (2) is discharged by his employer when he is sick or suffering from the result of an accident, the employer shall pay him the amount payable under this Act in respect of the period of the leave to which he was entitled at the time of his discharge, in addition to the amount, if any payable to him under sub-section (3).

(5) A person employed shall be deemed to have completed a period of twelve months' continuous service within the meaning of this section, notwithstanding any interruption in service during those twelve months brought about (i) by sickness, accident, or authorised leave (including authorised holidays) not exceeding ninety days in the aggregate for all three; or (ii) by a lock-out; (iii) by a strike which is not an illegal strike; or (iv) by intermittent periods of involuntary unemployment not exceeding thirty days in the aggregate and authorized leave shall be deemed not to include any weekly holiday or half-holiday allowed under this Act which occurs at the beginning or end of an interruption brought about by the leave.

(6) A person employed in a hostel attached to a school or college or in an establishment maintained in a boarding school in connection with the boarding and lodging of pupils and resident masters shall be allowed the privileges referred to in sub-sections (1) to (5), reduced however proportionately to the period for which he was employed continuously in the previous year or to the period for which he will be employed continuously in the current year, as the case may be; and all references to periods of holidays or of leave in sub-sections (1) and (2) shall be construed accordingly, fractions of less than one day being disregarded.

(7) The 1[State] Government shall have power to issue directions as to the manner in which the provisions of sub-section (6) shall be carried into effect in all or any class of cases or in any particular case.

26. Pay during annual holidays-- Every person employed shall, for the holidays or the period of leave allowed under sub- section (1) or (2) of section 25, be paid at a rate equivalent to the daily average of his wages for the days on which he actually worked during the preceding three months exclusive of any earnings in respect of overtime.

27. Power to increase the number of holidays-- Notwithstanding anything contained in Section 25, the 1[State] Government may, by notification, increase the total number of annual holidays and the maximum number of days up to which such holidays may be accumulated in respect of any establishment or class of establishments.

28. Power of Inspector to act for person employed-- Any Inspector may institute proceedings on behalf of any person employed to recover any sum required to be paid under this Chapter by an employer which he has not paid.

CHAPTER VII

WAGES

29. Responsibility for payment of wages-- Every employer shall be responsible for the payment to persons employed by him of all wages and sums required to be paid under this act.

30. Fixation of wage period-- 1) Every employer shall fix periods (in this Act referred to as wage periods) in respect of which such wages shall be payable.

2) No wage period shall exceed one month.

31. Wages for overtime work-- Where any person employed in any establishment is required to work overtime, he shall be entitled, in respect of such overtime work, to wages at twice the ordinary rate of wages.

Explanation—For the purpose of this section, the expression “ordinary rate of wages” shall mean such rate of wages as may be calculated in the manner prescribed.

32. Time of payment of wages-- 1) The wages of every person employed shall be paid before the expiry of the fifth day after the last day of the wage period in respect of which the wages are payable.

2) Where the employment of any person is terminated by or on behalf of the employer, the wages earned by such person shall be paid before the expiry of the second working day from the day on which his employment is terminated.

3) The 1[State] Government may, by general or special order, exempt an employer from the operation of this section in respect of the wages of any person employed or class of persons employed, to such extent and subject to such conditions as may be specified in the order.

4) All payments of wages shall be made on a working day.

33. Wages to be paid in current coin or currency notes-- All wages shall be paid in current coin or currency notes or in both.

34. Deductions which may be made from wages-- 1) The wages of a person employed shall be paid to him without deductions of any kind except those authorised by or under this Act.

Explanation—Every payment made by a person employed to the employer shall, for the purpose of this Act, be deemed to be a deduction from wages.

2) Deduction from the wages of a person employed shall be made only in accordance with the provisions of this Act, and may be of the following kinds only, namely:

(a) fines;

(b) deductions for absence from duty;

(c) deductions for damage to, or loss of, goods expressly entrusted to the employed person for custody, or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default;

- (d) deductions for house accommodation supplied by the employer;
- (e) deductions for such amenities and services supplied by the employer as the 1[State] Government may, by general or special order, authorise;
- (f) deductions for recovery of advances or for adjustment of overpayments of wages;
- (g) deductions of income-tax payable by the employed person;
- (h) deductions required to be made by order of a Court or other authority competent to make such order;
- (i) deductions for subscription to, and for repayment of advances from, any provident fund to which the Provident Funds Act, 1952 applies or any recognized provident fund as defined in section 58A of the Indian Income Tax Act 1922, or any provident fund approved in this behalf by the 1[State] Government during the continuance of such approval;
- (j) deductions for payments to co-operative societies approved in this behalf by the 1[State] Government or to a scheme of insurance maintained by the Indian Post Office or by any insurance company approved in this behalf by the 1[State] Government;
- (k) deductions made with the written authorisation of the employed person in furtherance of any savings scheme approved by the 1[State] Government for the purchase of securities of the Central or 1[State] Government.

35. Fines—(1) No fine shall be imposed on any person employed save in respect of such acts and omissions on his part as the employer, with the previous approval of the 1[State] Government or of the prescribed authority, may have specified by notice under sub-section (2).

(2) A notice specifying such acts and omissions shall be exhibited in the prescribed manner on the premises in which the employment is carried on.

(3) No fine shall be imposed on any person employed until he has been given an opportunity of showing cause against the fine, or otherwise than in accordance with such procedure as may be prescribed for the imposition of fines.

(4) The total amount of fine which may be imposed in any one wage period on any person employed shall not exceed an amount equal to half an anna in the rupee of the wages payable to him in respect of that wage period.

(5) No fine shall be imposed on any person employed who has not completed fifteenth year.

(6) No fine imposed on any person employed shall be recovered from him after the expiry of sixty days from the day on which it was imposed.

(7) Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed.

(8) All fines and realizations thereof shall be recorded in a register to be kept by the employer in such form as may be prescribed; and all such realization shall be applied only to such purposes beneficial to the persons employed in the establishment as are approved by the prescribed authority.

Explanation—When the persons employed are part only of a staff employed under the same management, all such realizations may be credited to a common fund maintained for the staff as a whole, provided that the fund shall be applied only to such purposes as are approved by the prescribed authority.

36. Deductions for absence from duty—(1) Deductions may be under clause (b) of subsection (2) of section 34 only on account of the absence of an employed person from the place or places where, by the terms of his employment, he is required to work, such absence being for the whole or any part of the period during which he is so required to work.

(2) The amount of such deduction shall in no case bear to the wages payable to the employed person in respect of the wage period for which the deduction is made, a larger proportion than the period for which he was absent bears to the total period, within such wage period during which by the terms of his employment, he was required to work:

Provided that, subject to any rules made in this behalf by the 1[State] Government, if ten or more employed persons acting in concert absent themselves without due notice (that is to say, without giving the notice which is required under the terms of their contract of employment)

and without reasonable cause such deduction from any such person may include such amount not exceeding his wages for eight days as may by any such terms be due to the employer in lieu of due notice.

Explanation—For the purposes of this section, an employed person shall be deemed to be absent from the place where he is required to work, if, although present in such place, he refuses, in pursuance of a stay-in-strike or for any other cause which is not reasonable in the circumstances, to carry out his work.

37. Deductions for damage or loss – (1) A deduction under clause (c) of sub- section (2) of section 34 shall not exceed the amount of the damage or loss caused to the employer by the neglect or default of the person employed and shall not be made until the person employed has been given an opportunity of showing cause against the deduction, or otherwise than in accordance with such procedure as may be prescribed for the making of such deductions.

(2) All such deductions and all realizations there of shall be recorded in a register to be kept by the employer in such form as may be prescribed.

38. Deductions for services rendered— A deduction under clause (d) or clause (e) of sub section (2) of section 34 shall not be made from the wages of a person employed unless the house accommodation, amenity or service has been accepted by him, as a term of employment or otherwise, and such deduction shall not exceed an amount equivalent to the value of the house accommodation, amenity or service supplied and in the case of deduction under the said clause (e) shall be subject to such conditions as the 1[State] Government may impose.

39. Deductions for recovery of advances -- Deductions under clause (f) of subsection (2) of section 34 shall be subject to the following conditions, namely:-

(a) recovery of an advance of money given before employment began shall be made from the first payment of wages in respect of a complete wage period, but no recovery shall be made of such advances given for travelling expenses;

b) recovery of advances of wages not already earned shall be subject to any rules made by the 1[State] Government regulating the extent to which such advances may be given and the instalments by which they may be recovered.

40. Deductions for payments to co-operative societies and insurance schemes -- Deductions under clauses (j) and (k) of sub-section (2) of section 34 shall be subject to such conditions as the 1[State] Government may impose.

41. Notice of dismissal—(1) No employer shall dispense with the services of a person employed continuously for a period of not less than six months, except for a reasonable cause and without giving such person at least one month's notice or wages in lieu of such notice, provided however, that such notice shall not be necessary where the services of such person are dispensed with on a charge of misconduct supported by satisfactory evidence recorded at an enquiry held for the purpose.

(2) The person employed shall have a right to appeal to such authority and within such time as may be prescribed either on the ground that there was no reasonable cause for dispensing with his services or on the ground that he had not been guilty of misconduct as held by the employer.

2[(2-A) The appellate authority may, if it considers that any document or the testimony of any person is relevant or necessary for the discharge of its duties under this Act as appellate authority, call for and inspect such document or summon and examine such person. For the aforesaid purposes, it shall have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908 (Central Act V of 1908), in respect of the following matters, namely:-

- i (i) summoning and enforcing the attendance of any person and examining him on oath;
- ii (ii) compelling the production of documents;
- iii (iii) issuing commissions for the examination of witnesses

(2-B) The appellate authority, may, after giving notice in the prescribed manner to the employer and the person employed, dismiss the appeal or direct the reinstatement of the person employed, with or without wages for the period he was kept out of employment or direct payment of compensation without reinstatement or grant such other relief as it deems fit in the circumstances of the case.]

3) The decision of the appellate authority shall be final and binding on both the employer and the person employed.

1[41.A. Payment of full wages to person employed pending proceedings in Higher Courts -- Where in any case, the appellate authority, by its decision under Section 41, directs reinstatement of any person employed and the employer prefers any proceeding against such decision in a High Court or the Supreme Court, the employer shall be liable to pay such person employed, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the person employed had not been employed in any establishment during such period and an affidavit by such person employed had been filed to that effect in such Court:

Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such person employed had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for such period or part, as the case may be.]

CHAPTER VIII

APPOINTMENT, POWERS AND DUTIES OF INSPECTORS

42. Appointment of Inspectors-- The 2[State] Government may, by notification, appoint such officers of the 2[State] Government or of any local authority as they think fit to be Inspectors for the purposes of this Act, within such local limits as the 2[State] Government may assign to them.

43. Powers and duties of Inspectors-- Any inspector may at all reasonable hours enter into any premises, which is, or which he has reason to believe is, an establishment, with such

assistants and make such examination of the premises and of the prescribed registers, records or notices as may be prescribed.

44. Inspectors to be public servants -- Every Inspector shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code.

CHAPTER IX

PENALTIES FOR OFFENCES

45. Penalties – 1[Whoever contravenes any of the provisions of Section 7 to 11, 13 to 23, 25, 26, 29 to 41 and 47 shall be punishable for a first offence, with fine which may extend to five thousand rupees and for a second or subsequent offence, with fine which may extend to ten thousand rupees.]

2[**45A. Penalty for failure to comply with the provisions of section 41-A--**

Any employer who fails to comply with the provisions of Section 41-A shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both and where such failure is a continuing one, with a further fine which may extend to two hundred rupees for every day during which such failure continues after the conviction for the first and the court trying the offence, if it fines the offender, may direct that the whole or any part of the fine realised from him shall be paid, by way of compensation, to any person who, in its opinion has been injured by such failure.]

46. Penalty for obstructing Inspector, etc.-- Any person who wilfully obstructs an Inspector in the exercise of any power conferred on him under this Act or any person lawfully assisting an Inspector in the exercise of such power, or who fails to comply with any lawful direction made by an Inspector, shall be punishable with fine which may extend to two hundred and fifty rupees.

3[**46-A. Compounding of Offences** – (1) Any offence punishable under section 45 or any rule made under section 49 may, either before or after the institution of the prosecution, be compounded by the Commissioner of Labour or such other officer as may be authorised in

this behalf by the Commissioner of Labour, on payment, for credit to the State Government, of such sum as the Commissioner of Labour or such other officer may specify:

Provided that such sum shall not, in any case, exceed the maximum amount of the fine which may be imposed under this Act for the offence so compounded.

(2) Nothing contained in sub-section (1) shall apply to a person who commits the same or similar offence within a period of three years from the date on which the first offence, committed by him, was compounded.

Explanation—For the purpose of this sub-section, any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously compounded, shall be deemed to be a first offence.

[Subs. by Tamil Nadu Act 9 of 2017, S.2 (with effect from 01.04.2017)

2 Ins. By Tamil Nadu Act 44 of 2008, S.3 (with effect from 19th June, 2008)

3 Ins. By Tamil Nadu Act 18 of 1999, S.2 (with effect from 10th August, 1999)]

(3) Where an offence has been compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken against the offender, in respect of the offence so compounded and the offender, if in custody, shall be discharged forthwith.

(4) No offence punishable under this Act shall be compounded except as provided by this section.]

CHAPTER X

MISCELLANEOUS

47. Maintenance of registers and records and display of notices-- Subject to the general or special orders of the 1[State] Government, an employer shall maintain such register and records and display such notices as may be prescribed.

48. Delegation of powers—(1) The 1[State] Government may, by notification, authorize any officer or authority subordinate to them, to exercise any one or more of the powers vested in

them by or under this Act, except the power mentioned in section 49, subject to such restrictions and conditions, if any, as may be specified in the notification.

(2) The exercise of the powers delegated under sub-section (1) shall be subject to control and revision by the 1[State] Government or by such persons as may be empowered by them in that behalf. The 1[State] Government shall also have power to control and revise the acts or proceedings of any person so empowered.

49. Power to make rules – (1) The 1[State] Government may make rules to carry out the purposes of this Act.

(2) In making a rule under sub-section (1), the 1[State] Government may provide that a contravention thereof shall be punishable with fine which may extend to fifty rupees.

(3) The power to make rules conferred by this section shall be subject to the condition of the rules being made after previous publication.

4) All rules made under this section shall be published in the Fort St. George Gazette and on such publication shall have effect as if enacted in this Act.

50. Rights and privileges under other law, etc., not affected -- Nothing contained in this Act shall affect any rights or privileges which any person employed in any establishment is entitled to on the date on which this Act comes into operation in respect of such establishment, under any other law, contract, custom or usage applicable to such establishment, if such rights or privileges are more favourable to him than those to which he would be entitled under this Act.

51. Commissioner of labour to decide certain questions-- If any question arises whether all or any of the provisions of this Act apply to an establishment or to a person employed therein or whether section 50 applies to any case or not, it shall be decided by the Commissioner of Labour and his decision there on shall be final and shall not be liable to be questioned in any Court of Law.

52. Power of Government to suspend provisions of the Act during fairs and festivals -- On any special occasion in connection with a fair or festival or a succession of public

holidays, the 1[State] Government may, by notification, suspend for a specified period the operation of all or any of the provisions of this Act.

53. Central Act XVIII of 1942 not to apply to establishments governed by this Act -- On and from the date on which this Act comes into operation in respect of an establishment, the Weekly Holidays Act, 1942, shall cease to apply to such establishment.

TAMIL NADU INDUSTRIAL ESTABLISHMENTS (NATIONAL, FESTIVAL AND SPECIAL HOLIDAYS) ACT, 1958

(TAMIL NADU ACT 33 OF 1958)

Object & Reasons

Statement of Objects and Reasons - Tamil Nadu Industrial Establishments (National and Festival Holidays) Amendment Act, 1961 (Tamil Nadu Act 43 of 1961). - Sub-section (1) of section 5 of the Madras Industrial Establishments (National and Festival Holidays) Act, 1958 (Madras Act XXXIII of 1958), states inter alia that every employee shall be paid wages for each of the holidays allowed to him under section 3. Under sub-section (3) of section 5 of the said Act an employee who is paid wages by the day or at piece rates shall be entitled to be paid wages for any holiday allowed under section 3, but no such employee shall be entitled to be paid any wages for any of the holidays allowed under sections 3 other than the 26th January and the 15th August, if he has not completed a period of thirty days' continuous service immediately preceding such holiday.

2. It has been represented that even workers who have put in long years of service are deprived of the benefit of the wages for the festival holidays granted under section 3 of the said Act as the employers insist that they must have been in continuous service for thirty days immediately preceding such holiday in order to enable them to claim wages for that holiday.

3. The Government have examined the question in detail and they consider that it is not necessary for the employees to put in thirty days' continuous service immediately preceding the holiday every time before they are entitled to be paid wages for the holiday. They have

decided that the employees should be entitled to be paid wages for all the festival holidays allowed under the Act, once they have completed a total period of thirty days, within a continuous period of ninety days immediately preceding such holiday.

4. It has been decided to amend the Madras Catering Establishments Act, 1958 (Madras Act XIII of 1958), providing for the notice to the employee in cases where the employee is required by the employer to work on any of the National and festival holidays allowed under that Act. Sub-section (2) of section 5 of Madras Act XXXIII of 1958 corresponds to sub-section (4) of section 11 of Madras Act XIII of 1958. It has accordingly been decided to amend Madras Act XXXIII of 1958 also on the lines of the amendment proposed to be made to Madras Act XIII of 1958.

5. It is also considered that section 12 of Madras Act XXXIII of 1958 should be amended to give effect to the recommendation of the Committee on Subordinate Legislation regarding the placing of rules on the table of both Houses of the Legislature.

6. The Bill seeks to give effect to the above decision.

Published in Part IV-Section 3, pages 400-401 of the Fort St. George Gazette, dated the 19th September 1961.

establishment are entrusted to any other person (whether called a managing agent, manager, superintendent or by any other name), such other person;

(d) "*Government*" means the State Government;

(e) "*industrial establishment*" means,-

(i) any establishment as defined in clause (6) of section 2 of the Tamil Nadu Shops and Establishments Act, 1947 (Tamil Nadu Act XXXVI of 1947);

(ii) any factory as defined in clause (m) of section 2 of the Factories Act, 1948 (Central Act LXIII of 1948), or any place which is deemed to be a factory under sub-section (2) of section 85 of that Act;

(iii) any plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (Central Act LXIX of 1951);

(iv) "*Inspector*" means an Inspector appointed under sub-section (1) of section 6;

(g) "*wages*" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment or of the work done by him in such employment, and includes-

(i) such allowances (including dearness allowance) as the employee is for the time being entitled to;

(ii) the value of any house accommodation; or of a supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food grains or other articles; but does not include-

(a) any bonus;

(b) any contribution paid or payable by the employer to any pension fund or provident fund, or for the benefit of the employee under any law for the time being in force;

(c) any gratuity payable on the termination of his service;

(d) any sum paid to the employee to defray special expenses entailed on him by the nature of his employment;

(e) any travelling concession.

3. Grant of [National, festival and special holidays]. - (1) Every employee shall be allowed in each calendar year a holiday of one whole day on the [26th January, the 1st May, the 15th August and the 2nd October] and five other holidays each of one whole day for such festivals as the Inspector may, in consultation with the employer and the employees, specify in respect of any industrial establishment.

[(2) Notwithstanding anything contained in sub-section (1), the Government may, having due regard to any emergency or special circumstances prevailing in the State or any part thereof, by notification, declare any other day as a special holiday, to the employees of the industrial establishments, as it may deem fit.] [xxx]

4. Employer to send statement to Inspector. - Every employer shall send to the Inspector having jurisdiction over the area in which the industrial establishment is situated, and display in the premises of the industrial establishment, a statement showing the holidays allowed in each calendar year under section 3, in such form, within such time and in such manner as may be prescribed.

5. Wages. - (1) Notwithstanding any contract to the contrary, every employee shall be paid wages for each of the holidays allowed to him under section 3.

(2) Where an employee works on any holiday allowed under section 3, he shall, at his option, be entitled to-

(a) twice the wages; or

(b) wages for such day and to avail himself of a substituted holiday with wages [on one of the three days immediately before or after the day on which he so works.]

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an employee who is paid wages by the day or at piece rates shall be entitled to be paid wages for any holiday allowed under section 3-

(i) only at a rate equivalent to the daily average of his wages to be calculated in the prescribed manner;

(ii) where he works on any such holiday, only at twice the rate mentioned in clause (i), or in lieu thereof, at the rate mentioned in that clause and to avail himself of a substituted holiday with wages at the rate [on one of the three days immediately before or after the day on which he so works:]

Provided that no such employee shall be entitled to be paid any wages for any of the holidays allowed under section 3, other than [the 26th January, the 1st May, the 15th August and the

2nd October] if he has not completed a period of thirty days' continuous service immediately preceding such holiday.

Explanation. - For the purpose of this proviso, a weekly or any other holiday or authorized leave availed of by an employee shall be included in computing the period of thirty days mentioned therein.

6. Inspectors. - (1) The Government may, by notification, appoint such persons or such class of persons as they think fit to be Inspectors of this Act for such local limits as the Government may specify.

(2) Every Inspector shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (Central Act XLV of 1860).

7. Powers of Inspectors. - Subject to any rules made by the Government in this behalf, an Inspector may, within the local limits for which he is appointed,-

- (a) enter, at all reasonable times and with such assistants, if any, who are persons in the service of the Government or of any local authority as he thinks fit to take with him, any place which is, or which he has reason to believe is, an industrial establishment;
- (b) make such examination of the premises and of any prescribed registers, records and notices and take on the spot or otherwise, the evidence of such person as he may deem necessary for carrying out the purposes of this Act;
- (c) exercise such other powers as may be necessary for carrying out the purposes of this Act:

Provided that no one shall be required under this section to answer any question or give any evidence tending to incriminate himself.

8. Penalties. - Any employer who contravenes any of the provisions of section 3 or section 5 shall be punishable with fine which, for the first offence, may extend to twenty-five rupees and for a second and subsequent offences may extend to two hundred and fifty rupees.

[8A. Compounding of offences. - (1) Any offence punishable under section 8 or any rule made under section 12 may, either before or after the institution of the prosecution, be compounded by the Commissioner of Labour or such other officers as may be authorised in this behalf by the Commissioner of Labour, on payment, for credit to the Government of such sum as the Commissioner of Labour or such other officer may specify:

Provided that such sum shall not, in any case, exceed the maximum amount of fine which may be imposed under this Act for the offence so compounded.

(2) Where an offence has been compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken against the offender, in respect of the offence so compounded and the offender, if in custody, shall be discharged forthwith.

(3) No offence punishable under this Act shall be compounded except as provided by this section.]

9. Penalty for obstructing Inspector. - Whoever wilfully obstructs an Inspector in the exercise of any power conferred on him or under this Act, or fails to produce on demand in writing by an Inspector any register, record or notice in his custody which may be required to be kept in pursuance of this Act or of any rule made thereunder, 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.

10. Exemptions. - (1) Nothing contained in this Act shall apply to-

(a) any employee in a position of management;

(b) any employee whose work involves travelling;

(c) any industrial establishment under the control of the Central or any State Government, local authority, Reserve Bank of India, a railway administration operating any railway as defined in clause (20) of Article 366 of the Constitution or a cantonment authority;
or

(2) The Government may, by notification, exempt either permanently or for any specified period any establishment or class of establishments, or person or class of persons from all or any of the provisions of this Act, subject to such conditions as the Government may deem fit.

11. Rights and privileges under other laws not affected. - Nothing contained in this Act shall affect any rights or privileges which any employee is entitled to, on the date on which this Act comes into force under any other law, contract, custom or usage, if such right or privileges are more favourable to him than those to which he would be entitled under this Act.

[xxx]

12. Power to make rules. - (1) The Government may, by notification, make rules for the purpose of carrying into effect the provisions of this Act.

(2) In making a rule under this Act, the Government may provide that a contravention thereof shall be punishable with fine which may extend to fifty rupees.

(3) All rules made under this Act shall, as soon as possible after they are made, be placed on the table of [the Legislative Assembly] and shall be subject to such modifications by way of amendment or repeal as the [Legislative Assembly] may make within fourteen days on which it actually sits either in the same session or in more than one session.

UNIT - VIII

8. EMPLOYMENT LEGISLATION

THE INDUSTRIAL DISPUTES ACT, 1947

INTRODUCTION

The first enactment dealing with the settlement of industrial disputes was the Employers' and Workmen's Disputes Act, 1860. This Act weighed much against the workers and was therefore replaced by the Trade Disputes Act, 1929. The Act of 1929 contained special provisions regarding strikes in public utility services and general strikes affecting the community as a whole. The main purpose of the Act, however, was to provide a conciliation machinery to bring about peaceful settlement of industrial disputes. The Whitely Commission made in this regard the perceptive observation that the attempt to deal with unrest must begin rather with the creation of an atmosphere unfavourable to disputes than with machinery for their settlement.

The next stage in the development of industrial law in this country was taken under the stress of emergency caused by the Second World War. Rule 81-A of the Defence of India Rules was intended to provide speedy remedies for industrial disputes by referring them compulsorily to conciliation or adjudication, by making the awards legally binding on the parties and by prohibiting strikes or lock-outs during the pendency of conciliation or adjudication proceedings and for two months thereafter. This rule also put a blanket ban on strikes which did not arise out of genuine trade disputes.

With the termination of the Second World War, Rule 81-A was about to lapse on 1st October, 1946, but it was kept alive by issuing an Ordinance in the exercise of the Government's Emergency Powers. Then followed the Industrial Disputes Act, 1947. The provisions of this Act, as amended from time to time, have furnished the basis on which industrial jurisprudence in this country is founded.

OBJECT AND SIGNIFICANCE OF THE ACT

The Industrial Disputes Act, 1947 makes provision for the investigation and settlement of industrial disputes and for certain other purposes. It ensures progress of industry by bringing

about harmony and cordial relationship between the employers and employees. Definitions of the words 'industrial dispute, workmen and industry' carry specific meanings under the Act and provide the framework for the application of the Act.

In the case of Workmen of Dimakuchi Tea Estate v. Dimakuchi Tea Estate, AIR 1958 S.C. 353, the Supreme Court laid down following objectives of the Act:

(i) Promotion of measures of securing and preserving amity and good relations between the employer and workmen.

(ii) Investigation and settlement of industrial disputes between employers and employers, employers and workmen, or workmen and workmen with a right of representation by registered trade union or federation of trade unions or an association of employers or a federation of associations of employers.

(iii) Prevention of illegal strikes and lock-outs.

(iv) Relief to workmen in the matter of lay-off and retrenchment.

(v) Promotion of collective bargaining.

This Act extends to whole of India. The Act was designed to provide a self-contained code to compel the parties to resort to industrial arbitration for the resolution of existing or apprehended disputes without prescribing statutory norms for varied and variegated industrial relating norms so that the forums created for resolution of disputes may remain unhampered by any statutory control and devise rational norms keeping pace with improved industrial relations reflecting and imbibing socio-economic justice. This being the object of the Act, the Court by interpretative process must strive to reduce the field of conflict and expand the area of agreement and show its preference for upholding agreements sanctified by mutuality and consensus in larger public interest, namely, to eschew industrial strife, confrontation and consequent wastage (*Workmen, Hindustan Lever Limited v. Hindustan Lever Limited*, (1984) 1 SCC 728).

wastage (*Workmen, Hindustan Lever Limited v. Hindustan Lever Limited*,

(1984) 1 SCC 728).

Test your knowledge

Choose the correct answer

Which was the first enactment that dealt with the settlement of industrial disputes?

- (a) Employers' and Workmen's Disputes Act, 1850
- (b) Employers' and Workmen's Disputes Act, 1860
- (c) Trade Disputes Act, 1860
- (d) Trade Disputes Act, 1929

Correct answer: (b)

The Act applies to an existing and not to a dead industry. It is to ensure fair wages and to prevent disputes so

that production might not be adversely affected. It applies to all industries irrespective of religion or caste of

parties. It applies to the industries owned by Central and State Governments too (*Hospital Employees Union v.*

Christian Medical College, (1987) 4 SCC 691).

IMPORTANT DEFINITIONS

(i) *Industry*

“Industry” means any business, trade, undertaking, manufacture or calling of employers and includes any calling service, employment, handicraft, or industrial occupation or avocation of workmen. [Section 2(j)]

The Supreme Court carried out an indepth study of the definition of the term industry in a comprehensive manner in the case of *Bangalore Water Supply and Sewerage Board v. A Rajappa*, AIR 1978 SC 548 (hereinafter referred to as Bangalore Water Supply case), after

considering various previous judicial decisions on the subject and in the process, it rejected some of them, while evolving a new concept of the term “industry”.

Tests for determination of “industry”

After discussing the definition from various angles, in the above case, the Supreme Court, laid down the following tests to determine whether an activity is covered by the definition of “industry” or not. It is also referred to as the triple test.

I. (a) Where there is (i) systematic activity, (ii) organised by co-operation between employer and employee,

(iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss e.g., making, on a large scale, prasada or food) prima facie, there is an “industry” in that enterprise.

(b) Absence of profit motive or gainful objective is irrelevant wherever the undertaking is whether in the public, joint, private or other sector.

(c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

(d) If the organisation is a trade or business, it does not cease to be one because of philanthropy animating the undertaking.

Criteria for determining dominant nature of undertaking

The Supreme Court, in *Bangalore Water Supply* case laid down the following guidelines for deciding the dominant nature of an undertaking:

(a) Where a complex of activities, some of which qualify for exemption, others not, involves the employees on the total undertaking. Some of whom are not “workmen” or some departments are not productive of goods and services if isolated, nature of the department will be the true test. The whole undertaking will be “industry” although those who are not “workmen” definition may not be benefited by the status.

(b) Notwithstanding with previous clause, sovereign functions strictly understood alone qualify for exemption and not the welfare activities or economic adventures undertaken by Government or statutory bodies.

(c) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(j).

(d) Constitutional and competently enacted legislative provisions may well remove an undertaking from the scope of the Act.

The above decision of the Supreme Court has a wide sweep. The triple test along with dominant nature criteria will cover almost the entire labour force in the country. The charitable or missionary institutions, hospital, educational and other research institutions, municipal corporations, firms of chartered accountants, solicitors' firms, etc., which were not held to be "industry" earlier will now be covered by the definition of "industry".

Now let us see whether the following activities would fall under industry or not:

1. Sovereign functions: Sovereign functions strictly understood alone qualify for exemption, not the welfare activities or economic adventures undertaken by Government or statutory bodies. Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable then they can be considered to come within Section 2(j). (*Bangalore Water Supply case*). If a department of a municipality discharged many functions, some pertaining to "industry" and other non-industrial activities, the predominant function of the department shall be the criterion for the purposes of the Act (*Corp'n. of City of Nagpur v. Employees*, AIR 1960 SC 675).

2. Municipalities: Following Departments of the municipality were held, to be "industry" (i) Tax (ii) Public Conveyance (iii) Fire Brigade (iv) Lighting (v) Water Works (vi) City Engineers (vii) Enforcement (Encroachment) (viii) Sewerage

(ix) Health (x) Market (xi) Public Gardens (xii) Education (xiii) Printing Press (xiv) Building and (xv) General administration. If a department of a municipality discharges many functions

some pertaining to industry and others non-industrial, the predominant function of the department shall be the criterion for the purpose of the Act.

3. Hospitals and Charitable institutions: Exemptions to charitable institutions under Section 32(5) of Payment of Bonus Act is not relevant to the construction of Section 2(j), *FICCI v. Workmen*, (1972) 1 SCC 40, there is an industry in the enterprise, provided the nature of the activity, namely the employer-employee basis bears resemblance to what is found in trade or business. This takes into the fold of industry undertakings, callings, services and adventures 'analogous to the carrying on of trade or business'. Absence of profit motive or gainful objective is irrelevant for "industry", be the venture in the public, joint, private or other sector. The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

4. Clubs: A restricted category of professions, clubs, co-operatives and even Gurukulas may qualify for exemption if, in simple ventures, substantially and going by the dominant nature criterion substantively, no employees are entertained, but in minimal matters marginal employees are hired without destroying the non-employee character of the unit. But larger clubs are "industry" (as per *Bangalore Water Supply case*).

5. Universities, Research Institutions etc.: As regards institutions, if the triple tests of systematic activity, cooperation between employer and employee and production of goods and services were to be applied, a university, a college, a research institute or teaching institution will be "industry". The following institutions were held to be "industry": Ahmedabad Textile Industries Research Association, Tocklai Experimental Station. Indian

Standard Institute, and Universities. However Physical Research Laboratory, Ahmedabad was held not to be an Industry by the Supreme Court (1997 Lab. IC 1912 SC). Since it is carrying on research not for the benefit of others and moreover, it is not engaged in commercial or industrial activity.

6. Professional Firms: A solicitors establishment can be an "industry" (as per *Bangalore Water Supply case*). Regarding liberal professions like lawyers, doctors, etc., the test of direct cooperation between capital and labour in the production of goods or in the rendering of service or that cooperation between employer and employee is essential for carrying out the

work of the enterprise. The personal character of the relationship between a doctor or a lawyer with his professional assistant may be of such a kind that requires complete confidence and harmony in the productive activity in which they may be cooperating.

7. Voluntary services: If in a pious or altruistic mission, many employ themselves free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the Holiness, divinity or Central personality and the services are supplied free or at a nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then the institution is not an industry even if stray servants manual or technical are hired. Such eleemosynary or like undertakings alone are exempted. (*Bangalore Water Supply case*)

Following are held to be “industry”: Co-operative Societies, Federation of Indian Chamber of Commerce, Company carrying on agricultural operations, Bihar Khadi Gramodyog Sangh, Indian Navy Sailors Home, Panchayat Samiti, Public Health Department of the State Government, Forest Department of Govt., Zoo; Primary Health Centres, and Indian Institute of Petroleum. Some other instances of ‘Industry are: Rajasthan Co-operative Credit Institutions Cadre Authority (1985 Lab IC 1023 (Raj.)), A trust for promoting religious, social and educational life but also undertaking commercial activities (1987) 1 LLJ 81, M.P. Khadi and Village Industries Board, Housing Board, Dock Labour Board, Management of a private educational institution (*R.C.K. Union v. Rajkumar College*, (1987) 2 LLN 573).

But the following are held to be not “Industry”: Posts and Telegraphs Department (*Union of India v. Labour Court*, (1984) 2 LLN 577), Telecom Deptt. (*Bombay Telephones Canteen Employees Association v. Union of India*),

Central Institute of Fisheries (*P. Bose v. Director, C.I.F.*, 1986 Lab IC 1564), and Construction and maintenance of National and State Highways (*State of Punjab v. Kuldip Singh and another*, 1983 Lab IC 83), Trade Unions (*RMS v. K.B. Wagh*, 1993(2) CLR 1059).

Section 2(j) shall stand amended by Amendment Act of 1982.

Section 2(j) under Amendment Act, 1982 [date of effect is yet to be notified]

2(j) “Industry” means any systematic activity carried on by co-operation between an employer and his workmen (Whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not:

(i) any capital has been invested for the purpose of carrying on such activity; or

(ii) such activity is carried on with a motive to make any gain or profit, and includes:

(a) any activity of the Dock Labour Board established under Section 5A of the Dock Workers (Regulations of Employment) Act, 1948, (9 of 1948);

(b) any activity relating to the promotion of sales or business or both carried on by an establishment,

but does not include:

(1) any agricultural operation except where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this clause) and such other activity is the predominant one.

Explanation: For the purpose of this sub-clause, “agricultural operation” does not include any activity carried on in a plantation as defined in clause (f) of Section 2 of the Plantations Labour Act, 1951; or

(2) hospitals or dispensaries; or

(3) educational, scientific, research to training institutions; or

(4) institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service; or

(5) khadi or village industries; or

(6) any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defence research atomic energy and space; or

(7) any domestic service; or

(8) any activity, being a profession practised by an individual or body of individuals, if the number of persons employed by the individuals or body of individuals in relation to such profession is less than ten; or

(9) any activity, being an activity carried on by a co-operative society or a club or any other like body of individuals, if the number of persons employed by the co-operative society, club or other like body of individuals in relation to such activity is less than ten.

8.2. INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT 1946

ACT NO. 20 OF 1946 [23rd April, 1946.]

An Act to require employers in industrial establishments formally to define conditions of employment under them. WHEREAS it is expedient to require employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them;

It is hereby enacted as follows: — **1. Short title, extent and application.**—

(1) This Act may be called the Industrial Employment (Standing Orders) Act, 1946.

(2) It extends to 2[the whole of India

4[(3) It applies to every industrial establishment wherein one hundred or more workmen are employed, or were employed on any day of the preceding twelve months: 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 industrial

establishment employing such number of persons less than one hundred as may be specified in the notification.

5* * * * *

6[(4) Nothing in this Act shall apply to — (i) any industry to which the provisions of Chapter VII of the Bombay Industrial Relations Act, 1946 (Bombay Act 11 of 1947) apply; or (ii) any industrial establishment to which the provisions of the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 (Madhya Pradesh Act 26 of 1961) apply: Provided that notwithstanding anything contained in the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 (Madhya Pradesh Act 26 of 1961), the provisions of this Act shall apply to all industrial establishments under the control of the Central Government.]

*{ 1. This Act has been extended to— (i) Goa, Daman and Diu by Reg. 12 of 1962, s. 3 and the Sch. (ii) Pondicherry by Regulation 7 of 1963, s. 3 and the Sch. I (w.e.f. 1-10-1963), and (iii) the whole of the Union territory of Lakshadweep, vide Reg. 8 of 1965, s. 3 and the Sch. The Act has been amended in its application to— (i) Maharashtra by Maharashtra Act 54 of 1974. (ii) Mysore by Mysore Act 37 of 1975. (iii) Madras by Madras Act 24 of 1960, and (iv) Andhra Pradesh by A. P. Act 9 of 1969. 2. Subs. by the A.O. 1950, for “all the Provinces of India”. 3. The words “except the State of Jammu and Kashmir” omitted by Act 51 of 1970, s. 2 (w.e.f. 1-9-1971). 4. Subs. by Act 16 of 1961, s. 2, for sub-section (3). 5. Second proviso omitted by Act 39 of 1963, s. 2 (w.e.f. 23-12-1963). 6. Ins. by s. 2, *ibid.* (w.e.f. 23-12-1963).}*

2. Interpretation.—In this Act, unless there is anything repugnant in the subject or context,—

1[(a) “appellate authority” means an authority appointed by the appropriate Government by notification in the Official Gazette to exercise in such area as may be specified in the notification the functions of an appellate authority under this Act: Provided that in relation to an appeal pending before an Industrial Court or other authority immediately before the commencement of the Industrial Employment (Standing Orders) Amendment Act, 1963 (39 of 1963), that court or authority shall be deemed to be the appellate authority;]

(b) “appropriate Government” means in respect of industrial establishments under the control of the Central Government or a 2[Railway administration] or in a major port, mine or oil-field, the Central Government, and in all other cases, the State Government:

3[Provided that where any question arises as to whether any industrial establishment is under the control of the Central Government, that Government may, either on a reference made to it by the employer or the workman or a trade union or other representative body of the workmen, or on its own motion and after giving the parties an opportunity of being heard, decide the question and such decision shall be final and binding on the parties;]

4[(c) “Certifying Officer” means a Labour Commissioner or a Regional Labour Commissioner, and includes any other officer appointed by the appropriate Government, by notification in the Official Gazette, to perform all or any of the functions of a Certifying Officer under this Act;] (d) “employer” means 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 5[clause (f) of sub-section (1) of section 7, of the Factories Act, 1948 (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; (e) “industrial establishment” means— (i) an industrial establishment as defined in clause (ii) of section 2 of the Payment of Wages Act, 1936 (4 of 1936), or

6[(ii) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948), or] (iii) a railway as defined in clause (4) of section 2 of the Indian Railways Act; 1890 (9 of 1890), or (iv) the establishment of a person who, for the purpose of fulfilling a contract with the owner of any industrial establishment, employs workmen; (f) “prescribed” means prescribed by rules made by the appropriate Government under this Act;

(g) “standing orders” means rules relating to matters set out in the Schedule;

{ 1. Subs. by Act 39 of 1963, s. 3, for cl. (a) (w.e.f. 23-12-1963). 2. Subs. by the A.O. 1950, for “Federal railway”. 3. Added by Act 18 of 1982, s. 2 (w.e.f. 17-5-1982). 4. Subs. by Act 16

of 1961, s. 3, for cl. (c). 5. Subs. by s. 3, *ibid.*, “for clause (e) of sub-clause (1) of section 9 of Factories Act, 1934 (25 of 1934)”. 6. Subs. by s. 3, *ibid.*, for sub-clause (ii) }

(h) “trade union” means a trade union for the time being registered under the Indian Trade Unions Act, 1926 (16 of 1926);

1[(i) “wages” and “workman” have the meanings respectively assigned to them in clauses (rr) and (s) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947).] **3. Submission of draft standing orders.**—(1) Within six months from the date on which this Act becomes applicable to an industrial establishment, the employer shall submit to the Certifying Officer five copies of the draft standing orders proposed by him for adoption in his industrial establishment. (2) Provision shall be made in such draft for every matter set out in the Schedule which may be applicable to the industrial establishment, and where model standing orders have been prescribed, shall be, so far as is practicable, in conformity with such model. (3) The draft standing orders submitted under this section shall be accompanied by a statement giving prescribed particulars of the workmen employed in the industrial establishment including the name of the trade union, if any, to which they belong. (4) Subject to such conditions as may be prescribed, a group of employers in similar industrial establishments may submit a joint draft of standing orders under this section. **4. Conditions for certification of standing orders.**—Standing orders shall be certifiable under this Act if— (a) provision is made therein for every matter set out in the Schedule which is applicable to the industrial establishment, and (b) the standing orders are otherwise in conformity with the provisions of this Act;

and it 2[shall be the function] of the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any standing orders. **5. Certification of standing orders.**—(1) On receipt of the draft under section 3, the Certifying Officer shall forward a copy thereof to the trade union, if any, of the workmen, or where there is no such trade union, to the workmen in such manner as may be prescribed, together with a notice in the prescribed form requiring objections, if any, which the workmen may desire to make to the draft standing orders to be submitted to him within fifteen days from the receipt of the notice. (2) After giving the employer and the trade union or such other representatives of the workmen as may be prescribed an opportunity of being heard, the Certifying Officer shall decide whether or not any modification of or addition to the draft submitted by the employer

is necessary to render the draft standing orders certifiable under this Act, and shall make an order in writing accordingly. (3) The Certifying Officer shall thereupon certify the draft standing orders, after making any modifications therein which his order under sub-section (2) may require, and shall within seven days thereafter send copies of the certified standing orders authenticated in the prescribed manner and of his order under sub-section (2) to the employer and to the trade union or other prescribed representatives of the workmen.

6. Appeals.—(1) 3[Any employer, workmen, trade union or other prescribed representatives of the workmen] aggrieved by the order of the Certifying Officer under sub-section (2) of section 5 may, within 4[thirty days] from the date on which copies are sent under sub-section (3) of that section, appeal to the appellate authority, and the appellate authority, whose decision shall be final, shall by order in writing confirm the standing orders either in the form certified by the Certifying Officer or after amending the said standing orders by making such modifications thereof or additions thereto as it thinks necessary to render the standing orders certifiable under this Act.

{ 1. Subs. by Act 18 of 1982, s. 2 for cl. (i) (w.e.f. 17-5-1982). 2. Subs. by Act 36 of 1956, s. 32 for “shall not be the function” (w.e.f.17-9-1956). 3. Subs. by Act 18 of 1982, s. 3, for “Any person” (w.e.f. 17-5-1982). 4. Subs. by Act 16 of 1961, s. 4, for “twenty-one days”. }

(2) The appellate authority shall, within seven days of its order under sub-section (1), send copies thereof to the Certifying Officer, to the employer and to the trade union or other prescribed representatives of the workmen, accompanied, unless it has confirmed without amendment the standing orders as certified by the Certifying Officer, by copies of the standing orders as certified by it and authenticated in the prescribed manner. **7. Date of operation of standing orders.**—Standing orders shall, unless an appeal is preferred under section 6, come into operation on the expiry of thirty days from the date on which authenticated copies thereof are sent under sub-section (3) of section 5, or where an appeal as aforesaid is preferred, on the expiry of seven days from the date on which copies of the order of the appellate authority are sent under sub-section (2) of section 6. **8. Register of standing orders.**—A copy of all standing orders as finally certified under this Act shall be filed by the Certifying Officer in a register in the prescribed form maintained for the purpose, and the Certifying Officer shall furnish a copy thereof to any person applying therefore on payment of the prescribed fee. **9. Posting of standing orders.**—The text of the standing orders as

finally certified under this Act shall be prominently posted by the employer in English and in the language understood by the majority of his workmen on special boards to be maintained for the purpose at or near the entrance through which the majority of the workmen enter the industrial establishment and in all departments thereof where the workmen are employed.

10. Duration and modification of standing orders.—(1) Standing orders finally certified under this Act shall not, except on agreement between the employer and the workmen 1[or a trade union or other representative body of the workmen], be liable to modification until the expiry of six months from the date on which the standing orders or the last modifications thereof came into operation.

2[(2) Subject to the provisions of sub-section (1), an employer or workman 1[or a trade union or other representative body of the workmen] may apply to the Certifying Officer to have the standing orders modified, and such application shall be accompanied by five copies of 3*** the modifications proposed to be made, and where such modifications are proposed to be made by agreement between the employer and the workmen 1[or a trade union or other representative body of the workmen], a certified copy of that agreement shall be filed along with the application.] (3) The foregoing provisions of this Act shall apply in respect of an application under sub-section (2) as they apply to the certification of the first standing orders.

4[(4) Nothing contained in sub-section (2) shall apply to an industrial establishment in respect of which the appropriate Government is the Government of the State of Gujarat or the Government of the State of Maharashtra.]

5[**10A. Payment of subsistence allowance.**—(1) Where any workman is suspended by the employer pending investigation or inquiry into complaints or charges of misconduct against him, the employer shall pay to such workman subsistence allowance— (a) at the rate of fifty per cent. of the wages which the workman was entitled to immediately preceding the date of such suspension, for the first ninety days of suspension; and (b) at the rate of seventy-five per cent. of such wages for the remaining period of suspension if the delay in the completion of disciplinary proceedings against such workman is not directly attributable to the conduct of such workman.

{ 1. Ins. by Act 18 of 1982, s. 4 (w.e.f. 17-5-1982). 2. Subs. by Act 36 of 1956, s. 32, for sub-section (2) (w.e.f. 17-9-1956). 3. Certain words omitted by Act 39 of 1963, s. 4 (w.e.f. 23-12-1963). 4. Ins. by s. 4, *ibid.* (w.e.f. 23-12-1963). 5. Ins. by Act 18 of 1982, s. 5 (w.e.f. 17-5-1982). }

(2) If any dispute arises regarding the subsistence allowance payable to a workman under sub-section (1) the workman or the employer concerned may refer the dispute to the Labour Court, constituted under the Industrial Disputes Act, 1947 (14 of 1947), within the local limits of whose jurisdiction the industrial establishment wherein such workman is employed is situate and the Labour Court to which the dispute is so referred shall, after giving the parties an opportunity of being heard, decide the dispute and such decision shall be final and binding on the parties. (3) Notwithstanding anything contained in the foregoing provisions of this section, where provisions relating to payment of subsistence allowance under any other law for the time being in force in any State are more beneficial than the provisions of this section, the provisions of such other law shall be applicable to the payment of subsistence allowance in that State.]

11. Certifying Officers and appellate authorities to have powers of civil court.—1[(1)] Every Certifying Officer and appellate authority shall have all the powers of a Civil Court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, and compelling the discovery and production of documents, and shall be deemed to be a civil court within the meaning of 2[sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974).]

3[(2) Clerical or arithmetical mistakes in any order passed by a Certifying Officer or appellate authority, or errors arising therein from any accidental slip or omission may, at any time, be corrected by that Officer or authority or the successor in office of such Officer or authority, as the case may be.] **12. Oral evidence in contradiction of standing orders not admissible.**—No oral evidence having the effect of adding to or otherwise varying or contradicting standing orders as finally certified under this Act shall be admitted in any Court.

4[12A. Temporary application of model standing orders.—(1) Notwithstanding anything contained in sections 3 to 12, for the period commencing on the date on which this Act

becomes applicable to an industrial establishment and ending with the date on which the standing orders as finally certified under this Act come into operation under section 7 in that establishment, the prescribed model standing orders shall be deemed to be adopted in that establishment, and the provisions of section 9, sub-section (2) of section 13 and section 13A shall apply to such model standing orders as they apply to the standing orders so certified. (2) Nothing contained in sub-section (1) shall apply to an industrial establishment in respect of which the appropriate Government is the Government of the State of Gujarat or the Government of the State of Maharashtra.] **13. Penalties and procedure.**—(1) An employer who fails to submit draft standing orders as required by section 3, or who modifies his standing orders otherwise than in accordance with section 10, shall be punishable with fine which may extend to five thousand rupees, and in the case of a continuing offence with a further fine which may extend to two hundred rupees for every day after the first during which the offence continues. (2) An employer who does any act in contravention of the standing orders finally certified under this Act or his industrial establishment shall be punishable with fine which may extend to one hundred rupees, and in the case of a continuing offence with a further fine which may extend to twenty-five rupees for every day after the first during which the offence continues. (3) No prosecution for an offence punishable under this section shall be instituted except with the previous sanction of the appropriate Government.

(4) No Court inferior to that of 5[a Metropolitan Magistrate or Judicial Magistrate of the second class] class] shall try any offence under this section.

{1. S. 11 renumbered as sub-section (1) thereof by Act 39 of 1963, s. 5 (w.e.f. 23-12-1963). 2. Subs. by Act 18 of 1982, s. 6, for “sections 480 and 482 of the Code of Criminal Procedure, 1898 (5 of 1898)” (w.e.f. 17-5-1982). 3. Ins. by Act 39 of 1963, s. 5 (w.e.f. 23-12-1963). 4. Ins. by s. 6, ibid. (w.e.f. 23-12-1963). 5. Subs. by Act 18 of 1982, s. 7, for “a Metropolitan Magistrate or Judicial Magistrate of the second class” (w.e.f. 17-5-1982).}

1[13A. Interpretation, etc., of standing orders.—If any question arises as to the application or interpretation of a standing order certified under this Act, any employer or workman 2[or a trade union or other representative body of the workmen] may refer the question to any one of the Labour Courts constituted under the Industrial Disputes Act, 1947 (14 of 1947), and specified for the disposal of such proceeding by the appropriate Government by notification

in the Official Gazette, and the Labour Court to which the question is so referred shall, after giving the parties an opportunity of being heard, decide the question and such decision shall be final and binding on the parties. **13B. Act not to apply to certain industrial establishments.**—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 Services) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Service (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.] **14. Power to exempt.**—The appropriate Government may by notification in the Official Gazette exempt, conditionally or unconditionally, any industrial establishment or class of industrial establishments from all or any of the provisions of this Act.

3[14A. Delegation of powers.—The appropriate Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act or any 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; (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.] **15. Power to make rules.**—(1) The appropriate Government may, after previous publication, by notification in the Official Gazette, make rules to carry out the purposes of this Act. (2) In particular and without prejudice to the generality of the foregoing power, such rules may— (a) prescribe additional matters to be included in the Schedule, and the procedure to be followed in modifying standing orders certified under this Act in accordance with any such addition; (b) set out model standing orders for the purposes of this Act; (c) prescribe the procedure of Certifying Officers and appellate authorities; (d) prescribe the fee which may be charged for copies of standing orders entered in the register of standing orders; (e) provide for any other matter which is to be or may be prescribed: Provided that before any rules are made under clause (a) representatives of both employers and workmen shall be consulted by the appropriate Government.

{ 1. Ins. by Act 36 of 1956, s. 32 (w.e.f. 10-3-1957). 2. Ins. by Act 18 of 1982, s. 8 (w.e.f. 17-5-1982). 3. Subs. by Act 39 of 1963, s. 7, for s. 14A (w.e.f. 23-12-1963). }

1[(3) Every rule made by the Central Government under this section shall be laid as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or 2[in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid], both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

EMPLOYMENT EXCHANGES (COMPULSORY NOTIFICATION OF VACANCIES) ACT, 1959

The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 provides for compulsory notification of vacancies and submission of employment returns by the employers to the employment exchanges. Thus, the main activities of the employment exchanges are registration, placement of job seekers, career counseling, and vocational guidance and collection of employment market information.

The Act applies to all establishments in the public sector and such establishments in the private sector as are engaged in nonagricultural activities and employing 25 or more workers. The employer in every establishment in public sector in any State or area shall furnish such prescribed information or return in relation to vacancies that have occurred or are about to occur in that establishment, to such prescribed employment exchanges.

DEFINITION

Employee means any person who is employed in an establishment to do any work for remuneration. { Section 2(b)}

Employer means any person who employs one or more other person to do any work in an establishment for remuneration and includes any person entrusted with the supervision and control of employees in such establishment. { Section 2(c)}

Employment Exchange means any office or place established and maintained by the Government for the collection and furnishing of information, either by the keeping of registers or otherwise, respecting— (i) persons who seek to engage employees. (ii) persons who seek employment, and (iii) vacancies to which persons seeking employment, may be appointed .{ Section 2(d)}

Establishment means— (a) any office, or (b) any place where any industry, trade, business or occupation is carried on. { Section 2(e)}

Establishment in Public Sector means an establishment owned, controlled or managed by — (1) the Government or a department of the Government (2) a Government company as defined in Section 617 of the Companies Act,1956 (1 of 1956) ; (3) a corporation (including a co-operative society) established by or under a Central, Provincial or State Act, which is owned, controlled or managed by the Government; (4) a local authority. { Section 2(f)}

Establishment in Private Sector means an establishment which is not an establishment in public sector and where ordinarily twenty-five or more persons are employed to work for remuneration. { Section 2(g)}

Act not to apply in relation to certain vacancies

Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 does not apply in relation to vacancies in any employment –

(i) in agriculture and horticulture in any establishment in private sector;

(ii) in domestic service;

(iii) where the period of employment is less than three months;

(iv) to do unskilled office work;

- (v) connected with the staff of Parliament;
- (vi) proposed to fill through promotion or by absorption of surplus staff;
- (vii) which carries a remuneration of less than sixty rupees a month.

Notification of vacancies to employment exchanges

Section 4 of the Act provides that the employer in every establishment in public sector in that State and the employer in every establishment in private sector or every establishment pertaining to any class or category of establishments in private sector shall notify the vacancy to such employment exchanges as may be prescribed. However, there is no obligation upon any employer to recruit any person through the employment exchange to fill any vacancy.

Employers to furnish information and returns in prescribed form

Section 5 stipulates that the employer in every establishment in public sector in that State or area shall furnish such information or return as may be prescribed in relation to vacancies that have occurred or are about to occur in that establishment, to such employment exchanges as may be prescribed.

The appropriate Government may, by notification in the Official Gazette, require that from such date, the employer in every establishment in private sector or every establishment pertaining to any class or category of establishments in private sector shall furnish such information or return as may be prescribed in relation to vacancies that have occurred or are about to occur in that establishment to such employment exchanges as may be prescribed.

Right of access to records or documents

Section 6 empowers such officer of Government as may be prescribed in this behalf, or any person authorized by him in writing, shall have access to any relevant record or document in the possession of any employer required to furnish any information or returns under section 5 and may enter at any reasonable time any premises where he believes such record or document to be and inspect or take copies of relevant records or documents or ask any question necessary for obtaining any required information.

Penalties

If any employer fails to notify to the employment exchanges prescribed for the purpose any vacancy, he shall be punishable for the first offence with fine which may extend to five hundred rupees and for every subsequent offence with fine which may extend to one thousand rupees. If any refuses or neglects to furnish such information or return, or furnishes or causes to be furnished any information or return which he knows to be false, or refuses to answer, or gives a false answer to, any question necessary for obtaining any information required to be furnished or impedes the right of access to relevant records or documents or the right of entry, he shall be punishable for the first offence with fine which may extend to two hundred and fifty rupees and for every subsequent offence with fine which may extend to five hundred rupees.

An Act to regulate 2 [the employment of children in] certain Industries trial employment.

Whereas it is expedient to regulate 2[the employment of children in] certain industrial employment;

It is hereby enacted as follows:

1. Subs. by the A.O., 1950, for the words “ all the provinces of India.”
2. Subs by Act 3 of 1951, for the words “except Part B states” which was omitted by Act 51 of 1970, Sec. 2 and Schedule, (w.e.f.1st September, 1971).

1. Short title and extent. -

- (1) This Act may be called the Employment of Children Act, 1938.
- (2) It extends to 1[the whole of India] 2 [***]

1. Subs. by the A.O., 1950, for the words “ all the provinces of India.”
2. Subs by Act 3 of 1951, for the words “except Part B states” which was omitted by Act 51 of 1970, Sec. 2 and Schedule, (w.e.f.1st September, 1971).

2. Definitions. - In this Act, -

1[(a)] "Competent authority", in respect of a major port, as defined in the Indian Ports Act, 1908 (15 of 1908), 2[or so declared by or under the Act of Parliament] and in respect of 3[* * *] a railway, 4[* * *] means the Central Government, and in any other case means the 5[State Government];

1(b) "Occupier" of a workshop means the person who has ultimate control over the affairs of the workshop;

6[(bb) "Port authority" means a body of port commissioners or other authority administering a port:]

(c) "Prescribed" means prescribed by rules made under this Act;

(d) "Workshop" means any premises (including the precincts thereof) wherein any industrial process is carried on, but does not include any premises to which the provisions of Sec. 50 of the Factories Act, 1934 (25 of 1934), for the time being apply.]

1. Ins. by Act 15 of 1939, Sec. 2 (w.e.f. 1st October, 1939).

2. Ins. by the A.O., 1950.

3. The word "federal" was omitted by *ibid*.

4. The words "as" defined in the Indian Railway Act, 1890" were omitted by *ibid*.

5. Subs. by *ibid*, for the words "Provincial".

6. Ins. by Act 48 of 1951, sec. 3 (w.e.f. 1st September, 1951).

3. Prohibition of employment of children in certain occupations. -

6(1) No child who has not completed his fifteenth year shall be employed or permitted to work in any occupation. -

(a) Connected with the transport of passengers, goods or mails by railway; or

1[(b) Connected with cinder picking, cleaning of an ash pit of building operation, in the railway premises; or

(c) Connected with the work in a catering establishment, at a railway station, involving the movement of a vendor or any other employee of the establishment from one platform to another or into or out of a moving train; or

(d) Connected with the work relating to the construction of a railway station or with any other work where such work is done in close proximity to, or between, the railway line; or]

2[(e)] Connected with a port authority within the limits of any port.

(2) No child who has completed his fifteenth year but has not completed his seventeenth year shall be employed or permitted to work in any occupation referred to in sub-section (1) unless the periods of work of such child for any day's are so fixed as to allow an interval of rest for at least twelve consecutive hours which shall include at least such seven consecutive hours between 10 p.m. and 7 a.m. may be prescribed:

Provided that nothing in this sub-section shall apply to any child referred to herein while employed or permitted to work in such circumstances and in accordance with such conditions as may be prescribed in any occupation aforesaid either as an apprentice or for the purpose of receiving vocational training therein:

Provided further that the competent authority may, where it is of opinion that an emergency has arisen and the public interests so requires by notification in the official Gazette declare that the provisions of this subsection shall not be in operation for such period as may be specified in the notification.]

3[(3) No child who has not completed his 4[fourteenth] year shall be employed, or permitted to work in any workshop wherein any of the processes set forth in the schedule in carried on:

Provided that nothing in this sub-section shall apply to any workshop wherein any process is carried on by the occupier with the aid of his family only and without employing

hired labour or to any school established by, or receiving assistance or recognition from a 5[State Government].

1. Ins. by the Employment of Children (Amendment) Act, 1978 (39 of 1978) (w.e.f. 1st March, 1978) (39 of 1978) w.e.f. 1st March 1978.
2. Relettered by Act 39 of 1978 (w.e.f. 1st March 1979).
3. Added by Act 15 of 1939, sec. 3 (w.e.f. 1st October, 1939).
4. Subs. by Act 63 of 1948, sec. 119, for “twelfth” (w.e.f. 1st April 1949).
5. Subs. by the A.O., 1950, for “Provincial”.
6. Subs. by Act 48 of 1951, S.S.C. 4, for the former sub-sections(1) and (2) (w.e.f. 1st September, 1951).

1[3-A. Power to amend the schedule. - The 2 [State] Government, after giving, by notification in the official Gazette, not less than three months notice of its intention so to do, may, by like notification, add any description of process to the schedule, and thereupon the schedule shall have force in the 3[State as if it has been enacted accordingly.

1. 1957 S.C.R. 51.
2. State of Punjab v. Kailash Nath 1989 (1) C.L.R. 60 at p. 64.
3. Ins. by Act, 15

3-B. 1[1] Notice to inspector before carrying on work in certain processes. -(1) Before work in any of the processes set forth in the schedule is carried on in any workshop after the 1st day of October, 1939, the occupier shall send to the Inspector, within whose local limits the workshop is situated, a written notice containing-

- (a) The name and situation of the workshop;
- (b) The name of the person in actual management of the workshop;

- (c) The address to which communications relating to the workshop should be sent: and
- (d) The nature of the processes to be carried on in the workshop.

2[(2) In its application to State of Jammu and Kashmir, reference to the 1st day of October, 1939, shall be construed as reference to the commencement of this Act in the said State.]

1. Section 3-B renumbered as sub-section (1) by Act 51 of 1970, sec., 2 and Sec. (w.e.f. 1st September; 1971).

2. Ins. by ibid (w.e.f. 1st September, 1971).

3-C. Disputes as to age: - If any question arises between an inspector an employer as to 1[the age of any child who is employed or is permitted to work by the employer] the question shall, in the absence of a certificate as to the age of such child, granted by a prescribed medical authority, be referred by the Inspector for decision to the prescribed medical authority].

1. Subs. by Act 40 of 1994, for certain words (w.e.f. 1st May, 1949).

3-D. Maintenance of register: - There shall be maintained by every employer, in respect of children employed or permitted to work in pursuance of sub-section, (2) of Sec.3 in any occupation referred to in sub-section (1) of that section, a register to be available for inspection by an inspector at all times during working hours or when work is being carried on in any such occupation, showing-

- (a) The name and date of birth of every child under seventeen years of age so employed or permitted to work;
- (b) The periods of work of any such child and the intervals of rest to which he is entitled;
- (c) The nature of work of any such child; and
- (d) Such other particulars as may be prescribed.

1[3.E. Display of notice containing abstract of Secs., 3 and 4.- Every railway administration 2 [every port authority and every employer] shall cause to be displayed in a

conspicuous and accessible place at every station on its railway or within the limits of a part , 3 [or at the place of work] as the case may be, notice in such Indian language or languages as may be prescribed and in the English language containing an abstract of sub-sections (1) and (2) of Secs. 3 and 4 of this Act.

Explanation.- In this section "railway administration "has the meaning assigned to in the Indian

Railways Act, 1890 (9 of 1890).

1. Ins. by Act 48 of 1951, Sec. 5 (w.e.f. 1st September, 1951).
2. Subs. by the Employment of Children (Amendment) Act, 1978 (39 of 1978) (w.e.f. 1st March, 1979).
3. Ins. by ibid, (w.e.f. 1st March, 1979).
4. Penalty. -

6(1) Whoever employs any child or permits any child to work in contravention of the provisions of Sec. 3 shall be punishable with imprisonment for a term which shall not be less than three months by which may extend to one year with fine which shall not be less than five hundred rupees but which may extend to two thousand rupees or with both.

(2) Whoever having been convicted of an offence under Sec. 3 for employing any child or permitting any child to work in contravention of the provisions of Sec.3 commits a like offence afterwards, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years:

Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than six months.]

1[(3)] 2[Whoever

3[(a) * * * * *]

(b) Falls to give notice as required by Sec. 3-B; or

(c) Fails to maintain a register as required by Sec. 3-D or makes any false entry in such register; 4[or]

5[(d) Fails to display a notice containing an abstract of subsections (1) and (2) of Secs. 3 and 4 as required by Sec. 3-E)

Shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to five hundred rupees or with both.]

1. Renumbered by Act 62 of 1995, Sec. 2ml (w.e.f. 20th August 1996).
2. Subs. by Act 49 of 1951, Sec. 6. for the former Sec. (w.e.f. 1st September, 1951).
3. Clause (a) omitted by Act 62 of 1985, (w.e.f. 20th August 1986).
4. Ins. by Act 39 of 1978 (w.e.f. 1st March 1979).
5. Ins. by the Employment of the Children (Amendment) Act, 1978 (39 of 1978) w.e.f. 1st March 1979).
6. Ins. by Act 62 of 1985, Sec. 2 (w.e.f. 20th August 1986).
5. Procedure relating to offences. -

(1) No prosecution under this Act shall be instituted except by or with the previous sanction of an inspector appointed under Sec.6.

1[(2) Every certificate as to the age of a child which has been granted by a prescribed medical authority shall for the purposes of this Act, be conclusive evidence as to the age of the child to whom it relates.]

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

1. Subs, by Act 15 of 1939, sec. 6, for the original sub-section (2) (w.e.f. 1st October, 1939).

6. Appointment of inspector. - The competent authority may appoint persons to be inspectors of the purpose of securing compliance with the provisions of this Act and any inspector so appointed shall be deemed to be a public' servant within the meaning of the Indian Penal Code (45 of 1860).

7. Power to make rules. -

(1) The competent authority may by notification in the official Gazette and subject to the condition of previous publication make rules for carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may-

(a) Regulate the procedure of inspectors appointed under Sec. 6,

(b) Make provision for the grant of certificates of age in respect of young persons in employment or seeking employment, ~~2~~[the medical authorities] which may issue such certificates, the form of such certificate, the charges which may be made therefor, and the manner in which such certificates may be issued:

Provided that no charge shall be made for the issue of any such certificate if the application is accompanied by evidence of age deemed satisfactory by the authority concerned;

~~3~~[(c) Fix the seven consecutive hours between 10 p.m. and 7a.m. for the purpose of sub-section (2) of Sec. 3;

(d) Specify the circumstances in which and the conditions subject to which a child may be employed or permitted to work either as an apprentice or for the purpose of receiving vocational training in any occupation referred to in sub-section (1) of Sec. 3;

(e) Specify the other particulars which a register maintained under Sec. 3-D, should contain;

(f) Specify the Indian language or languages in which a notice referred to in Sec. 3-E shall be published; and

(g) Provide for exemption from the provisions of sub-section (2) of Sec. 3 in cases of emergencies which could not have been controlled of four-teen, which are not of a periodical character and which Interfere with the normal working of any occupation referred to in sub-section (1) or Sec. 3.]

4[(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

1. The word "and" was omitted by Act 43 of 1851, Sec. 7 (w.e.f. 1st September, 1951).
2. Subs. by Act 15 of 1939, Sec, 7, for "the authorities "(w.e.f 1st October, 1939).
3. Added by Act 48 of 1951, Sec. 7 (w.e.f. 1st September, 1951).
4. Ins. by the Employment of Children (Amendment) Act, 1978 (39 of 1978) w.e.f. 1st march, 1979).
8. Amendment of sec. 6 of act 15 of 1908.] Repealed by the repealing and Amendment Act, 1942 (25 of 1942), sec. 2 and Sch..

Repeal. - It Is a matter of legislative practice to provide while enactive an amending law, that an existing provision shall be deleted. Such deletion has the effect of repeal of the existing provision.¹

1. Bhagat Ram Sharma v. union of India, A.I.R. 1988 740 at p. 746.

UNIT – IX

9.1. SOCIAL SECURITY

Social Security for employees is a concept which over time has gained importance in the industrialized countries. Broadly, it can be defined as measures providing protection to working class against contingencies like retirement, resignation, retrenchment, maternity, old age, unemployment, death, disablement and other similar conditions.

With reference to India, the Constitution levies responsibility on the State to provide social security to citizens of the country. The State, here, discharges duty as an agent of the society in order to help those who are in adverse situations or otherwise needs protection owing to above mentioned contingencies. Article 41, 42 and 43 of the Constitution do talk about the same. Also, the Concurrent List of the Constitution of India mentions issues like-

- Social Security and insurance, employment and unemployment.
- Welfare of Labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pension and maternity benefits.

Drawing from the Constitution of India and ILO Convention on Social Security¹ (ratified by India in 1964), some of the legislations that have been enacted for social security are Employees' State Insurance Act, 1948, Workmen's Compensation Act, 1923, Employees' Provident Fund and Miscellaneous Provisions Act, 1952, Maternity Benefit Act, 1961, Payment of Gratuity Act, 1972, etc. A social security division has also been set up under the Ministry of Labour and Employment which mainly focuses on framing policies for social security for the workers of organized sector.

Apart from above mentioned enactments, since the last decade the government has initialized efforts to extend the benefits to the unorganized sector too. Legislative enactments like the National Rural Employment Guarantee Act, 2005, Unorganized Sector Workers' Social Security Act, 2008 and the Domestic Workers (Registration, social security and welfare) Act, 2008 are examples of the same.

The National Rural Employment Guarantee Act, 2005 aim at curbing unemployment or unproductive employment in rural areas. It focuses on enhancing livelihood security to rural people, as it guarantees productive wage employment for at least 100 days in a year. The Fiscal budget, this year, has also hiked the allocation to its job guarantee scheme NREGA by 144% and also the beneficiaries under the scheme would, henceforth, be entitled for a minimum wage of Rs. 100 per day.

Also, there is Unorganized Workers' Social Security Act, 2008, which targets at extending social security measures to unorganized sector workers. The law thereby aims at extending to workers in informal sector status and benefits similar to that of formal sector workers.

On the same lines, Domestic Workers Act, 2008 has also been enacted. The legislation aims at regulating payment and working conditions of domestic workers and entitles every registered domestic worker to receive pension, maternity benefits and paid leave that is a paid weekly off.

These legislations for organized and unorganized sector workers need to be bestowed attention because this will help improve their productivity and industrial relations and thus ensure development of the country.

9.2. WORKMEN'S COMPENSATION ACT,1923

OBJECT AND SCOPE

The Employees' Compensation Act is social security legislation. It imposes statutory liability upon an employer to discharge his moral obligation towards his employees when they suffer from physical disabilities and diseases during the course of employment in hazardous working conditions. The Act also seeks to help the dependents of the employee rendered destitute by the 'accidents' and from the hardship arising out from such accidents. The Act provides for cheaper and quicker mode of disposal of disputes relating to compensation through special proceedings than possible under the civil law. The Act extends to the whole of India.

DEFINITIONS

Some important definitions are given below:

(i) Dependant

Section 2(1)(d) of the Act defines “dependant” as to mean any of the following relatives of a deceased employee,

namely:

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

(ii) if wholly dependent on the earnings of the employee at the time of his death, a son or a daughter who has attained the age of 18 years and who is infirm; and

(iii) if wholly or in part dependent on the earnings of the employee at the time of his death:

(a) a widower,

(b) a parent other than a widowed mother,

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

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

(e) a widowed daughter-in-law,

(f) a minor child of a pre-deceased son,

(g) a minor child of a pre-deceased daughter where no parent of the child is alive or

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

Explanation – For the purpose of sub-clause (ii) and items (f) and (g) of sub-clause (iii) references to a son, daughter or child include an adopted son, daughter or child respectively.

(ii) Employee

The definition of workmen has been replaced by the definition of employee. The term “employee” has been inserted by the Workmen’s Compensation (Amendment) Act, 2009 under a new clause (dd) in Section 2 of the Act. Clause (n) defining “workman” has been omitted. Under Section 2(dd) “employee” has been defined as follows:

“Employee” means a person, who is –

(i) a railway servant as defined in clause (34) of section 2 of the Railways Act, 1989 (24 of 1989), not permanently employed in any administrative district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II; or

(ii) (a) a master, seaman or other members of the crew of a ship,

(b) a captain or other member of the crew of an aircraft,

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

(d) a person recruited for work abroad by a company,

and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India; or

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

(ii) Employer

The following persons are included in the definition of “employer”:

(a) any body of persons incorporated or not;

(b) any managing agent of the employer;

(c) legal representative of a deceased employer. Thus, one who inherits the estate of the deceased, is made liable for the payment of compensation under the Act. However, he is liable only upto the value of the estate inherited by him;

(d) any person to whom the services of a employee are temporarily lent or let on hire by a person with whom the employee has entered into a contract of service or apprenticeship. [Section 2(1)(e)]

A contractor falls within the above definition of the employer. Similarly, a General Manager of a Railway is an employer (*Bajjnath Singh v. O.T. Railway*, A.I.R. 1960 All 362).

(iii) Seaman

“Seaman” under Section 2(1)(k) means any person forming part of the crew of any ship but does not include the master of the ship.

(iv) Wages

According to Section 2(1)(m), the term “wages” include any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer to an employee towards any pension or provident fund or a sum paid to employee to cover any special expenses entailed on him by the nature of his employment.

Wages include dearness allowance, free accommodation, overtime pay, etc. (*Godawari Sugar Mills Ltd. v. Shakuntala*; *Chitru Tanti v. TISCO*; and *Badri Prasad v. Trijugi Sitaram*).

The driver of a bus died in an accident. On a claim for compensation made by widow it was held that line allowance and night out allowance came under the privilege or benefit which is capable of being estimated in money and can be taken into consideration in computing compensation as part of wages (*KSRTC Bangalore v. Smt. Sundari*, 1982 Lab. I.C. 230). The claim of bonus being a right of the workman is a benefit forming part of wages and the same can be included in wages (LLJ-II 536 Ker.).

DISABLEMENT

The Act does not define the word Disablement. It only defines the partial and total disablement. After reading the partial or total disablement as defined under the Act one may presume that disablement is loss of earning capacity by an injury which depending upon the nature of injury and percentage of loss of earning capacity will be partial or total. The Act has classified disablement into two categories, viz. (i) Partial disablement, and (ii) Total disablement.

(i) Partial disablement

Partial disablement can be classified as temporary partial disablement and permanent partial disablement.

(a) *Where the disablement is of a temporary nature:* Such disablement as reduces the earning capacity of an employee in the employment in which he was engaged at the time of the accident resulting in the disablement; and

(b) *Where the disablement is of a permanent nature:* Such disablement as reduces for all time his earning capacity in every employment which he was capable of undertaking at the time. [Section 2(1)(g)] But every injury specified in Part II of Schedule I shall be deemed to result in permanent partial disablement.

Schedule I contains list of injuries deemed to result in Permanent Total/Partial disablement. In case of temporary partial disablement, the disablement results in reduction of earning capacity in respect of only that employment in which he was engaged at the time of accident. This means the employee's earning capacity in relation to other employment is not affected. But in case of permanent partial disablement, the disablement results in reduction in his earning capacity in not only the employment in which he was engaged at the time of accident but in all other employments.

Whether the disablement is temporary or permanent and whether it results in reduction of earning capacity, the answer will depend upon the fact of each case, except when the injury is clearly included in Part II of Schedule I.

If after the accident a worker has become disabled, and cannot do a particular job but the employer offers him another kind of job, the worker is entitled to compensation for partial disablement (*General Manager, G.I.P. Rly. v. Shankar*, A.I.R. 1950 Nag. 307).

Deemed to be permanent partial disablement: Part II of Schedule I contains the list of injuries which shall be deemed to result in permanent partial disablement.

Complete and permanent loss of the use of any limb or member referred to in this Schedule shall be deemed to be the equivalent to the loss of that limb or member.

Note to Schedule I – On the question whether eye is a member or limb as used in the note to Schedule I it was held that considering the meaning as stated in the Oxford Dictionary as also in the Medical Dictionary, it could be said that the words limb or member include any organ of a person and in any case it includes the eye (*Lipton (India) Ltd. v. Gokul Chandran Mandal*; 1981 Lab. I.C. 1300).

(ii) Total disablement

Total disablement can also be classified as temporary total disablement and permanent total disablement.

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

Provided further that permanent total disablement shall be deemed to result from every injury specified in Part I of Schedule I or similarly total disablement shall result from any combination of injuries specified in Part II of

Schedule I, where the aggregate percentage of loss of earning capacity, as specified in the said Part II against these injuries amount to one hundred per cent or more. [Section 2(1)(l)]

9.3. EMPLOYEES' STATE INSURANCE ACT, 1948

INTRODUCTION

The Employees' State Insurance Act, 1948 provides for certain benefits to employees in case of sickness, maternity and employment injury and also makes provisions for certain other matters in relation thereto. The Act has been amended by the Employees' State Insurance (Amendment) Act, 2010 for enhancing the Social Security Coverage, streamlining the procedure for assessment of dues and for providing better services to the beneficiaries.

The Act extends to the whole of India. The Central Government is empowered to enforce the provisions of the Act by notification in the Official Gazette, to enforce different provisions of the Act on different dates and for different States or for different parts thereof [Section 1(3)]. The Act applies in the first instance to all factories (including factories belonging to the Government) other than seasonal factories [Section 1(4)]. According to the proviso to Section 1(4) of the Act, nothing contained in sub-section (4) of Section 1 shall apply to a factory or establishment belonging to or under the control of the Government whose employees are otherwise in receipt of benefits substantially similar or superior to the benefits provided under the Act. Section 1(5) of the Act empowers the appropriate Government to extend any of the provisions of the Act to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise after giving one month's notice in the Official Gazette. However, this can be done by the appropriate Government, only in consultation with the Employees' State Insurance Corporation set up under the Act and, where the appropriate Government is a State Government, it can extend the provisions of the Act with the approval of the Central Government. Under these enacting provisions, the Act has been extended by many State Governments to shops, hotels, restaurants, cinemas, including preview theatres, newspaper establishments, road transport undertakings, etc.,

employing 20 or more persons. **It is not sufficient that 20 persons are employed in the shop. They should be employee as per Section 2(9) of the Act, getting the wages prescribed therein (*ESIC v. M.M. Suri & Associates Pvt. Ltd.*, 1999 LAB IC SC 956).** According to the proviso to sub-section (5) of Section 1 where the provisions of the Act have been brought into force in any part of a State, the said provisions shall stand extended to any such establishment or class of establishment within that part, if the provisions have already

been extended to similar establishment or class of establishments in another part of that State. It may be noted that a factory or an establishment to which the Act applies shall continue to be governed by this Act even if the number of persons employed therein at any time falls below the limit specified by or under the Act or the manufacturing process therein ceases to be carried on with the aid of power. [Section 1(6)]

The coverage under the Act is at present restricted to employees drawing wages not exceeding `15,000 per month.

(i) Appropriate Government

“Appropriate Government” means in respect of establishments under the control of the Central Government or a railway administration or a major port or a mine or oil-field; the Central Government, and in all other cases, the State Government. [Section 2(1)]

(ii) Confinement

“Confinement” means labour resulting in the issue of a living child or labour after 26 weeks of pregnancy resulting in the issue of child whether alive or dead. [Section 2(3)]

(iii) Contribution

“Contribution” means the sum of money payable to the Corporation by the principal employer in respect of an employees and includes any amount payable by or on behalf of the employee in accordance with the provisions of this Act. [Section 2(4)]

(iv) Dependent

“Dependent” under Section 2(6A) of the Act (as amended by the Employees’ State Insurance (Amendment) Act, 2010) means any of the following relatives of a deceased insured person namely:

(i) a widow, a legitimate or adopted son who has not attained the age of twenty-five years,, an unmarried legitimate or adopted daughter,

(ia) a widowed mother,

(ii) if wholly dependent on the earnings of the insured person at the time of his death, a legitimate or adopted son or daughter who has attained the age of 25 years and is infirm;

(iii) if wholly or in part dependent on the earnings of the insured person at the time his death:

(a) a parent other than a widowed mother,

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

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

(d) a widowed daughter-in-law,

(e) a minor child of a pre-deceased son,

(f) a minor child of a pre-deceased daughter where no parent of the child is alive or,

(g) a paternal grand parent if no parent of the insured person is alive.

(v) Employment Injury

It means a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment, being an insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India. [Section 2(8)]

It is well settled that an employment injury need not necessarily be confined to any injury sustained by a person within the premises or the concern where a person works. Whether in a particular case the theory of notional extension of employment would take in the time and place of accident so as to bring it within an employment injury, will have to depend on the assessment of several factors. There should be a nexus between the circumstances of the accident and the employment. On facts no case could be an authority for another case, since there would necessarily be some differences between the two cases. Therefore, each case has to be decided on its own facts. It is sufficient if it is proved, that the injury to the employee

was caused by an accident arising out of and in the course of employment no matter when and where it occurred. There is not even a geographical limitation.

In *E.S.I. Corpn. Indore v. Babulal*, 1982 Lab. I.C. 468, the M.P. High Court held that injury arose out of employment where a workman attending duty in spite of threats by persons giving call for strike and was assaulted by them while returning after his duty was over. A worker was injured while knocking the belt of the moving pulley, though the injury caused was to his negligence, yet such an injury amounts to an employment injury (*Jayanthilal Dhanji Co. v. E.S.I.C.*, AIR AP 210).

The word injury does not mean only visible injury in the form of some wound. Such a narrow interpretation would be inconsistent with the purposes of the Act which provides certain benefits in case of sickness, maternity and employment injury (*Shyam Devi v. E.S.I.C.*, AIR 1964 All. 42).

(vi) Employee

“Employee” according to Section 2(9) as amended by the Employees’ State Insurance (Amendment) Act, 2010 means any person employed for wages in connection with the work of a factory or establishment to which this Act applies and:

(i) who is directly employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of the factory or establishment, whether such work is done by employee in the factory or establishment; or elsewhere, or (ii) who is employed by or through a immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent, on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or

(iii) whose services are temporarily lent or let on hire to the principal employer by the person with whom the person, whose services are so lent or let on hire, has entered into a contract of service; and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof, or with the purchase of raw materials of, or the distribution or sale of the product of the factory or establishment; or any person engaged as an apprentice, not being an apprentice engaged

under Apprentices Act, 1961 and includes such person engaged as apprentice whose training period is extended to any length of time, ; but does not include:

(a) any member of the Indian Naval, Military or Air Forces; or

(b) any person so employed whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government.

Provided that an employee whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government at any time after (and not before) the beginning of the contribution period shall continue to be an employee until the end of that period. The Central Government has since prescribed by a Notification under Rule 50 of the E.S.I. Rules, 1950 the wage limit for coverage of an employee under Section 2(9) of the Act as Rs. 10,000 per month. Further, it is provided that an employee whose wages (excluding remuneration for overtime work) exceed Rs. 10,000 a month at any time after and not before the beginning of the contribution period, shall continue to be an employee until the end of the period.

In the case of Royal Talkies Hyderabad v. E.S.I.C., AIR 1978 SC 1476, there was a canteen and cycle stand run by private contractors in a theatre premises. On the question of whether the theatre owner will be liable as principal employer for the payment of E.S.I. contributions, the Supreme Court held that the two operations namely keeping a cycle stand and running a canteen are incidental or adjuncts to the primary purpose of the theatre and the workers engaged therein are covered by the definition of employee as given in E.S.I. Act. The Supreme Court observed that the reach and range of Section 2(9) is apparently wide and deliberately transcends pure contractual relationship.

Section 2(9) contains two substantive parts. Unless the person employed qualifies under both, he is not an employee. First, he must be employed in or in connection with the work of an establishment. The expression in connection with the work of an establishment ropes in a wide variety of workmen who may not be employed in the establishment but may be engaged only in connection with the work of establishment. Some nexus must exist between the establishment and the work of employee but it may be a loose connection. The test of

payment of salary or wages is not a relevant consideration. It is enough if the employee does some work which is ancillary, incidental or has relevance to or link with the object of the establishment.

The word employee would include not only persons employed in a factory but also persons connected with the work of the factory. It is not possible to accept the restricted interpretation of the words “employees in factories”.

The persons employed in zonal offices and branch offices of a factory and concerned with the administrative work or the work of canvassing sale would be covered by the provisions of the Act, even though the offices are located in different towns (*Hyderabad Asbestos Cement Products, etc. v. ESIC*, AIR 1978 S.C. 356). The Act is a beneficial piece of legislation to protect interest of the workers. The employer cannot be allowed to circumvent the Act in the disguise of ambiguous designations such as ‘trainees, ‘apprentices etc. who are paid regular wages, basic wages plus allowances. Such workers also fall under the Act (LLJ-II-1996 389 AP). Managing director could be an employee of the company. There could be dual capacity i.e. as managing director as well as a servant of the company (*ESIC v. Apex Engg. Pvt. Ltd.*, Scale (1997) 6 652).

(vii) Exempted Employee

“Exempted Employee” means an employee who is not liable under this Act to pay the employees contribution. [Section 2(10)]

(viii) Principal Employer

“Principal Employer” means the following:

(i) in a factory, owner or occupier of the factory and includes the managing agent of such owner or occupier, the legal representative of a deceased owner or occupier and where a person has been named as the manager of the factory under the Factories Act, 1948, the person so named;

(ii) in any establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf or where no authority is so appointed the head of the Department.

(iii) in any other establishment, any person responsible for the supervision and control of the establishment. [Section 2(17)].

(ix) Family

“Family” under Section 2(11) as amended by the Employees’ State Insurance (Amendment) Act, 2010 means all or any of the following relatives of an insured person, namely:

(i) a spouse;

(ii) a minor legitimate or adopted child dependent upon the insured person;

(iii) a child who is wholly dependent on the earnings of the insured person and who is:

(a) receiving education, till he or she attains the age of twenty-one years,

(b) an unmarried daughter;

(iv) a child who is infirm by reason of any physical or mental abnormality or injury and is wholly dependent on the earnings of the insured person, so long as the infirmity continues.

(v) dependent parents whose income from all sources does not exceed such income as may be prescribed by the Central Government.

(vi) In case the insured person is unmarried and his or her parents are not alive, a minor brother or sister wholly dependant upon the earnings of the insured person.

(x) Factory

The definition of the factory as amended by the Employees’ State Insurance (Amendment) Act, 2010 is as follows:

“Factory” means any premises including the precincts thereof whereon ten or more persons are employed or were employed on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on or is ordinarily so carried on, but does not including a mine subject to the operation of the Mines Act, 1952 or a railway running shed.

It may be noted that the terms manufacturing process, occupier and power, shall have the meaning assigned to them in the Factories Act, 1948. [Section 2(12)]

(xi) Immediate Employer

“Immediate Employer” means a person, in relation to employees employed by or through him, who has undertaken the execution on the premises of a factory or an establishment to which this Act applies or under the supervision of principal employer or his agent, of the whole or any part of any work which is ordinarily part of the work of the factory or establishment of the principal employer or is preliminary to the work carried on, in or incidental to the purpose of any such factory or establishment, and includes a person by whom the services of an employee who has entered into a contract of service with him are temporarily lent or let on hire to the principal employer and includes a contractor. [Section 2(13A)] It would not be necessary that the work undertaken by immediate employer should be in the premises where the factory of principal employer is situated (1997-II LLJ 31 Pat.).

(xii) Insurable Employment

It means an employment in factory or establishment to which the Act applies. [Section 2(13A)]

(xiii) Insured person

It means a person who is or was an employee in respect of whom contributions are, or were payable under the Act and who is by reason thereof entitled to any of the benefits provided under the Act. [Section 2(14)]

(xiv) Permanent Partial Disablement

It means such disablement of a permanent nature, as reduced the earning capacity of an employee in every employment which he was capable of undertaking at the time of the accident resulting in the disablement:

Provided that every injury specified in Part II of the Second Schedule to the Act shall be deemed to result in permanent partial disablement. [Section 2(15A)]

(xv) Permanent Total Disablement

It means such disablement of a permanent nature as incapacitates an employee for all work which he was capable of performing at the time of the accident resulting in such disablement:

Provided that permanent total disablement shall be deemed to result from every injury specified in Part-I of the Second Schedule to the Act or from any combination of injuries specified in Part-II thereof, where the aggregate percentage of the loss of earning capacity, as specified in the said Part-II against those injuries, amounts to one hundred per cent or more. [Section 2(15B)]

(xvi) Seasonal Factory

It means a factory which is exclusively engaged in one or more of the following manufacturing processes namely, cotton ginning, cotton or jute pressing, decortication of groundnuts, the manufacture of coffee, indigo, lac, rubber, sugar (including gur) or tea or any manufacturing process which is incidental to or connected with any of the aforesaid processes and includes a factory which is engaged for a period not exceeding seven months in a year:

(a) in any process of blending, packing or repacking of tea or coffee; or

(b) in such other manufacturing process as the Central Government may by notification in the Official Gazette, specify. [Section 2(19A)]

(xvii) Sickness

It means a condition which requires medical treatment and attendance and necessitates, abstention from work on medical grounds. [Section 2(20)]

(xviii) Temporary Disablement

It means a condition resulting from an employment injury which requires medical treatment and renders an employee as a result of such injury, temporarily incapable of doing the work which he was doing prior to or at the time of injury. [Section 2(21)]

(xix) Wages

“Wages” means all remuneration paid or payable in cash to an employee if the terms of the contract of employment, express or implied, were fulfilled and includes any payment to an employee in respect of any period of authorized leave, lock-out, strike which is not illegal or lay-off and other additional remuneration if any, paid at intervals not exceeding two months but does not include:

- (a) any contribution paid by the employer to any pension fund or provident fund, or under this Act;
- (b) any travelling allowance or the value of any travelling concession;
- (c) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment, or
- (d) any gratuity payable on discharge. [Section 2(22)]

Wages include other additional remuneration paid at intervals not exceeding two months wages. It is question of fact in each case whether sales commission and incentive are payable at intervals not exceeding two months

(Handloom House Ernakulam v. Reg. Director, ESIC, 1999 CLA 34 SC 10). Travelling allowance paid to employees is to defray special expenses entitled on him by nature of his employment. It does not form part of wages as defined under Section 2(22) of the E.S.I. Act. Therefore, employer is not liable to pay contribution on travelling allowance. [*S. Ganesan v. The Regional Director, ESI Corporation, Madras, 2004 Lab.I.C 1147*]

Registration Of Factories And Establishments Under This Act

Section 2A of the Act lays down that every factory or establishment to which this Act applies shall be registered within such time and in such manner as may be specified in the regulations made in this behalf.

Employees' State Insurance

Section 38 of the Act makes compulsory that subject to the provisions of the Act all the employees in factories or establishments to which this Act applies shall be insured in the manner provided by this Act. Such insured persons shall pay contributions towards Insurance Fund through their employers who will also pay their own contribution. Such insured persons are entitled to get certain benefits from that fund which shall be administered by the Corporation. Any dispute will be settled by the Employees' Insurance Court.

Administration Of Employees' State Insurance Scheme

For the administration of the scheme of Employees' State Insurance in accordance with the provisions of this Act, the Employees' State Insurance Corporation Standing Committee and Medical Benefit Council have been constituted. Further, ESI Fund has been created which is held and administered by ESI Corporation through its executive committee called Standing Committee with the assistance, advice and expertise of Medical Council, etc. and Regional and Local Boards and Committees.

Employees' State Insurance Corporation

Section 3 of this Act provides for the establishment of Employees' State Insurance Corporation by the Central Government for administration of the Employees' State Insurance Scheme in accordance with the provisions of Act. Such Corporation shall be body corporate having perpetual succession and a common seal and shall sue and be sued by the said name.

Constitution

The Central Government appoints a chairman, a vice-chairman and other members representing interests of employers, employees, state governments/union territories and

medical profession. Three members of the Parliament and the Director General of the Corporation are its ex-officio members. [Section 4]

Powers and duties of the Corporation

Section 19 empowers the Corporation, to promote (in addition to the scheme of benefits specified in the Act), measures for the improvement of the health and welfare of insured persons and for the rehabilitation and reemployment of insured persons who have been disabled or injured and incur in respect of such measures expenditure from the funds of the Corporation within such limits as may be prescribed by the Central Government.

Section 29 empowers the Corporation (a) to acquire and hold property both movable and immovable, sell or otherwise transfer the said property; (b) it can invest and reinvest any moneys which are not immediately required for expenses and or realise such investments; (c) it can raise loans and discharge such loans with the previous sanction of Central Government; (d) it may constitute for the benefit of its staff or any class of them such provident or other benefit fund as it may think fit. However, the powers under Section 29 can be exercised subject to such conditions as may be prescribed by the Central Government.

Appointment of Regional Boards etc.

The Corporation may appoint Regional Boards, Local Committees and Regional and Local Medical Benefit Councils in such areas and in such manner, and delegate to them such powers and functions, as may be provided by the regulations. (Section 25)

Wings Of The Corporation

The Corporation to discharge its functions efficiently, has been provided with two wings:

Standing Committee

The Act provides for the constitution of a Standing Committee under Section 8 from amongst its members.

Power of the Standing Committee

The Standing Committee has to administer affairs of the Corporation and may exercise any of the powers and perform any of the functions of the Corporation subject to the general superintendence and control of the Corporation. The standing Committee acts as an executive body for administration of Employees State Insurance Corporation. Medical Benefit Council Section 10 empowers the Central Government to constitute a Medical Benefit Council. Section 22 determines the duties of the Medical Benefit Council stating that the Council shall:

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

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

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

EMPLOYEES' STATE INSURANCE FUND

Creation of Fund

Section 26 of the Act provides that all contributions paid under this Act and all other moneys received on behalf of the Corporation shall be paid into a Fund called the Employees' State Insurance Fund which shall be held and administered by the Corporation for the purposes of this Act. The Corporation may accept grants, gifts, donations from the Central or State Governments, local authority, or any individual or body whether incorporated or not, for all, or any of the purposes of this Act. A Bank account in the name of Employees' State Insurance Fund shall be opened with the Reserve Bank of India or any other Bank approved by the Central Government. Such account shall be operated on by such officers who are authorised by the Standing Committee with the approval of the Corporation.

Purposes for which the Fund may be expended

Section 28 provides that Fund shall be expended only for the following purposes:

(i) payment of benefits and provisions of medical treatment and attendance to insured persons and, where the medical benefit is extended to their families, in accordance with the provisions of this Act and defraying the charge, and costs in connection therewith;

(ii) payment of fees and allowances to members of the Corporation, the Standing Committee and Medical Benefit Council, the Regional Boards, Local Committees and Regional and Local Medical Benefit Councils;

(iii) payment of salaries, leave and joining time allowances, travelling and compensatory allowances, gratuities and compassionate allowances, pensions, contributions to provident or other benefit fund of officers and servants of the Corporation and meeting the expenditure in respect of officers and other services set up for the purpose of giving effect to the provisions of this Act;

(iv) establishment and maintenance of hospitals, dispensaries and other institutions and the provisions of medical and other ancillary services for the benefit of insured persons and where the medical benefit is extended to their families, their families;

(v) payment of contribution to any State Government, local authority or any private body or individual towards the cost of medical treatment and attendance provided to insured persons and where the medical benefit is extended to their families, their families including the cost of any building and equipment, in accordance with any agreement entered into by the Corporation;

(vi) defraying the cost (including all expenses) of auditing the accounts of the Corporation and of the valuation of the assets and liabilities;

(vii) defraying the cost (including all expenses) of Employees Insurance Courts set up under this Act;

(viii) payment of any sums under any contract entered into for the purposes of this Act by the Corporation or the Standing Committee or by any officer duly authorised by the Corporation or the Standing Committee in that behalf;

(ix) payment of sums under any decree, order or award, of any court or tribunal against the Corporation or any of its officers or servants for any act done in execution of his duty or under a compromise or settlement of any suit or any other legal proceedings or claims instituted or made against the Corporation;

(x) defraying the cost and other charges of instituting or defending any civil or criminal proceedings arising out of any action taken under this Act;

(xi) defraying expenditure within the limits prescribed, on measure for the improvement of the health and welfare of insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured; and

(xii) such other purposes as may be authorised by the Corporation with the previous approval of the Central Government.

CONTRIBUTIONS

The contributions have to be paid at such rates as may be prescribed by the Central Government. The present rates of contribution are 4.75 percent and 1.75 percent of workers wages by employers and employees respectively. The wage period in relation to an employee shall be the unit in respect of which all contributions shall be payable. The contributions payable in respect of each wage period shall ordinarily fall due on the last day of the wage period and where an employee is employed for part of the wage period, or is employed under two or more employers during the same wage period, the contributions shall fall due on such days as may be specified in the regulations.

Principal employer to pay contributions in the first instance

According to Section 40 of the Act, it is incumbent upon the principal employer to pay in respect of every employee whether directly employed by him or by or through an immediate employer, both the employers contributions and the employees contribution. However, he can

recover from the employee (not being an exempted employee) the employees contribution by deduction from his wages and not otherwise. Further Section 40 provides that the principal employer has to bear the expenses of remitting the contributions to that Corporation.

According to Section 39(5) of the Act, if any contribution payable is not paid by the principal employer on the date on which such contribution has become due, he shall be liable to pay simple interest at the rate of 12 per cent per annum or at such higher rate as may be specified in the regulations, till the date of its actual payment. However, according to proviso to sub-section (5) of Section 39, higher interest specified in the regulations should not exceed the lending rate of interest charged by any scheduled bank. It may be noted that any interest recoverable as stated above may be recovered as an arrear of land revenue or under newly introduced Sections 45-C to 45-I of the Act.

Recovery of contribution from immediate employer

According to Section 41, principal employer who has paid contribution in respect of an employee employed by or through an immediate employer is entitled to recover the amount of contribution so paid (both employers and employees contribution) from the immediate employer either by deduction from any amount payable to him by the principal employer under any contract or as a debt payable by the immediate employer. However the immediate employer is entitled to recover the employees contribution from the employee employed by or through him by deduction from wages and not otherwise. The immediate employer is required to maintain a register of employees employed by or through him as provided in the Regulations and submit the same to the principal employer before the settlement of any amount payable. He is not required to have separate account with ESI (LAB IC 1999 Kar 1369).

Method of payment of contribution

Section 43 provides for the Corporation to make regulations for payment and collection of contribution payable under this Act and such regulations may provide for:

- (a) the manner and time for payment of contribution;

(b) the payment of contributions by means of adhesive or other stamps affixed to or impressed upon books, cards or otherwise and regulating the manner, times and conditions in, at and under which, such stamps are to be affixed or impressed;

(c) the date by which evidence of contributions having been paid is to be received by the Corporation;

(d) the entry in or upon books or cards or particulars of contribution paid and benefits distributed in the case of the insured persons to whom such books or card relate; and

(e) the issue, sale, custody, production, inspection and delivery of books or cards and the replacement of books or cards which have been, lost, destroyed or defaced.

BENEFITS

Under Section 46 of the Act, the insured persons, their dependants are entitled to the following benefits on prescribed scale:

(a) periodical payments in case of sickness certified by medical practitioner;

(b) periodical payments to an insured workman in case of confinement or miscarriage or sickness arising

out of pregnancy, confinement;

(c) periodical payment to an insured person suffering from disablement as a result of employment injury;

(d) periodical payment to dependants of insured person;

(e) medical treatment and attendance on insured person;

(f) payment of funeral expenses on the death of insured person at the prescribed rate of.

General provisions relating to Benefits

Right to receive benefits is not transferable or assignable. When a person receives benefits under this Act, he is not entitled to receive benefits under any other enactment.

An insured person is not entitled to receive for the same period more than one benefit, e.g. benefit of sickness cannot be combined with benefit of maternity or disablement, etc.

EMPLOYEES' INSURANCE COURT (E.I. COURT)

Constitution

Section 74 of the Act provides that the State Government shall by notification in the Official Gazette constitute an Employees' Insurance Court for such local area as may be specified in the notification. The Court shall consist of such number of judges as the State Government may think fit. Any person who is or has been judicial officer or is a legal practitioner of 5 years standing shall be qualified to be a judge of E.I. Court. The State Government may appoint the same Court for two or more local areas or two or more Courts for the same local area and may regulate the distribution of business between them.

Matters to be decided by E.I. Court

(i) Adjudication of disputes

The Employees' Insurance Court has jurisdiction to adjudicate disputes, namely, whether any person is an employee under the Act, rate of wages/contribution, as to who is or was the principal employer, right of a person to any benefit under the Act.

(ii) Adjudication of claims

The EI Court also has jurisdiction to decide claims for recovery of contribution from principal employer or immediate employer, action for failure or negligence to pay contribution, claim for recovery of any benefit admissible under the Act.

Proceedings in both the above cases can be initiated by filing application in the prescribed form by the employee or his dependent or employer or the corporation depending who has cause of action.

No Civil Court has power to decide the matters falling within the purview/ jurisdiction of E.I. Court.

EXEMPTIONS

The appropriate Government may exempt any factory/establishment from the purview of this Act, as well as any person or class of persons employed in any factory/establishment, provided the employees employed therein are in receipt of benefits superior to the benefits under the Act. Such exemption is initially given for one year and may be extended from time to time. The applicant has to submit application justifying exemption with full details and satisfy the concerned Government.

9.4. EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952

Introduction

Provident Fund schemes for the benefit of the employees had been introduced by some organisations even when there was no legislation requiring them to do so. Such schemes were, however, very few in number and they covered only limited classes/groups of employees. In 1952, the Employees Provident Funds Act was enacted to provide institution of Provident Fund for workers in six specified industries with provision for gradual extension of the Act to other industries/classes of establishments. The Act is now applicable to employees drawing pay not exceeding Rs. 6,500/- per month. The Act extends to whole of India except Jammu and Kashmir.

The term pay includes basic wages with dearness allowance, retaining allowance (if any), and cash value of food concession.

The following three schemes have been framed under the Act by the Central Government:

- (a) The Employees' Provident Fund Schemes, 1952;
- (b) The Employees' Pension Scheme, 1995; and
- (c) The Employees' Deposit-Linked Insurance Scheme; 1976.

The three schemes mentioned above confer significant social security benefits on workers and their dependents.

Application Of The Act

According to Section 1(3), the Act, subject to the provisions of Section 16, applies:

(a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed; and

(b) to any other establishment employing twenty or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf: Provided that the Central Government may, after giving not less than two months notice of its intention to do so by notification in the Official Gazette, apply the provisions of this Act to any establishment employing such number of persons less than twenty as may be specified in the notification.

The Central Government can extend the provisions of the Act to any establishment [including the co-operative society to which under Section 16(1) the provisions of the Act are not applicable by notification in Official Gazette when the employer and the majority of employees in relation to any establishment have agreed that the provisions of this Act should be made applicable to them [Section 1(4)]. However, before notification is made, parties can opt out of such an agreement (1996 20 CLA 25 Bom.). Once an establishment falls within the purview of the Act, it shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below twenty. [Section 1(5)] Where an establishment to which this Act applied was divided among the partners, the Act would continue to apply to the part of each ex-partner even if the number of persons employed in each part is less than twenty (1986 2 LLJ 137). Where as a result of real and bona fide partition among the owners, an establishment was disrupted and separate and distinct establishments come into existence, allottees with no regular employee, cannot be saddled with liability to pay minimum administrative charges as before

(1993 I LLN 698). For compliance with the Act and the scheme, for an establishment there should be an employer and one or more employees are required to be in existence atleast.

When there is not even one employee, it would be difficult to contend that the Act continues to apply to the establishment (1998 LLJ I Kar. 780).

The constitutional validity of this Act was challenged on the ground of discrimination and excessive delegation. It was held that the law lays down a rule which is applicable to all the factories or establishments similarly placed. It makes a reasonable classification without making any discrimination between factories placed in the same class or group (*Delhi Cloth and General Mills v. R.P.F. Commissioner* A.I.R. 1961 All. 309).

The liability to contribute to the provident fund is created the moment the Scheme is applied to a particular establishment.

On the question whether casual or temporary workmen should be included for the purpose of ascertaining the strength of workmen in terms of Section 1(3) it was held by the Rajasthan High Court in Bikaner Cold Storage Co. Ltd. v. Regional P.F. Commissioner, Rajasthan, 1979 Lab. I.C. 1017, that persons employed in the normal course of the business of the establishment should be considered as the persons employed for the purposes of Section 1(3)(a) and persons employed for a short duration or on account of some urgent necessity or abnormal contingency, which was not a regular feature of the business of the establishment cannot be considered as employees for the purpose of determining the employment strength in relation to the applicability of Section 1(3)(a). In the case of P.F. Inspector v. Hariharan, AIR 1971 S.C. 1519, the Supreme Court held that casual workers are not covered under Section 1(3).

Section 1(3)(b) empowers the Central Government to apply the Act to trading or commercial establishments whether, such establishments are factories or not.

Non-applicability of the Act to certain establishments

Section 16(1) of the Act provides that the Act shall not apply to certain establishments as stated thereunder. Such establishments include (a) establishments registered under the Co-operative Societies Act, 1912, or under any other law for the time being in force in any State relating to co-operative societies, employing less than 50 persons and working without the aid of power; or (b) to any other establishment belonging to or under the control of the Central

Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits; or (c) to any other establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits.

According to Section 16(2), if the Central Government is of opinion that having regard to the financial position of any class of establishments or other circumstances of the case, it is necessary or expedient so to do, it may, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification, exempt that class of establishments from the operation of this Act for such period as may be specified in the notification.

The date of establishment of a factory is the date when the factory starts its manufacturing process. A change in the ownership does not shift the date of establishment. A mere change in the partnership deed, does not mean that a new business has come into existence for the purpose of Section 16(1) (*P.G. Textile Mills v. Union of India* (1976) 1 LLJ 312).

Important Definitions

To understand the meaning of different Sections and provisions thereto, it is necessary to know the meaning of important expressions used therein. Section 2 of the Act explains such expressions which are given below:

(i) Appropriate Government

“Appropriate Government” means:

(i) in relation to those establishments belonging to or under the control of the Central Government or in relation to an establishment connected with a railway company, a major port, a mine or an oil field or a controlled industry, or in relation to an establishment having departments or branches in more than one State, the Central Government; and (ii) in relation to any other establishment, the State Government. [Section 2(a)]

(ii) Basic Wages

“Basic Wages” means all emoluments which are earned by an employee while on duty or on leave or on holiday with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include:

(i) the cash value of any food concession;

(ii) any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house- rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;

(iii) any presents made by the employer. [Section 2(b)]

(iii) Contribution

“Contribution” means a contribution payable in respect of a member under a Scheme or the contribution payable in respect of an employee to whom the Insurance Scheme applies. [Section 2(c)]

(iv) Controlled Industry

“Controlled Industry” means any industry the control of which by the Union has been declared by the Central Act to be expedient in the public interest. [Section 2(d)]

(v) Employer

“Employer” means

(i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and where a person has been named as a manager of the factory under clause (f) of sub-section (1) of Section 7 of the Factories Act, 1948, the person so named; and

(ii) in relation to any other establishment, the person who or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted

to a manager, managing director, or managing agent, such manager, managing director or managing agent. [Section 2(e)]

(vi) Employee

“Employee” means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employer and includes any person (i) employed by or through a contractor in or in connection with the work of the establishment;

(ii) engaged as an apprentice, not being an apprentice engaged under Apprentices Act, 1961 or under the standing orders of the establishment. [Section 2(f)]

The definition is very wide in its scope and covers persons employed for clerical work or other office work in connection with the factory or establishment. The inclusive part of the definition makes it clear that even if a person has been employed through a contract in or in connection with the work of the establishment, he would yet fall within the description of employee within the meaning of the Act.

The dominant factor in the definition of ‘employee in Section 2(f) of the Act is that a person should be employed in or in connection with the work of the establishment. Sons being paid wages are employees (*Goverdhanlal v. REPC* 1994 II LLN 1354). In case of doubt whether a particular person is an employee or not, both the parties should be heard by the Commissioner before deciding the issue (1976-II Labour Law Journal, 309).

The definition of employee in Section 2(f) of the Act is comprehensive enough to cover the workers employed directly or indirectly and therefore, wherever the word employee is used in this Act, it should be understood to be within the meaning of this definition (*Malwa Vanaspati and Chemical Co. Ltd. v. Regional Provident Fund Commissioner, M.P. Region, Indore*, 1976-I Labour Law Journal 307).

The definition of “employee”, includes a part-time employee, who is engaged for any work in the establishment, a sweeper working twice or thrice in a week, a night watchman keeping watch on the shops in the locality, a gardener working for ten days in a month, etc. (*Railway Employees Co-operative Banking Society Ltd. v. The Union of India*, 1980 Lab. IC 1212).

The Government of India, by certain notification extended the application of Act and EPF scheme to beedi industry. It was held that the workers engaged by beedi manufacturers directly or through contractors for rolling beedi at home subject to rejection of defective beedies by manufacturers, were employees (1986 1 SCC 32). But working partners drawing salaries or other allowances are not employees. When members of cooperative society do work in connection with that of society and when wages are paid to them, there would be employer-employee relationship and such member-workers would be covered under the definition (1998 LLJ I Mad. 827).

(vii) Exempted Employee

It means an employee to whom a Scheme or the Insurance Scheme as the case may be would, but for the exemption granted under Section 17, have applied. [Section 2(ff)]

(viii) Exempted Establishment

It means an establishment in respect of which an exemption has been granted under Section 17 from the operation of all or any of the provisions of any Scheme or the Insurance Scheme as the case may be whether such exemption has been granted to the establishment as such or to any person or class of persons employed therein. [Section 2(fff)]

(ix) Factory

It means any premises including the precincts thereof, in any part of which a manufacturing process is being carried on or ordinarily so carried on, whether with the aid of power or without the aid of power. [Section 2(g)]

(x) Fund

It means Provident Fund established under the Scheme. [Section 2(h)]

(xi) Industry

It means any industry specified in Schedule I, and includes any other industry added to the Schedule by notification under Section 4. [Section 2(i)]

(xii) Insurance Fund

It means the Deposit-Linked Insurance Fund established under sub-section (2) of Section 6-C. [Section 2(i-a)]

(xiii) Insurance Scheme

It means the Employees Deposit-Linked Insurance Scheme framed under sub-section (1) of Section 6-C. [Section 2(i-b)]

(xiv) Manufacture or Manufacturing Process

It means any process for making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal. [Section 2(i-c)]

(xv) Member

“Member” means a member of the Fund. [Section 2(j)]

(xvi) Occupier of a Factory

It means the person, who has ultimate control over the affairs of the factory, and where the said affairs are entrusted to a managing agent, such agent shall be deemed to be the occupier of the factory. [Section 2(k)]

(xvii) Pension Fund

“Pension Fund” means the Employees Pension Fund established under sub-section (2) of Section 6A. [Section 2(kA)]

(xviii) Pension Scheme

“Pension Scheme” means the Employees Pension Scheme framed under sub-section (1) of Section 6A. [Section 2(kB)]

(xix) Scheme

It means the Employees' Provident Fund Scheme framed under Section 5. [Section 2(l)]

(xx) Superannuation

“Superannuation”, in relation to an employee, who is the member of the Pension Scheme, means the attainment, by the said employee, of the age of fifty-eight years. [Section 2(ll)]

Different departments or branches of an establishment

Where an establishment consists of different departments or branches situated in the same place or in different places, all such departments or branches shall be treated as parts of the same establishment. (Section 2A)

Schemes Under The Act

In exercise of the powers conferred under the Act, the Central Government has framed the following three schemes:

(A) Employees Provident Fund Scheme

The Central Government has framed a Scheme called Employees Provident Fund Scheme. The Fund vests in and is administered by the Central Board constituted under Section 5A.

Administration of the Fund

(a) Board of Trustees or Central Board: Section 5A provides for the administration of the Fund. The Central Government may by notification in the Official Gazette constitute with effect from such date as may be specified therein, a Board of Trustees, for the territories to which this Act extends.

The Employees Provident Fund Scheme contains provisions regarding the terms and conditions subject to which a member of the Central Board may be appointed and of procedure of the meetings of the Central Board.

The Scheme also lays down the manner in which the Board shall administer the funds vested in it however subject to the provisions of Section 6AA and 6C of the Act. The Board also performs functions under the Family Pension Scheme and the Insurance Scheme.

Class of employees entitled and required to join Provident Fund

Every employee employed in or in connection with the work of a factory or other establishment to which this scheme applies, other than an excluded employee, shall be entitled and required to become a member of the fund from the date of joining the factory or establishment.

The term “excluded employee” has been defined in para 2(f) of the Employees’ Provident Fund Scheme, 1952 as follows:

‘Excluded employee’ means:

- (i) an employee who, having been a member of the Fund, withdraw the full amount of his accumulations in the Fund under clause (a) or (c) of sub-paragraph 69;
- (ii) an employee whose pay at the time he is otherwise entitled to become a member of the Fund, exceeds five thousand rupees per month.

Explanation: “Pay” includes basic wages with dearness allowance retaining allowance (if any) and cash value of food concession admissible thereon.

- (iii) An apprentice.

Explanation: An apprentice means a person who, according to the certified standing orders applicable to the factory or establishment is an apprentice, or who is declared to be an apprentice by the authority specified in this behalf by the appropriate Government.

Contributions

As per Section 6, the contribution which shall be paid by the employer to the Fund shall be 10%, of the basic wages, dearness allowance and retaining allowance, if any, for the time being payable to each of the employees whether employed by him directly or through a contractor and the employees contribution shall be equal to the contribution payable by the employer. Employees, if they desire, may make contribution exceeding the prescribed rate but subject to the condition that employer shall not be under any obligation to contribute over and above the

contribution payable as prescribed by the Government from time to time under the Act. The Government has raised the rate of Provident Fund Contribution from the current 8.33% to 10% in general and in cases of establishments specially notified by the Government, from 10% to 12% with effect from September 22, 1997.

Each contribution shall be calculated to the nearest rupee, fifty paise or more to be counted as the next higher rupee and fraction of a rupee less than fifty paise to be ignored. Dearness allowance shall include the cash value of any food concession allowed to an employee. Retaining allowance is the allowance payable to an employee for retaining his services, when the establishment is not working.

The Provident Fund Scheme has made the payment of contribution mandatory and the Act provides for no exception under which a specified employer can avoid his mandatory liability (*State v. S.P. Chandani*, AIR 1959 Pat. 9).

Investment: The amount received by way of Provident Fund contributions is invested by the Board of Trustees in accordance with the investment pattern approved by the Government of India. The members of the Provident Fund get interest on the money standing to their credit in their Provident Fund Accounts. The rate of interest for each financial year is recommended by the Board of Trustees and is subject to final decision by the Government of India.

Advances/Withdrawals: Advances from the Provident Fund can be taken for the following purposes subject to conditions laid down in the relevant paras of the Employees Provident Fund Scheme:

- (1) Non-refundable advance for payment of premia towards a policy or policies of Life Insurance of a member;
- (2) Withdrawal for purchasing a dwelling house or flat or for construction of a dwelling house including the acquisition of a suitable site for the purpose, or for completing/continuing the construction of a dwelling house, already commenced by the member or the spouse and an additional advance for additions, alteration or substantial improvement necessary to the dwelling house;

(3) Non-refundable advance to members due to temporary closure of any factory or establishment for more than fifteen days, for reasons other than a strike or due to non-receipt of wages for 2 months or more, and refundable advance due to closure of the factory or establishment for more than six months;

(4) (i) Non-refundable in case of:

(a) hospitalisation lasting one month or more, or

(b) major surgical operation in a hospital, or

(c) suffering from T.B., Leprosy, Paralysis, Cancer, Mental derangement or heart ailment, for the treatment of which leave has been granted by the employer;

(ii) Non-refundable advance for the treatment of a member of his family, who has been hospitalised or requires hospitalisation, for one month or more:

(a) for a major surgical operation; or

(b) for the treatment of T.B., Leprosy, Paralysis, Cancer, mental derangement or heart ailment;

(5) Non-refundable advance for daughter/sons marriage, self-marriage, the marriage of sister/brother or for the post matriculation education of son or daughter;

(6) Non-refundable advance to members affected by cut in the supply of electricity;

(7) Non-refundable advance in case property is damaged by a calamity of exceptional nature such as floods, earthquakes or riots;

(8) Withdrawals for repayment of loans in special cases; and

(9) Non-refundable advance to physically handicapped members for purchasing an equipment required to minimise the hardship on account of handicap.

Final withdrawal: Full accumulations with interest thereon are refunded in the event of death, permanent

disability, superannuation, retrenchment or migration from India for permanent settlement abroad/taking employment abroad, voluntary retirement, certain discharges from employment under Industrial Disputes Act, 1947, transfer to an establishment/factory not covered under the Act.

In other cases, with permission of commissioner or any subordinate officer to him, a member is allowed to draw full amount when he ceases to be in employment and has not been employed in any establishment to which the Act applies for a continuous period of atleast 2 months. This requirement of 2 months waiting period shall not apply in cases of female members resigning from service for the purpose of getting married.

9.5. THE EMPLOYEES' PENSION SCHEME, 1995

Under Section 6A, Government has introduced a new pension scheme styled Employees' Pension Scheme, 1995 w.e.f. 16.11.1995, in place of Family Pension Scheme, 1971.

The Employees' Pension Scheme is compulsory for all the persons who were members of the Family Pension Scheme, 1971. It is also compulsory for the persons who become members of the Provident Fund from 16.11.1995 i.e. the date of introduction of the Scheme. The PF subscribers who were not members of the Family Pension Scheme, have an option to join this Pension Scheme. The Scheme came into operation w.e.f. 16.11.1995, but the employees, including those covered under the Voluntary Retirement Scheme have an option to join the scheme w.e.f. 1.4.1993. Minimum 10 years contributory service is required for entitlement to pension. Normal superannuation pension is payable on attaining the age of 58 years. Pension on a discounted rate is also payable on attaining the age of 50 years. Where pensionable service is less than 10 years, the member has an option to remain covered for pensionary benefits till 58 years of age or claim return of contribution/ withdrawal benefits.

The Scheme provides for payment of monthly pension in the following contingencies(a) Superannuation on attaining the age of 58 years; (b) Retirement; (c) Permanent total disablement; (d) Death during service; (e) Death after retirement/ superannuation/permanent total disablement; (f) Children Pension; and (g) Orphan pension.

The amount of monthly pension will vary from member to member depending upon his pensionable salary and pensionable service. The formula for calculation of monthly members pension is as under:

$$\text{Members Pension} = \frac{* \text{Pensionable Salary} \times (\text{Pensionable Service} + 2)}{70}$$

To illustrate, if the contributory service is 33 years and pensionable salary is

Rs. 5,000 per month, the above formula operates as given below:

$$\text{Members Pension} = \frac{5,000 \times (33 + 2)}{70} = \text{Rs. 2,500 p.m}$$

In case where the contributory service is less than 20 years but more than 10 years, monthly pension is required to be determined as if the member has rendered eligible service of 20 years. The amount so arrived shall be reduced at the rate of 3 per cent for every year by which the eligible service falls short of 20 years, subject to maximum reduction of 25 per cent.

*** Pensionable Salary will be average of last 12 months pay.**

A separate formula for pension has been prescribed for the members of the ceased Family Pension Scheme, 1971. In the case of members who contributed to the Family Pension Scheme for 24 years, the minimum amount of pension will be Rs. 500 per month. Depending upon the retirement date, the amount of pension for such members may go even beyond Rs. 800 per month. The Family Pension members retiring in November, 1995 after having membership of only 10 years will also get a minimum pension of Rs. 265 p.m. In addition such Family Pension members will get back their full provident fund including the employers share along with interest accumulated in their account upto 15.11.1995.

(a) The rate of minimum widow pension is Rs. 450 p.m. The maximum may go upto Rs. 2,500 p.m. payable as normal members pension on completion of nearly 33 years of service. Family pension upto Rs. 1,750 p.m. is also payable to the widow of the member who has contributed only for one month to the pension fund.

(b) In addition to the widow pension, the family is also entitled to children pension. The rate of children pension is 25 per cent of widow pension for each child subject to a minimum of Rs. 115 p.m. per child payable upto two children at a time till they attain the age of 25 years.

(c) If there are no parents alive, the scheme provides for orphan pension @ 75 per cent of the widow pension payable to orphans subject to the minimum of Rs. 170 p.m. per orphan. The scheme has been amended making dependent parents eligible for pension. Further disabled children are also made eligible for life long pension.

Under the Pension Scheme, the employees have an option to accept the admissible pension or reduced pension with return of capital. In the case of employee opting for 10% less pension than the actual entitlement, the scheme provides for return of capital equivalent to 100 times of the original pension in the event of death of the pensioner. For example, if the monthly pension is Rs. 2,000 p.m. and the employee opts for reduced pension of Rs. 1,800 the family will have refund of the capital amounting to Rs. 2,00,000 on death of the pensioner. In addition, the widow and two children will continue to get pension for life or upto the age of 25 years, as the case may be.

Under the Scheme, neither the employer nor the employee is required to make any additional contribution. A Pension Fund has been set up from 16.11.95, and the employers share of PF contribution representing 8.33% of the wage is being diverted to the said Fund. All accumulations of the ceased Family Pension Fund have been merged in the Pension Fund. The Central Government is also contributing to the Pension Fund at the rate of 1.16% of the wage of the employees.

(C) Employees' Deposit-Linked Insurance Scheme

The Act was amended in 1976 and a new Section 6B was inserted empowering the Central Government to frame a Scheme to be called the Employees' Deposit-Linked Insurance Scheme for the purpose of providing life insurance benefit to the employees of any establishment or class of establishments to which the Act applies.

The Central Government has accordingly framed the Employees' Deposits-Linked Insurance Scheme, 1976. It came into force on the 1st August, 1976.

1. *Application of the Scheme:* The Employees Deposit-Linked Insurance Scheme, 1976 is applicable to all factories/establishments to which the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 applies.

All the employees who are members of the Provident Funds in both the exempted and the unexempted establishments are covered under the scheme.

2. *Contributions to the Insurance Fund:* The employees are not required to contribute to the Insurance Fund.

The employers are required to pay contributions to the Insurance Fund at the rate of 1% of the total emoluments, i.e., basic wages, dearness allowance including, cash value of any food concession and retaining allowance, if any.

3. *Administrative expenses:* The employers of all covered establishments are required to pay charges to the Insurance Fund, at the rate of 0.01% of the pay of the employee-members for meeting the administrative charges, subject to a minimum of Rs. 2/- per month.

4. *Nomination:* The nomination made by a member under the Employee Provident Fund Scheme 1952 or in the exempted provident fund is treated as nomination under this scheme. Provisions of Section 5 have overriding effect and will override the personal laws of the subscriber in the matters of nominations (LLJ I 1996 All. 236).

5. *Payment of assurance benefit:* In case of death of a member, an amount equal to the average balance in the account of the deceased during the preceding 12 months or period of membership, whichever is less shall be paid to the persons eligible to receive the amount or the Provident Fund accumulations. In case the average balance exceeds Rs. 50,000, the amount payable shall be Rs. 50,000 plus 40% of the amount of such excess subject to a ceiling of Rs. one lakh

6. *Exemption from the Scheme:* Factories/establishments, which have an Insurance Scheme conferring more benefits than those provided under the statutory Scheme, may be granted exemption, subject to certain conditions, if majority of the employees are in favour of such exemption.

Determination of Moneys Due from Employers

(i) Determination of money due

Section 7A vests the powers of determining the amount due from any employer under the provisions of this Act and deciding the dispute regarding applicability of this Act in the Central Provident Fund Commissioner, Additional Provident Fund Commissioner, Deputy Provident Fund Commissioner, or Regional Provident Fund Commissioner. For this purpose he may conduct such inquiry as he may deem necessary. Central Government has already constituted Employees Provident Fund Appellate Tribunal, consisting of a presiding officer who is qualified to be a High Court Judge or a District Judge with effect from 1st July, 1997 in accordance with provisions of Section 7D. The term, service conditions and appointment of supporting staff are governed by Sections 7E to 7H. Any person aggrieved by order/notification issued by Central Government/ authority under Sections 1(3), 1(4), 3, 7A(1), 7C, 14B or 7B (except an order rejecting an application for review) may prefer an appeal. The tribunal shall prescribe its own procedure and have all powers vested in officers under Section 7A. The proceedings before the tribunal shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 and for Section 196 of Indian Penal Code and Civil, 1908, it shall be deemed to be a Civil Court for all purposes of Section 195 and Chapter XXVI of Code of Procedure. The appellant can take assistance of legal practitioner and the Government shall appoint a presenting officer to represent it. Any order made by the Tribunal finally disposing of the appeal cannot be questioned in any Court.

(ii) Mode of recovery of moneys due from employers

Section 8 prescribes the mode of recovery of moneys due from employers by the Central Provident Fund Commissioner or such officer as may be authorised by him by notification in the Official Gazette in this behalf in the same manner as an arrear of land revenue. Recovery of arrears of Provident Fund cannot be effected from unutilised part of cash-credit of an industrial establishment (1998 LAB IC Kar 3044).

(iii) Recovery of moneys by employers and contractors

Section 8A lays down that the amount of contribution that is to say the employer's contribution as well as the employee's contribution and any charges for meeting the cost of

administering the Fund paid or payable by an employer in respect of an employee employed by or through a contractor, may be recovered by such employer from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

A contractor from whom the amounts mentioned above, may be recovered in respect of any employee employed by or through him, may recover from such employee, the employee's contribution under any scheme by deduction from the basic wages, dearness allowance and retaining allowance, if any, payable to such employee. However, notwithstanding any contract to the contrary, no contractor shall be entitled to deduct the employer's contribution or the charges referred to above from the basic wages, dearness allowance and retaining allowance payable to an employee employed by or through him or otherwise to recover such contribution or charges from such employee.

(iv) Measures for recovery of amount due from employer

The authorised officer under this Act shall issue a certificate for recovery of amount due from employer to the Recovery Officer. The Recovery Officer has got the powers to attach/sell the property of employer, call for arrest and detention of employer, etc. for effecting recovery. The employer cannot challenge the validity of the certificate.

The authorised officer can grant time to the employer to make the payment of dues. The Central Provident Fund Commissioner may require any person, from whom amount is due to the employer, to pay directly to the Central Provident Fund Commissioner/Officer so authorised and the same will be treated as discharge of his liability to the employer to the extent of amount so paid. (Sections 8B to 8G)

(v) Priority of payment of contributions over other debts

Section 11 of the Act provides that the contribution towards Provident Fund shall rank prior to other payments in the event of employer being adjudicated insolvent or where it is a company on which order of winding up has been made. The amount shall include:

(a) the amount due from the employer in relation to an establishment to which any Scheme or Insurance Scheme applies in respect of any contribution payable to the Fund, or the

Insurance, damages recoverable under Section 14B, accumulations required to be transferred under sub-section (2) of Section 15 or any charges payable by him under any other provisions of this Act or of any provision of the Scheme or the Insurance Scheme; or

(b) the amount due from employer in relation to an exempted establishment in respect of any contribution to the Provident Fund or any Insurance Fund in so far as it relates to exempted employees under the rules of the Provident Fund, or any Insurance Fund or any contribution payable by him towards the Pension Fund under Sub-section (6) of Section 17, damages recoverable under Section 13B or any charges payable by him to the appropriate Government under any provisions of this Act or any of the

conditions specified under Section 17.

Employer Not To Reduce Wages

Section 12 prohibits an employer not to reduce directly or indirectly the wages of any employee to whom the Scheme or the Insurance Scheme applies or the total quantum of benefits in the nature of old age pension, gratuity or provident fund or life insurance to which the employee is entitled under the terms of employment, express or implied, simply by reason of his liability for the payment of any contribution to the Fund or the Insurance Fund or any charges under this Act or the Scheme or the Insurance Scheme.

Transfer Of Accounts

Section 17A(1) of the Act provides that where an employee employed in an establishment to which this Act applies leaves his employment and obtain re-employment in another establishment to which this Act does not apply, the amount of accumulations to the credit of such employee in the Fund, or as the case may be, in the Provident Fund of the establishment left by him shall be transferred within such time as may be specified by Central Government in this behalf to the credit of his account in the Provident Fund of the establishment in which he is re-employed, if the employee so desires and the rules in relation to that Provident Fund permit such transfer.

Sub-section (2) further provides that where as employee employed in an establishment to which this Act does not apply, leaves his employment and obtain re-employment in another

establishment to which this Act applies, the amount of accumulations to the credit of such employee in the Provident Fund of the establishment left by him, may, if the employee so desires and also rules in relation to such Provident Fund permit, be transferred to the credit of his account in the Fund or as the case may be, in the Provident Fund of the establishment in which he is re-employed.

Protection Against Attachment

Statutory protection is provided to the amount of contribution to Provident Fund under Section 10 from attachment to any Court decree. Sub-section (1) of Section 10 provides that the amount standing to the credit of any member in the Fund or any exempted employee in a Provident fund shall not in any way, be capable of being assigned or charged and shall not be liable to attachment under any decree or order or any Court in respect of any debt or liability incurred by the member or the exempted employee and neither the official assignee appointed under the Presidency Towns Insolvency Act, 1909 nor any receiver appointed under the Provincial Insolvency Act, 1920 shall be entitled to or have any claim on any such amount.

It is further provided in sub-section (2) that any amount standing to the credit of a member in the Fund or of an exempted employee in a Provident Fund at the time of his death and payable to his nominee under the Scheme or the rules of the Provident Fund shall, subject to any deduction authorised by the said scheme or rules, vest in the nominee and shall be free from any debt or other liability incurred by the deceased or the nominee before the death of the member or of the exempted employee and shall also not be liable to attachment under any decree or order of any Court. There is a statutory vesting of the fund on dependents after the death of the subscriber which on such vesting becomes absolute property of dependent and cannot be held to have inherited by dependent.

The above provision shall apply in relation to the Employees' Pension Scheme or any other amount payable under the Insurance Scheme as they apply in relation to any amount payable out of the fund.

Power to Exempt

Section 17 authorises the appropriate Government to grant exemptions to certain establishments or persons from the operation of all or any of the provisions of the Scheme.

Such exemption shall be granted by notification in the Official Gazette subject to such conditions as may be specified therein.

9.6. MATERNITY BENEFIT ACT, 1961

Introduction

Article 39(e) &(f) of the Constitution of India provides that the State shall, in particular, direct its policy towards securing that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength; and that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Maternity Benefits are aimed to protect the dignity of motherhood by providing for the full and healthy maintenance of women and her child when she is not working. The Maternity Benefit Act, 1961 is applicable to mines, factories, circus industry, plantations, shops and establishments employing ten or more persons. It can be extended to other establishments by the State Governments.

Definition

“Appropriate Government” means in relation to an establishment being a mine or an establishment wherein persons are employed for the exhibition of equestrian acrobatic and other performances the Central Government and in relation to any other establishment the State Government. { Section 3(a)}

“Child” includes a still-born child. { Section 3(b)}

“Employer” means –

(i) in relation to an establishment which is under the control of the government a person or authority appointed by the government for the supervision and control of employees or where no person or authority is so appointed the head of the department;

(ii) in relation to an establishment under any local authority the person appointed by such authority for the supervision and control of employees or where no person is so appointed the chief executive officer of the local authority;

(iii) in any other case the person who or the authority which has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to any other person whether called a manager managing director managing agent or by any other name such person; { Section 3(d)}

“Establishment” means –

(i) a factory;

(ii) a mine;

(iii) a plantation;

(iv) an establishment wherein persons are employed for the exhibition of equestrian acrobatic and other performance;

(iva) a shop or establishment; or

(v) an establishment to which the provisions of this Act have been declared under sub-section (1) of section

2 to be applicable { Section 3(e)};

“Maternity benefit” means the payment referred to in sub-section (1) of section 5 { Section 3(h)};

“Wages” means all remuneration paid or payable in cash to a woman if the terms of the contract of employment express or implied were fulfilled and includes -

(1) such cash allowances (including dearness allowance and house rent allowances) as a woman is for the time being entitled to

(2) incentive bonus and

(3) the money value of the concessional supply of foodgrains and other articles but does not include –

(i) any bonus other than incentive bonus;

(ii) over-time earnings and any deduction or payment made on account of fines;

(iii) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the woman under any law for the time being in force; and

(iv) any gratuity payable on the termination of service; { Section 3(n)}

Employment of or work by women prohibited during certain periods

Section 4 of the Act provides that no employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy. It also specifies that no women shall work in any establishment during the six weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy. It may be noted that if a pregnant women makes request to her employer, she shall not be given to do during the period of one month immediately preceding the period of six weeks, before the date of her expected delivery, any work which is of an arduous nature or which involves long hours of standing, or which in any way is likely to interfere with her pregnancy or the normal development of the foetus, or is likely to cause her miscarriage or otherwise to adversely affect her health.

Right to payment of maternity benefits

Every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day.

The average daily wage means the average of the woman's wages payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she absents herself on account of maternity, the minimum rate of wage fixed or revised under the Minimum Wages Act, 1948 or ten rupees, whichever is the highest.

A woman shall be entitled to maternity benefit if she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than eighty days in the twelve months immediately preceding the date of her expected delivery.

The maximum period for which any woman shall be entitled to maternity benefit shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery. If a woman dies during this period, the maternity benefit shall be payable only for the days up to and including the day of her death. Where a woman, having been delivered of a child, dies during her delivery or during the period immediately following the date of her delivery for which she is entitled for the maternity benefit, leaving behind in either case the child, the employer shall be liable for the maternity benefit for that entire period. If the child also dies during the said period, then, for the days up to and including the date of the death of the child.

Notice of claim for maternity benefit

Section 6 deals with notice of claim for maternity benefit and payment thereof. As per the section any woman employed in an establishment and entitled to maternity benefit under the provisions of this Act may give notice in writing in prescribed form, to her employer, stating that her maternity benefit and any other amount to which she may be entitled under this Act may be paid to her or to such person as she may nominate in the notice and that she will not work in any establishment during the period for which she receives maternity benefit.

In the case of a woman who is pregnant, such notice shall state the date from which she will be absent from work, not being a date earlier than six weeks from the date of her expected delivery. Any woman who has not given the notice when she was pregnant may give such notice as soon as possible after the delivery.

On receipt of the notice, the employer shall permit such woman to absent herself from the establishment during the period for which she receives the maternity benefit. The amount of maternity benefit for the period preceding the date of her expected delivery shall be paid in advance by the employer to the woman on production of such proof, that the woman is pregnant, and the amount due for the subsequent period shall be paid by the employer to the

woman within forty-eight hours of production of such proof as may be prescribed that the woman has been delivered of a child.

Nursing breaks

Every woman delivered of a child who returns to duty after such delivery shall, in addition to the interval for rest allowed to her, be allowed in the course of her daily work two breaks of the prescribed duration for nursing the child until the child attains the age of fifteen months.

Abstract of Act and rules there under to be exhibited

As per section 19 an abstract of the provisions of this Act and the rules made there under in the language or languages of the locality shall be exhibited in a conspicuous place by the employer in every part of the establishment in which women are employed.

Registers

Every employer shall prepare and maintain such registers, records and muster-rolls and in prescribed manner under section 20 of the Act.

Penalty for contravention of Act by employer

Section 21 provides that if any employer fails to pay any amount of maternity benefit to a woman entitled under this Act or discharges or dismisses such woman during or on account of her absence from work in accordance with the provisions of the Act, he shall be punishable with imprisonment which shall not be less than three months but which may extend to one year and with fine which shall not be less than two thousand rupees but which may extend to five thousand rupees. However, the court may, for sufficient reasons to be recorded in writing, impose a sentence of imprisonment for a lesser term or fine only in lieu of imprisonment.

If any employer contravenes the provisions of the Act or the rules made thereunder, he shall, if no other penalty is elsewhere provided by or under the Act for such contravention, be punishable with imprisonment which may extend to one year, or with fine which may extend to five thousand rupees, or with both. Where the contravention is of any provision regarding maternity benefit or regarding payment of any other amount and such maternity benefit or

amount has not already been recovered, the court shall, in addition, recover such maternity benefit or amount as if it were a fine and pay the same to the person entitled thereto.

9.7. PAYMENT OF GRATUITY ACT, 1972

Introduction

Gratuity is a lump sum payment made by the employer as a mark of recognition of the service rendered by the employee when he retires or leaves service. The Payment of Gratuity Act provides for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments.

The Payment of Gratuity Act has been amended from time to time to bring it in tune with the prevailing situation. Recently the Act has been amended twice to enhance the ceiling on amount of gratuity from Rs.3.50 lakh to Rs.10 lakh as well as to widen the scope of the definition of “employee” under section 2 (e) of the Act. These amendments have been introduced by the Payment of Gratuity (Amendment) Act, 2010 with effect from May 24, 2010.

Application of the Act

Application of the Act to an employed person depends on two factors. Firstly, he should be employed in an establishment to which the Act applies. Secondly, he should be an “employee” as defined in Section 2(e).

According to Section 1(3), the Act applies to:

- (a) every factory, mine, oilfield, plantation, port and railway company;
- (b) every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months;
- (c) such other establishments or class of establishments in which ten or more employees are employed, or were employed, on any day of the preceding twelve months as the Central Government may, by notification specify in this behalf.

In exercise of the powers conferred by clause (c), the Central Government has specified Motor transport undertakings, Clubs, Chambers of Commerce and Industry, Inland Water Transport establishments, Solicitors offices, Local bodies, Educational Institutions, Societies, Trusts and Circus industry, in which 10 or more persons are employed or were employed on any day of the preceding 12 months, as classes of establishments to which the Act shall apply.

A shop or establishment to which the Act has become applicable once, continues to be governed by it, even if the number of persons employed therein at any time after it has become so applicable falls below ten. (Section 3A)

Who is an Employee?

The definition of “employee” under section 2 (e) of the Act has been amended by the Payment of Gratuity (Amendment) Act, 2009 to cover the teachers in educational institutions retrospectively with effect from 3rd April, 1997. The amendment to the definition of “employee” has been introduced in pursuance to the judgment of Supreme Court in *Ahmedabad Private Primary Teachers’ Association v. Administrative Officer, AIR 2004 SC 1426*. The ceiling on the amount of gratuity from Rs.3.50 lakh to Rs.10 lakh has been enhanced by the Payment of Gratuity (Amendment) Act, 2010.

According to Section 2(e) as amended by the Payment of Gratuity (Amendment) Act, 2009 “employee” means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity. The wage ceiling of Rs. 3,500/- which was earlier in the Act has been removed. With the removal of ceiling on wage every employee will become eligible for gratuity, irrespective of his wage level w.e.f. 24th May, 1994.

Teacher was held to be not an employee (LAB 1C Pat 365) under the Act. The teachers are clearly not intended to be covered by the definition of 'employee'. [*Ahmedabad Pvt. Primary Teachers Association v. Administrative Officer*, LLJ (2004) SC]

Now the controversy has been set at rest. The Payment of Gratuity (Amendment) Act, 2009 has amended the definition of 'employee' including teachers in educational institutions within the purview of the Act retrospectively in pursuance to the judgement of Supreme Court in the above mentioned case.

Other Important Definitions

Appropriate Government

“Appropriate Government” means:

(i) in relation to an establishment:

(a) belonging to, or under the control of, the Central Government,

(b) having branches in more than one State,

(c) of a factory belonging to, or under the control of the Central Government.

(d) of a major port, mine, oilfield or railway company, the Central Government.

(ii) in any other case, the State Government. [Section 2(a)]

It may be noted that many large establishments have branches in more than one State. In such cases the 'appropriate Government' is the Central Government and any dispute connected with the payment or nonpayment of gratuity falls within the jurisdiction of the 'Controlling Authority' and the 'Appellate Authority' appointed by the Central Government under Sections 3 and 7.

A Company Secretary should know whether the 'appropriate Government' in relation to his establishment is the Central Government or the State Government. He should also find out who has been notified as the 'Controlling Authority' and also who is the 'Appellate Authority'. It may be noted that any request for exemption under Section 5 of the Act is also

to be addressed to the 'appropriate Government'. It is, therefore, necessary to be clear on this point.

Continuous Service

According to Section 2A, for the purposes of this Act:

(1) An employee shall be said to be in 'continuous service' for a period if he has, for that period been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order treating the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment), layoff, strike or a lock-out or cessation of work not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act;

(2) Where an employee (not being an employee employed in a seasonal establishment) is not in continuous service within the meaning of clause (1) for any period of one year or six months, he shall be deemed to be in continuous service under the employer:

(a) for the said period of one year, if the employee during the period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than:

(i) one hundred and ninety days in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and (ii) two hundred and forty, days in any other case;

(b) for the said period of six months, if the employee during the period of six calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than:

(i) ninety five days, in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and

(ii) one hundred and twenty days in any other case;

Explanation: For the purpose of clause (2), the number of days on which an employee has actually worked under an employer shall include the days on which:

(i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946, or under the Industrial Disputes Act, 1947, or under any other law applicable to the establishment;

(ii) he has been on leave with full wages, earned in the previous year;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so however, that the total period of such maternity leave does not exceed twelve weeks.

(3) Where an employee, employed in a seasonal establishment, is not in continuous service within the meaning of clause (1) for any period of one year or six months, he shall be deemed to be in continuous service under the employer for such period if he has actually worked for not less than seventy-five per cent, of the number of days on which the establishment was in operation during such period.

Service is not continuous, in case of legal termination of service and subsequent re-employment.

Gratuity cannot be claimed on the basis of continuous service on being taken back in service after break in service of one and a half year on account of termination of service for taking part in an illegal strike, where the employee had accepted gratuity for previous service and later withdrawn from the industrial dispute (*Balaram v. Phoenix Mills Ltd.*, 1999 CLA Bom.19).

Family

Family, in relation to an employee, shall be deemed to consist of:

(i) in case of a male employee, himself, his wife, his children, whether married or unmarried, his dependent parents and the dependent parents of his wife and the widow and children of his predeceased son, if any,

(ii) in the case of a female employee, herself, her husband, her children, whether married or unmarried, her dependent parents and the dependent parents of her husband and the widow and children of her predeceased son, if any. [Section 2(h)]

Explanation: Where the personal law of an employee permits the adoption by him of a child, any child lawfully adopted by him shall be deemed to be included in his family, and where a child of an employee has been adopted by another person and such adoption is, under the personal law of the person making such adoption lawful, such child shall be deemed to be excluded from the family of the employee.

Retirement

“Retirement” means termination of the service of an employee otherwise than on superannuation. [Section 2(q)]

Superannuation

“Superannuation” in relation to an employee, means the attainment by the employee of such age as is fixed in the contract or conditions of service as the age on the attainment of which the employee shall vacate the employment. [Section 2(r)]

Wages

“Wages” means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance. [Section 2(s)].

When is gratuity payable?

According to Section 4(1) of the Payment of Gratuity Act, 1972, gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years:

- (a) on his superannuation, or
- (b) on his retirement or resignation, or
- (c) on his death or disablement due to accident or disease.

Note: The completion of continuous service of five years is not necessary where the termination of the employment of any employee is due to death or disablement.

Further, the period of continuous service is to be reckoned from the date of employment and not from the date of commencement of this Act (CLA-1996-III-13 Mad.). Mere absence from duty without leave can not be said to result in breach of continuity of service for the purpose of this Act. [*Kothari Industrial Corporation v. Appellate Authority*, 1998 Lab IC, 1149 (AP)].

To whom is gratuity payable?

It is payable normally to the employee himself. However, in the case of death of the employee, it shall be paid to his nominee and if no nomination has been made, to his heirs and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.

Amount of Gratuity Payable

Gratuity is calculated on the basis of continuous service as defined above i.e. for every completed year of service or part in excess of six months, at the rate of fifteen days wages last drawn. The maximum amount of gratuity allowed under the Act is Rs. 10 lakh. The ceiling on the amount of gratuity from Rs.3.50 lakh to Rs.10 lakh has been enhanced by the Payment of Gratuity (Amendment) Act, 2010.

Nomination

An employee covered by the Act is required to make nomination in accordance with the Rules under the Act for the purpose of payment of gratuity in the event of his death. The rules also provide for change in nomination.

Forfeiture of Gratuity

The Act deals with this issue in two parts. Section 4(6)(a) provides that the gratuity of an employee whose services have been terminated for any act of willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, gratuity shall be forfeited to the extent of the damage or loss or caused. The right of forfeiture is limited to the extent of damage. In absence of proof of the extent of damage, the right of forfeiture is not available (LLJ- II-1996-515 MP).

Section 4(6)(b) deals with a case where the services of an employee have been terminated:

- (a) for riotous and disorderly conduct or any other act of violence on his part, or
- (b) for any act which constitutes an offence involving moral turpitude provided that such offence is committed by him in the course of his employment.

In such cases the gratuity payable to the employee may be wholly or partially forfeited. Where the service has not been terminated on any of the above grounds, the employer cannot withhold gratuity due to the employee.

Where the land of the employer is not vacated by the employee, gratuity cannot be withheld (*Travancore Plywood Ind. v. Regional JLC, Kerala*, 1996 LLJ-II-14 Ker.). Assignment of gratuity is prohibited, it cannot be withheld for non vacation of service quarters by retiring employees (*Air India v. Authority under the Act*, 1999 CLA 34 Bom. 66).

Exemptions

The appropriate Government may exempt any factory or establishment covered by the Act or any employee or class of employees if the gratuity or pensionary benefits for the employees are not less favourable than conferred under the Act.

The Controlling Authority and the Appellate Authority

The controlling authority and the Appellate Authority are two important functionaries in the operation of the Act.

Section 3 of the Act says that the appropriate Government may by notification appoint any officer to be a Controlling Authority who shall be responsible for the administration of the Act. Different controlling authorities may be appointed for different areas.

Section 7(7) provides for an appeal being preferred against an order of the Controlling Authority to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf.

Rights and obligations of employees

Application for Payment of Gratuity

Section 7(1) lays down that a person who is eligible for payment of gratuity under the Act or any person authorised, in writing, to act on his behalf shall send a written application to the employer. Rule 7 of the Payment of Gratuity (Central) Rules, 1972, provides that the application shall be made ordinarily within 30 days from the date gratuity becomes payable. The rules also provides that where the date of superannuation or retirement of an employee is known, the employee may apply to the employer before 30 days of the date of superannuation or retirement.

A nominee of an employee who is eligible for payment of gratuity in the case of death of the employee shall apply to the employer ordinarily within 30 days from the date of the gratuity becomes payable to him. [Rule 7(2)]

Although the forms in which the applications are to be made have been laid down, an application on plain paper with relevant particulars is also accepted. The application may be presented to the employer either by personal service or be registered post with acknowledgement due. An application for payment of gratuity filed after the period of 30 days mentioned above shall also be entertained by the employer if the application adduces

sufficient cause for the delay in preferring his claim. Any dispute in this regard shall be referred to the Controlling Authority for his decision.

Rights and obligations of the employer

Employers Duty to Determine and Pay Gratuity

Section 7(2) lays down that as soon as gratuity becomes payable the employer shall, whether the application has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the Controlling Authority, specifying the amount of gratuity so determined.

Section 7(3) of the Act says that the employer shall arrange to pay the amount of gratuity within thirty days from the date of its becoming payable to the person to whom it is payable.

Section 7(3A): If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at the rate of 10 per cent per annum:

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.

Dispute as to the Amount of Gratuity or Admissibility of the Claim

If the claim for gratuity is not found admissible, the employer shall issue a notice in the prescribed form to the applicant employee, nominee or legal heir, as the case may be, specifying reasons why the claim for gratuity is not considered admissible. A copy of the notice shall be endorsed to the Controlling Authority.

If the dispute relates as to the amount of gratuity payable, the employer shall deposit with the Controlling Authority such amount as he admits to be payable by him. According to Section 7(4)(e), the Controlling Authority shall pay the amount of deposit as soon as may be after a deposit is made

(i) to the applicant where he is the employee; or

(ii) where the applicant is not the employee, to the nominee or heir of the employee if the Controlling Authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

Recovery of Gratuity

Section 8 provides that if the gratuity payable under the Act is not paid by the employer within the prescribed time, the Controlling Authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector, who shall recover the same together with the compound interest thereon at such rate as the Central Government may be notified, from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto:

“Provided that the controlling authority shall, before issuing a certificate under this section, give the employer a reasonable opportunity of showing cause against the issue of such certificate:

Provided further that the amount of interest payable under this section shall, in no case, exceed the amount of gratuity payable under this Act”.

Protection of Gratuity

Gratuity has been exempted from attachment in execution of any decree or order of any Civil, Revenue or Criminal Court. This relief is aimed at providing payment of gratuity to the person or persons entitled there to without being affected by any order of attachment by an decree of any Court.

UNIT – X

10.1. WAGE LEGISLATION THE PAYMENT OF WAGES ACT 1936

The Payment of Wages Act, 1936 is a central legislation which has been enacted to regulate the payment of wages to workers employed in certain specified industries and to ensure a speedy and effective remedy to them against unauthorized deductions and/or unjustified delay caused in paying wages to them. It applies to the persons employed in a factory, industrial or other establishment or in a railway, whether directly or indirectly, through a sub-contractor. In order to bring the law in uniformity with other labour laws and to make it more effective and practicable, the payment of wages Act was last amended in 2005. The amendment enhancing the wage ceiling per Month with a view to covering more employed persons and substitute the expressions “the Central Government” or “a State Government” by the expression “appropriate Government”. Amendment also strengthening compensation and penal provisions made more stringent by enhancing the quantum of penalties by amending of the Act.

The Central Government is responsible for enforcement of the Act in railways, mines, oilfields and air transport services, while the State Governments are responsible for it in factories and other industrial establishments.

Object and Scope

The main object of the Act is to eliminate all malpractices by laying down the time and mode of payment of wages as well as securing that the workers are paid their wages at regular intervals, without any unauthorized deductions. In order to enlarge its scope and provide for more effective enforcement the Act empowering the Government to enhance the ceiling by notification in future. The Act extends to the whole of India.

Definitions

“**Employed person**” includes the legal representative of a deceased employed person. {Section 2(ia)}

“**Employer**” includes the legal representative of a deceased employer. {Section 2(ib)}

“Factory” means a factory as defined in clause (m) of section 2 of the Factories Act 1948 (63 of 1948) and includes any place to which the provisions of that Act have been applied under sub-section (1) of section 85 thereof. {Section 2(ic)}

“Industrial or other establishment” means any –

- (a) tramway service or motor transport service engaged in carrying passengers or goods or both by road for hire or reward;
- (aa) air transport service other than such service belonging to or exclusively employed in the military naval or air forces of the Union or the Civil Aviation Department of the Government of India;
- (b) dock wharf or jetty;
- (c) inland vessel mechanically propelled;
- (d) mine quarry or oil-field;
- (e) plantation;
- (f) workshop or other establishment in which articles are produced adapted or manufactured with a view to their use transport or sale;
- (g) establishment in which any work relating to the construction development or maintenance of buildings roads bridges or canals or relating to operations connected with navigation irrigation or to the supply of water or relating to the generation transmission and distribution of electricity or any other form of power is being carried on;
- (h) any other establishment or class of establishments which the Appropriate Government may having regard to the nature thereof the need for protection of persons employed therein and other relevant circumstances specify by notification in the Official Gazette. {Section 2(ii)}

“Wages” means all remuneration (whether by way of salary allowances or otherwise) expressed in terms of money or capable of being so expressed which would if the terms of employment express or implied were fulfilled be payable to a person employed in respect of his employment or of work done in such employment and includes –

- (a) any remuneration payable under any award or settlement between the parties or order of a court;
- (b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;
- (c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);
- (d) any sum which by reason of the termination of employment of the person employed is payable under any law contract or instrument which provides for the payment of such sum whether with or without deductions but does not provide for the time within which the payment is to be made;
- (e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force, but does not include –
 - (1) any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a court;
 - (2) the value of any house-accommodation or of the supply of light water medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of Appropriate Government;
 - (3) any contribution paid by the employer to any pension or provident fund and the interest which may have accrued thereon;
 - (4) any travelling allowance or the value of any travelling concession;

- (5) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or
- (6) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d). {Section 2(vi)}

Responsibility for payment of wages

Section 3 provides that every employer shall be responsible for the payment to persons employed by him of all wages required to be paid under the Act. However, in the case of persons employed in factories if a person has been named as the manager of the factory; in the case of persons employed in industrial or other establishments

if there is a person responsible to the employer for the supervision and control of the industrial or other establishments; in the case of persons employed upon railways if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned; in the case of persons employed in the work of contractor, a person designated by such contractor who is directly under his charge; and in any other case, a person designated by the employer as a person responsible for complying with the provisions of the Act, the person so named, the person responsible to the employer, the person so nominated or the person so designated, as the case may be, shall be responsible for such payment.

It may be noted that as per section 2(ia) “employer” includes the legal representative of a deceased employer.

Fixation of wage period

As per section 4 of the Act every person responsible for the payment of wages shall fix wage-periods in respect of which such wages shall be payable. No wage-period shall exceed one month.

Time of payment of wages

Section 5 specifies the time payment of wages. The wages of every person employed upon or in any railway factory or industrial or other establishment upon or in which less than one thousand persons are employed, shall be paid before the expiry of the seventh day.

The wages of every person employed upon or in any other railway factory or industrial or other establishment shall be paid before the expiry of the tenth day, after the last day of the wage-period in respect of which the wages are payable. However, in the case of persons employed on a dock wharf or jetty or in a mine the balance of wages found due on completion of the final tonnage account of the ship or wagons loaded or unloaded as the

case may be shall be paid before the expiry of the seventh day from the day of such completion. Where the employment of any person is terminated by or on behalf of the employer the wages earned by him shall be paid before the expiry of the second working day from the day on which his employment is terminated.

However, the employment of any person in an establishment is terminated due to the closure of the establishment for any reason other than a weekly or other recognised holiday the wages earned by him shall be paid before the expiry of the second day from the day on which his employment is so terminated.

The Appropriate Government may by general or special order exempt to such extent and subject to such conditions as may be specified in the order the person responsible for the payment of wages to persons employed upon any railway or to persons employed as daily-rated workers in the Public Works Department of the Appropriate Government from the operation of this section in respect of wages of any such persons or class of such persons.

All payments of wages shall be made on a working day.

Wages to be paid in current coin or currency notes

As per section 6 of the Act, all wages shall be paid in current coin or currency notes or in both. However, the employer may, after obtaining the written authorisation of the employed person, pay him the wages either by cheque or by crediting the wages in his bank account.

Deductions from the wages of an employee

Section 7 of the Act allows deductions from the wages of an employee on the account of the following:- (i) fines;

(ii) absence from duty; (iii) damage to or loss of goods expressly entrusted to the employee; (iv) housing accommodation and amenities provided by the employer; (v) recovery of advances or adjustment of overpayments of wages; (vi) recovery of loans made from any fund constituted for the welfare of labour in accordance with the rules approved by the State Government, and the interest due in respect thereof; (vii) subscriptions to and for repayment of advances from any provident fund;(viii) income-tax; (ix) payments to co-operative societies approved by the State Government or to a scheme of insurance maintained by the Indian Post Office; (x) deductions made with the written authorisation of the employee for payment of any premium on his life insurance policy or purchase of securities.

Fines

Section 8 deals with fines. It provides that :

- (1) No fine shall be imposed on any employed person save in respect of such acts and omissions on his part as the employer with the previous approval of the State Government or of the prescribed authority may have specified by notice under subsection (2).
- (2) A notice specifying such acts and omissions shall be exhibited in the prescribed manner on the premises in which the employment carried on or in the case of persons employed upon a railway (otherwise than in a factory) at the prescribed place or places.
- (3) No fine shall be imposed on any employed person until he has been given an opportunity of showing cause against the fine or otherwise than in accordance with such procedure as may be prescribed for the imposition of fines.
- (4) The total amount of fine which may be imposed in any one wage-period on any employed person shall not exceed an amount equal to three per cent of the wages payable to him in respect of that wageperiod.
- (5) No fine shall be imposed on any employed person who is under the age of fifteen years.

- (6) No fine imposed on any employed person shall be recovered from him by installments or after the expiry of ninety days from the day on which it was imposed.
- (7) Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed.
- (8) All fines and all realisations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under section 3 in such form as may be prescribed; and all such realizations shall be applied only to such purposes beneficial to the persons employed in the factory or establishment as are approved by the prescribed authority.

It may be noted that when the persons employed upon or in any railway, factory or industrial or other establishment are part only of a staff employed under the same management all such realisations may be credited to a common fund maintained for the staff as a whole provided that the fund shall be applied only to such purposes as are approved by the prescribed authority.

Maintenance of registers and records

Section 13A provides that every employer shall maintain such registers and records giving such particulars of persons employed by him, the work performed by them, the wages paid to them, the deductions made from their wages, the receipts given by them and such other particulars in prescribed form. Every register and record required to be maintained shall be preserved for a period of three years after the date of the last entry made therein.

Claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims

Section 15 deals with claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims. It provides that the appropriate Government may, by notification in the Official Gazette, appoint-

- (a) any Commissioner for Workmen's Compensation; or
- (b) any officer of the Central Government exercising functions as,-

- (i) Regional Labour Commissioner; or
- (ii) Assistant Labour Commissioner with at least two years' experience; or
- (c) any officer of the State Government not below the rank of Assistant Labour Commissioner with at least two years' experience; or
- (d) a presiding officer of any Labour Court or Industrial Tribunal, constituted under the Industrial Disputes Act, 1947 or under any corresponding law relating to the investigation and settlement of industrial disputes in force in the State; or
- (e) any other officer with experience as a Judge of a Civil Court or a Judicial Magistrate, as the authority to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in payment of the wages, of persons employed or paid in that area, including all matters incidental to such claims.

Provided that where the appropriate Government considers it necessary so to do, it may appoint more than one authority for any specified area and may, by general or special order, provide for the distribution or allocation of work to be performed by them under this Act. Sub-section (2) of section 15 provides that where contrary to the provisions of the Act any deduction has been made from the wages of an employed person or any payment of wages has been delayed such person himself or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf or any Inspector under this Act or any other person acting with the permission of the authority appointed under subsection

(1) may apply to such authority for a direction under sub-section (3) :

However, every such application shall be presented within twelve months from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made as the case may be. Any application may be admitted after the said period of twelve months when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.

As per sub-section (3) when any application under sub-section (2) is entertained, the authority shall hear the applicant and the employer or other person responsible for the payment of

wages under section 3, or give them an opportunity of being heard, and, after such further enquiry, if any, as may be necessary, may, without prejudice to any other penalty to which such employer or other person is liable under this Act, direct the refund to the employed person of the amount deducted, or the payment of the delayed wages, together with the payment of such compensation as the authority may think fit, not exceeding ten times the amount deducted in the former case and not exceeding three thousand rupees but not less than one thousand five hundred rupees in the latter, and even if the amount deducted or delayed wages are paid before the disposal of the application, direct the payment of such compensation, as the authority may think fit, not exceeding two thousand rupees.

A claim under the Act shall be disposed of as far as practicable within a period of three months from the date of registration of the claim by the authority. It may be noted that the period of three months may be extended if both parties to the dispute agree for any bona fide reason to be recorded by the authority that the said period of three months may be extended to such period as may be necessary to dispose of the application in a just manner.

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

(a) a bona fide error or bona fide dispute as to the amount payable to the employed person;

or

(b) the occurrence of an emergency, or the existence of exceptional circumstances, the person responsible for the payment of the wages was unable, in spite of exercising reasonable diligence; or

(c) the failure of the employed person to apply for or accept payment.

As per sub-section (4) if the authority hearing an application under this section is satisfied that the application was either malicious or vexatious the authority may direct that a penalty not exceeding three hundred seventy five Rupees be paid to the employer or other person responsible for the payment of wages by the person presenting the application; or in any case in which compensation is directed to be paid under sub-section (3) the applicant ought not to have been compelled to seek redress under this section the authority may direct that a penalty

not exceeding three hundred seventy five Rupees be paid to the State Government by the employer or other person responsible for the payment of wages.

10.2. THE MINIMUM WAGES ACT, 1948

Introduction

The Minimum Wages Act was enacted primarily to safeguard the interests of the worker engaged in the unorganized sector. The Act provides for fixation and revision of minimum wages of the workers engaged in the scheduled employments. Under the Act, both central and State Governments are responsible, in respect of scheduled employments within their jurisdictions to fix and revise the minimum wages and enforce payment of minimum wages.

In case of Central sphere, any Scheduled employment carried on by or under the authority of the Central Government or a railway administration, or in relation to a mine, oil-field or major port, or any corporation established by a Central Act, the Central Government is the appropriate Government while in relation to any other Scheduled employment, the State Government is the appropriate Government. The Act is applicable only for those employments, which are notified and included in the schedule of the Act by the appropriate Governments. According to the Act, the appropriate Governments review/revise the minimum wages in the scheduled employments under their respective jurisdictions at an interval not exceeding five years.

Object and scope of the legislation

The Minimum Wages Act was passed in 1948 and it came into force on 15th March, 1948. The National Commission on Labour has described the passing of the Act as landmark in the history of labour legislation in the country.

The philosophy of the Minimum Wages Act and its significance in the context of conditions in India, has been explained by the Supreme Court in *Unichoyi v. State of Kerala* (A.I.R. 1962 SC 12), as follows:

“What the Minimum Wages Act purports to achieve is to prevent exploitation of labour and for that purpose empowers the appropriate Government to take steps to prescribe minimum

rates of wages in the scheduled industries. In an underdeveloped country which faces the problem of unemployment on a very large scale, it is not unlikely that labour may offer to work even on starvation wages. The policy of the Act is to prevent the employment of such sweated labour in the interest of general public and so in prescribing the minimum rates, the capacity of the employer need not to be considered. What is being prescribed is minimum wage rates which a welfare State assumes every employer must pay before he employs labour”.

According to its preamble the Minimum Wages Act, 1948, is an Act to provide for fixing minimum rates of wages in certain employments. The employments are those which are included in the schedule and are referred to as ‘Scheduled Employments’. The Act extends to whole of India.

Important definitions

***Appropriate Government* [Section 2(b)]**

“Appropriate Government” means –

(i) in relation to any scheduled employment carried on by or under the authority of the Central or a railway administration, or in relation to a mine, oilfield or major part or any corporation established by a Central Act, the Central Government, and

(ii) in relation to any other scheduled employment, the State Government.

***Employee* [Section 2(i)]**

“Employee” means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical in a scheduled employment in respect of which minimum rates of wages have been fixed; and includes an outworker to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale purpose of the trade or business of that other person where the process is to be carried out either in the home of the out-worker or in some other premises, net being premises under the control and management of that person; and also

includes an employee declared to be an employee by the appropriate Government; but does not include any member of Armed Forces of the Union.

Employer [Section 2(e)]

“Employer” means any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, and includes, except, in sub-section (3) of Section 26 –

(i) in a factory where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person named under clause (f) of sub-section (1) of Section 7 of the Factories Act, 1948, as manager of the factory;

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

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

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

The definitions of “employees” and “employer” are quite wide. Person who engages workers through another like a contractor would also be an employer (1998 LLJ I Bom. 629). It was held in *Nathu Ram Shukla v. State of Madhya Pradesh* A.I.R. 1960 M.P. 174 that if minimum wages have not been fixed for any branch of work of any scheduled employment, the person employing workers in such branch is not an employer with the meaning of the Act. Similarly, in case of *Loknath Nathu Lal v. State of Madhya Pradesh* A.I.R. 1960 M.P. 181 an out-

worker who prepared goods at his residence, and then supplied them to his employer was held as employee for the purpose of this Act.

Scheduled employment [Section 2(g)]

“Scheduled employment” means an employment specified in the Schedule or any process or branch of work forming part of such employment.

Note: The schedule is divided into two parts namely, Part I and Part II. When originally enacted Part I of Schedule had 12 entries. Part II relates to employment in agriculture. It was realised that it would be necessary to fix minimum wages in many more employments to be identified in course of time. Accordingly, powers were given to appropriate Government to add employments to the Schedule by following the procedure laid down in Section 21 of the Act. As a result, the State Government and Central Government have made several additions to the Schedule and it differs from State to State.

Wages [Section 2(h)]

“Wages” means all remunerations capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment and includes house rent allowance but does not include:

(i) the value of:

(a) any house accommodation, supply of light, water medical;

(b) any other amenity or any service excluded by general or social order of the appropriate Government;

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

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

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

(v) any gratuity payable on discharge.

Fixation Of Minimum Rates Of Wages [Section 3(1)(a)]

Section 3 lays down that the ‘appropriate Government’ shall fix the minimum rates of wages, payable to employees in an employment specified in Part I and Part ii of the Schedule, and in an employment added to either part by notification under Section 27. In case of the employments specified in Part II of the Schedule, the minimum rates of wages may not be fixed for the entire State. Parts of the State may be left out altogether. In the case of an employment specified in Part I, the minimum rates of wages must be fixed for the entire State, no parts of the State being omitted. The rates to be fixed need not be uniform. Different rates can be fixed for different zones or localities: [*Basti Ram v. State of A.P.* A.I.R. 1969, (A.P.) 227].

The constitutional validity of Section 3 was challenged in Bijoy Cotton Mills v. State of Ajmer, 1955 S.C. 3. The Supreme Court held that the restrictions imposed upon the freedom of contract by the fixation of minimum rate of wages, though they interfere to some extent with freedom of trade or business guarantee under Article 19(1)(g) of the Constitution, are not unreasonable and being imposed and in the interest of general public and with a view to carrying out one of the Directive Principles of the State Policy as embodied in Article 43 of the Constitution, are protected by the terms of Clause (6) of Article 9.

Notwithstanding the provisions of Section 3(1)(a), the “appropriate Government” may not fix minimum rates of wages in respect of any scheduled employment in which less than 1000 employees in the whole State are engaged. But when it comes to its knowledge after a finding that this number has increased to 1,000 or more in such employment, it shall fix minimum wage rate.

Revision Of Minimum Wages

According to Section 3(1)(b), the ‘appropriate Government’ may review at such intervals as it may think fit, such intervals not exceeding five years, and revise the minimum rate of wages, if necessary. This means that minimum wages can be revised earlier than five years also.

Manner Of Fixation/Revision Of Minimum Wages

According to Section 3(2), the ‘appropriate Government’ may fix minimum rate of wages for:

- (a) time work, known as a Minimum Time Rate;
- (b) piece work, known as a Minimum Piece Rate;
- (c) a “Guaranteed Time Rate” for those employed in piece work for the purpose of securing to such employees a minimum rate of wages on a time work basis; (This is intended to meet a situation where operation of minimum piece rates fixed by the appropriate Government may result in a worker earning less than the minimum wage), and (d) a “Over Time Rate” i.e. minimum rate whether a time rate or a piece rate to apply in substitution for the minimum rate which would otherwise be applicable in respect of overtime work done by employee.

Section 3(3) provides that different minimum rates of wages may be fixed for –

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

Further, minimum rates of wages may be fixed by any one or more of the following wage periods, namely:

- (i) by the hour,
- (ii) by the day,
- (iii) by the month, or

(iv) by such other large wage periods as may be prescribed;

and where such rates are fixed by the day or by the month, the manner of calculating wages for month or for a day as the case may be, may be indicated.

However, where wage period has been fixed in accordance with the Payment of Wages Act, 1986 vide Section 4 thereof, minimum wages shall be fixed in accordance therewith [Section 3(3)].

Minimum Rate Of Wages (Section 4)

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

- (i) a basic rate of wages and a special allowance at a rate to be adjusted, at such intervals and in such manner as the appropriate Government may direct to accord as nearly as practicable with the variation in the cost of living index number applicable to such worker (hereinafter referred to as the cost of living allowance); or
- (ii) a basic rate of wages or without the cost of living allowance and the cash value of the concession in respect of supplies of essential commodities at concessional rates where so authorized; or
- (iii) an all inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any.

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

Procedure For Fixing And Revising Minimum Wages (Section 5)

In fixing minimum rates of wages in respect of any scheduled employment for the first time or in revising minimum rates of wages, the appropriate Government can follow either of the two methods described below.

First Method [Section 5(1)(a)]

This method is known as the 'Committee Method'. The appropriate Government may appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision as the case may be. After considering the advise of the committee or committees, the appropriate Government shall, by notification in the Official Gazette fix or revise the minimum rates of wages.

The wage rates shall come into force from such date as may be specified in the notification. If no date is specified, wage rates shall come into force on the expiry of three months from the date of the issue of the notification.

Note: It was held in *Edward Mills Co. v. State of Ajmer* (1955) A.I.R. SC, that Committee appointed under Section 5 is only an advisory body and that Government is not bound to accept its recommendations. As regards composition of the Committee, Section 9 of the Act lays down that it shall consist of persons to be nominated by the appropriate Government representing employers and employee in the scheduled employment, who shall be equal in number and independent persons not exceeding 1/3rd of its total number of members.

One of such independent persons shall be appointed as the Chairman of the Committee by the appropriate Government.

Second Method [Section 5(1)(b)]

The method is known as the 'Notification Method'. When fixing minimum wages under Section 5(1)(b), the appropriate Government shall by notification, in the Official Gazette publish its proposals for the information of persons likely to be affected thereby and specify a date not less than 2 months from the date of notification, on which the proposals will be taken into consideration.

The representations received will be considered by the appropriate Government. It will also consult the Advisory Board constituted under Section 7 and thereafter fix or revise the minimum rates of wages by notification in the Official Gazette. The new wage rates shall come into force from such date as may be specified in the notification.

However, if no date is specified, the notification shall come into force on expiry of three months from the date of its issue. Minimum wage rates can be revised with retrospective effect. [1996 II LLJ 267 Kar.].

Advisory Board

The advisory board is constituted under Section 7 of the Act by the appropriate Government for the purpose of co-ordinating the work of committees and sub-committees appointed under Section 5 of the Act and advising the appropriate Government generally in the matter of fixing and revising of minimum rates of wages. According to Section 9 of the Act, the advisory board shall consist of persons to be nominated by the appropriate Government representing employers and employees in the scheduled employment who shall be equal in number, and independent persons not exceeding 1/3rd of its total number of members, one of such independent persons shall be appointed as the Chairman by the appropriate Government. It is not necessary that the Board shall consist of representatives of any particular industry or of each and every scheduled employment; *B.Y. Kashatriya v. S.A.T. Bidi Kamgar Union* A.I.R. (1963) S.C. 806. An independent person in the context of Section 9 means a person who is neither an employer nor an employee in the employment for which the minimum wages are to be fixed. In the case of *State of Rajasthan v. Hari Ram Nathwani*, (1975) SCC 356, it was held that the mere fact that a person happens to be a Government servant will not divert him of the character of the independent person.

Central Advisory Board

Section 8 of the Act provides that the Central Government shall appoint a Central Advisory Board for the purpose of advising the Central Government and State Governments in the matters of fixation and revision of minimum rates of wages and other matters under the Minimum Wages Act and for coordinating work of the advisory boards. The Central Advisory Board shall consist of persons to be nominated by the Central Government representing employers and employees in the scheduled employment who shall be equal in number and independent persons not exceeding 1/3rd of its total number of members, one of such independent persons shall be appointed as the Chairman of the Board by Central Government.

Minimum Wage – Whether To Be Paid In Cash Or Kind

Section 11 of the Act provides that minimum wages payable under the Act shall be paid in cash. But where it has been the custom to pay wages wholly or partly in kind, the appropriate Government, on being satisfied, may approve and authorize such payments. Such Government can also authorize for supply of essential commodities at concessional rates. Where payment is to be made in kind, the cash value of the wages in kind or in the shape of essential commodities on concessions shall be estimated in the prescribed manner.

Payment Of Minimum Wages Is Obligatory On Employer (Section 12)

Payment of less than the minimum rates of wages notified by the appropriate Government is an offence. Section 12 clearly lays down that the employer shall pay to every employee engaged in a scheduled employment under him such wages at a rate not less than the minimum rate of wages fixed by the appropriate Government under Section 5 for that class of employment without deduction except as may be authorized, within such time and subject to such conditions, as may be prescribed.

Fixing Hours For A Normal Working Day (Section 13)

Fixing of minimum rates of wages without reference to working hours may not achieve the purpose for which wages are fixed. Thus, by virtue of Section 13 the appropriate Government may –

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

The above stated provision shall apply to following classes of employees only to such extent and subject to such conditions as may be prescribed:

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

For the purpose of clause (c) employment of an employee is essentially intermittent when it is declared to be so by the appropriate Government on ground that the daily hours of the employee, or if there be no daily hours of duty as such for the employee, the hours of duty, normally includes period of inaction during which the employee may be on duty but is not called upon to display either physical activity or sustained attention.

There is correlation between minimum rates of wages and hours of work. Minimum wages are to be fixed on basis of standard normal working hours, namely 48 hours a week; *Benode Bihari Shah v. State of W.B.* 1976 Lab I.C. 523 (Cal).

Payment Of Overtime (Section 14)

Section 14 provides that when an employee, whose minimum rate of wages is fixed under this Act by the hours, the day or by such longer wage period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or part of an hour so worked in excess at the overtime rate fixed under this Act or under any other law of the appropriate Government for the time being in force whichever is higher. Payment for overtime work can be claimed only by the employees who are getting minimum rate of wages under the Act and not by those getting better wages. (1998 LLJ I SC 815).

Wages Of A Worker Who Works Less Than Normal Working Day (Section 15)

Where the rate of wages has been fixed under the Act by the day for an employee and if he works on any day on which he employed for a period less than the requisite number of hours constituting a normal working day, he shall be entitled to receive wages for that day as if he had worked for a full working day.

Provided that he shall not receive wages for full normal working day –

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

Minimum Time – Rate Wages For Piece Work (Section 17)

Where an employee is engaged in work on piece work for which minimum time rate and not a minimum piece rate has been fixed, wages shall be paid in terms of Section 17 of the Act at minimum time rate.

Maintenance Of Registers And Records (Section 18)

Apart from the payment of the minimum wages, the employer is required under Section 18 to maintain registers and records giving such particulars of employees under his employment, the work performed by them, the receipts given by them and such other particulars as may be prescribed. Every employee is required also to exhibit notices, in the prescribed form

containing particulars in the place of work. He is also required to maintain wage books or wage-slips as may be prescribed by the appropriate Government and the entries made therein will have to be authenticated by the employer or his agent in the manner prescribed by the appropriate Government.

Authority And Claims (Section 20-21)

Under Section 20(1) Of The Act, The Appropriate Government, May Appoint Any Of The Following As An Authority To Hear And Decide For Any Specified Area Any Claims Arising Out Of Payment Of Less Than The Minimum Rate Of Wages Or In Respect Of The Payment Of Remuneration For The Days Of Rest Or Of Wages At The Rate Of Overtime Work:

- (A) Any Commissioner For Workmen's Compensation; Or
- (B) Any Officer Of The Central Government Exercising Functions As Labour Commissioner For Any Region; Or
- (C) Any Officer Of The State Government Not Below The Rank Of Labour Commissioner; Or
- (D) Any Other Officer With Experience As A Judge Of A Civil Court Or As The Stipendiary Magistrate.

The Authority So Appointed Shall Have Jurisdiction To Hear And Decide Claim Arising Out Of Payment Of Less Than The Minimum Rates Of Wages Or In Respect Of The Payment Remuneration For Days Of Rest Or For Work Done On Such Days Or For Payment Of Overtime.

The Provisions Of Section 20(1) Are Attracted Only If There Exists A Disputed Between The Employer And The Employee As To The Rates Of Wages. Where No Such Dispute Exists Between The Employer And Employees And The Only Question Is Whether A Particular Payment At The Agreed Rate In Respect Of Minimum Wages, Overtime Or Work On Off Days Is Due To An Employee Or Not, The Appropriate Remedy Is Provided By The Payment Of Wages Act, 1936.

Offences And Penalties

Section 22 of the Act provides that any employer who (a) pays to any employee less than the minimum rates of wages fixed for that employee's class of work or less than the amount due to him under the provisions of this Act or contravenes any rule or order made under Section 13, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or with both.

While imposing any fine for an offence under this section the court shall take into consideration the amount of any compensation already awarded against the accused in any proceedings taken under section 20. It is further stipulated under Section 22A of the Act that any employer who contravenes any provision of this Act or of any rule or order made thereunder shall if no other penalty is provided for such contravention by this Act be punishable with fine which may extend to five hundred rupees.

10.3. PAYMENT OF BONUS ACT, 1965

The term "bonus" is not defined in the Payment of Bonus Act, 1965. Webster International Dictionary defines bonus as "something given in addition to what is ordinarily received by or strictly due to the recipient". The Oxford Concise Dictionary defines it as "something to the good into the bargain (and as an example) gratuity to workmen beyond their wages". The purpose of payment of bonus is to bridge the gap between wages paid and ideal of a living wage.

The Payment of Bonus Act, 1965 applies to every factory as defined under the Factories Act, 1948; and every other establishment in which twenty or more persons are employed on any day during an accounting year. However, the Government may, after giving two months' notification in the Official Gazette, make the Act applicable to any factory or establishment employing less than twenty but not less than ten persons. An employee is entitled to be paid by his employer a bonus in an accounting year subjected to the condition that he/she has worked for not less than 30 working days of that year. An employer shall pay minimum bonus at the rate of 8.33% of the salary or wages earned by an employee in an year or one hundred rupees, whichever is higher.

Object And Scope Of The Act

The object of the Act is to provide for the payment of bonus to persons employed in certain establishments and for matters connected therewith. Shah J. observed in *Jalan Trading Co. (Pvt.) Ltd. v. Mill Mazdor Sabha*, AIR 1967 S.C. 691, that the “object of the Act being to maintain peace and harmony between labour and capital by allowing the employees to share the prosperity of the establishment and prescribing the maximum and minimum rates of bonus together with the scheme of “set-off” and “set on” not only secures the right of labour to share in the profits but also ensures a reasonable degree of uniformity”.

On the question whether the Act deals only with profit bonus, it was observed by the Supreme Court in Mumbai Kamgar Sabha v. Abdulbhai Faizullabhai, (1976) II LLJ 186, that “bonus” is a word of many generous connotations and, in the Lord’s mansion, there are many houses. There is profit based bonus which is one specific kind of claim and perhaps the most common. There is customary or traditional bonus which has its emergence from long, continued usage leading to a promissory and expectancy situation materialising in a right. There is attendance bonus and what not. The Bonus Act speak and speaks as a whole Code on the sole subject of profit based bonus but is silent and cannot, therefore, annihilate by implication, other distinct and different kinds of bonuses, such as the one oriented on custom.

The Bonus Act, 1965 as it then stood does not bar claims to customary bonus or those based on conditions of service. Held, a discerning and concrete analysis of the scheme of the Bonus Act and reasoning of the Court leaves no doubt that the Act leaves untouched customary bonus.

The provision of the Act have no say on customary bonus and cannot, therefore, be inconsistent therewith. Conceptually, statutory bonus and customary bonus operate in two fields and do not clash with each other (*Hukamchand Jute Mills Limited v. Second Industrial Tribunal, West Bengal*; 1979-I Labour Law Journal 461).

Application of the act

According to Section 1(2), the Act extends to the whole of India, and as per Section 1(3) the Act shall apply to (a) every factory; and (b) every other establishment in which twenty or more persons are employed on any day during an accounting year.

Provided that the appropriate Government may, after giving not less than two months notice of its intention so to do, by notification in the Official Gazette apply the provisions of this Act with effect from such accounting year as may be specified in the notification to any establishment including an establishment being a factory within the meaning of sub-clause (ii) of clause (m) of Section 2 of the Factories Act, 1948 employing such number of persons less than twenty as may be specified in the notification; so, however, that the number of persons so specified shall in no case be less than ten.

Save as otherwise provided in this Act, the provisions of this Act shall, in relation to a factory or other establishment to which this Act applies, have effect in respect of the accounting year commencing on any day in the year 1964 and in respect of every subsequent accounting year: Provided that in relation to the State of Jammu and Kashmir, the reference to the accounting year commencing on any day in the year 1964 and every subsequent accounting year shall be construed as reference to the accounting year commencing on any day in the year 1968 and every subsequent accounting year.

Provided further that when the provisions of this Act have been made applicable to any establishment or class of establishments by the issue of a notification under the proviso to sub-section (3), the reference to the accounting year commencing on any day in the year 1964 and every subsequent accounting year, or, as the case may be, the reference to the accounting year commencing on any day in the year 1968 and every subsequent accounting year, shall, in relation to such establishment or class of establishments, be construed as a reference to the accounting year specified in such notification and every subsequent accounting year [Section 1(4)].

An establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein falls below twenty, or, as the

case may be, the number specified in the notification issued under the proviso to sub-section (3).

Act not to apply to certain classes of employees

Section 32 of this Act provides that the Act shall not apply to the following classes of employees:

(i) employees employed by any insurer carrying on general insurance business and the employees employed by the Life Insurance Corporation of India;

(ii) seamen as defined in clause (42) of Section 3 of the Merchant Shipping Act, 1958;

(iii) employees registered or listed under any scheme made under the Dock Workers (Regulation of Employment) Act, 1948 and employed by registered or listed employers;

(iv) employees employed by an establishment engaged in any industry called on by or under the authority of any department of Central Government or a State Government or a local authority;

(v) employees employed by

(a) the Indian Red Cross Society or any other institution of a like nature including its branches;

(b) universities and other educational institutions;

(c) institutions (including hospitals, chambers of commerce and social welfare institutions)

established not for the purpose of profit;

(vi) & (vii)(omitted).

(viii) employees employed by the Reserve Bank of India;

(ix) employees employed by

(a) the Industrial Finance Corporation of India;

- (b) any Financial Corporation established under Section 3, or any Joint Financial Corporation established under Section 3A of the State Financial Corporations Act, 1951;
 - (c) the Deposit Insurance Corporation;
 - (d) the National Bank for Agriculture and Rural Development;
 - (e) the Unit Trust of India;
 - (f) the Industrial Development Bank of India;
 - (fa) the Small Industries Development Bank of India established under Section 3 of the Small Industries Development Bank of India Act, 1989;
 - (fb) the National Housing Bank;
 - (g) any other financial Institution (other than Banking Company) being an establishment in public sector, which the Central Government may by notification specify having regard to (i) its capital structure;
- (ii) its objectives and the nature of its activities; (iii) the nature and extent of financial assistance or any concession given to it by the Government; and (iv) any other relevant factor;
- (xi) employees employed by inland water transport establishments operating on routes passing through any other country.

Apart from the above, the appropriate Government has necessary powers under Section 36 to exempt any establishment or class of establishments from all or any of the provisions of the Act for a specified period having regard to its financial position and other relevant circumstances and if it is of the opinion that it will not be in the public interest to apply all or any of the provisions of this Act thereto. It may also impose such conditions while according the exemptions as it may consider fit to impose.

Important Definitions

Accounting Year

“Accounting Year” means

- (i) in relation to a corporation, the year ending on the day on which the books and accounts of the corporation are to be closed and balanced;
- (ii) in relation to a company, the period in respect of which any profit and loss account of the company laid before it in annual general meeting is made up, whether that period is a year or not;
- (iii) in any other case
 - (a) the year commencing on the 1st day of April; or
 - (b) if the accounts of an establishment maintained by the employer thereof are closed and balanced on any day other than the 31st day of March, then, at the option of the employer, the year ending on the day on which its accounts are so closed and balanced;

Provided that an option once exercised by the employer under paragraph (b) of this sub-clause shall not again be exercised except with the previous permission in writing of the prescribed authority and upon such conditions as that authority may think fit. [Section 2(1)]

Allocable Surplus

It means –

- (a) in relation to an employer, being a company (other than a banking company) which has not made the arrangements prescribed under the Income-tax Act for the declaration and payment within India of the dividends payable out of its profits in accordance with the provisions of Section 194 of that Act, sixty-seven per cent of the available surplus in an accounting year;
- (b) in any other case sixty per cent of such available surplus. [Section 2(4)]

Available Surplus

It means the available surplus under Section 5. [Section 2(6)]

Award

“Award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Tribunal Constituted under the Industrial Disputes Act, 1947 or by any other authority constituted under any corresponding law relating to investigation and settlement of industrial disputes in force in a State and includes an arbitration award made under Section 10A of that Act or under that law. [Section 2(7)]

Corporation

“Corporation” means any body corporate established by or under any Central, Provincial or State Act but does not include a company or a co-operative society. [Section 2(11)]

Employee

“Employee” means any person (other than an apprentice) employed on a salary or wages not exceeding *Rs. 10,000* per mensem in any industry to do any skilled or unskilled, manual, supervisory, managerial, administrative, technical or clerical work of hire or reward, whether the terms of employment be express or implied. [Section 2(13)]

Part time permanent employees working on fixed hours are employees (1971 (22) FLR 98).

Employer

“Employer” includes:

(i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier, and where a person has been named as a manager of the factory under Clause (f) of Sub-section 7(1) of the Factories Act, 1948, the person so named; and

(ii) in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent. [Section 2(14)]

Establishment in Private Sector

It means any establishment other than an establishment in public sector. [Section 2(15)]

Establishment in Public Sector

It means an establishment owned, controlled or managed by:

(a) a Government company as defined in Section 617 of the Companies Act, 1956;

(b) a corporation in which not less than forty percent of its capital is held (whether singly or taken together) by:

(i) the Government; or

(ii) the Reserve Bank of India; or

(iii) a corporation owned by the Government or the Reserve Bank of India. [Section 2(16)]

Salary or Wage

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

(i) any other allowance which the employee is for the time being entitled to;

(ii) the value of any house accommodation or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food grains or other articles;

(iii) any travelling concession;

(iv) any bonus (including incentive, production and attendance bonus);

(v) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the employee under any law for the time being in force;

(vi) any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex-gratia payment made to him;

(vii) any commission payable to the employee. [Section 2(21)]

The Explanation appended to the Section states that where an employee is given in lieu of the whole or part of the salary or, wage payable to him, free food allowance or free food by his employer, such food allowance or the value of such food shall, for the purpose of this clause, be deemed to form part of the salary or wage of such employee.

The definition is wide enough to cover the payment of retaining allowance and also dearness allowance paid to the workmen. It is nothing but remuneration (*Chalthan Vibhag Sahakari Khand Udyog v. Government Labour Officer AIR 1981 SC 905*). Subsistence allowance given during suspension is not wages. However lay-off compensation is wages.

Establishment – Meaning of

Section 3 of the Act provides that the word establishment shall include all its departments, undertakings and branches wherever it has so whether situated in the same place or in different places and the same shall be treated as parts of the same establishment for the purpose of computation of bonus under this Act:

Provided that where for any accounting year, a separate balance-sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking or branch then such department, undertaking or branches shall be treated as a separate

establishment for the purpose of computation of bonus under this Act for that year, unless such department, or undertaking or branch was, immediately before the commencement of that accounting year treated as part of establishment for the purpose of computation of bonus.

Calculation Of Amount Payable As Bonus

The Act has laid down a detailed procedure for calculating the amount of bonus payable to employees. First of all, Gross Profit is calculated as per First or Second Schedule. From this Gross Profit, the sums deductible under Section 6 are deducted. To this figure, we add the sum equal to the difference between the direct tax calculated on gross profit for the previous year and direct tax calculated on gross profit arrived at after deducting the bonus paid or payable to the employees. The figure so arrived will be the available surplus. Of this surplus,

67% in case of company (other than a banking company) and 60% in other cases, shall be the “allocable surplus” which is the amount available for payment of bonus to employees. The details of such calculations are given below.

(i) Computation of gross profits

As per Section 4, the gross profits derived by an employer from an establishment in respect of any accounting year shall:

- (a) in the case of banking company be calculated in the manner specified in the First Schedule.
- (b) in any other case, be calculated in the manner specified in the Second Schedule.

(ii) Deductions from gross profits

According to Section 6, the sums deductible from gross profits include

- (a) any amount by way of depreciation admissible in accordance with the provisions of Section 32(1) of the Income-tax Act, or in accordance with the provisions of the Agricultural Income-tax Law, as the case may be:

Provided that where an employer has been paying bonus to his employees under a settlement or an award or agreement made before the 29th May, 1965, and subsisting on that date after deducting from the gross profits notional normal depreciation, then, the amount of depreciation to be deducted under this clause shall, at the option of such employer (such option to be exercised once and within one year from that date) continue to be such notional normal depreciation. What is deductible under Section 6(a), is depreciation admissible in accordance with the provisions of Section 32(1) of the Income- tax Act and not depreciation allowed by the Income-tax Officer in making assessment on the employer.

(b) any amount by way of development rebate, investment allowance, or development allowance which the employer is entitled to deduct from his income under the Income Tax Act.

(c) subject to the provisions of Section 7, any direct tax which the employer is liable to pay for the accounting year in respect of his income, profits and gains during the year.

(d) such further sums as are specified in respect of the employer in the Third Schedule.

(iii) Calculation of direct tax payable by the employer

Under Section 7, any direct tax payable by the employer for any accounting year shall, subject to the following provisions, be calculated at the rates applicable to the income of the employer for that year, namely:

(a) in calculating such tax no account shall be taken of

(i) any loss incurred by the employer in respect of any previous accounting year and carried forward under any law for the time being in force relating to direct taxes;

(ii) any arrears of depreciation which the employer is entitled to add to the amount of the allowance for depreciation for any following accounting year or years under sub-section (2) of Section 32 of the Income-tax Act;

(iii) any exemption conferred on the employer under Section 84 of the Income-tax Act or of any deduction to which he is entitled under sub-section (1) of Section 101 of that Act, as in force immediately before the commencement of the Finance Act, 1965;

(b) where the employer is a religious or a charitable institution to which the provisions of Section 32 do not apply and the whole or any part of its income is exempt from tax under the Income-tax Act, then, with respect to the income so exempted, such institution shall be treated as if it were a company in which the public are substantially interested within the meaning of that Act;

(c) where the employer is an individual or a Hindu undivided family, the tax payable by such employer under the Income-tax Act shall be calculated on the basis that the income derived by him from the establishment is his only income.

(iv) Computation of available surplus

The available surplus in respect of any accounting year shall be the gross profits for that year after deducting therefrom the sums referred to in Section 6.

Provided that the available surplus in respect of the accounting year commencing on any day in the year 1968 and in respect of every subsequent accounting year shall be the aggregate of—

(a) the gross profits for that accounting year after deducting therefrom the sums referred to in Section 6; and

(b) an amount equal to the difference between

(i) the direct tax, calculated in accordance with the provisions of Section 7, in respect of an amount equal to the gross profits of the employer for the immediately preceding accounting year; and

(ii) the direct tax calculated in accordance with the provisions of Section 7 in respect of an amount equal to the gross profits of the employer for such preceding accounting year after deducting there from the amount of bonus which the employer has paid or is liable to pay to his employees in accordance with the provisions of this Act for that year. (Section 5)

Eligibility For Bonus And Its Payment

(i) Eligibility for bonus

Every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of this Act, provided he has worked in the establishment for not less than thirty working days in that year. (Section 8).

An employee suspended but subsequently reinstated with full back wages can not be treated to be ineligible for bonus for the period of suspension. [*Project Manager, Ahmedabad Project, ONGC v. Sham Kumar Sahegal* (1995) 1 LLJ 863]

(ii) Disqualification for bonus

An employee shall be disqualified from receiving bonus under this Act, if he is dismissed from service for:

(a) fraud; or

(b) riotous or violent behaviour while on the premises or the establishment; or

(c) theft, misappropriation or sabotage of any property of the establishment. (Section 9)

This provision is based on the recommendations of the Bonus Commission which observed "after all bonus can only be shared by those workers who promote the stability and well-being of the industry and not by those who positively display disruptive tendencies. Bonus certainly carries with it obligation of good behaviour".

If an employee is dismissed from service for any act of misconduct enumerated in Section 9, he stands disqualified from receiving any bonus under the Act, and not the bonus only for the accounting year in which the dismissal takes place (*Pandian Roadways Corpn. Ltd. v. Presiding Officer, Principal Labour Court*, (1996) 2 LLJ 606).

(iii) Payment of minimum bonus

Section 10 states that subject to the other provisions of this Act, every employer shall be bound to pay to every employee in respect of any accounting year a minimum bonus which shall be 8.33 per cent of the salary or wage earned by the employee during the accounting

year or one hundred rupees whichever is higher, whether or not the employer has any allocable surplus in the accounting year:

Provided that where an employee has not completed fifteen years of age at the beginning of the accounting year, the provisions of this Section shall have effect in relation to such employee as if for the words one hundred rupees the words sixty rupees were substituted. Section 10 of the Act is not violative of Articles 19 and 301 of the Constitution. Even if the employer suffers losses during the accounting year, he is bound to pay minimum bonus as prescribed by Section 10 (*State v. Sardar Singh Majithia* (1979) Lab. I.C.).

(iv) Maximum bonus

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

(2) In computing the allocable surplus under this Section, the amount set on or the amount set off under the provisions of Section 15 shall be taken into account in accordance with the provisions of that Section. (Section 11)

(iv-A) Calculation of bonus with respect to certain employees

Where the salary or wage of an employee exceeds three thousand and five hundred rupees per mensem, the bonus payable under Section 10 or 11 shall be calculated as if his salary or wage were *three thousand* and five hundred rupees per mensem. (Section 12)

(v) Proportionate reduction in bonus in certain cases

Where an employee has not worked for all the working days in an accounting year, the minimum bonus of one hundred rupees or, as the case may be, of sixty rupees, if such bonus is higher than 8.33 per cent of his salary or wage for the days he had worked in that accounting year, shall be proportionately reduced. (Section 13)

(vi) Computation of number of working days

For the purposes of Section 13, an employee shall be deemed to have worked in an establishment in any accounting year also on the days on which:

(a) he has been laid off under an agreement or as permitted by standing orders under the Industrial Employment (Standing Orders) Act, 1946 or under the Industrial Disputes Act, 1947 or under any other law applicable to the establishment;

(b) he has been on leave with salary or wage;

(c) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(d) the employee has been on maternity leave with salary or wage, during the accounting year. (Section 14)

(vii) Set on and set off of allocable surplus

(1) Where for any accounting year, the allocable surplus exceeds the amount of maximum bonus payable to the employees in the establishment under Section 11, then, the excess shall, subject to a limit of twenty per cent of the total salary or wage of the employees employed in the establishment in that accounting year, be carried forward for being set on in the succeeding accounting year and so on up to and inclusive of the fourth accounting year to be utilized for the purpose of payment of bonus in the manner illustrated in the Fourth Schedule. (Section 15)

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

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

(4) Where in any accounting year any amount has been carried forward and set on or set off under this Section, then, in calculating bonus for the succeeding accounting year, the amount of set on or set off carried forward from the earliest accounting year shall first be taken into account. Apart from the provisions contained in Section 15(1), there is no statutory obligation on an employer to set apart any part of the profits of the previous year for payment of bonus for subsequent years.

(viii) Adjustment of customary or interim bonus

Where in any accounting year (a) an employer has paid any puja bonus or other customary bonus to an employee; or (b) an employer has paid a part of the bonus payable under this Act to an employee before the date on which such bonus becomes payable; then, the employer shall be entitled to deduct at the amount of bonus so paid from the amount of bonus payable by him to the employee under this Act in respect of that accounting year and the employee shall be entitled to receive only the balance. (Section 17)

In Hukam Chand Jute Mills Ltd. v. Second Industrial Tribunal, West Bengal, AIR 1979 SC 876, the Supreme Court held that the claim for customary bonus is not affected by 1976 Amendment Act. In fact, it has left Section 17 intact which refers to puja bonus or other customary bonus. Section 31A (see later) speaks about productivity bonus but says nothing about other kinds of bonuses. The contention that all agreements inconsistent with the provisions of the Act become inoperative, has no substance vis-a-vis customary bonus. Conceptually statutory bonus and customary bonus operate in two fields and do not clash with each other.

(ix) Deductions of certain amounts from bonus

Where in any accounting year, an employee is found guilty of misconduct causing financial loss to the employer, then, it shall be lawful for the employer to deduct the amount of loss from the amount of bonus payable by him to the employee under this Act, in respect of that

accounting year only and the employee shall be entitled to receive the balance, if any. (Section 18)

(x) Time limit for payment of bonus

(a) Where there is a dispute regarding payment of bonus pending before any authority under Section 22, all amounts payable to an employee by way of bonus under this Act shall be paid in cash by his employer, within a month from the date from which the award becomes enforceable or the settlement comes into operation, in respect of such dispute;

(b) In any other case, the bonus should be paid within a period of eight months from the close of the accounting year. However, the appropriate Government or such authority as the appropriate Government may specify in this behalf may, upon an application made to it by the employer and for sufficient reasons, by order, extend the said period of 8 months to such further period or periods as it thinks fit, so, however, that the total period so extended shall not in any case exceed two years. (Section 19)

(xi) Recovery of bonus from an employer

Where any money is due to an employee by way of bonus from his employer under a settlement or an award or agreement, the employee himself or any other person authorised by him in writing in this behalf, or in the case of the death of the employee, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government or such authority as the appropriate Government may specify in this behalf is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

If may be noted that every such application shall be made within one year from the date on which the money become due to the employee from the employer. Any such application may be entertained after the expiry of the said period of one year,if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

Explanation: In this Section and in Sections 22, 23, 24 and 25, employee includes a person who is entitled to the payment of bonus under this Act but who is no longer in employment. (Section 21)

Mode of recovery prescribed in Section 21 would be available only if bonus sought to be recovered is under settlement or an award or an agreement. Bonus payable under Bonus Act is not covered by Section 21 (1976- I Labour Law Journal 511).

Bonus Linked With Production Or Productivity

Section 31A enables the employees and employers to evolve and operate a scheme of bonus payment linked to production or productivity in lieu of bonus based on profits under the general formula enshrined in the Act. However, bonus payments under Section 31A are also subject to the minimum (8.33 per cent) and maximum (20 per cent). In other words a minimum of 8.33 per cent is payable in any case and the maximum cannot exceed 20 per cent. (Section 31-A)

Power of Exemption

If the appropriate Government, having regard to the financial position and other relevant circumstances of any establishment or class of establishments, is of opinion that it will not be in public interest to apply all or any of the provisions of this Act thereto, it may, by notification in the Official Gazette, exempt for such period as may be specified therein and subject to such conditions as it may think fit to impose, such establishment or class of establishments from all or any of the provisions of this Act. (Section 36)

Government should consider public interest, financial position and whether workers contributed to the loss, before grant of exemption (J.K.Chemicals v. Maharashtra, 1996 III CLA Bom. 12).

Penalties

If any person contravenes any of the provisions of this Act or any rule made thereunder; he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. Likewise if any person, to

whom a direction is given or a requisition is made under this Act, fails to comply with the direction or requisition, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. (Section 28)

Offences by Companies

If the person committing an offence under this Act is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Further, if an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be proceeded against and punished accordingly. (Section 29)

For the purpose of Section 29, 'company' means any body corporate and includes a firm or other association of individuals, and 'director', in relation to a firm, means a partner in the firm.

10.4. THE EQUAL REMUNERATION ACT, 1976

In today's globalised liberalised scenario, women form an integral part of the Indian workforce. In such an environment, the quality of women's employment is very important and depends upon several factors. The foremost being equals access to education and other opportunities for skill development. This requires empowerment of women as well as creation of awareness among them about their legal rights and duties. In order to ensure this, the Government of India has taken several steps for creating a congenial work environment for women workers. A number of protective provisions have been incorporated in the various Labour Laws. To give effect to the Constitutional provisions and also ensure the enforcement of ILO Convention the Equal Remuneration Act, 1976 enacted by the Parliament.

The implementation of the Equal Remuneration Act, 1976 is done at two levels. In Central Sphere the Act is being implemented by the Central Government and in State Sphere, the implementation rests with the State Governments.

Article 39 of Constitution of India envisages that the State shall direct its policy, among other things, towards securing that there is equal pay for equal work for both men and women. To give effect to this constitutional provision, the Parliament enacted the Equal Remuneration Act, 1976.

Object and scope

The Equal Remuneration Act, 1976 provides for payment of equal remuneration to men and women workers for same work or work of similar nature without any discrimination and also prevents discrimination against women employees while making recruitment for the same work or work of similar nature, or in any condition of service subsequent to recruitment. The provisions of the Act have been extended to all categories of employment. The Act extends to whole of India.

Definitions

“Appropriate Government” means –

(i) in relation to any employment carried on by or under the authority of the Central Government or a railway administration, or in relation to a banking company, a mine, oilfield or major port or any corporation established by or under a Central Act, the Central Government, and

(ii) in relation to any other employment, the State Government. {section 2(a)}

“Man” and “Woman” mean male and female human beings, respectively, of any age. {section 2(d)}

“Remuneration” means the basic wage or salary, and any additional emoluments whatsoever payable, either in cash or in kind, to a person employed in respect of employment

or work done in such employment, if the terms of the contract of employment, express or implied, were fulfilled. {section 2(g)}

“Same work or Work of a similar nature” means work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions, by a man or a woman and the differences, if any, between the skill, effort and responsibility required of a man and those required of a woman are not of practical importance in relation to the terms and conditions of employment. {section 2(h)}

Act to have overriding effect

Section 3 of the Act provides that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the commencement of the Act, or in any instrument having effect under any law for the time being in force.

Duty of employer to pay equal remuneration to men and women workers for same work or work of a similar nature

Section 4 of the Act provides that no employer shall pay to any worker, employed by him in an establishment or employment, remuneration, whether payable in cash or in kind, at rates less favourable than those at which remuneration is paid by him to the workers of the opposite sex in such establishment or employment for performing the same work or work of a similar nature and employer shall not reduce the rate of remuneration of any worker.

It may be noted that as per Section 2(g) “remuneration” means the basic wage or salary, and any additional emoluments whatsoever payable, either in cash or in kind, to a person employed in respect of employment or work done in such employment, if the terms of the contract of employment, express or implied, were fulfilled and Section 2(h) defines “same work or work of a similar nature” means work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions, by a man or a woman and the differences, if any, between the skill, effort and responsibility required of a man and those required of woman are not of practical importance in relation to the terms and conditions of employment :

Discrimination not to be made while recruiting men and women

As per section 5 employer while making recruitment for the same work or work of a similar nature, or in any condition of service subsequent to recruitment such as promotions, training or transfer, shall not make any discrimination against women except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force .

However, above mentioned section shall not affect any priority or reservation for Scheduled Castes or Scheduled Tribes, ex-servicemen, retrenched employees or any other class or category of persons in the matter of recruitment to the posts in an establishment or employment

Authorities for hearing and deciding claims and complaints

Section 7 of the Act empower the appropriate Government appoint such officers, not below the rank of a Labour Officer, as it thinks fit to be the authorities for the purpose of hearing and deciding complaints with regard to the contravention of any provision of the Act; claims arising out of non-payment of wages at equal rates to men and women workers for the same work or work of a similar nature; and define the local limits within which each such authority shall exercise its jurisdiction.

Maintenance of Registers

As per section 8 it is the duty of every employer, to maintain registers and other documents in relation to the workers employed by him in the prescribed manner.

Penalty

If any employer:- (i) makes any recruitment in contravention of the provisions of this Act; or (ii) makes any payment of remuneration at unequal rates to men and women workers for the same work or work of a similar nature; or (iii) makes any discrimination between men and women workers in contravention of the provisions of this Act; or (iv) omits or fails to carry out any direction made by the appropriate Government, then he/ she shall be punishable with fine or with imprisonment or with both.

10.5. THE TAMIL NADU PAYMENT OF SUBSISTENCE ALLOWANCE ACT, 1981

(ACT No. 43 OF 1981)

(Received the assent of the President on the 21st July, 1981)

An Act to provide for the payment of subsistence allowance to employees during the period of suspension.

BE it enacted by the Legislature of the State of Tamil Nadu in the Thirty-second Year of the Republic of India as follows:-

1. Short title, extent and commencement:- (1) This Act may be called the Tamil Nadu Payment of Subsistence Allowance Act, 1981.

(2) It extends to the whole of the State of Tamil Nadu.

(3) It shall come into force on such date as the Government may, by notification, appoint.

2. Definitions:- In this Act, unless the context otherwise requires,-

(a) “employee” means any person employed in, or in connection with the work or activities of, any establishment to do any skilled, semi-skilled or unskilled, manual, supervisory, technical, clerical or any other kind of work or activities for hire or reward, whether the terms of employment be expressed or implied, but does not include any such person-

(i) who is employed mainly in a managerial or administrative capacity; or

(ii) who, being employed in a supervisory capacity [draws wages exceeding fifteen thousand rupees per mensem] or exercises, either by the nature of the duties attached to the office or by reason of the powers vested to him, functions mainly of a managerial nature;

(b) “employer” means the owner of an establishment and includes any person entrusted with the supervision and control of employees in such establishment;

(c) “establishment” means any place where any industry, trade, business, undertaking, manufacture, occupation or service is carried on, and with respect to which the executive power of the State extends but does not include-

(i) any office or department of the Central or the State Government; or

(ii) a railway administration; or

(iii) any mine or oil-field; or

(iv) any major port; or

(v) any public sector undertaking of the Central Government.

(1 Subs. By Act 10 of 2017, S. 2 (w.e.f 15th May, 2017))

Explanation.- For the purpose of this clause “any public sector undertaking of the Central Government” means an establishment owned, controlled or managed by-

(1) The Central Government or a department of the Central Government;

(2) a Government company as defined in section 617 of the Companies Act, 1956 (Central Act I of 1956) and owned or controlled by the Central Government;

(3) a Corporation established by or under a Central Act, which is owned, controlled or managed by the Central Government;

(d) “Government” means the State Government;

(e) “industry” means an industry as defined in section 2(j) of the Industrial Disputes Act, 1947 (Central Act XIV of 1947);

(f) “period of suspension” includes the period taken to obtain permission where such permission of the authority under sub-section (1) of section 33 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), is necessary before the employment of an employee is validly terminated;

(g) “suspension” means an interim decision of an employer as a result of which an employee is debarred temporarily from attending to his office and performing his functions in the establishment on the ground that-

(1) an enquiry into grave charges against him is contemplated or is pending or no final order after the completion of the enquiry has been passed; or

(2) a complaint against him of any criminal offence is under investigation or trial or the complaint has not been finally disposed of;

(h) “wages” shall have the same meaning as in clause (rr) of section 2 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

3. Payment of subsistence allowance- (1) An employee who is placed under suspension shall, during the period of such suspension, be entitled to receive payment from the employer as subsistence allowance, an amount equal to fifty per centum of the wages which the employee was drawing immediately before suspension, for the first ninety days reckoned from the date of such suspension:

Provided that where the period of suspension exceeds ninety days but does not exceed one-hundred and eighty days, the employee shall be entitled to receive, after the said period of ninety days, a subsistence allowance equal to seventy-five per centum of the wages which the employee was drawing immediately before his suspension:

Provided also that where the enquiry or criminal proceeding is prolonged beyond the period of ninety days for reasons directly attributable to the employee, the subsistence allowance shall, for the period exceeding ninety days, be reduced to fifty per centum of the wages, which the employee was drawing immediately before his suspension.

(2) An employee shall not be entitled to receive any subsistence allowance if he accepts any other employment during the period of his suspension in any establishment other than the establishment where he had been working immediately before his suspension.

(3) An employee shall not, in any event, be liable to refund or forfeit any part of the subsistence allowance admissible to him under sub-section (1) :

Provided that where the employee is exonerated of the charge based on which his suspension was ordered, the subsistence allowance paid to him for any period shall be adjusted against the full wages admissible to him for the period of suspension.

(4) The subsistence allowance under sub-section (1) shall be paid by the employer to the employee on the date or dates on which the wages due to the employee, but for his suspension, would have become payable.

4. Recovery of money due from an employer – Where any money is due to an employee from an employer under this Act, the employee himself or any other person authorised by him in this behalf, or in the case of the death of the employee, his legal representative may, without prejudice to any other mode of recovery make an application to the Government in such manner as may be prescribed for the recovery of money due to him, and if the Government, after giving the employer an opportunity of being heard, in such manner as may be prescribed, are satisfied that any money is so due 1[the Government shall issue a certificate for that amount together with such amount of compensation as the Government may think fit] to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

Provided that every such application shall be made within one year from the date on which the money became due to the employee from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the Government are satisfied that the applicant had sufficient cause for not making the application within the said period.

2[Provided also that the amount of compensation under this section shall not exceed fifty percent of the amount of subsistence allowance or two hundred and fifty rupees whichever is less.]

5. Savings of certain rights and privileges – Nothing in this Act shall affect any right or privilege to which any employee is entitled on the date of commencement of this Act under any law for the time being in force or under any contract, custom or usage which is more favourable to him than any right or privilege conferred upon him by this Act.

6. Power to grant exemption – The Government may, if they think fit so to do, in the public interest, by notification exempt, subject to such conditions, if any, as may be specified in such notification, from the operation of all or any of the provisions of this Act, any class or classes of establishments, for such period or periods and for such reasons as may be specified in the said notification.

(1 Subs. By Act 1 of 1997, S. 2 (w.e.f 1st May, 1997, 2 Ins. By Act 1 of 1997, S. 2 (w.e.f 1st May, 1997))

7. Delegation of powers of Government – (1) The Government may, by notification, authorise any authority or officer subordinate to them to exercise all or any of the powers vested in them by this Act and may in like manner withdraw such authority.

(2) The exercise of any powers delegated under sub-section (1) shall be subject to such restrictions and conditions as may be prescribed or as may be specified in the notification and also to control and revision by the Government or by such officer as may be empowered by the Government in this behalf. The Government shall also have the power to control and revise the act or proceedings of any officer so empowered.

8. Protection of action taken in good faith – (1) No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rule made thereunder.

(2) No suit or other legal proceedings 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 made thereunder.

9. Penalties – Whoever contravenes any provision of this Act or any rule made thereunder shall be punishable with imprisonment for a term which may extend to three months or with fine which shall not be less than one thousand rupees or with both.

10. Exemption of occupier or manager from liability in certain cases – Where the occupier or manager of an establishment is charged with an offence punishable under this Act, he shall be entitled, upon a complaint duly made by him and on giving to the prosecutor not less than three clear days' notice in writing of his intention so to do, to have any other

person whom he charges as the actual offender brought before the Court at the time appointed for hearing the charge, and if after the commission of the offence has been proved, the occupier or manager of the establishment as the case may be, proves to the satisfaction of the Court-

(a) that he has used due diligence to enforce the execution of this Act, and

(b) that the said other person committed the offence in question without his knowledge, consent or connivance,-

that other person shall be convicted of the offence and shall be liable to the like punishment as if he were the occupier or manager of the establishment, and the occupier or manager, as the case may be, shall be discharged from any liability under this Act in respect of such offence:

Provided that in seeking to prove as aforesaid, the occupier or manager of the establishment, as the case may be, may be examined on oath, and his evidence and that of any witness whom he calls in his support shall be subject to cross-examination on behalf of the person he charges as the actual offender and by the prosecutor:

Provided further that, if the person charged as the actual offender by the occupier or manager cannot be brought before the Court at the time appointed for hearing the charge, the Court shall adjourn the hearing from time to time for a period not exceeding three months and if by the end of the said period the person charged as the actual offender cannot still be brought before the Court, the Court shall proceed to hear the charge against the occupier or manager and shall, if the offence be proved, convict the occupier or manager.

11. Cognizance of offences – (1) No Court shall take cognizance of any offence punishable under this Act, except upon a complaint in writing made by an officer generally or specially authorised in this behalf by the Government.

(2) No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try any offence punishable by or under this Act.

12. Power to make rules – (1) The Government may, by notification, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power such rules may provide for –

(a) all matters expressly required or allowed by this Act to be prescribed;

(b) the manner in which, and the conditions subject to which, the subsistence allowance is payable; and

(c) the restrictions and conditions subject to which powers under this Act may be delegated.

13. Rules and notifications to be placed before the Legislature – (1) (a) All rules made under this Act shall be published in the Tamil Nadu Government Gazette and unless they are expressed to come into force on a particular day, shall come into force on the day on which they are so published.

(b) All notifications issued under this Act shall, unless they are expressed to come into force on a particular day, come into force on the day on which they are so published.

(2) Every rule made or notification issued under this Act shall, as soon as possible after it is made or issued, be placed on the table of 1[Legislative Assembly], and if, before the expiry of the session in which it is so placed or the next session 1[the Legislative Assembly agrees] in making any modification in any such rule or notification or 1[the Legislative Assembly agrees] that the rule or notification should not be made or issued, the rule or notification 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 or notification.

(1Subs. By the Tamil Nadu Adaptation of Laws Order, 1987)

UNIT –XI

11.1. INDUSTRIAL RELATION

11.1.1. Meaning and Definition of Industrial Relation

The relationship between Employer and employee or trade unions is called Industrial Relation. Harmonious relationship is necessary for both employers and employees to safeguard the interests of the both the parties of the production. In order to maintain good relationship with the employees, the main functions of every organization should avoid any dispute with them or settle it as early as possible so as to ensure industrial peace and higher productivity. Personnel management is mainly concerned with the human relation in industry because the main theme of personnel management is to get the work done by the human power and it fails in its objectives if good industrial relation is maintained. In other words good Industrial Relation means industrial peace which is necessary for better and higher productions.

Definition:-

- i. Industrial Relation is that part of management which is concerned with the manpower of the enterprise – whether machine operator, skilled worker or manager-(Bethel, Smith & Group)
- ii. Industrial Relation is a relation between employer and employees, employees and employees and employees and trade unions. – (Industrial dispute Act 1947)
- iii. While moving from jungle of the definitions, here, Industrial Relation is viewed as the “process by which people and their organizations interact at the place of work to establish the terms and conditions of employment.” The Industrial relations are also called as labour - management, employee-employers relations.

Features of Industrial Relations

1. Industrial Relation do not emerge in vacuum they are born of employment relationship in an industrial setting. Without the existence of the two parties, i.e. labour and management,

this relationship cannot exist. It is the industry, which provides the environment for industrial relations.

2. Industrial Relation are characterised by both conflict and co-operations. This is the basis of adverse relationship. So the focus of Industrial Relation is on the study of the attitudes, relationships, practices and procedure developed by the contending parties to resolve or at least minimize conflicts.

3. As the labour and management do not operate in isolations but are parts of large system, so the study of Industrial Relation also includes vital environment issues like technology of the workplace, country's socio-economic and political environment, nation's labour policy, attitude of trade unions workers and employers.

4. Industrial Relation also involve the study of conditions conducive to the labour, managements co-operations as well as the practices and procedures required to elicit the desired co-operation from both the parties.

5. Industrial Relations also study the laws, rules regulations agreements, awards of courts, customs and traditions, as well as policy framework laid down by the governments for eliciting co-operations between labour and management. Besides this, it makes an indepth analysis of the interference patterns of the executive and judiciary in the regulations of labour-managements relations. In fact the concepts of Industrial Relations are very broad-based, drawing heavily from a variety of discipline like social sciences, humanities, behavioural sciences, laws etc.

11.2.3. Characteristics of Industrial Relations

1. Dynamic and Developing Concept: The concept of "Industrial Relations" is dynamic and developing. It is described as a relationship between employers and management of the enterprise and the employees or among employees and their organizations or Employers, Employees, and their trade unions and the government.

2. It is a set of functional: Industrial relations do not constitute a simple relationship, but they are set functional, inter-dependent complexities involving various factors or various variables such as economic, political, social, psychological, legal factors, or variables.

3. Employee-employers relationship: Without the existence of the minimum two parties, the industrial relationship cannot exist such as :

- Workers and their organizations.
- Employers or management of the enterprise.
- The government is the three participants or parties in industrial relations.

4. It is a product: Industrial relations are the product of economic, social, and political systems arising out of employment in the industrial field.

5. Development of healthy labour management: The important purpose of industrial relations is the development of healthy labor-management or employee-employer relations, maintenance industrial peace, avoidance of industrial strife, development, and growth of industrial democracy, etc.

Importance of Industrial Relations

- **Reduction in Industrial Disputes:** Good industrial relations reduce industrial disputes. Disputes are reflections of the failure of basic human urges or motivations to secure adequate satisfaction or expression which are fully cured by good industrial relations. Strikes, Lockouts, Go-slow tactics, and grievances are some of the reflections of industrial unrest which do not spring up in an atmosphere of industrial peace. It helps to promote co-operation and increasing production.
- **Uninterrupted production:** The most important benefit of industrial relations is that this ensures continuity of production. This means, continuous employment for all from manager to workers. The resources are fully utilized, resulting in the maximum possible production. There is an uninterrupted flow of income for all. The smooth running of the industry is of vital importance for several other industries; to other industries if the products are intermediaries or inputs; to exporters if these are export goods; to consumers and workers if these are goods of mass consumption.
- **Promote Industrial Democracy:** Industrial democracy means the government-mandated worker participation at various levels of the organization about decisions that affect workers. It is mainly the joint consultations, That pave the way for industrial democracy and cement relationship between workers and management.

Management of Change and Development

1. Technology and HRD

Change is the order of the day. Change before changes you and change or decay are the buzz words of the day. The factors that force the change include nature of the work face, technology, economic sharks, competition, social trend and world of politics.

Just as necessity is the mother of invention, competition and a host of other reasons are responsible for the rapid technological changes and innovations all over the world. As a result of these changes, technical personnel, system specialist, technical workers and machine operators are increasingly required while the demand for other categories of employee has declined. But it is found that the supply of former category employees is less compared to the demand for the same. Hence, procurement of skilled employees and maintaining them is highly essential. Further, the changes in technology continuously demand the existing employees to upgrade their skills and knowledge.

Human resources development techniques help the employees to acquire new skills and knowledge necessary to carry out the changed duties due to up-gradation of technology.

Technology is the most dramatic force shaping destiny of people all over the world. Technology is self-reinforcing and in a big way affects society. In fact, technology reaches people through business. It increases the expectations of the customers. It brings social change and makes social system complex.

The impact of technology on human resources is significant, direct and complex. The impact of technology on HRD is through (i) job becoming intellectual, (ii) need for bio-professionals and multi-professional managers, (iii) change in organisation structure, (iv) TQM and (v) BPRE.

Job becoming intellectual: Enhancement of the level of the technology needs high level skills and knowledge. These high level skills and knowledge should be incorporated in the job description. Jobs handled by semi-skilled employees are now to be handled by skilled employees. Jobs handled by the clerks yesterday retrenches some employees from

employment unless they are trained and developed on the application of new technology and methods

New technology demands high level skills, knowledge and values. These aspects are incorporate in the job description. Hence, jobs become intellectual. These factors demand for development for human resources.

Need for Bio-professional and Multi-professional: Recent technological advancements changed the job description. These changed job descriptions require the employees with both technical skills and marketing skills. Some jobs need the employees with technical skills, marketing skills, finance skills and human resources management skills. Thus, technologies demand bio-professionals. But present employees are single professionals. Development of human resources of the single professional employees is necessary to the make them bio-professional and multi professionals.

Technology and Organisational Structure: Technology bring s the changes in the span of control, delegation of authority like delegation to individual employees or groups of employees. The group of employees. These change s influence the changes in the present organisational structure. Further, technology results in downsizing and de-layering. These factors also change the organisational structure. Technology influences the organisational structure through job redesign and change in job description demand for new skills and knowledge from the employees. These factors invariably necessitate the development human resources.

TQM: Total Quality Management is mostly developed based on changes in technology. Further, it is influenced by changes in methods. These factors necessitate training and development of the employee in these new areas.

BPRE: Business Reengineering basically changes the process of the business. In other word, it changes the existing pattern of production, marketing, finance and human resources. It bring the business process centred on a customer's needs, preferences or needs of a project or activity. Further, this process changes the existing technology and methods. These changes influence HRD.

Technology change with Human Face

The object of any economic institution is to provide human welfare. Technology is brought to the people through economic institutions. Therefore, technological changes should be in compatibility with the objectives of economic institutions. In other words, technological changes should result in human welfare.

Human welfare includes satisfying unsatisfied human needs, additional and untapped human needs, reducing or minimising human inconveniences or discomforts, creation of employment opportunities at least in the long run, if not in the short run. In addition, technological advancements should not cause all type of pollution in order to provide welfare to the people. Further, technology should contribute to reduce the gaps between the rich and poor by providing the sources of income to the poor. Such technology can only provide human welfare.

Technological changes with a human face means that technology should change along with the needs, preferences and well-being of the human beings. Further, technology change should contribute to the enhancement of economic, social and psychological needs of the people.

There are several inconsistencies between technology and human face. Advances in technology reduces jobs immediately. Pollutes the air, water and sound. Further, it affects the natural environment and ecological balance. Further, technological changes result in the development of certain new products which harm human health like fertilizer, pesticides and even cellular phones.

Technology also changes the culture, which sometimes may be against the cultural values. For example, introduction of some TV channels which mostly transmit Western culture.

Development of human resources continuously at the levels in the organisations and nations help in developing the human face in the technological changes, at least, to some extent.

Change Agents: Change agents foresee the possible changes in technology, product and markets, plan for modifications in the company and implement the modifications. According to Robbins, change agents are, “person who act as catalysts and assume the responsibility for

managing change activities.” Thus, change agents responsible for managing change activities. Change agents are employees or managers or executives of a company or outside management consultants.

The activities of change agents include:

Changing organizational structure

Changing technology

Changing the physical setting and

Changing people

Changing the Organisation Structure: Change agents introduce changes in the existing organizational structure. These changes include selecting a new approach of organization design like the team structure, empowerment, open and flexible structure. In addition, change agents introduce matrix structures, flat structure and simple and dynamic structure.

11.2.4. ADMINISTRATION OF LABOUR DEPARTMENT

Administration-I

INTRODUCTION

Adm.I Section is Primarily Responsible for dealing with all Establishment/ administrative/ personnel/ service matters in respect of officers belonging to:-

- All Group ‘A’ officers posted in this Ministry under Central Staffing Scheme
- Indian Economic Services (IES) / Indian Statistical Services (ISS)
- Central Secretariat Service (CSS)
- Central Secretariat Stenographers Service (CSSS)
- Central Secretariat Clerical Service (CSCS)
- Official Language Service Cadres
- Staff Car Drivers

- Multi Tasking Staff
- Library Staff
- Other ex-cadre posts including personal staff of Minister of Labour & Employment.
- All matters relating to IES/ISS Officers and establishment matters (including framing of Recruitment Rules) in respect of Economic Officers, Investigators (Grade II) and Canteen employees working in the Main Secretariat of the Ministry of Labour & Employment.
- Coordination work of IES and ISS cadre posts in the Ministry of Labour & Employment.
- Maintenance of Service Books and sanctioning of leave of all Non-Gazetted staff including canteen employees working in the Main Secretariat of the Ministry of Labour & Employment.
- All matters pertaining to the Board of Arbitration (JCM) including framing of Recruitment Rules in respect of Chairman, BOA.
- Work relating to compilation of Statistical Statements and other information pertaining to Scheduled Castes/Tribes and Other Backward Classes (OBCs).
- Quarterly report regarding welfare measures for Minorities Recruitment in respect of Group B, C & D.
- Circulation of orders, notifications and other material issued by DOP&T and Ministry of Finance.
- Work relating to compilation of Statistical Statements and other information pertaining to Physically Handicapped employees.
- Matters related to O&M, Record Room.

Cadre Unit

DoP&T is the cadre controlling authority in respect of the posts of CSS/ CSSS/ CSCS cadres. Being the Cadre unit in respect of these posts, Adm.I Section manages the Staff of Main Secretariat and participating offices viz. DGE&T, CLC(C), DGFASLI and DGLB in respect of officers/ officials belonging to these cadres.

- Central Secretariat Service (CSS) Consisting of Assistant Section Officers, Section Officers, Under Secretaries, Deputy Secretaries and Directors

- Central Secretariat Stenographers' Service (CSSS) Consisting of Stenos Grade 'D', Stenos Grade 'C', Private Secretaries, Principal Private Secretaries, Senior Principal Private Secretaries and Principal Staff Officers
- Central Secretariat Clerical Service (CSCS) consisting of Lower Division Clerks and Upper Division Clerks

Recruitment

CSS:-The direct recruitment in CSS is being done in Assistant Section Officers Grade only through All India Competition being conducted by the Staff Selection Commission (SSC). Other posts are filled up by promotion.

CSSS:- The Direct recruitment in CSSS is being done in Steno Grade 'D' only through All India competition being conducted by the Staff Selection Commission (SSC). Other Posts are filled up by promotion.

CSCS:-No direct recruitment is being done in CSCS. As per the Department of Personnel & Training's instructions the 85% of the total vacancies arise in the LDC Grade is being abolished and only 15% of the vacancies is being filled up through Departmental Competitive Exam for amongst MTS (Multi Tasking Staff). Posts in UD Grade are being filled up by promotion of LDCs as per the provisions of CSCS Rules.

Appointing Authority:-

CSS:- The appointing Authority in respect of CSS is President. Assistant Section Officers is Group 'B' (Non- Gazetted) post and Section Officer is Group 'B' (Gazetted) post. All other posts of CSS are Group 'A' (Gazetted).

CSSS:- Steno Grade 'D' is Group 'C' post, Steno Grade 'C' is Group 'B' (Non-Gazetted) post and Private Secretary is Group 'B' (Gazetted). All other posts of CSSS are Group 'A' (Gazetted). The Appointing Authority in respect of Group 'A'/'B' posts of CSSS is President and in respect of Group 'C' posts of CSSS is the Head of Department.

Administration-II

Work allocated to ADM.II section

- Medical Service Rules, Reimbursement of medical expenses and C.G.H.S
- Identity Cards and Token Cards.
- Office and Residential accommodation.
- Telephones and telephone bills.
- Sanctions pertaining to Air Travel and Payment of Air Travel Bills.
- Loans for purchases of conveyances, House Building Advance etc. Advances/withdrawal from G.P.F
- Office Equipment and furniture(Purchase and Maintenance)
- Delhi Official Directory.
- Purchases, procurement and distribution of Stationery, other consumables and Liveries
- Reimbursement of Children's Education Allowance, Tuition Fee, Telephone/Mobile/Broadband.
- Staff Cars and overtime bills of staff car drivers.
- All Advances
- Leave Travel Concession.
- Telex/Telephones/EPABX-Maintenance and payment.
- Issue of 'No Demand' Certificate to Government Servants Transferred/retired
- All administrative matters relating to JCM like Arbitration, Meetings of JCM etc
- Payment of Employees Insurance Amount
- Meeting relating to Office Council
- Passes for Independence Day and Republic Day celebrations.
- Organizing social and welfare activities by way of establishments of clubs and recreational centers for members of staff.
- Assistance to Government employees in relation to Contributory health Scheme, Housing, transport educational Facilities for children of employees etc.
- Family Planning Scheme - Popularisation amongst staff of the M/o L&E
- Collection for Armed Forces Day, TB seals etc
- Maintaining First Aid Box

- House-keeping and General sanitation of the building
- Opening and closing of rooms.
- Liaison with CPWD, NDMC, etc in respect of maintenance of the Building
- Decoration and maintenance of indoor and outdoor plants
- Work relating to Hospitality
- To interact with other departments/agencies like Delhi Police, Fire Department and CPWD in connection with security, fire safety and maintenance of building, respectively
- Upkeep and Booking of Committee Rooms for different meetings organized by divisions/sections within the ministry and other bodies under the administrative control of ministry
- Organize and manage other events like Retirement of employees
- Lending help to other divisions in case of any exigency, as and when required, like providing logistic support at the venues outside the building for the Meetings/Workshops held at national/international level.
- Providing and maintenance of logistic support in the ministry viz. photocopier, computer, AC, Water Cooler, Water Ro System, Local Area Network etc.

UNIT –XII

12.1. INTERNATIONAL LABOUR ORGANIZATION

12.1.1. History of the ILO

As the ILO celebrates its 100th anniversary in 2019, it is timely to reflect on the many life-changing events which are linked to the ten decades of ILO history.

The Organization has played a role at key historical junctures – the Great Depression, decolonization, the creation of Solidarność in Poland, the victory over apartheid in South Africa – and today in the building of an ethical and productive framework for a fair globalization.

It was created in 1919, as part of the Treaty of Versailles [PDF 837KB] that ended World War I, to reflect the belief that universal and lasting peace can be accomplished only if it is based on social justice.

The Constitution of the ILO was drafted in early 1919 by the Labour Commission, chaired by Samuel Gompers, head of the American Federation of Labour (AFL) in the United States. It was composed of representatives from nine countries: Belgium, Cuba, Czechoslovakia, France, Italy, Japan, Poland, the United Kingdom and the United States.

The process resulted in a tripartite organization, the only one of its kind, bringing together representatives of governments, employers and workers in its executive bodies.

The driving forces for the ILO's creation arose from security, humanitarian, political and economic considerations. The founders of the ILO recognized the importance of social justice in securing peace, against a background of the exploitation of workers in the industrializing nations of that time. There was also increasing understanding of the world's economic interdependence and the need for cooperation to obtain similarity of working conditions in countries competing for markets.

Reflecting these ideas, the Preamble of the ILO Constitution states:

- Whereas universal and lasting peace can be established only if it is based upon social justice;
- And whereas conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required;
- Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries.

The areas of improvement listed in the Preamble remain relevant today, including the regulation of working time and labour supply, the prevention of unemployment and the provision of an adequate living wage, social protection of workers, children, young persons and women. The Preamble also recognizes a number of key principles, for example equal remuneration for work of equal value and freedom of association , and highlights, among others, the importance of vocational and technical education.

Early years

The ILO moved to Geneva in the summer of 1920, with France's Albert Thomas as its first Director. Nine International Labour Conventions and 10 Recommendations were adopted in less than two years. These standards covered key issues, including:

- hours of work ,
- unemployment ,
- maternity protection ,
- night work for women ,
- minimum age , and
- night work for young persons .

1920, ILO Assistant Director Harold Butler and Director Albert Thomas enjoy a moment of rest in front of the first ILO building, La Châtelaine (Pregny). This building now houses the Headquarters of the International Committee of the Red Cross.

A Committee of Experts was set up in 1926 to supervise the application of ILO standards. The Committee, which still exists today, is composed of independent jurists responsible for examining government reports and presenting each year to the Conference its own report on the implementation of ILO Conventions and Recommendations.

The Great Depression, with its resulting massive unemployment, soon confronted Britain's Harold Butler, who succeeded Albert Thomas as Director in 1932. Realizing that handling labour issues also requires international cooperation, the United States became a Member of the ILO in 1934, although it continued to stay out of the League of Nations.

The American, John Winant, took over as head of the ILO in 1939 - just as the Second World War was imminent. He moved the ILO's headquarters temporarily to Montreal, Canada, in May 1940 for reasons of safety.

Going global

In 1946, the ILO became a specialized agency of the newly formed United Nations.

America's David Morse was Director-General from 1948-1970, when the number of Member States doubled and the Organization took on its universal character. Industrialized countries became a minority among developing countries, the budget grew five-fold and the number of officials quadrupled.

The ILO established the Geneva-based International Institute for Labour Studies in 1960 and the International Training Centre in Turin in 1965. The Organization won the Nobel Peace Prize on its 50th anniversary in 1969.

Under Britain's Wilfred Jenks, Director-General from 1970-73, the ILO advanced further in the development of standards and mechanisms for supervising their application, particularly the promotion of freedom of association and the right to organize.

His successor, Francis Blanchard of France, expanded ILO's technical cooperation with developing countries. The ILO played a major role in the emancipation of Poland from dictatorship by giving its full support to the legitimacy of the Solidarnosc Union, based on respect for Convention No. 87 on freedom of association, which Poland had ratified in 1957.

Belgium's Michel Hansenne succeeded him in 1989 and guided the ILO into the post-Cold War period, emphasizing the importance of placing social justice at the heart of international economic and social policies. He also set the ILO on a course of decentralization of activities and resources away from the Geneva headquarters.

In March 1999, Juan Somavia of Chile took over as Director-General. He emphasized the importance of making decent work a strategic international goal and promoting a fair globalization. He also underlined work as an instrument of poverty alleviation and the ILO's role in helping to achieve the Millennium Development Goals, including cutting world poverty in half by 2015.

Under Somavia, the ILO established the World Commission on the Social Dimension of Globalization, which published a major report responding to the needs of people as they cope with the unprecedented changes that globalization has brought to societies.

In May 2012, Guy Ryder (UK) was elected as the tenth Director-General of the ILO. He was re-elected to his second five-year term in November 2016. Ryder has emphasised that the future of work is not predetermined: Decent work for all is possible but societies have to make it happen. It is precisely with this imperative that the ILO established its Global Commission on the Future of Work as part of its initiative to mark its centenary in 2019.

Mission and objectives

The organisation's main aims are to promote rights at work, encourage decent employment opportunities, enhance social protection and strengthen dialogue on work-related issues.

These aims are described in detail in the ILO's four strategic objectives:

1. Promote and realise standards and fundamental principles and rights at work;
2. Create greater opportunities for women and men to decent employment and income;
3. Enhance the coverage and effectiveness of social protection for all;
4. Strengthen tripartism and social dialogue.

12.1.3. These aims and objectives are implemented through:

1. Formulation of international policies and programmes to promote basic human rights, improve working and living conditions, and enhance employment opportunities;
2. Creation of international labour standards backed by a unique system to supervise their application;
3. An extensive programme of international technical cooperation formulated and implemented in an active partnership with constituents, to help countries put these policies into practice in an effective manner;
4. Training, education and research activities to help advance all of these efforts.

12.1.4. Structure and Function of ILO

1. International Labour Conference (ILC):

This is the Apex body of ILO which makes labour policies for international labour. The ILC holds its sessions at a frequency not less than once in a year. The delegates from three group's viz. the government, the employers' and the workers attend ILC sessions in the ratio of 2:1:1 respectively. Each representative has a vote. The representatives from the Government are mostly ministers, diplomats or officials.

The conference is empowered to appoint committees to deal with different matters relating to labour during each session. Examples of such committees are the selection committee, The Credential Committee, The Resolution Committee, The Drafting Committee, The Finance Committee, etc. All committees except Finance Committee are tripartite in nature.

The functions performed by the ILC are to:

1. Formulate international labour standards.
2. Fix the amount of contribution to be paid by the member states.
3. Decide budget and submit the same to the Governing Body.

4. Study the labour problems submitted by the Director General and assist in their solutions.
5. Appoint committees to deal with different problems during its sessions.
6. Elect the president.
7. Select members of the Governing Body.
8. Develop policies and procedures.
9. Seek advisory opinion from International Committee of Justice.
10. Confirm the powers, functions and procedure of Regional Conference.

2. Governing Body:

It is also a tripartite body. It implements decisions of the ILC with the help of the International Labour Organisation. It consists of 56 members in the same ratio of 2:1:1, i.e. 28 representatives of the Government, 14 of the employers and 14 of the workers. Of the 28 representatives of the Government, 10 are appointed by the members of the States of Chief Industrial Importance and remaining 18 are delegates of the other governments.

3. International Labour Office:

This is the secretariat of the ILO in Geneva and is the third major organ of the ILO. The Director General (DG) of the ILO is the Chief Executive Officer of the Secretariat appointed by the Governing Body. He also serves as the Secretary General of the ILC. His tenure is for 10 years and extendable by the Governing Body.

The Director General is assisted by two Deputy Director Generals, six Assistant Director Generals, one Director of the International Institute of Labour Studies, and one Director of the International Centre for Advanced Technical and Vocational Training, Advisors, Chief of Divisions from 100 nations.

Following are the main functions of this office:

1. Prepare briefs and documents for agenda of ILC.

2. Assist the Governments of the States to form labour legislation based on recommendations of the ILC.
3. Bring out publications relating to industrial labour problems of international nature and interest.
4. Carry out functions related to the observance of the conventions.
5. Collect and distribute information on international labour and social problems.

12.1.5. Influence of ILO on Indian Labour Legislation

The International Labor Organization (ILO) was set up, with an aim to develop the conditions of labors not only in India but around the world, in the year 1919. India was the instituting member of ILO, which now expanded its primary membership to 145 countries. Indian Labor Organization through its resolutions and recommendations supports countries to lure their own set of labor legislations for the well conduct of the labor class, and the preservation of their rights. The primary objective of action in the ILO is the creation of the International Labor Standards in the form of Resolutions and Recommendations. Resolutions are international treaties and instruments, which generate legally binding responsibilities on the nations that ratify those nations. Recommendations are non-binding but better set out guidelines orienting countrywide policies, procedure and help in developing actions. Labor Law controls matters, such as, remuneration, labor employment, and conditions of employment, trade unions, industrial and labor management relations. They also include social legislations regulating such characteristics as reimbursement for accident triggered to a worker at work place, maternity benefits fixation of minimum wages, and distribution of the company's profit of the organization's workers, etc. Most of these acts regulate rights and the responsibilities of employee.

History of Indian labor legislation is obviously interlaced with the history of British colonialism. British political economy was considered natural paramount in modeling some of these early laws. In the initial phases it was very difficult to get adequate regular Indian workers to run British organizations and hence labor laws became essential. This was obviously labor law giving in order to protect the interests of British bosses. The outcome was the Factories Act. It is well known fact that Indian textile goods offered unbending

competition to British textiles in textile market and hence in order to make Indian labor costlier. The Factories Act was first time introduced in 1883 because of the pressure carried on the British parliament by the then textile tycoons of Manchester and Lancashire. Thus we acknowledged the first requirement of eight hours of work for labor, the abolition of child labor, and the rheostat of employment of women in night, and inaction of overtime wages for labor who work beyond eight hours. Further the attitude of India with respect to International Labor Standards has always been very constructive.

The Indian Labor Organization tools have provided procedures and useful framework for the development of legislative and administrative procedures for the protection and progression in the interest of labor. To that point the impact of ILO Resolutions as a regular for reference for both labor legislation and practices in India, rather than legally binding norm, has been substantial. Ratification of a Resolution enforces legally binding responsibilities on the nation concerned and, consequently, India has been very careful in ratifying Resolutions. It has always been in the exercise in India that we ratify a Resolution when we are entirely satisfied that these laws and practices are in conformity with the appropriate ILO Resolution. It is now measured that a better course of action is to proceed with progressive implementation of the standards, leave the formal ratification for consideration at a later stage when it becomes practicable. India have so far ratified 39 Conventions of the ILO, which is much better than the position obtaining in many other countries. Even where for special reasons, India may not be in a position to ratify a Convention, India has generally voted in favor of the Conventions reserving its position as far as its future ratification is concerned.

Trade Unionism

Trade Union means "any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more trade unions".

Trade union is a voluntary organization of workers pertaining to a particular trade, industry or a company and formed to promote and protect their interests and welfare by collective action. They are the most suitable organizations for balancing and improving the relations between

the employer and the employees. They are formed not only to cater to the workers' demand, but also for inculcating in them the sense of discipline and responsibility.

12.1. Trade Union History in India

12.1.1. Pre-1918: The genesis of the labour movement in India

After the setting up of textile and jute mills coupled with the laying of railways in the 1850s, worker atrocities started to come to light.

Though the origin of labour movements was traced to the 1860s, first labour agitation in the history of India occurred in Bombay, 1875. It was organised under the leadership of S.S Bengalee. It concentrated on the plight of workers, especially women and children. This led to the appointment of the first Factory commission, 1875. Consequently, the first factories act was passed in 1881.

In 1890, M.N Lokhande established **Bombay Mill Hands Association**. This was the **first organised labour union in India**.

Following this, different organisations were established across India.

Features of the labour movements in this era:

- Leadership was provided by social reformers and not by the workers themselves.
- The movements in this era mainly concentrated on the welfare of workers rather than asserting their rights.
- They were organised, but there was no pan India presence.
- A strong intellectual foundation or agenda was missing.
- Their demands revolved around issues like that of women and children workers.

1918-1924: The early trade union phase

- This period marked the birth of true trade union movement in India. It was organised along the lines of unions in the industrialised world.
- The deteriorated living conditions caused by the first world war and the exposure with the outside world resulted in heightened class consciousness amongst the workers.

This provided fertile ground to the development of the movement. This period is known as the early trade union period.

- Important unions: Ahmedabad Textile Labour Association (1917) led by Smt. Anasuyaben Sarabhai, All India Postal and RMS Association, Madras Labour Union led by B.P Wadia etc.
- AITUC, the oldest trade union federation in India was set up in **1920**. It was founded by Lala Lajpat Rai, Joseph Baptista, N.M Joshi and Diwan Chaman Lall. Lajpat Rai was elected the first president of AITUC.

Factors that influenced the growth of the movement:

- Spiralling prices during War and the mass entrenchment of workers that followed it led to low living standards. Also, the wretched working conditions added to their woes. Hence, they sought collective bargaining power through unionisation.
- Development of Home Rule, the emergence of Gandhian leadership and the socio-political conditions led to the nationalist leadership taking interest in the worker's plight. Workers, in turn, was looking for professional leadership and guidance.
- Russian revolution and other international developments (like setting up of International Labour Organisation in 1919) boosted their morale.

1925-1934: Period of left-wing trade unionism

- This era was marked by increasing militancy and a revolutionary approach. It also saw multiple split-ups in the movement. Leaders like N.M Joshi and V.V Giri was instrumental in moderating the movement and further integrating it with the nationalist mainstream.
- AITUC split up multiple times paving way for the formation of organisations like National Trade Union Federation (NTUF) and All India Red Trade Union Congress (AIRTUC). However, the need for unity was felt and they all merged with the AITUC in the next phase.
- The government was also receptive to the trade union movement. Legislations like the Trade Unions Act, 1926 and the Trade Disputes Act, 1929 gave a fillip to its growth. It bestowed many rights to the unions in return for certain obligations. This

period was marked by the dominance of the left. Hence, it may be referred to as the period of left-wing trade unionism.

1935-1938: The Congress interregnum

- This phase was marked by greater unity between different unions. Indian National Congress was in power in most of the provinces by 1937. This led to more and more unions coming forward and getting involved with the nationalist movement. In 1935, AIRTUC merged with AITUC. Different legislations were passed by provincial governments that gave more power and recognition to the trade unions.
- The approach of Congress ministries was that of promoting worker interests while protecting industrial peace. Reconciliation of labour with capital was seen as an aim, with ministries working towards securing wage rise and better living conditions. However, many ministries treated strikes as law and order issues. They used colonial machinery to suppress it. This led to considerable resentment from the unions.
- 1939-1946: Period of labour activism
- The Second World War lowered standard of living for the workers further and this led to the strengthening of the movement. The question of war effort created a rift between the Communists and the Congress. This, coupled with other issues, led to further split in the movement. However, the movement as a whole got stronger due to the compounding issues. This included mass entrenchment post-war and the massive price rise that accompanied it.
- Legislations like **Industrial Employment Act, 1946** and **Bombay Industrial Relations Act, 1946** contributed to strengthening the trade union movement. In general, the movements got more vocal and involved in the national movement.
- 1947-present: Post-independence trade unionism
- It was marked by the proliferation of unions. **INTUC** was formed in May **1947** under the aegis of Sardar Vallabhbhai Patel. Since then, the AITUC has come to be dominated by the Communists. Hind Mazdoor Sabha was formed in 1948 under the banner of Praja Socialist Party. Later on, it came under the influence of Socialists. Bharatiya Mazdoor Sangh was founded in 1955 and is currently affiliated to the BJP.
- Post-independence, trade unions became increasingly tied with party politics. Rise of regional parties has led to a proliferation in their numbers with each party opting to create its trade union. However, their influence has been somewhat reduced after the

liberalisation post-1991. Issues like labour code reforms and minimum wage remains a political hot potato due to the opposition from the trade union leadership.

- Post-independence, India has also witnessed different unions coming together to address a common issue. These include the crippling railway strike of 1974 and the Great Bombay textile strike, 1982. However, such strikes are seen to get less public support post-1991. There is also an increased focus on informal labour. This is due to the particularly vulnerable situation of unorganised labour. All major trade unions have registered an increase in their membership from the unorganised sector.

Problems faced by the labour movement post Independence

- **Uneven growth:** They are concentrated in the metropolises, largely catering to organised sector. Rural Agricultural labour and small scale labour are grossly underrepresented.
- **Low membership:** Trade union membership is growing, but the vast majority of India's labour is not part of any trade unions. This reduces their collective bargaining power.
- **Weak financial position:** Membership fees are set too low (25 paise) by the Trade Union Act, 1926. They are particularly disadvantaged against corporate lobbying groups that are flush with cash.
- **Political leadership:** Careerist politicians and vested political agenda mean that worker interests are sidelined. Since the leadership may not be from the labour force, they are held captive to party politics. This lead to further exploitation.
- **The multiplicity of unions:** Bargaining power is diluted and it is easy for employers to divert the attention of the labour.
- **Inter-union rivalry:** There are conflicts of interest and party politics between the unions.
- **The problem of recognition:** Employers are under no obligation to give them recognition. This means that docile unions get recognition and genuine ones may be sidelined.
- **Diverse nature of labour:** Most unions don't have properly differentiated organisational structure to cater to different classes of labour. Eg: Differences between agricultural, formal and informal labour.

- **Lack of public support:** Especially post 1991, trade unionism is looked down as an impediment to growth and development. This has led to a general ebbing of the movement across the country.

Major Labour Unions and their Political Affiliation

1. All India Trade Union Congress – Communist Party of India.
2. Indian National Trade Union Congress – Indian National Congress.
3. Bhartiya Mazdoor Sangh – Bharatiya Janata Party.
4. Centre for Indian Trade Unions – CPI(M).
5. Hind Mazdoor Sabha – Samajwadi Party.
6. Self Employed Women’s Association – Unaffiliated.

12.3. Collective Bargaining

Meaning

Collective bargaining is the formal process of negotiation between an employer and a group of employees – often with their union representative – that sets the terms and conditions of work.

Collective bargaining results in a collective bargaining agreement (CBA), a legally binding agreement that lays out policies agreed to by management and labor. Because of its role in governing the actions of both management and labor, a CBA is often referred to as the “law” of the workplace. While each agreement is unique to a given labormanagement relationship, most CBAs include provisions that address compensation, scheduling, promotions, discipline and job standards. CBAs also usually contain a grievance procedure, which provides a process for resolving disputes between management and labor over interpretation of the contract and in the event of employee discipline or termination.

Collective bargaining occur

Employees and employers engage in collective bargaining to negotiate new contracts and renegotiate existing contracts that have expired. In 2015 alone, an estimated five million men and women are engaged in the collective bargaining process.¹ By one measure, more than

21,000 labor-management relationships engaged in collective bargaining during the 2014 fiscal year.² Despite the amount of bargaining that occurs every year, only 7.4 percent of private sector employees and 39.2 percent of public sector employees are covered by a contract.

Who can collectively bargain?

The National Labor Relations Act (NLRA) grants most private sector employees the right to organize unions and collectively bargain. The Railway Labor Act (RLA) provides railway and airline employees the right to form unions and engage in collective bargaining. Between the NLRA and RLA, approximately 85 percent of all private sector employees hold collective bargaining rights. Some members of the private sector, including employees of very small businesses, agricultural workers, domestic workers, supervisors and independent contractors, do not have the right to engage in collective bargaining.

Public sector collective bargaining rights are established by a patchwork of laws. Federal law offers many federal employees the right to engage in collective bargaining over a limited set of issues, and state laws govern the right of state and local government employees to engage in collective bargaining.⁵ As of 2014, three states expressly prohibit collective bargaining for all public sector employees.⁶ The prohibition of bargaining is considered by Human Rights Watch to be in direct violation of international human rights law.

The collective bargaining process

Though more formal in nature, the collective bargaining process is not much different from everyday negotiations between parties, like the process of buying a car. Bargaining commonly begins with employees coming together with their union to determine and prioritize a set of demands they have for their employer. A bargaining committee, comprised of employees and union representatives, then meets with management at the “bargaining table,” presenting a series of proposals and explaining the intention behind them. Management will then respond with its own proposals and counteroffers. The sides will begin to reach agreement on some proposals and continue trading counteroffers over unresolved issues. The length of bargaining and amount of counteroffers varies depending on the complexity and number of bargaining proposals.

Collective bargaining in the United States is typically a decentralized process, occurring between a single employer and its employees. However, in industries like hospitality and trucking, employers and unions sometimes engage in regional or industry-wide bargaining, where a CBA covers employers in a specific city or across an entire industry.⁹ • In the construction sector, a project labor agreement (PLA) serves as a pre-hire collective bargaining agreement establishing the terms and conditions of employment for a particular construction project. PLAs are negotiated between a coalition of building trades unions and a general contractor. Typically, they require all the contractors on the project to pay fair wages and to contribute to joint labor-management health, pension and training funds.

What happens when management and labor don't agree?

If management and labor cannot reach agreement on a mandatory subject, they are said to be at impasse. At this point, management may unilaterally implement its final offer. Alternatively, both sides can agree to engage in a mediation process where a federal or private mediator or arbitrator helps the parties work to an agreement. Labor or management may also try to exert economic pressure to force the other side into agreement.

In the private sector, economic pressure typically occurs in the form of a strike or lockout. Such actions are relatively rare, though, as it is the threat of a work stoppage that pushes the opposite side toward agreement.

In the public sector, employees may only strike if allowed to do so by the relevant law. Federal law prohibits strikes by federal employees, while state and local laws vary. As of March 2014, only 12 states allow teachers to go on strike.¹⁰ Some states, like Pennsylvania, prohibit strikes by emergency workers (police officers, firefighters and prison guards), but offer them access to a binding arbitration process for Expanding the theater of bargaining

The vast majority of Americans do not have access to a collective bargaining process. Employer hostility towards unions chills organizing efforts.¹¹ Working people who wish to join together to raise wages and standards are seeking new “on ramps” to bargaining, particularly when their employers refuse to either recognize their union or bargain with them collectively. Sometimes, the NLRA structure of bargaining does not enable people to bargain with their “real” boss - the company that has actual economic control over their work but is

not their direct employer. In those cases, employees are utilizing alternative strategies to build power and influence their wages and standards. For example, the cleaning staff for Target stores in Minnesota managed to win a direct agreement with Target in order to improve standards with the stores' subcontracted cleaning firms.

Bargaining spaces can also be created through legislation. Child-care and home-care providers in Connecticut recently mobilized in support of a Low-Wage Employer Fee, which would assess a fee on large, low wage employers in order to fund the state's strained public care programs. While the fee did not pass, advocates won a Low Wage Employer Advisory Board, where care workers will have the chance to sit with employers, public assistance recipients, elected officials and other stakeholders to confer over recommendations to the governor and state legislature on how to address the public cost of low wage work.

Finally, working people who lack the right to collectively bargain are taking their "bargaining" demands to the public too. Domestic workers in Hawaii, Massachusetts, California, Connecticut and New York have successfully won "Domestic Workers' Bill of Rights" laws that ensure they receive access to overtime pay and adequate workplace protections.

UNIT – XIII

13.1. INDUSTRIAL CONFLICT

Industrial conflict occurs when employees express their dissatisfaction with management over the current state of the management-employee relationship. The causes of such dissatisfaction are typically matters related to regular wage payment, wage increase or remunerations according to terms of the employment contract. Employees can express such dissatisfaction in formal or informal ways. Formal methods are organized and are planned in advance, while informal ones are spontaneous and unorganized, usually taking management by surprise. There are different types of formal and informal industrial conflicts.

Strike

A strike is the employees' temporary withdrawal of services, contrary to an employment contract. It is a formal form of industrial conflict that is usually organized by a trade union. (Trade unions are representatives of employment that ensure that employee working conditions and earnings are managed according to rule.) During typical strikes, trade unions ensure that there are no alternative means of getting the services that employees have refused to provide. A strike usually continues until management addresses the matter of dissatisfaction that caused it.

Work-to-rule

Work-to-rule, another form of formal industrial action, occurs when workers work strictly according to the legal terms of their contract. They deliberately refuse to make use of their initiative and act rigidly, like pre-programmed machines. For instance, a nurse may deliberately refuse to answer phone calls that are meant for doctors (since her terms of contract do not include phone-answering). A stenographer may ignore glaring grammatical errors in what her boss dictates to her (since, strictly speaking, her responsibility is merely to transcribe whatever her boss dictates to her). Since work-to-rule does not go against any formal terms of contract, it rarely brings punishment. However, it naturally slows down work progress.

Absenteeism

Absenteeism, an informal form of industrial conflict, occurs when employees deliberately refuse to report to their workplace. Absenteeism is not always a sign of industrial conflict, since employees can fail to report to work due to injury or illness, for instance. Thus industrial-conflict absenteeism merely increases the loss of productivity and revenue that an organization suffers due to failure of workers to report for duty due to reasons of personal incapacity that they cannot help, such as illness.

Sabotage

Sabotage, another form of informal industrial conflict, occurs when employees deliberately damage their organization's production or reputation. This could take the form of slowing down production, temporarily disabling machinery, direct destruction of organization's property or slandering the organization. Employers who engage in sabotage (saboteurs) usually hide their individual identities, but do not shy away from identifying themselves as a pressure group.

13.2. STANDING ORDERS ACT 1946

An Act to require employers in industrial establishments formally to define conditions of employment under them. WHEREAS it is expedient to require employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them;

It is hereby enacted as follows: - **1. Short title, extent and application.**—(1) This Act may be called the Industrial Employment (Standing Orders) Act, 1946.

(2) It extends to 2[the whole of India

4[(3) It applies to every industrial establishment wherein one hundred or more workmen are employed, or were employed on any day of the preceding twelve months: 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 industrial establishment employing such number of persons less than one hundred as may be specified in the notification.

5* * * * *

6[(4) Nothing in this Act shall apply to — (i) any industry to which the provisions of Chapter VII of the Bombay Industrial Relations Act, 1946 (Bombay Act 11 of 1947) apply; or (ii) any industrial establishment to which the provisions of the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 (Madhya Pradesh Act 26 of 1961) apply: Provided that notwithstanding anything contained in the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 (Madhya Pradesh Act 26 of 1961), the provisions of this Act shall apply to all industrial establishments under the control of the Central Government.]

*{ 1. This Act has been extended to— (i) Goa, Daman and Diu by Reg. 12 of 1962, s. 3 and the Sch. (ii) Pondicherry by Regulation 7 of 1963, s. 3 and the Sch. I (w.e.f. 1-10-1963), and (iii) the whole of the Union territory of Lakshadweep, vide Reg. 8 of 1965, s. 3 and the Sch. The Act has been amended in its application to— (i) Maharashtra by Maharashtra Act 54 of 1974. (ii) Mysore by Mysore Act 37 of 1975. (iii) Madras by Madras Act 24 of 1960, and (iv) Andhra Pradesh by A. P. Act 9 of 1969. 2. Subs. by the A.O. 1950, for “all the Provinces of India”. 3. The words “except the State of Jammu and Kashmir” omitted by Act 51 of 1970, s. 2 (w.e.f. 1-9-1971). 4. Subs. by Act 16 of 1961, s. 2, for sub-section (3). 5. Second proviso omitted by Act 39 of 1963, s. 2 (w.e.f. 23-12-1963). 6. Ins. by s. 2, *ibid.* (w.e.f. 23-12-1963).}*

2. Interpretation.—In this Act, unless there is anything repugnant in the subject or context,—

1[(a) “appellate authority” means an authority appointed by the appropriate Government by notification in the Official Gazette to exercise in such area as may be specified in the notification the functions of an appellate authority under this Act: Provided that in relation to an appeal pending before an Industrial Court or other authority immediately before the commencement of the Industrial Employment (Standing Orders) Amendment Act, 1963 (39 of 1963), that court or authority shall be deemed to be the appellate authority;]

(b) “appropriate Government” means in respect of industrial establishments under the control of the Central Government or a 2[Railway administration] or in a major port, mine or oil-field, the Central Government, and in all other cases, the State Government:

3[Provided that where any question arises as to whether any industrial establishment is under the control of the Central Government, that Government may, either on a reference made to it by the employer or the workman or a trade union or other representative body of the workmen, or on its own motion and after giving the parties an opportunity of being heard, decide the question and such decision shall be final and binding on the parties;]

4[(c) “Certifying Officer” means a Labour Commissioner or a Regional Labour Commissioner, and includes any other officer appointed by the appropriate Government, by notification in the Official Gazette, to perform all or any of the functions of a Certifying Officer under this Act;] (d) “employer” means 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 5[clause (f) of sub-section (1) of section 7, of the Factories Act, 1948 (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; (e) “industrial establishment” means— (i) an industrial establishment as defined in clause (ii) of section 2 of the Payment of Wages Act, 1936 (4 of 1936), or

6[(ii) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948), or] (iii) a railway as defined in clause (4) of section 2 of the Indian Railways Act, 1890 (9 of 1890), or (iv) the establishment of a person who, for the purpose of fulfilling a contract with the owner of any industrial establishment, employs workmen; (f) “prescribed” means prescribed by rules made by the appropriate Government under this Act;

(g) “standing orders” means rules relating to matters set out in the Schedule;

{ 1. Subs. by Act 39 of 1963, s. 3, for cl. (a) (w.e.f. 23-12-1963). 2. Subs. by the A.O. 1950, for “Federal railway”. 3. Added by Act 18 of 1982, s. 2 (w.e.f. 17-5-1982). 4. Subs. by Act 16 of 1961, s. 3, for cl. (c). 5. Subs. by s. 3, *ibid.*, “for clause (e) of sub-clause (1) of section 9 of Factories Act, 1934 (25 of 1934)”. 6. Subs. by s. 3, *ibid.*, for sub-clause (ii) }

(h) “trade union” means a trade union for the time being registered under the Indian Trade Unions Act, 1926 (16 of 1926);

1[(i) “wages” and “workman” have the meanings respectively assigned to them in clauses (rr) and (s) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947).] **3. Submission of draft standing orders.**—(1) Within six months from the date on which this Act becomes applicable to an industrial establishment, the employer shall submit to the Certifying Officer five copies of the draft standing orders proposed by him for adoption in his industrial establishment. (2) Provision shall be made in such draft for every matter set out in the Schedule which may be applicable to the industrial establishment, and where model standing orders have been prescribed, shall be, so far as is practicable, in conformity with such model. (3) The draft standing orders submitted under this section shall be accompanied by a statement giving prescribed particulars of the workmen employed in the industrial establishment including the name of the trade union, if any, to which they belong. (4) Subject to such conditions as may be prescribed, a group of employers in similar industrial establishments may submit a joint draft of standing orders under this section. **4. Conditions for certification of standing orders.**—Standing orders shall be certifiable under this Act if— (a) provision is made therein for every matter set out in the Schedule which is applicable to the industrial establishment, and (b) the standing orders are otherwise in conformity with the provisions of this Act; and it 2[shall be the function] of the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any standing orders. **5. Certification of standing orders.**—(1) On receipt of the draft under section 3, the Certifying Officer shall forward a copy thereof to the trade union, if any, of the workmen, or where there is no such trade union, to the workmen in such manner as may be prescribed, together with a notice in the prescribed form requiring objections, if any, which the workmen may desire to make to the draft standing orders to be submitted to him within fifteen days from the receipt of the notice. (2) After giving the employer and the trade union or such other representatives of the workmen as may be prescribed an opportunity of being heard, the Certifying Officer shall decide whether or not any modification of or addition to the draft submitted by the employer is necessary to render the draft standing orders certifiable under this Act, and shall make an order in writing accordingly. (3) The Certifying Officer shall thereupon certify the draft standing orders, after making any modifications therein which his order under sub-section (2) may require, and shall within seven days thereafter send copies of

the certified standing orders authenticated in the prescribed manner and of his order under sub-section (2) to the employer and to the trade union or other prescribed representatives of the workmen.

6. Appeals.—(1) 3[Any employer, workmen, trade union or other prescribed representatives of the workmen] aggrieved by the order of the Certifying Officer under sub-section (2) of section 5 may, within 4[thirty days] from the date on which copies are sent under sub-section (3) of that section, appeal to the appellate authority, and the appellate authority, whose decision shall be final, shall by order in writing confirm the standing orders either in the form certified by the Certifying Officer or after amending the said standing orders by making such modifications thereof or additions thereto as it thinks necessary to render the standing orders certifiable under this Act.

{ 1. Subs. by Act 18 of 1982, s. 2 for cl. (i) (w.e.f. 17-5-1982). 2. Subs. by Act 36 of 1956, s. 32 for “shall not be the function” (w.e.f.17-9-1956). 3. Subs. by Act 18 of 1982, s. 3, for “Any person” (w.e.f. 17-5-1982). 4. Subs. by Act 16 of 1961, s. 4, for “twenty-one days”. }

(2) The appellate authority shall, within seven days of its order under sub-section (1), send copies thereof to the Certifying Officer, to the employer and to the trade union or other prescribed representatives of the workmen, accompanied, unless it has confirmed without amendment the standing orders as certified by the Certifying Officer, by copies of the standing orders as certified by it and authenticated in the prescribed manner. **7. Date of operation of standing orders.**—Standing orders shall, unless an appeal is preferred under section 6, come into operation on the expiry of thirty days from the date on which authenticated copies thereof are sent under sub-section (3) of section 5, or where an appeal as aforesaid is preferred, on the expiry of seven days from the date on which copies of the order of the appellate authority are sent under sub-section (2) of section 6. **8. Register of standing orders.**—A copy of all standing orders as finally certified under this Act shall be filed by the Certifying Officer in a register in the prescribed form maintained for the purpose, and the Certifying Officer shall furnish a copy thereof to any person applying therefore on payment of the prescribed fee. **9. Posting of standing orders.**—The text of the standing orders as finally certified under this Act shall be prominently posted by the employer in English and in the language understood by the majority of his workmen on special boards to be maintained

for the purpose at or near the entrance through which the majority of the workmen enter the industrial establishment and in all departments thereof where the workmen are employed.

10. Duration and modification of standing orders.—(1) Standing orders finally certified under this Act shall not, except on agreement between the employer and the workmen 1[or a trade union or other representative body of the workmen], be liable to modification until the expiry of six months from the date on which the standing orders or the last modifications thereof came into operation.

2[(2) Subject to the provisions of sub-section (1), an employer or workman 1[or a trade union or other representative body of the workmen] may apply to the Certifying Officer to have the standing orders modified, and such application shall be accompanied by five copies of 3*** the modifications proposed to be made, and where such modifications are proposed to be made by agreement between the employer and the workmen 1[or a trade union or other representative body of the workmen], a certified copy of that agreement shall be filed along with the application.] (3) The foregoing provisions of this Act shall apply in respect of an application under sub-section (2) as they apply to the certification of the first standing orders.

4[(4) Nothing contained in sub-section (2) shall apply to an industrial establishment in respect of which the appropriate Government is the Government of the State of Gujarat or the Government of the State of Maharashtra.]

5[**10A. Payment of subsistence allowance.**—(1) Where any workman is suspended by the employer pending investigation or inquiry into complaints or charges of misconduct against him, the employer shall pay to such workman subsistence allowance— (a) at the rate of fifty per cent. of the wages which the workman was entitled to immediately preceding the date of such suspension, for the first ninety days of suspension; and (b) at the rate of seventy-five per cent. of such wages for the remaining period of suspension if the delay in the completion of disciplinary proceedings against such workman is not directly attributable to the conduct of such workman.

{ 1. Ins. by Act 18 of 1982, s. 4 (w.e.f. 17-5-1982). 2. Subs. by Act 36 of 1956, s. 32, for sub-section (2) (w.e.f. 17-9-1956). 3. Certain words omitted by Act 39 of 1963, s. 4 (w.e.f. 23-12-

1963). 4. Ins. by s. 4, *ibid.* (w.e.f. 23-12-1963). 5. Ins. by Act 18 of 1982, s. 5 (w.e.f. 17-5-1982). }

(2) If any dispute arises regarding the subsistence allowance payable to a workman under sub-section (1) the workman or the employer concerned may refer the dispute to the Labour Court, constituted under the Industrial Disputes Act, 1947 (14 of 1947), within the local limits of whose jurisdiction the industrial establishment wherein such workman is employed is situate and the Labour Court to which the dispute is so referred shall, after giving the parties an opportunity of being heard, decide the dispute and such decision shall be final and binding on the parties. (3) Notwithstanding anything contained in the foregoing provisions of this section, where provisions relating to payment of subsistence allowance under any other law for the time being in force in any State are more beneficial than the provisions of this section, the provisions of such other law shall be applicable to the payment of subsistence allowance in that State.]

11. Certifying Officers and appellate authorities to have powers of civil court.—1[(1)]

Every Certifying Officer and appellate authority shall have all the powers of a Civil Court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, and compelling the discovery and production of documents, and shall be deemed to be a civil court within the meaning of 2[sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974).]

3[(2) Clerical or arithmetical mistakes in any order passed by a Certifying Officer or appellate authority, or errors arising therein from any accidental slip or omission may, at any time, be corrected by that Officer or authority or the successor in office of such Officer or authority, as the case may be.]

12. Oral evidence in contradiction of standing orders not admissible.—No oral evidence having the effect of adding to or otherwise varying or contradicting standing orders as finally certified under this Act shall be admitted in any Court.

4[12A. Temporary application of model standing orders.—(1) Notwithstanding anything contained in sections 3 to 12, for the period commencing on the date on which this Act becomes applicable to an industrial establishment and ending with the date on which the standing orders as finally certified under this Act come into operation under section 7 in that

establishment, the prescribed model standing orders shall be deemed to be adopted in that establishment, and the provisions of section 9, sub-section (2) of section 13 and section 13A shall apply to such model standing orders as they apply to the standing orders so certified. (2) Nothing contained in sub-section (1) shall apply to an industrial establishment in respect of which the appropriate Government is the Government of the State of Gujarat or the Government of the State of Maharashtra.] **13. Penalties and procedure.**—(1) An employer who fails to submit draft standing orders as required by section 3, or who modifies his standing orders otherwise than in accordance with section 10, shall be punishable with fine which may extend to five thousand rupees, and in the case of a continuing offence with a further fine which may extend to two hundred rupees for every day after the first during which the offence continues. (2) An employer who does any act in contravention of the standing orders finally certified under this Act or his industrial establishment shall be punishable with fine which may extend to one hundred rupees, and in the case of a continuing offence with a further fine which may extend to twenty-five rupees for every day after the first during which the offence continues. (3) No prosecution for an offence punishable under this section shall be instituted except with the previous sanction of the appropriate Government.

(4) No Court inferior to that of 5[a Metropolitan Magistrate or Judicial Magistrate of the second class] class] shall try any offence under this section.

{1. S. 11 renumbered as sub-section (1) thereof by Act 39 of 1963, s. 5 (w.e.f. 23-12-1963). 2. Subs. by Act 18 of 1982, s. 6, for “sections 480 and 482 of the Code of Criminal Procedure, 1898 (5 of 1898)” (w.e.f. 17-5-1982). 3. Ins. by Act 39 of 1963, s. 5 (w.e.f. 23-12-1963). 4. Ins. by s. 6, ibid. (w.e.f. 23-12-1963). 5. Subs. by Act 18 of 1982, s. 7, for “a Metropolitan Magistrate or Judicial Magistrate of the second class” (w.e.f. 17-5-1982).}

1[13A. Interpretation, etc., of standing orders.—If any question arises as to the application or interpretation of a standing order certified under this Act, any employer or workman 2[or a trade union or other representative body of the workmen] may refer the question to any one of the Labour Courts constituted under the Industrial Disputes Act, 1947 (14 of 1947), and specified for the disposal of such proceeding by the appropriate Government by notification in the Official Gazette, and the Labour Court to which the question is so referred shall, after giving the parties an opportunity of being heard, decide the question and such decision shall

be final and binding on the parties. **13B. Act not to apply to certain industrial establishments.**—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 Services) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Service (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.] **14. Power to exempt.**—The appropriate Government may by notification in the Official Gazette exempt, conditionally or unconditionally, any industrial establishment or class of industrial establishments from all or any of the provisions of this Act.

3[14A. Delegation of powers.—The appropriate Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act or any 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; (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.] **15. Power to make rules.**—(1) The appropriate Government may, after previous publication, by notification in the Official Gazette, make rules to carry out the purposes of this Act. (2) In particular and without prejudice to the generality of the foregoing power, such rules may— (a) prescribe additional matters to be included in the Schedule, and the procedure to be followed in modifying standing orders certified under this Act in accordance with any such addition; (b) set out model standing orders for the purposes of this Act; (c) prescribe the procedure of Certifying Officers and appellate authorities; (d) prescribe the fee which may be charged for copies of standing orders entered in the register of standing orders; (e) provide for any other matter which is to be or may be prescribed: Provided that before any rules are made under clause (a) representatives of both employers and workmen shall be consulted by the appropriate Government.

{ 1. Ins. by Act 36 of 1956, s. 32 (w.e.f. 10-3-1957). 2. Ins. by Act 18 of 1982, s. 8 (w.e.f. 17-5-1982). 3. Subs. by Act 39 of 1963, s. 7, for s. 14A (w.e.f. 23-12-1963). }

1[(3) Every rule made by the Central Government under this section shall be laid as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or 2[in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid], both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

13.3. THE INDUSTRIAL DISPUTES ACT, 1947

Introduction

The first enactment dealing with the settlement of industrial disputes was the Employers' and Workmen's Disputes Act, 1860. This Act weighed much against the workers and was therefore replaced by the Trade Disputes Act, 1929. The Act of 1929 contained special provisions regarding strikes in public utility services and general strikes affecting the community as a whole. The main purpose of the Act, however, was to provide a conciliation machinery to bring about peaceful settlement of industrial disputes. The Whitely Commission made in this regard the perceptive observation that the attempt to deal with unrest must begin rather with the creation of an atmosphere unfavourable to disputes than with machinery for their settlement.

The next stage in the development of industrial law in this country was taken under the stress of emergency caused by the Second World War. Rule 81-A of the Defence of India Rules was intended to provide speedy remedies for industrial disputes by referring them compulsorily to conciliation or adjudication, by making the awards legally binding on the parties and by prohibiting strikes or lock-outs during the pendency of conciliation or adjudication proceedings and for two months thereafter. This rule also put a blanket ban on strikes which did not arise out of genuine trade disputes.

With the termination of the Second World War, Rule 81-A was about to lapse on 1st October, 1946, but it was kept alive by issuing an Ordinance in the exercise of the Government's Emergency Powers. Then followed the Industrial Disputes Act, 1947. The provisions of this Act, as amended from time to time, have furnished the basis on which industrial jurisprudence in this country is founded.

Object and Significance of the Act

The Industrial Disputes Act, 1947 makes provision for the investigation and settlement of industrial disputes and for certain other purposes. It ensures progress of industry by bringing about harmony and cordial relationship between the employers and employees. Definitions of the words 'industrial dispute, workmen and industry' carry specific meanings under the Act and provide the framework for the application of the Act.

In the case of Workmen of Dimakuchi Tea Estate v. Dimakuchi Tea Estate, AIR 1958 S.C. 353, the Supreme Court laid down following objectives of the Act:

(i) Promotion of measures of securing and preserving amity and good relations between the employer and workmen.

(ii) Investigation and settlement of industrial disputes between employers and employers, employers and workmen, or workmen and workmen with a right of representation by registered trade union or federation of trade unions or an association of employers or a federation of associations of employers.

(iii) Prevention of illegal strikes and lock-outs.

(iv) Relief to workmen in the matter of lay-off and retrenchment.

(v) Promotion of collective bargaining.

This Act extends to whole of India. The Act was designed to provide a self-contained code to compel the parties to resort to industrial arbitration for the resolution of existing or apprehended disputes without prescribing statutory norms for varied and variegated industrial relating norms so that the forums created for resolution of disputes may remain unhampered by any statutory control and devise rational norms keeping pace with improved industrial

relations reflecting and imbibing socio-economic justice. This being the object of the Act, the Court by interpretative process must strive to reduce the field of conflict and expand the area of agreement and show its preference for upholding agreements sanctified by mutuality and consensus in larger public interest, namely, to eschew industrial strife, confrontation and consequent wastage (*Workmen, Hindustan Lever Limited v. Hindustan Lever Limited*, (1984) 1 SCC 728).

wastage (*Workmen, Hindustan Lever Limited v. Hindustan Lever Limited*, (1984) 1 SCC 728).

The Act applies to an existing and not to a dead industry. It is to ensure fair wages and to prevent disputes so that production might not be adversely affected. It applies to all industries irrespective of religion or caste of parties. It applies to the industries owned by Central and State Governments too (*Hospital Employees Union v. Christian Medical College*, (1987) 4 SCC 691).

Important definitions

(i) Industry

“Industry” means any business, trade, undertaking, manufacture or calling of employers and includes any calling service, employment, handicraft, or industrial occupation or avocation of workmen. [Section 2(j)]

The Supreme Court carried out an indepth study of the definition of the term industry in a comprehensive manner in the case of *Bangalore Water Supply and Sewerage Board v. A Rajiappa*, AIR 1978 SC 548 (hereinafter referred to as Bangalore Water Supply case), after considering various previous judicial decisions on the subject and in the process, it rejected some of them, while evolving a new concept of the term “industry”.

Tests for determination of “industry”

After discussing the definition from various angles, in the above case, the Supreme Court, laid down the following tests to determine whether an activity is covered by the definition of “industry” or not. It is also referred to as the triple test.

- I. (a) Where there is (i) systematic activity, (ii) organised by co-operation between employer and employee,
- (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss e.g., making, on a large scale, prasada or food) prima facie, there is an “industry” in that enterprise.
- (b) Absence of profit motive or gainful objective is irrelevant wherever the undertaking is whether in the public, joint, private or other sector.
- (c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.
- (d) If the organisation is a trade or business, it does not cease to be one because of philanthropy animating the undertaking.

Criteria for determining dominant nature of undertaking

The Supreme Court, in *Bangalore Water Supply* case laid down the following guidelines for deciding the dominant nature of an undertaking:

- (a) Where a complex of activities, some of which qualify for exemption, others not, involves the employees on the total undertaking. Some of whom are not “workmen” or some departments are not productive of goods and services if isolated, nature of the department will be the true test. The whole undertaking will be “industry” although those who are not “workmen” definition may not be benefited by the status.
- (b) Notwithstanding with previous clause, sovereign functions strictly understood alone qualify for exemption and not the welfare activities or economic adventures undertaken by Government or statutory bodies.
- (c) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(j).

(d) Constitutional and competently enacted legislative provisions may well remove an undertaking from the scope of the Act.

The above decision of the Supreme Court has a wide sweep. The triple test along with dominant nature criteria will cover almost the entire labour force in the country. The charitable or missionary institutions, hospital, educational and other research institutions, municipal corporations, firms of chartered accountants, solicitors' firms, etc., which were not held to be "industry" earlier will now be covered by the definition of "industry".

Now let us see whether the following activities would fall under industry or not:

1. Sovereign functions: Sovereign functions strictly understood alone qualify for exemption, not the welfare activities or economic adventures undertaken by Government or statutory bodies. Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable then they can be considered to come within Section 2(j). (*Bangalore Water Supply case*). If a department of a municipality discharged many functions, some pertaining to "industry" and other non-industrial activities, the predominant function of the department shall be the criterion for the purposes of the Act (*Corpn. of City of Nagpur v. Employees*, AIR 1960 SC 675).

2. Municipalities: Following Departments of the municipality were held, to be "industry" (i) Tax (ii) Public Conveyance (iii) Fire Brigade (iv) Lighting (v) Water Works (vi) City Engineers (vii) Enforcement (Encroachment) (viii) Sewerage

(ix) Health (x) Market (xi) Public Gardens (xii) Education (xiii) Printing Press (xiv) Building and (xv) General administration. If a department of a municipality discharges many functions some pertaining to industry and others non-industrial, the predominant function of the department shall be the criterion for the purpose of the Act.

3. Hospitals and Charitable institutions: Exemptions to charitable institutions under Section 32(5) of Payment of Bonus Act is not relevant to the construction of Section 2(j), *FICCI v. Workmen*, (1972) 1 SCC 40, there is an industry in the enterprise, provided the nature of the activity, namely the employer-employee basis bears resemblance to what is found in trade or business. This takes into the fold of industry undertakings, callings, services and adventures 'analogous to the carrying on of trade or business'. Absence of profit motive or gainful

objective is irrelevant for “industry”, be the venture in the public, joint, private or other sector. The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

4. Clubs: A restricted category of professions, clubs, co-operatives and even Gurukulas may qualify for exemption if, in simple ventures, substantially and going by the dominant nature criterion substantively, no employees are entertained, but in minimal matters marginal employees are hired without destroying the non-employee character of the unit. But larger clubs are “industry” (*as per Bangalore Water Supply case*).

5. Universities, Research Institutions etc.: As regards institutions, if the triple tests of systematic activity, cooperation between employer and employee and production of goods and services were to be applied, a university, a college, a research institute or teaching institution will be “industry”. The following institutions were held to be “industry”: Ahmedabad Textile Industries Research Association, Tocklai Experimental Station. Indian

Standard Institute, and Universities. However Physical Research Laboratory, Ahmedabad was held not to be an Industry by the Supreme Court (1997 Lab. IC 1912 SC). Since it is carrying on research not for the benefit of others and moreover, it is not engaged in commercial or industrial activity.

6. Professional Firms: A solicitors establishment can be an “industry” (*as per Bangalore Water Supply case*). Regarding liberal professions like lawyers, doctors, etc., the test of direct cooperation between capital and labour in the production of goods or in the rendering of service or that cooperation between employer and employee is essential for carrying out the work of the enterprise. The personal character of the relationship between a doctor or a lawyer with his professional assistant may be of such a kind that requires complete confidence and harmony in the productive activity in which they may be cooperating.

7. Voluntary services: If in a pious or altruistic mission, many employ themselves free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the Holiness, divinity or Central personality and the services are supplied free or at a nominal cost and those who

serve are not engaged for remuneration or on the basis of master and servant relationship, then the institution is not an industry even if stray servants manual or technical are hired. Such eleemosynary or like undertakings alone are exempted. (*Bangalore Water Supply case*)

Following are held to be “industry”: Co-operative Societies, Federation of Indian Chamber of Commerce, Company carrying on agricultural operations, Bihar Khadi Gramodyog Sangh, Indian Navy Sailors Home, Panchayat Samiti, Public Health Department of the State Government, Forest Department of Govt., Zoo; Primary Health Centres, and Indian Institute of Petroleum. Some other instances of ‘Industry are: Rajasthan Co-operative Credit Institutions Cadre Authority (1985 Lab IC 1023 (Raj.)), A trust for promoting religious, social and educational life but also undertaking commercial activities (1987) 1 LLJ 81, M.P. Khadi and Village Industries Board, Housing Board, Dock Labour Board, Management of a private educational institution (*R.C.K. Union v. Rajkumar College*, (1987) 2 LLN 573).

But the following are held to be not “Industry”: Posts and Telegraphs Department (*Union of India v. Labour Court*, (1984) 2 LLN 577), Telecom Deptt. (*Bombay Telephones Canteen Employees Association v. Union of India*),

Central Institute of Fisheries (*P. Bose v. Director, C.I.F.*, 1986 Lab IC 1564), and Construction and maintenance of National and State Highways (*State of Punjab v. Kuldip Singh and another*, 1983 Lab IC 83), Trade Unions (*RMS v. K.B. Wagh*, 1993(2) CLR 1059).

Section 2(j) shall stand amended by Amendment Act of 1982.

Section 2(j) under Amendment Act, 1982 [date of effect is yet to be notified]

2(j) “Industry” means any systematic activity carried on by co-operation between an employer and his workmen (Whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not:

(i) any capital has been invested for the purpose of carrying on such activity; or

(ii) such activity is carried on with a motive to make any gain or profit, and includes:

(a) any activity of the Dock Labour Board established under Section 5A of the Dock Workers (Regulations of Employment) Act, 1948, (9 of 1948);

(b) any activity relating to the promotion of sales or business or both carried on by an establishment,

but does not include:

(1) any agricultural operation except where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this clause) and such other activity is the predominant one.

Explanation: For the purpose of this sub-clause, “agricultural operation” does not include any activity carried on in a plantation as defined in clause (f) of Section 2 of the Plantations Labour Act, 1951; or

(2) hospitals or dispensaries; or

(3) educational, scientific, research to training institutions; or

(4) institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service; or

(5) khadi or village industries; or

(6) any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defence research atomic energy and space; or

(7) any domestic service; or

(8) any activity, being a profession practised by an individual or body of individuals, if the number of persons employed by the individuals or body of individuals in relation to such profession is less than ten; or

(9) any activity, being an activity carried on by a co-operative society or a club or any other like body of individuals, if the number of persons employed by the co-operative society, club or other like body of individuals in relation to such activity is less than ten.

13.4. INDUSTRIAL HARMONY

In the present topic of research “Industrial Harmony can be maintained through Talent Recognition” there are two terms i.e. “Industrial Harmony” and “Talent Recognition” and these two terms have been formed by four words of English Language two in each term. The four words of English Language are (1) Industrial (2) Harmony (3) Talent (4) Recognition. In order to do the proper study for the purpose of research it seems essential that first of all we should little elaborate these two terms with literary meaning of the four words of English Language which have basically combined and appeared in the shape of two main terms of the research’s topic. The literary meanings according to Oxford English to Hindi Dictionary of above four words of English Language are as mentioned below:-

In order to do the proper study for the purpose of research it seems essential that first of all we should little elaborate these two terms with literary meaning of the four words of English Language which have basically combined and appeared in the shape of two main terms of the research’s topic. The literary meanings according to Oxford English to Hindi Dictionary of above four words of English Language are as mentioned below:- 1. Industrial: meaning of the word “Industrial” is or which is related to industry or something of industry. 2. Harmony: means peace 3. Talent: means or the ability. 4. Recognition: means or an art of identifying something.

In the first term two words Industrial + Harmony have been combined which means the peace of industries and the other term has been formed with combination of another two words i.e. Talent + Recognition which collectively means identification of inherent ability of someone. These two terms Industrial Harmony and Talent Recognition have been further explained for easy understanding of the researcher as well as the respondents involved in the research process.

The meaning of Industrial Harmony is the peaceful state of circumstances prevailing in the industries where everybody employee and employer both are comfortable in their respective positions. The employees do their work efficiently and honestly and give the desired output

to their employer in this way both are satisfied and happy with each other and reciprocating the same the employer also take care of his employee's needs and welfare. The employer also compensates the employees according to their output and the employees are also satisfied and happy. In this way there is no complaint from either side, or no conflict or any dispute between the two parts of the organization. Everybody understands his duties and responsibilities towards each other and they perform it nicely consequently the things are running smoothly according to the set practices in routine. This situation is known as existence of industrial harmony. Industrial harmony is as important for the industries as the human body free from any disease or pain. If any human being is suffering from any sort of disease or pain in any part of his body the individual would not be able to do any work or even if he does any work the performance result will not be according to expectation qualitatively and quantitatively, similarly in disharmonious conditions no organization would be able to obtain or give the desired production or services whatever the case may be, thus the industrial harmony can be explained as the state of good health of the industries and disharmony is the bad or sick state of the health of the industry.

Further, the term "Talent Recognition" is also as important as to know the strength and weaknesses of one's body and mind by the individual himself and prepare for the life because without knowing no human being can set the targets for his/ her life and strive for accomplishment of the same, similarly it is very important activity for the management of every organization of various industries to explore, know and understand the strength and inherent capabilities of their employees as well as their weaknesses and according to the same future objectives can be established and accomplished.

The talent recognition is activity which is very important to be carried out continuously and place the human resources according to their suitability which would result into the individual employee's job satisfaction, optimum and proper use of resources will result into cent percent output of the human resources with high quality and quantity. High quality will help in reducing the rejections and re-working, saving cost, energy and time and enhanced quantity will satisfy the customers' requirements which will make them to satisfied. The satisfied customers shall give the organization more business and increased business shall enhance the profitability. More profit to the organization will be the cause of increments and promotions to the employees which will make employer and employee relationship

harmonious and industrial harmony will prevail. The scholar has intended to bring some more facts into the light through this research and prove that the Industrial harmony can be maintained through Talent Recognition and Management of talent properly. The ingredients of industrial harmony are as provided here but not limited to the following: (1) Neither any grievance of employees against the employer nor of employer against his employees. (2) No dispute between employee and employer and employee and employee. (3) No scene of strike, slogans, lockout and gherao etc. (4) Payment of employee compensation and benefits is made adequately and on time. (5) Right man at right place (6) Hierarchical organization and management.

There are certain common factors which are responsible for maintenance of harmony or existence of disharmony in any industry that depends upon the methods of management and tackling of such factors. These factors are as enumerated below:-

Human Relations: The meaning of the term human relations is relationship between the employees of an organization. The mutual relations between the people of an organization at their workplace which are known as formal relations may be good or bad. The good relations are known as harmonious relations and the bad one are called as disharmonious relations. The relations between the employees of an organization can be divided into two types i.e. (1) Formal Relations (2) Informal Relations.

Formal Relations: The formal relations are those which are maintained between the employee and employee or employee and employer in connection with their employment and the work related to their employment. In other words the meaning of the term 'Formal' is 'Official', hence any relationship which arising between the employee and employee or employer and employee in connection with the official work for obtaining the organizational objectives.

Informal Relations: The informal relations are those relations which have developed between the people of an organization not because of the official work but due to their own and private reasons. In other words the term contains two words of the English Language i.e. Informal + Relations. The literary meaning of the word 'Informal' is 'Unofficial' and 'Relation' means 'Connection' that the combined meaning the term Informal Relation is unofficial relationship existing between the employee and employee or employee and employer of an organization irrespective of the quality of formal relationship between the two parts. This relationship between the members of an organization constitute the term 'Human

Relations' that means the relationship between employee and employee or employee and employer of an organization which are further affected by various activities and situations prevailing within the organization. The activities situations existing in almost all industries affecting the industrial harmony are not limited to which have been mentioned below:-

- Group Dynamics
- Employee Relations
- Human Needs' Satisfaction
- Motivation
- Employees Morale
- Communication
- Leadership
- Grievances and Grievances Handling Procedure
- Discipline and Disciplinary Action
- Employees Safety at workplace and their health.
- Industrial Disputes
- Industrial Relations
- Industrial Harmony

13.5. TYPES OF INDUSTRIAL CONFLICT

It is not easy to identify a single factor as a cause of industrial conflicts as multifarious causes blended together result in industrial disputes.

Causes of industrial conflicts may be grouped into four categories;

- Industrial factors
- Management attitudes towards workers
- Government machinery
- Other causes

Strikes are the result of more fundamental maladjustments, injustices and economic disturbances. Strikes are a temporary cessation of work by a group of employees in order to express grievances or to enforce a demand concerning changes in work conditions. Strikes are divided into primary strikes and secondary strikes. Primary strikes are generally against the employer with whom the disputes exist. They take the form of stay away strike, sit-in, sit-down, pen-down, tools-down or mouth-shut strikes, go slow, work-to-rule, token or protest strike, lightening or wildcat strike, picketing or boycott.

The Outcome of the Strikes

The outcome of the strikes include; Settlement of the dispute in favor of employees, loss of work, loss of jobs by employees, loss of earnings by employees, inconveniences to customers, suppliers and market intermediaries.

Lock-outs means the action of an employer in temporarily closing down or shutting down his undertaking or refusing to provide his employees with work with the intention of forcing them either to accept demands made by him or to withdraw demands made by them on him.

Lock-out is used with some intention thus to coerce or force the workmen to come to terms. Lockouts, thus, necessarily involves an over act on the part of the employer involving an element of motive of ill-will. In the absence of this over act, the temporary suspension of work would not amount to a lockout and the workmen cannot claim wages for the period of closure.

But the following does not constitute Lockout

- Prohibiting an individual employee is not lockout
- Termination of employment by retrenchment does not amount to lockout
- Termination of services of more than one person at the same time would not lockout

- Declaration of lockout by an employer merely on the ground that the workmen have refrained from attending work

Loss of income to the employees

Loss of property to the employer

Loss of employment

Inconvenience to the customers and general public

Inconvenience to the suppliers and market intermediaries

Loss of income to the 1 shareholder

Loss to the economy

13.5.1. Industrial conflict causes

- Wage Demands. By far, the most important cause for disputes is related to wages. ...
- Union Rivalry. Multiplicity of unions leads to inter-union rivalries. ...
- Political Interference. Major trade unions are affiliated to political parties. ...
- Unfair Labour Practices.
- Multiplicity of Labour Laws.

UNIT - XIV

14.1. INDUSTRIAL DEMOCRACY

The theory of workers' participation at the workplace or what is called as WPM historically conceptualized with the emergence of industrializing capitalist societies as early as the Industrial Revolution, as workers struggled to have power over of the labour process and to democratize workplace management. Since then, workers have started participating in decisions touching their working surroundings at various times in countries with capitalist systems, and soon after, in those with socialist systems. (Bayat, 1991).

The concept of Workers' Participation in Management is viewed by people differently. "There are people who feel that workers' participation is the tool for solving most industrial relations problems, and that it will even become the underline concept of the future society. So people use the term as the synonym for what they call Industrial Democracy." The concept of Workers' Participation in Management has developed in different forms in different countries to suit the requirement, need and necessity of the political and economic system of different countries from time to time. The concept is an extension of political system to the workplace. In a democracy, participation of the people in the political process is an essential ingredient of the system. Workers' Participation in Management is an influence process at workplace which affects the condition of employment and helps in understanding the dynamics of an industrial establishment which ultimately fosters a "sense of belonging." In India, the concept of worker participation in management still requires a deeper and clearer understanding. This concept is masked with so much indistinctness that for different people it has a different meaning. For management, it is joint consultation prior to decision-making; for workers it is codecision making or co-determination; for trade union leaders it is the ushering in of a new era of social relationship and for administrators it is merely the association of workers with management without assigning them any authority or responsibility. Notwithstanding these different views on worker participation, all agree that it is an essential step involving redistribution of power between the management and workers in the direction of industrial democracy.

The concept of worker participation represents a popular theme in the analysis of the world of work among scholars in the fields of Industrial Sociology, Industrial Relations as well as

management. It refers to any arrangement which is designed to involve low cadre employees (workers) in the important decision making within the workplace. This implies that rather than saddling only a group within the enterprise (for instance, management) with the responsibility of making decisions, all those who are to be affected by these decisions (including the workers) would be involved in its formulation and implementation.

Origin and the need of industrial democracy Around 18th century, the Industrial Revolution began in Britain and later on spread to other parts of advanced countries. The Industrial revolution or the more recent managerial revolution came along with the setting up of modern business enterprises that contained a hierarchy of salaried executives. However, as Kauffman (2004) [10] notes that the current discourse and the relations between those who managed work and those who performed work is something which has existed since human civilization began, although the practice of recognizing it as a matter of social concern is recent. The process of industrialization in Britain brought about the setting up of factories, mills and warehouses where associations of men came together and jointly participated in the production process. Briggs (1954) [3] clarifies that these places were not only viewed as places of production but as places where men spent a significant time of their lives. Scholars studying industrialization concerned themselves not only with issues like output, sales, costs in the production process but also the social aspects of a newly laid down base for an industrial society.

It is this that has laid down the foundations of the domain known as industrial relations. Participation brings the two parties closer and makes them aware of each other's problems. As a result, a better understanding and mutual trust can be created between employer and workers. Workers participation in management helps to reduce industrial disputes and to improve workers loyalty. Continuous dialogue between management and workers improves peace in industry. They become more able and ready to adopt themselves to technological and other changes made to improve the competitive position of the company. Clerks, Fatchett and Roberts⁵ have mentioned four broad objectives of workers' participation in management in the British context, that is (i) as a means of promoting the satisfaction and personal development of an individual worker, (ii) on the ground that workers should have a greater say in decision making at work, (iii) as a means of improving industrial relations (iv) As a means of increasing efficiency.

14.1.2. Workers participation

The concept of worker participation represents a popular theme in the analysis of the world of work among scholars in the fields of Industrial Sociology, Industrial Relations as well as management. It refers to any arrangement which is designed to involve low cadre employees (workers) in the important decision making within the workplace. This implies that rather than saddling only a group within the enterprise (for instance, management) with the responsibility of making decisions, all those who are to be affected by these decisions (including the workers) would be involved in its formulation and implementation

The following are the main characteristics of WPM

1. Participation implies practices which increase the scope for employees' share of influence in decision-making process with the assumption of responsibility.
2. Participation presupposes willing acceptance of responsibility by workers.
3. Workers participate in management not as individuals but as a group through their representatives.
4. Worker's participation in management differs from collective bargaining in the sense that while the former is based on mutual trust, information sharing and mutual problem solving; the latter is essentially based on power play, pressure tactics, and negotiations.
5. The basic rationale for worker's participation in management is that workers invest their labour and their fates to their place of work. Thus, they contribute to the outcomes of organization. Hence, they have a legitimate right to share in decision-making activities of organisation.

14.2. WORKER PARTICIPATION SCHEMES

- (i) The works committees (set up under the Industrial Disputes Act, 1947);
- (ii) The joint management councils (set up as a result of the Labour- Management Co-operation Seminar, 1958); and

(iii) The scheme for workers' Representative on the Board of Management (under the Management and Miscellaneous Scheme, 1970) on some public and private sector enterprises, including industrial undertakings and nationalised banks.

Since July 1975, a two-tier participation model, namely, the shop council at the shop level and to joint council at the enterprise level, were introduced. On 7th January 1977, a new scheme of workers' participation in management in commercial and service organisations in public sector undertakings was launched with the setting up of unit councils.

The following are the schemes of participation

1. Works Committee

Enterprises with a workforce of 100 or more workers constitute a works committee with equal number of representatives from employees and the management. This committee has to evolve ways and means for maintaining cordial and harmonious relations between employees and the management.

Joint Management Council (JMC)

JMCs were introduced in 1958. These councils are formed at plant level with equal number of employee and employer representatives. These are mainly consultative and advisory ones. The scope of JMCs encompasses to matters like working conditions, indiscipline, absenteeism, accident prevention, preparation of holiday schemes etc. It is generally alleged that both works committee and JMC are similar in scope and function. Hence multiplicity of bipartite consultative bodies did not serve the purpose.

Board of Representation

Under this scheme, one or two representatives of workers are nominated or elected to the Board of Directors. The basic idea is to safeguard worker's interest, and usher in industrial harmony and good relations between workers and management. This is the highest form of participation. Government of India introduced this schemes in public sector enterprises like Hindustan Antibiotics Ltd, BHEL, NTC, National Coal Mines Development Corporation, Hindustan Organic Chemicals, etc.

Public Sector Banks have introduced the scheme from 1970 onwards. The representative unions have to give a panel containing names out of which one will be selected by the Government. The success of the worker director depends in his role in the board and his prior consultation communication with the other workers. He should articulate the worker's concern very effectively and cogently with facts and figures and enlighten the management of the implications of various proposals at the board.

Participation through Ownership

Workers by becoming shareholders take part in management. Management sell shares at reduced price to its committed and loyal workforce. Such workers are allowed to pay the price in installments or allowed financial accommodation to buy the shares. But participation is distinct from management. But its effect on participation is observed to be limited. In some cases, sick companies are allowed to be taken over by workers. For example, Kamani Tubes, New Central Jute mills, etc., are some of the companies taken over by worker's cooperatives.

Participation through Complete Control

It is called self-management. Yugoslavia is the country practicing this model. This gives a complete control to the workers to directly manage all aspects of industries through their representatives. This method ensures complete identification of workers with their organization. The scope for industrial conflict becomes lesser under the self-management method. But the success of the method depends on the intensity of interest shown by workers in the management.

Collective Bargaining

This mechanism gives the management and the employees to lay down rules relating to working conditions and contract of employment. This type of participation is in practice.

Job Enlargement and Job Enrichment

Job enlargement means addition of task elements horizontally. Job enrichment means adding motivators to the existing job. Both are mechanisms to relieve the job holders of the

monotony of work. They serve as participative mechanisms as they offer freedom and scope to use their wisdom.

Suggestion Scheme

Suggestions are invited from workers on the various aspects of work. Management reviews the suggestions made and put the constructive suggestions into action. Some companies share financial benefits accruing through good suggestions with the workers who contribute the suggestion. This mechanism kindles the creative or innovative urge in the workers. This is a win-win mechanism. The rewards awarded should be commensurate with the benefits derived from the suggestion.

Quality Circle (QC)

A Quality Circle (QC) consists of 7 to 10 people drawn from the same work area, who meet regularly to define, analyse and solve quality and related problems in their area. Membership is voluntary and meetings are held once a week for an hour. During the meetings, members are trained in problem-solving. This concept originated from Japan. In India, the experience of quality circle is a mixed one.

Empowered Team and Autonomous Teams:

Empowerment means transferring authority and responsibility to employees. When power is transferred to employees, they experience a sense of ownership and control over their job. At the same time, it engenders in them a sense of accountability.

- i. Empowered team sets its own target.
- ii. Decides the method of work.
- iii. Decides the style of leadership and function.
- iv. Creates its own work schedules and reviews its performance.
- v. Prepares its own budget and coordinates its work with other departments.
- vi. Chooses the source of supply of materials.

- vii. Hires own replacement.
- viii. Assumes responsibility for the discipline of its members.
- ix. Takes responsibility for the quality of the products and services.

Indian companies practising empowered team concept includes TITAN, ABB, TATA Information System, Philips, Wipro Infotech, etc.

14.3. QUALITY CIRCLE

Meaning of Quality Circles:

Conceptually Quality Circles can be described as a small group of employees of the same work area, doing similar work that meets voluntarily and regularly to identify, analyse and resolve work related problems.

This small group with every member of the circle participating to the full carries on the activities, utilising problem solving techniques to achieve control or improvement in the work area and also help self and mutual development in the process.

The concept of the Quality Circle is based on “respect for the human individual” as against the traditional assumption based on suspicion and mistrust between management and its employees.

Quality circles built mutual trust and create greater understanding between the management and the workers. Cooperation and not confrontation is the key element in its operation. Quality Circles aims at building people, developing them, arousing genuine interest and dedication to their work to improve quality, productivity, cost reduction etc.

Characteristics of Effective Quality Circles:

1. The atmosphere should be informal, comfortable and relaxed. The members should feel involved and interested.
2. Everyone should participate.

3. The objectives should be clear to the members
4. The members should listen to each other.
5. The group should feel comfortable even when there are disagreements.
6. The decisions should generally be taken by a kind of consensus and voting should be minimum.
7. When an action is required to be taken, clear assignments should be made and accepted by all the members.

Objectives of Quality Circles:

- (i) To improve quality, productivity, safety and cost reduction.
- (ii) To give chance to the employees to use their wisdom and creativity.
- (iii) To encourage team spirit, cohesive culture among different levels and sections of the employees.
- (iv) To promote self and mutual development including leadership quality,
- (v) To fulfill the self-esteem and motivational needs of employees.

14.4. QUALITY OF WORK LIFE

Quality of Work Life (QWL) is a relatively new concept which is defined as the overall quality of an individual's working life. QWL is sometimes considered as a sub-concept of the broad concept of quality of life, which refers to the overall quality of an individual's life. Quality of life includes factors such as income, health, social relationships, and other factors such as happiness and fulfillment. QWL being the main subject of the present study meaning, definition, scope of the QWL, and QWL in the Indian context, etc.,

The pursuit for improved productivity through human resources has its foundation in the early nineteenth century with F.W Taylor developing Scientific Management Theory and creating a new awareness regarding human resources. Prior to the advent of Scientific Management, human resources were considered as a mere instrument of production with regard to work from dawn to dusk. The working conditions were paid scanty attention. The labour was motivated by the lure of money. The Scientific Management focused mostly on division of labour, hierarchy, close supervision and management principles. These have no doubt brought several benefits to the society. From then onwards continuous research and investigations have been undertaken to understand human behavior at work and the ways to improve their job satisfaction, balanced with the aim of the organizations to work for better productivity with job and employee satisfaction. In order to achieve these twin objectives, different approaches have been developed and applied for improvement of quality of working life of workers.

Objectives of Quality of Work Life:

- To increase in individual productivity, accountability and commitment.
- For better teamwork and communication.
- For improving the morale of employees.
- To reduce organizational stress.
- To improve relationships both on and off the job.
- To improve the safety working conditions.
- To provide adequate Human Resource Development Programs.
- To improve employee satisfaction.
- To strengthen workplace learning.
- To better manage on-going change and transition.

- To participate in management at all levels in shaping the organization.

Importance of Quality of Work Life:

Improved Quality of Work Life was not considered as important factor in India until recently as there were important impending factors like resource deficiency, environmental threats and some services of financial problems. Quality of Work Life program has become important in work place for the following reasons:

1. Increase demands at work
2. Loss of long term employee guarantees
3. The need for enhanced work place skills
4. Greater competition for talent

5. Increased women in work force Good quality of Work Life leads to an atmosphere of good impersonal relations and highly motivated employees who strive for their development. Though monetary benefits still occupy the first place in the cost of elements like physical working conditions, job restructuring and job re-designing, career development, promotional opportunities etc. are gaining importance rapidly. As such, workers expect the management to improve all these facilities which thereby improve Quality of Work life. If provided with good Quality of Work Life, employees concentrate more on both individual as well as group development which in turn leads to overall development.

According to Walton (1975) proposed eight conceptual categories. They are as follows:

- Adequate and fair compensation
- Safe and healthy working conditions
- Immediate opportunity to use and develop human capacities
- Opportunity for continued growth and security
- Social integration in the work organization
- Constitutionalization in the work organization
- Work and the total life span

- The social relevance of work life

Successful organization is turning through the introduction of Quality of Work Life strategy to the people who work in them to maintain competitive advantage. The benefits to both management and workers include:

1. Improved organization performance through the development of people.
2. Increased co-operation and team work within and across all the levels of the organization including movement towards management or trade union partnership.
3. Increased environment in doing a good job .
4. Improved quality performance.
5. Increased commitment to the values and goals of the organization.
6. The anchoring of the development of a quality organization.

Quality of Work Life as a process:

The concept of Quality of Work Life views a work as a process of interaction and joint problem solving by work in people, managers, supervisors and workers. This process is:

- i. Co-operative rather than authoritarian
- ii. Evolutionary and changing rather than static
- iii. Open rather than rigid
- iv. Informal rather than rule based
- v. Problem solving

Quality of Work life programme has become important in the work place for the following reasons:

- Increased women in work force
- Increased male involvement in dependent care activities
- Increased responsibilities for elders

- Increased demand at work
- Loss of long term employment guarantees
- The need for enhanced work place skills
- Greater competition for talent

The following are the some of the specific issues in Quality of Work life

- Pay and stability of employment
- Occupational stress
- Organizational health programme
- Alternative work schedules
- Participative management and control of work
- Recognition
- Grievance procedure
- Adequacy of resources
- Seniority and merit in promotions

Problems of implementing Quality of Work Life programmes:

Bohlander has identified three common problems of implementing Quality of Work Life programme. The three areas are:

- Managerial attitudes
- Union influence
- Restrictiveness of industrial engineering

Strategies to improve Quality of Work Life: By implementing some changes, the management can create sense of involvement, commitment and togetherness among the employees which paves way for better Quality of Work Life.

- a. Job enrichment and Job redesign
- b. Autonomous work redesign
- c. Opportunity for growth

- d. Administrative or organizational justice
- e. Job security
- f. Suggestion system
- g. Flexibility in work schedules
- h. Employee participation

Quality of Work life improvements are defined as any activity which takes place at every level of an organization which seeks greater organizational effectiveness through the enhancement of human dignity and growth. A process through which the state holders in the organization, management, unions and employees - learn how to work together better to determine for themselves what actions, changes and improvements are desirable and workable in order to achieve the win and simultaneous goals of an improved quality of life at work for all members of the organization and greater effectiveness for both the company and the unions.

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