LABOUR LEGISLATIONS-I

DIRECTORATE OF DISTANCE EDUCATION

MBA
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Labour Legislations-I

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INTRODUCTION

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

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

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 It is felt that our labour laws are overprotective, overreactive, fragmented, outdated and irrelevant and have created hurdles in achieving the target of ensuring fair labour practices.

This book, *Labour Legislations-I*, explains almost every aspect of the labour legislation. The government is trying to motivate and enable workers to understand the importance and significance of reforms to regulations pertaining to labour. The government is responsible for convincing workers to support all activities related to reforms and similar operations. However, the success of these reforms is only possible when the governments assure workers of complementary policies that they plan to establish. These policies should be aimed at providing social security and other significant benefits for the welfare of the workforce.

In the book, each unit begins with an Introduction to the main topic, followed by an outline of Unit Objectives. The topic is then explained in detail, in a way that is easy to understand. The units comprise of 'Check Your Progress' questions to test the understanding of the reader. Each unit has a Summary, a glossary of Key Terms, Answers to 'Check Your Progress' and Questions and Exercises. At the end of each unit, Further Reading lists the names of other books which are related to the topic.

UNIT 1 THE FACTORIES ACT, 1948

Structure

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1.0 INTRODUCTION

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

1.1 UNIT OBJECTIVES

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

- Explain the basic concepts and definitions set out in the Factories Act, 1948
- Discuss the health, safety and welfare provisions established in the Act for factory workers
- Describe the provisions made in the Act with regard to working hours and annual leave and wages

1.2 CONCEPTS AND DEFINITIONS

Meaning of Factory

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

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

'factory': 'factory' to mean any premises including the precincts thereof

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(ii) Wherein twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on. (Section 2m(i) and 2(m)(ii) of the Act)

A Factory does not mean a mine subject to the operation of The Mines Act, 1952 or a mobile unit belonging to the armed forces of the Union, a railway running shed or hotel, or restaurant or eating place.

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

Explanation 2: For the purposes of this clause, the mere fact that the electronic data processing unit or a computer unit is installed in any premises or part thereof, shall not be construed to make it a factory if no manufacturing process is being carried on in such premises or part thereof.

Meaning of Manufacturing Process

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

Meaning of Occupier

'occupier': The person who has ultimate control over the affairs of the factory

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

The person who has ultimate control over the affairs of the factory, provided that—

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

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

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

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

1. The owner of the dock shall be deemed to be the occupier for the purposes of any matter provided for by or under—
   (a) Section 6, Section 7, Section 7-A, Section 7-B, Section 11 or Section 12
   (b) Section 17, in so far as it relates to the providing and maintenance of sufficient and suitable lighting in or around the dock
   (c) Section 18, Section 19, Section 42, Section 46, Section 47 or Section 49, in relation to the workers employed on such repair or maintenance
2. The owner of the ship or his agent or master or other officer-in-charge of the ship or any person who contracts with such owner, agent or master or

other officer-in-charge to carry out the repair or maintenance work shall be deemed to be the occupier for the purposes of any matter provided for by or under Section 13, Section 14, Section 16 or Section 17 (save as otherwise provided in this provisio) or Chapter IV (except Section 27) or Section 43, Section 44 or Section 45, Chapter VI, Chapter VII, Chapter VIII or Chapter IX or Section 108, Section 109 or Section 110, in relation to—

(a) The workers employed directly by him, or by or through any agency

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

In *M/s. Bhatia Metal Containers Pvt. Ltd.* v. *State of U.P.*[1], the Allahabad High Court held that from the first proviso of Section 2(n) it is clear that in the case of a company, one of the directors shall be deemed to be occupier. This proviso is also applicable to private limited companies. But Section 2(n) does not require that a company has to nominate only one of the directors or partners or individuals of an association as the occupier.[2]

1.3 HEALTH PROVISIONS FOR FACTORY WORKERS

Cleanliness

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

Disposal of Wastes and Effluents

Section 12 makes it obligatory on the occupier of every factory to make effective arrangements for the treatment of wastes and effluents due to the manufacturing process carried on therein, so as to render them innocuous and for their disposal.

Ventilation and Temperature

Section 13 of the Act provides that:

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

such adequate measures as are practicable shall be taken to protect the workers therefrom, by separating the process, which produces such temperatures, from the workroom, by insulating the hot parts or by other effective means

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Dust and Fumes

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

1. In every factory, in which, by reason of the manufacturing process carried on, there is given off any dust or fume or other impurity of such a nature and to such an extent as is likely to be injurious or offensive to the workers employed therein, or any dust in substantial quantities, effective measures shall be taken to prevent its inhalation and accumulation in any workroom, and if any exhaust appliance is necessary for this purpose, it shall be applied as near as possible to the point of origin of the dust, fume or other impurity, and such point shall be enclosed so far as possible.
2. In any factory, no stationary internal combustion engine shall be operated unless the exhaust is conducted into the open air, and no other internal combustion engine shall be operated in any room unless effective measures have been taken to prevent such accumulation of fumes therefrom as are likely to be injurious to the workers employed in the room.

Artificial Humidification

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

Overcrowding

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

Lighting

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

Conservancy Arrangements

The Act makes it obligatory on the employer to provide separately for male and female workers in every factory a sufficient number of toilets of the prescribed type. Further,

it should be situated at a place so at to be convenient and accessible to the employees. Moreover, it should be enclosed, adequately lighted, ventilated and cleanly maintained. For the purposes of sanitation, sweepers should be employed to clean toilets and washing places. But in factories employing more than 250 workers all and urinals shall be of prescribed sanitary types and the floors and internal walls, 90 centimetres tall. The sanitary blocks shall be laid in glazed tiles or otherwise finished to provide a smooth polished impervious surface.

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1.4 SAFETY OF WORKERS IN FACTORIES

Fencing of Machinery

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

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

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

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

(iv) unless they are in such position or of such construction as to be safe to every person employed in the factory as they would be if they were securely fenced, the following,

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

(b) every part of transmission machinery

(c) every dangerous part of any other machinery

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

Work on or Near Machinery in Motion

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

(a) lubrication or other adjusting operation

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

Such examination or operation shall be made or carried out only by a specially trained adult male worker wearing tight-fitting clothing (which shall be supplied by the occupier) whose name has been recorded in the register prescribed in this behalf and who has been furnished with a certificate of his appointment, and while he is so engaged:

(a) Such worker shall not handle a belt at a moving pulley unless:

(i) the belt is not more than fifteen centimetres in width

(ii) the pulley is normally for the purpose of drive and not merely a flywheel or balance wheel (in which case a belt is not permissible)

(iii) the belt joint is either laced or flush with the belt

(iv) the belt, including the joint and the pulley rim, are in good repair

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(v) there is reasonable clearance between the pulley and any fixed plant or structure

(vi) secure foothold and, where necessary, secure handhold, are provided for the operator

(vii) any ladder in use for carrying out any examination or aforesaid operation is securely fixed or lashed or is firmly held by a second person

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

Employment of Young Persons on Dangerous Machines

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

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

Striking Gear and Devices for Cutting off Power

In order to move the driving belts to and from fast and loose pulleys in transmission machinery and to prevent the belt from creeping back onto the fast pulley, suitable striking gear or other efficient mechanical appliance shall be provided, maintained and used. No driving belt when unused shall be allowed to rest or ride upon shafting in motion. Suitable devices are also maintained in every workroom for cutting off power in emergencies. But in factories operating before the commencement of the Act, this precaution is taken only where electricity is used as power for machines.[3] Further, when a device, which can inadvertently shift from 'off' to 'on' position, is provided in a factory to cut off power, arrangements shall be provided for locking the device in a safe position to prevent accidental starting of the transmission machinery or other machines to which the device is fitted.

Self-acting Machines

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

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

The chief inspector however, empowered to permit the continued use of a machine installed before the commencement of this Act which does not comply with the requirements of this section on such conditions for ensuring safety as he may think fit to impose.

Casing of New Machinery

Section 26(1) provides that in all machinery driven by power, after the commencement of the Factories Act, 1948, every set screw, bolt or key on any revolving shaft, spindle, wheel or pinion shall be sunk, encased or effectively guarded to prevent danger.[4] Further, all spur, worm and other toothed or friction gearing not requiring/frequent adjustment while in motion shall be completely encased, unless they are safely situated. Furthermore, Section 26(2) provides that whoever sells or lets on hire or, as agent of the seller or hirer, causes or procures to be sold or let on hire, for use in a factory any machinery driven by power which does not comply with the provisions of sub-section (1) or any rules made under sub-section (3), shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to ₹ 500 or with both. Under the Act, the state government is empowered to make rules for the safeguards to be provided from dangerous parts of machinery.

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Prohibition of Employment of Women and Children Near Cotton Openers

The Factories Act, 1948, prohibits the employment of women and children in any part of the factory for pressing cotton where the cotton opener is at work. But if the feed-end of the cotton opener is in a room separated from the delivery and by a partition extending to the roof or to such height as the inspector may in any particular case specify in writing, women and children may be employed on the side of the partition where the feed-end is situated.[5]

Hoists and Lifts

Hoists and lifts cause numerous accidents. Section 28(1) therefore requires that hoists and lifts must be of good mechanical construction, sound material and adequate strength. They should not only be properly maintained but also thoroughly examined at least twice a year by competent persons. A register should also be maintained for the particulars of examination. Further, every hoistway and liftway must be sufficiently protected by enclosures fitted with gates. Every hoist, lift and enclosure must be constructed in such a way as to prevent any person or thing from being trapped between any part of the hoist or lift and any fixed structure or moving part. Moreover, the maximum safe working load should be marked clearly on every hoist or lift and no load greater than that shall be carried thereon. The cage of hoists or lifts used for carrying persons must have interlocking devices on the gates so as to secure that the gates cannot be opened except when the cage is at the landing and that the cage cannot be moved unless the gate is closed.

According to Section 28(2), the following additional requirements shall apply to hoists and lifts used for carrying persons and installed or reconstructed in a factory after the commencement of the Act, namely:

(a) where the cage is supported by rope or chain, there shall be at least two ropes or chains separately connected with the cage and balance weight, and each rope or chain with its attachments shall be capable of carrying the whole weight of the cage together with its maximum load

(b) efficient devices shall be provided and maintained capable of supporting the cage together with its maximum load in the event of breakage of the ropes, chains or attachments

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

The Act empowers the chief inspector to permit the continued use of a hoist or lift installed in a factory before the commencement of this Act which does not fully comply with the provisions of Section 28 upon such conditions for ensuring safety as he may think fit to impose.[6]

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Lifting Machines, Chains, Ropes and Lifting Tackles

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

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

Section 29(3) lays down that for the purposes of this section a lifting machine or a chain, rope or lifting tackle shall be deemed to have been thoroughly examined if a visual examination supplemented, if necessary, by other means and by the dismantling of parts of the gear, has been carried out as carefully as the conditions permit in order to arrive at a reliable conclusion as to the safety of the parts examined.

Revolving Machinery

Section 30(1) provides that a notice indicating the maximum safe working peripheral speed of the grindstone or abrasive wheel, the speed of the shaft, or spindle, must be permanently affixed on all rooms in a factory where grinding is carried on. The speeds indicated in notices under sub-section (1) shall not be exceeded. Similarly, care shall be taken not to exceed the safe working peripheral speed of every revolving machine like revolving vessel, cage, basket, flywheel, pulley, disc or similar appliances run by power.[7]

Pressure Plant

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

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

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Pit, Sump and Opening in Floors

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

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

Precautions against Dangerous Fumes and Gases

In order to protect factory workers from dangerous fumes, special measures have been taken under the Factories Act. Thus, Section 36(1) prohibits entry in any chamber, tank, vat, pit, pipe, flue, or other confined space in any factory in which any gas, fume, vapour or dust is likely to be present, to such an extent as to involve risk to persons being overcome thereby, except in cases where there is a provision of a manhole of adequate size or other effective means of egress. Section 36(2) provides that no person shall be required or allowed to enter any confined space such as is referred to in sub-section (1) until all practicable measures have been taken to actually remove the gas, fumes or dust, which may be present so as to bring its level within permissible limits.

Precaution against Using Portable Electric Light

The Act prohibits any factory to use portable electric light or any other electric appliance of voltage exceeding 24 volts in any chamber, tank, vat, pipe, flue or other confined space unless adequate safety devices are provided.[8] The Act further prohibits the factory to use any lamp or light (other than that of flame-proof construction) if any inflammable gas, fume or dust is likely to be present in such chamber, tank, vat, pet, pipe, flue or other confined space.[9]

Explosives or Inflammable Materials

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

Further,

> where any part of the plant or machinery in a factory contains any explosive or inflammable gas or vapour under pressure greater than atmospheric pressure, that part shall not be opened except in accordance with the following provisions, namely: (a) before the fastening of any joint of any pipe connected with the part or the fastening of the cover of any opening into the part is loosened, any flow

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of the gas or vapour into the part of any such pipe shall be effectively stopped by a stop-value or other means; (b) before any such fastening as aforesaid is removed, all practicable measures shall be taken to reduce the pressure of the gas or vapour in the part or pipe to atmospheric pressure; (c) where any such fastening as aforesaid has been loosened or removed, effective measures shall be taken to prevent any explosive or inflammable gas or vapour from entering the part of pipe until the fastening has been secured, or, as the case may be, securely replaced.[10]

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

Moreover, Section 37(4) provides that,

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

The state government is, however, empowered to exempt by framing rules any factory or class or description of factories from compliance with all or any of the provisions of Section 37.[11]

Precaution in Case of Fire

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

Safety of Building and Machinery

According to Section 40(1), 'if it appears to the Inspector that any building or part of building or any part of the ways, machinery or plant in a factory is in such a condition that it is dangerous to human life or safety, he may serve on the occupier or manager or both of the factory an order in writing specifying the measures which in his opinion should be adopted, and requiring them to be carried out before a specified date'.

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

Maintenance of Buildings

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

building in a factory is in such a state of disrepair as is likely to lead to conditions detrimental to the health and welfare of the workers.[12]

Safety Officers

In order to prevent accidents, the Act provides for the appointment of safety officers in factories employing 1000 or more workers or where any manufacturing process or operation is carried on, which process or operation involves any risk of bodily injury, poisoning or disease, or any other hazard to the health of the persons employed in the factory.[13] The state government may prescribe the duties, qualifications and conditions of service of safety officers.

Power to Make Rules to Supplement

The state government is empowered to make rules requiring the provision in any factory or in any class or description of factories of such further devices and measures for securing the safety of persons employed therein as it may deem necessary.[14]

1.5 WELFARE OF WORKERS

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

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

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

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

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

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

(vi) Trained first aiders should also be provided.

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

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

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

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

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

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Check Your Progress

1. What does Section 21 (1) of the Factories Act require?
2. What does Section 23 of the Factories Act prohibit?
3. Who has the authority to make rules for the safety of a worker in factories?

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Amenities within the Plant

(i) Drinking Water

Section 18 of the Factories Act, 1948 provides:

1. All such points shall be legibly marked 'drinking water' in a language understood by a majority of the workers employed in the factory, and no such point shall be situated within six metres of any washing place, urinal, latrine, spitoon, open drain carrying sullage or effluents or any other source of contamination unless a shorter distance is approved in writing by the chief inspector.
2. In every factory wherein more than 250 workers are ordinarily employed, provision shall be made for cool drinking water during hot weather by effective means and for distribution thereof.
3. In respect of all factories or any class or description of factories the state government may make rules for securing compliance with the provisions of sub-sections (1), (2) and (3) and for the examination by prescribed authorities of the supply and distribution of drinking water in factories.[15]

(ii) Washing Facilities

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

(iii) Facilities for Storing and Drying Clothing

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

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

Suitability of accommodation within the meaning of Section 43 includes giving protection from theft. Whether accommodation is suitable or not depends on whether the workers' clothes are exposed to risk of theft.[16]

(iv) Facilities for Sitting

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

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

(v) Rest Shelters

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

1.6 WORKING HOURS

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1. **Daily Hours:** Subject to forty-eight weekly hours of work no adult worker shall be required or allowed to work for more than nine hours on any day [Section 54]; however this maximum daily may be exceeded to facilitate change of shifts with the previous approval of the chief inspector [proviso to Section 54].
2. **Intervals for Rest:** While fixing the periods of employment of adult workers it must be ensured that no period exceeds five hours and no worker works for more than five hours without an interval or rest of at least half an hour [Section 55 (1)]. The state government, may however, exempt any factory from this provision. But in that case the total number of hours worked by a worker would not exceed six hours [Section 55 (2)].
3. **Spread Over:** The spread over of the period of work of an adult worker must not exceed ten-and-a-half hours in any day including his intervals for rest, (Section 56). The chief inspector may, however, increase it to twelve hours for reasons to be specified in writing [proviso to Section 56].
4. **Night Shift:** Where a worker works in a shift extending beyond midnight for the purpose of the provision of weekly holidays and compensatory holidays, holidays and compensatory holidays and holiday for whole day shall mean a period of twenty-four consecutive hours, beginning when the shift ends [Section 57 (a)]. The following day for such worker shall be deemed to be period of twenty-four hours beginning when the shift ends and the hours he has worked after midnight, shall be counted in the previous day. [Section 5 (b)].
5. **Prohibition of Overlapping Shifts:** No worker shall be carried on by means of a system of shifts in such a way that more than one relay of workers is engaged in work of the same mind of the same time [Section 58 (1)]. However, the state government may make exceptions to this rule [Section 58 (2)]. In exercise of this power, printing presses attached to newspaper offices have been exempted subject to certain conditions. [Rule 84-A (1)].
6. **Extra Wages for Overtime:** A worker working in excess of an hour in any day or forty-eight hours in any week, shall be entitled to wages at the rate of twice his ordinary rate of wages for overtime work [Section 59 (1)].
7. **Restriction on Double Employment:** An adult worker shall not be required or allowed to work on any day on which he had already been working in any other factory, except in the prescribed circumstances [Section 60].
8. **Notice of Periods of Work for Adults:** A notice of periods of works for adults shall be displayed and it shall show clearly for every day, the periods during which adult workers are required to work [Section 61 (1)]. The period in the notice shall be fixed beforehand and shall not contravene the provisions of weekly and daily hours, weekly holidays, intervals for rest, spread over and prohibition of overlapping shifts [Section 61(2)].

1.7 ANNUAL LEAVE AND WAGES

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

1. The minimum days of work entitling a worker to earn leave is 240 days which would include—
   (a) days of layoff by agreement or contract or as permissible under the Standing Orders
   (b) the leave earned in the year prior to that in which leave is enjoyed
   (c) if the worker is a female, maternity leave for any number of days, not exceeding twelve weeks

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

   Every worker who has worked for a period of 240 days or more in a factory during a calendar year shall be allowed during the subsequent calendar year leave with wages for a number of days calculated at the rate of—
   (i) if an adult, one day for every twenty days of work performed by him during the previous calendar year
   (ii) if a child, one day for every fifteen days of work performed by him during the previous calendar year

   Explanation: The leave admissible under sub-section (1), as noted earlier, shall be exclusive of all holidays whether occurring during or at either end of the period of leave.
2. A worker whose service commences otherwise than on the first day of January shall be entitled to leave with wages at the rate laid down in clause (i), or as the case may be, clause (ii) of sub-section (1), if he has worked for two-thirds of the total number of days in the remainder of the calendar year.
3. Leave to worker discharged or dismissed: If a worker is discharged or dismissed from service, or quits his employment, or is superannuated, or dies while in service, during the course of the calendar year, he or his heir or nominee, as the case may be, shall be entitled to wages in lieu of the quantum of leave to which he was entitled immediately before his discharge, dismissal, quitting of employment, superannuation, or death, calculated at the rates specified in sub-section (1) even if he had not worked for the entire period specified in sub-section (2), making him eligible to avail of such leave, and such payment shall be made—
   (i) where the worker is discharged, or dismissed, or quits employment, before the expiry of the second working day from the date of discharge, dismissal or quitting
   (ii) where the worker is superannuated or dies while in service before the expiry of two months from the date of such superannuation, or death
4. In calculating leave under this section, fraction of leave of half a day or more shall be treated as one full day's leave, and fraction of less than half a day shall be omitted.

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

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

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

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

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

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

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(ii) if the worker quits the employment, but the leave was not granted, although applied for, he shall get payment on or before the next pay day

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

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

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

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

1.8 OBLIGATIONS OF MANAGERS OR OCCUPIERS

1. Every occupier shall ensure, so far as is reasonably practicable, the health, safety and welfare of all workers while they are at work in the factory.
2. Without prejudice to the generality of the provisions of sub-section (1), the matters to which such duty extends, shall include:
   (a) the provision and maintenance of plant and systems of work in the factory that are safe and without risks to health;
   (b) the arrangements in the factory for ensuring safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;
   (c) the provision of such information, instruction, training and supervision as are necessary to ensure the health and safety of all workers at work;
   (d) the maintenance of all places of work in the factory in a condition that is safe without risks to health and the provision and maintenance of such means of access to, and egress from, such places as are safe and without such risks;
   (e) the provision, maintenance or monitoring of such working environment in the factory for the workers that is safe, without risks to health and adequate as regards facilities and arrangements for their welfare at work.
3. Except in such cases as may be prescribed, every occupier shall prepare, and, as often as may be appropriate, revise, a written statement of his general policy with respect to the health and safety of the workers at work and the organization and arrangements for the time being in force for carrying out that policy, and to bring the statement and any revision thereof to the notice of all the workers in such manner as may be prescribed.

1.9 AUTHORITIES AND THEIR POWERS

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

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1. Inspectors

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

Section 8 provides that

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

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

2B. Every additional Chief Inspector, Joint Chief Inspector, Deputy Chief Inspector and every other officer appointment under sub-section (2A) shall, in addition to the powers of a Chief Inspector specified in the notification by which he is appointed, exercise the power of an Inspector throughout the State.

3. No person shall be appointed under sub-section (1), sub-section (2), sub-section (2A) or sub-section (5), or having been so appointed, shall continue to hold office, who is or becomes directly or indirectly interested in a factory or in any process or business carried on therein or in any patent or machinery connected therewith.
4. Every District Magistrate shall be an Inspector for his district.
5. The State Government may also, by notification as aforesaid, appoint such public officers as it thinks fit to be additional Inspectors for all or any of the purposes of this Act, within such local limits as it may assign to them respectively.
6. In any area where there are more Inspectors than one the State Government may, by notification as aforesaid, declare the powers which such Inspectors shall respectively exercise and the Inspector to whom the prescribed notices are to be sent.
7. Every Chief Inspector, Additional Chief Inspector, Joint Chief Inspector, Deputy Chief Inspector, Inspector and every other officer appointed under this section, shall be deemed to be a public servant within the meaning of the Indian Penal Code (XLV of 1860), and shall be officially subordinate to such authority as the State Government may specify in this behalf.

Section 9. Powers of Inspectors

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

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

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

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

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

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

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

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

(h) in case of any article of substance found in any premises, being an article or substance which appears to him as having caused or is likely to cause danger to the health or safety of the workers, direct it to be dismantled or subject it to any process or test (but not so as to damage or destroy it unless the same is, in the circumstances necessary, for carrying out the purposes of this Act), and take possession of any such article or substance or a part thereof, and detain it for so long as is necessary for such examination;

(i) exercise such other powers as may be prescribed.

1. Certifying Surgeons

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

1. The State Government may appoint qualified medical practitioners to be certifying surgeons for the purposes of this Act within such local limits or for such factory or class or description of factories as it may assign to them respectively.
2. A certifying surgeon may, with the approval of the State Government, authorize any qualified medical practitioner to exercise any of his powers under this Act for such period as the certifying surgeon may specify and subject to such conditions as the State Government may think fit to impose, and references in this Act to a certifying surgeon shall be deemed to include references to any qualified medical practitioner when so authorized.
3. No person shall be appointed to be, or authorized to exercise the powers of, a certifying surgeon, or having been so appointed or authorized, continue to

exercise such powers, who is or becomes the occupier of a factory or is or becomes directly or indirectly interested therein or in any process or business carried on therein or in any patent or machinery connected therewith or is otherwise in the employ of the factory:

Provided that the State Government may, by order in writing and subject to such conditions as may be specified in the order exempt any person or class of persons from the provisions of this sub-section in respect of any factory or class or description of factories.

4. The certifying surgeon shall carry out such duties as may be prescribed in connection with-
   (a) the examination and certification of young persons under this Act;
   (b) the examination of persons engaged in factories in such dangerous Occupations or processes as may be prescribed;
   (c) the exercising of such medical supervisions as may be prescribed for any factory or class or description of factories where-
      (i) cases of illness have occurred, which it is reasonable to believe are due to the nature of the manufacturing process carried on, or other conditions of work prevailing, therein;
      (ii) by reason of any change in the manufacturing process carried on or in the substances used therein or by reason of the adoption of any new manufacturing process, or of any new substance for use in a manufacturing process, there is a likelihood of injury to the health of workers employed in that manufacturing process;
      (iii) young persons are, or are about to be, employed in any work which is likely to cause injury to their health.

   Explanation: In this section "qualified medical practitioner" means a person holding a qualification granted by an authority specified in the Schedule to the Indian Medical Degrees Act, 1916 (VII of 1916), or in the Schedule to the Indian Medical Council Act, 1933 (XXVI1 of 1933).

2. Safety Officers

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

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

Safety officers must be in every factory, wherein one thousand or more workers are ordinarily employed or wherein, in the opinion of the State Government, any

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manufacturing process or operation is carried on, which processor operation involves any risk of bodily injury, poisoning or disease, or any hazard to health, to the persons employed in the factory.

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

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

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

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

Safety Officer-Responsibilities

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

Only one Safety Officer will be assigned for each incident, including incidents operating under Unified Command and multi- jurisdiction incidents. The Safety Officer may have assistants, as necessary, and the assistants may also represent assisting agencies or jurisdictions. During initial response, document the hazard analysis process, hazard identification, exposure assessment and controls. Participate in planning meetings to identify any health and safety concerns inherent in the operations daily work plan. Review the Incident Action Plan for safety implications. Exercise emergency authority

to prevent or stop unsafe acts. Investigate accidents that have occurred within incident areas. Ensure preparation and implementation of Site Safety and Health Plan (SSHP) Assign assistants and manage the incident safety organization.

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3. Welfare Officers

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

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

The State Government may make rules-

(a) exempting, subject to compliance with such alternative arrangements for the welfare of workers as may be prescribed, any factory or class or description of factories from compliance with any of the provisions of this Chapter,

(b) requiring in any factory or class or description of factories that representatives of the workers employed in the factories shall be associated with the management of the welfare arrangements of the workers.

1.10 LICENSING AND REGISTRATION OF FACTORIES

1. The State Government may make rules-
   [(a) requiring, for the purposes of the Act, the submission of plans of any class or description of factories to the Chief Inspector or the State Government;]
   [(aa) requiring the previous permission in writing of the State Government or the Chief Inspector to be obtained for the site on which the factory is to be situated and for the construction or extension of any factory or class or description of factories;
   (b) requiring for the purpose of considering applications for such permission the submission of plans and specifications;
   (c) prescribing the nature of such plans and specifications and by whom they shall be certified;
   (d) requiring the registration and licensing of factories or any class or description of factories, and prescribing the fees payable for such registration and licensing and for the renewal of licenses;
   (e) requiring that no license shall be granted or renewed unless the notice specified in section 7 has been given.
2. If on an application for permission referred to in [clause (aa)] of sub-section (1) accompanied by the plans and specifications required by the rules made under clause (b) of that sub-section, sent to the State Government or Chief Inspectors by registered post, no order is communicated to the applicant within three months

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from the date on which it is so sent, the permission applied for in the said application shall be deemed to have been granted.

3. Where a State Government or a Chief Inspector refuses to grant permission to the site, construction or extension of a factory or to the registration and licensing of a factory, the applicant may within thirty days of the date of such refusal appeal to the Central Government if the decision appealed from was of the State Government and to the State Government in any other case.

***Explanation*:** A factory shall not be deemed to be extended within the meaning of this section by reason only of the replacement of any plant or machinery, or within such limits as may be prescribed, of the addition of any plant or machinery [if such replacement or addition does not reduce the minimum clear space required for safe working around the plant or machinery or adversely affect the environmental conditions from the evolution or emission of steam, heat or dust or fumes injurious to health.]

1.11 PENALTY PROVISIONS

Section 92. General penalty for offences

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

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

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

Check Your Progress

4. How is a 'factory' defined according to the Factories Act, 1948?
5. What stand does the Factories Act take on artificial humidification?
6. List the amenities that must necessarily be present within the premises of a plant or establishment according to the law on labour welfare.

1.12 SUMMARY

Some of the important concepts discussed in this unit are:

- The various provisions of the Factories Act of 1948.
- The definitions of the term 'factory' as set out in the Act.
- A factory does not mean a mine subject to the operation of the Mines Act, 1925 or a mobile unit belonging to the armed forces of the Union, a railway running shed or hotel, restaurant or eating place.
- The exact definition of a factory as set out in Section 2(m) of the Factories Act, 1948 was given in this unit along with the definitions of terms such as 'manufacturing process' and 'occupier'.

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- The health provisions mandated by the law with regard to the cleanliness to be maintained within the premises of the factory, the ventilation, and temperature and humidity conditions to be maintained, lighting, disposal of wastes, etc.
- The safety arrangements to be made in factories in keeping with the law in terms of working near machinery, employment of young persons, striking gear and devices for cutting off power, precautions against fumes and gases, and so on.
- The general welfare of workers with respect to amenities within the plant, determining the maximum working hours, and the annual leave and wage policies to be followed by factories

1.13 ANSWERS TO 'CHECK YOUR PROGRESS'

1. Section 21(1) of the Factories Act requires safety of workers in factories.
2. Section 23 of the Factories Act prohibits the employment of a young person on a dangerous machine unless he/she has been trained properly.
3. The state government has the authority to make rules for the safety of workers in factories.
4. Section 2(m) of the Factories Act, 1948 defines the word 'factory' to mean any premises including the precincts thereof:
   (i) Wherein ten or more workers are working or were working on any day of the preceding twelve months and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
   (ii) Wherein twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on. (Section 2m(i) and 2(m)(ii) of the Act)
5. The Act empowers the state government to make rules in respect of all factories in which the humidity of the air is artificially increased, that is to (i) prescribe standards of humidification, (ii) regulate the methods used for artificially increasing the humidity of the air, (iii) direct prescribed tests for determining the humidity of the air to be correctly carried out and recorded, and (iv) prescribe methods to be adopted for securing adequate ventilation and cooling of the air in the workrooms.
6. The basic amenities that must necessarily be present within the premises of a pant or establishment are drinking water, washing facilities, facilities for storing and drying clothing, facilities for sitting and rest shelters.

1.14 QUESTIONS AND EXERCISES

Short-Answer Questions

1. What does Section 11 of the Factories Act, 1948 deal with?
2. What conservancy arrangements are mandated by the Factories Act?
3. State the provisions of Section21(1) of the Factories Act.
4. According to the Factories Act, how is leave for factory workers calculated?

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Long-Answer Questions

1. Explain the health provisions put in place for factory workers in the Factories Act, 1948.
2. Discuss the provisions of the Factories Act, 1948 with regard to the safety of factory workers.

1.15 REFERENCES

1. 1989 Lab. IC 2275.
2. *W.S. Industries (India) Ltd.* v. *Inspector of Factories* (1991) 2 LLJ 481 (HC Karnataka).
3. Section 24.
4. Section 26(2).
5. Section 27.
6. Section 27(3).
7. Sub-section (3) of Section 30.
8. Section 36-A (a).
9. Section 36-A(b).
10. Section 37(3).
11. Section 37(5)
12. Section 40-A.
13. Section 40-B.
14. Section 41.
15. *See* also Section 19 of the Mines Act, 1952.
16. *McCarthy* v. *Daily Mirror Newspaper*, [1949]1 All ER 801 (CA).

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UNIT 2 WORKMEN'S COMPENSATION AND EMPLOYEES' STATE INSURANCE ACTS

Structure

2.0 INTRODUCTION

This unit focuses on the Workmen's Compensation Act which was introduced in 1923 and the Employees State Insurance Act which came into effect in the year 1948. The first Acts ensures that an employee gets compensation from his employer in the case of any mishap during his or her employment. The second Act provides the sickness, disablement, medical and maternity benefits to the employee of a factory or other industrial establishments. This unit will also help you understand the meanings of employee, wages, contributions and the various kinds of benefits covered under these Acts.

2.1 UNIT OBJECTIVES

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

- Explain the object and scope of the Workmen's Compensation Act, 1923
- Discuss the methods of calculating wages and distribution of compensation
- Understand the object and definitions of the Employees State Insurance Act
- Know about various benefits availed of by the employees and their dependants

2.2 WORKMEN'S COMPENSATION ACT, 1923

Object of the Act

The object of the Act is to impose an obligation upon employers to pay compensation to workers for accidents arising out of and in the course of employment. The scheme

of the Act is not to compensate the workman in lieu of wages, but to pay compensation for the injury sustained by him.

Scope and Coverage

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

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

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

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

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

(a) a widower,

(b) a parent other than a widowed mother,

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

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

(e) a widowed daughter-in-law,

(f) a minor child of a predeceased son,

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

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

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

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

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

Total disablement: This means such disablement, whether of a temporary or permanent nature

(iii) Total disablement—This means such disablement, whether of a temporary or permanent nature, that incapacitates a workman for all the work he was capable of performing at the time of the accident resulting in such disablement; provided that permanent total disablement shall be deemed to result from every injury specified in Part I of Schedule I or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to 100 per cent or more (Section 2(1) (g).

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

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

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

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

Liability of an Employer to Payment Compensation

Section 3 of the Workmens' Compensation Act lays down conditions under which a workman is entitled to claim compensation. An employer shall be liable to pay compensation in accordance with the provisions of Sections 3 to 18-A to the workman

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if, firstly, personal injury is caused to him and, secondly, if he contracts any occupational disease or diseases in conditions stipulated in sub-sections (2), (3) and (4) of Section 3 of the Act.

Personal injury—Such personal injury:

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

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

An accident alone does not give a workman a right to compensation. For him to be entitled to compensation at the hands of his employers, the accident must arise out of and in the course of his employment. Any workman while undertaking a work which is not during the course of employment, if involved in an accident, is not entitled to compensation. An occurrence which is sudden and unexpected, and without any design on the part of the workman is an accident.[1] In *G.A.R.* vs *Bombay Port Trust*,[2] it was held that a workman suffering from heart disease, if dies on account of strain by standing and walking, the accident arose out of employment. Death from heat stroke is a personal injury.[3]

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

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

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

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

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

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

Provided that if it is proved—

(a) that a workman whilst in the service of one or more employers in any employment specified in Part C of Schedule III has contracted a disease specified therein as an occupational disease peculiar to that employment during a continuous period which is less than the period specified under this sub-section for that employment, and

(b) that the disease has arisen out of and in the course of the employment; the contracting of such disease shall be deemed to be an injury by accident within the meaning of this section.

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

Section 3(2-A) provides that if a workman employed in any employment specified in Part C of Schedule III contracts any occupational disease peculiar to that employment, the contracting whereof is deemed to be an injury by accident within the meaning of this Section, and such employment was under more than one employer, all such employers shall be liable for the payment of the compensation in such proportion as the commissioner may, in the circumstances, deem just.

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

As is clear from the provisions of sub-section (2) of Section 3, the list of occupational diseases is contained in Schedule III of the Act.[4] This Schedule is divided into three parts—A, B, and C. The disease contacted must be an occupational disease peculiar to the employment as specified in Schedule III. A list of several employments is given in relation of every such disease, described as occupational diseases in Schedule III. No specified period of employment is necessary for a claim for compensation with respect to occupational diseases mentioned in Part A: but for diseases mentioned in Part B, the workman must be in continuous service of the same employer for a period of six months in the employment specified in that Part. For diseases in Part C, the period of employment would be such as is specified by the Central Government for each of such employment, whether in the service of one or more employers. The contracting of any disease specified in Schedule III shall be deemed to be an injury by accidents arising out of and in the course of employment, unless the contrary is proved.

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

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

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

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

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

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

for a continuous period specified under sub-section (2), for that employment, and he has, after the cessation of such service, contacted any disease (in the said Part B or the said Part C), as the case may be, as an occupational disease peculiar to the employment, and such disease arose out of the employment, the contacting of the disease shall be deemed to be an injury by accident.

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

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

Non-occupational disease—Sub-section (4) of Section 3 provides that save as provided by sub-section (2) (2-A), and (3), no compensation shall be payable to a workman in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of the employment.

It is a substantial question of law whether a workman who was suffering from a disease and died when he was in employment would come under Section 3(4) of the Act.[5]

When is the employer is not liable for compensation?

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

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

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

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

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

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

No compensation shall be payable to a workman in respect of any disease, unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment, save as provided by sub-sections (2), (2-A) and (3) of Section 3.

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

The doctrine of notional extension has been mostly applied to four types of cases of injury to workmen employed in : (i) workshops, factories or other such establishments; (ii) harbours or on ships; (iii) transport services; (iv) mines. In some cases, the basis of the notional extension is considered to be an implied term of the contract,[6] while in others it is the proved or practical necessity.[7]

Saurashtra Salt Manufacturing Co. vs. *Bai Velu Raja*[8] laid down the following principles of notional extension of time and place:

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

The aforesaid principle was extended in *B.E.S.T. Undertakings* vs. *Mrs Agnes*[9] to cases where the employer offered the facility of bus service to its drivers for them to come to their depots and go back to their homes, as employees as of right and in interest of efficiency of service. The court accordingly held by a majority judgement that when a driver when going home from the depot or coming to the depot uses the bus provided as a means of transport any accident in such bus that happens to him is an accident in the course of his employment. The I.L.O. also adopted a convention in 1964 which defines more explicitly the kind of trips which are to be covered under workmen's compensation systems. They include[10] trips between the place of work and (1) the employee's permanent or temporary residence; (2) the place where the employee takes his meals; and (3) the place where the employee ordinarily receives his salary.

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

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

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

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

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

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

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

Amount of Compensation and Method of Calculation

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

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

Explanation I—For the purposes of Clause (a) and Clause (b), 'relevant factor' in relation to a workman means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years

which are the same as the completed years of the age of the workman on his last birthday immediately preceding the date on which the compensation fell due.

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

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

Explanation I—Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries.

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

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

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

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thereafter half-monthly during the disablement or during a period of five years, whichever period is shorter:

Provided that—

(a) there shall be deducted from any lump sum or half-monthly payments to which the workman is entitled the amount of any payment or allowance which the workman has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the first half-monthly payment, as the case may be; and

(b) no half-monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the workman before the accident exceeds half the amount of such wages which he is earning after the accident.

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

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

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

Compensation to be paid when Due and Penalty for Default

1. Compensation under Section 4 pertaining to the amount of compensation shall be paid as soon as it falls due.
2. In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and such payment shall be deposited with the Commissioner or made to the workman, as the case may be, without prejudice to the right of the workman to make any further claim.
3. Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall—
   (a) direct the employer to, in addition to the amount of the arrears, pay simple interest thereon at the rate of 12 per cent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be

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specified by the Central Government, by notification in the Official Gazette, on the amount due; and

(b) if, in his opinion, there is no justification for the delay, direct the employer to, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding 50 per cent of such amount by way of penalty.

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

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

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

Method of Calculating Wages

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

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

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

(c) In other cases including cases in which it is not possible for want of necessary information to calculate the monthly wages under clause (b), the monthly wages shall be thirty times the total wages earned in respect of last continuous period of service immediately preceding the accident from the employer who is liable to pay compensation, divided by the number of days comprising such period.

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

Distribution of Compensation

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

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

2. Any other sum amounting to not less than ₹ 10 which is payable as compensation may be deposited with the Commissioner on behalf of the person entitled thereto.
3. The receipt of the Commissioner shall be a sufficient discharge in respect of any compensation deposited with him.
4. On the deposit of any money under sub-section (1), as compensation in respect of a deceased workman the Commissioner shall, if he thinks necessary, cause notice to be published or to be served on each dependant in such manner as he thinks fit, calling upon the dependants to appear before him on such date as he may fix for determining the distribution of the compensation. If the Commissioner is satisfied after any inquiry which he may deem necessary, that no dependant exists, he shall repay the balance of the money to the employer by whom it was paid. The Commissioner shall, on application by the employer, furnish a statement showing in detail all disbursements made.
5. Compensation deposited in respect of a deceased workman shall, subject to any deduction made under sub-section (4) be apportioned among the dependants of the deceased workman or any of them in such proportion as the Commissioner thinks fit, or may, in the discretion of the Commissioner, be allotted to any one dependant.
6. Where any compensation deposited with the Commissioner is payable to any person, the Commissioner shall, if the person to whom the compensation is payable is not a woman or a person under a legal disability, and may, in other cases, pay the money to the person entitled thereto.
7. Where any lump sum deposited with the Commissioner is payable to a woman or a person under a legal disability, such sum may be invested, applied or otherwise dealt with for the benefit of the woman, or of such person during his disability, in such manner as the Commissioner may direct; and where a half-monthly payment is payable to any person under a legal disability, the Commissioner may, on his own motion or on an application made to him in this behalf, order that the payment be made during the disability to any dependant of the workman or to any other person whom the Commissioner thinks best fitted to provide for the welfare of the workman.
8. Where, on application made to him in this behalf or otherwise, the Commissioner is satisfied that on account of neglect of children on the part of a parent or on account of the variation of the circumstances of any dependant or for any other sufficient cause, an order of the Commissioner as to the distribution of any sum paid as compensation or as to the manner in which any sum payable to any such dependant is to be invested, applied or otherwise dealt with, ought to be varied, the Commissioner may make such orders for the variation of the former order as he thinks just in the circumstances of the case:

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

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

Notice, Claim and Appeal

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

1. No claim for compensation shall be entertained by a Commissioner unless notice of the accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before him within two years of the occurrence of the accident or in case of death within two years from the date of death:

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

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

   Provided further that if a workman who, having been employed in an employment for a continuous period, specified under sub-section (2) of section 3 in respect of that employment, ceases to be so employed and develops symptoms of an occupational disease peculiar to that employment within two years of the cessation of employment, the accident shall be deemed to have occurred on the day on which the symptoms were first detected:

   Provided further that the want of or any defect or irregularity in a notice shall not be a bar to the entertainment of a claim.

   (a) if the claim is preferred in respect of the death of a workman resulting from an accident which occurred on the premises of the employer, or at any place where the workman at the time of the accident was working under the control of the employer or of any person employed by him, and the workman died on such premises or at such place, or on any premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurred, or

   (b) if the employer or any one of several employers or any person responsible to the employer for the management of any branch of the trade or business

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in which the injured workman was employed had knowledge of the accident from any other source at or about the time when it occurred: Provided further that the Commissioner may entertain and decide any claim to compensation in any case notwithstanding that the notice has not been given, or the claim has not been preferred, in due time as provided in this sub-section, if he is satisfied that the failure so to give the notice or prefer the claim, as the case may be, was due to sufficient cause

2. Every such notice shall give the name and address of the person injured and shall state in ordinary language the cause of the injury and the date on which the accident happened, and shall be served on the employer or upon [any one of several employers, or upon any person responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed.
3. The State Government may require that any prescribed class of employers shall maintain at these premises al which workmen are employed a notice book, in the prescribed form, which shall be readily accessible al all reasonable times to any injured workman employed on the premises and lo any person acting bona fide on his behalf.
4. A notice under this section may be served by delivering it at, or sending it by registered post addressed to, the residence or any office or place of business of (he person on whom it is to be served, or, where a notice book is maintained, by entry in the notice book.

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

Administration

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

(i) Settlement of disputed claims

(ii) Disposal of cases of injuries involving death

(iii) Revision of periodical payments (Section 20)

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

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

Disposal of Cases of Injuries

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

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

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

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

2.2.1 Statements Regarding Fatal Accidents

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

1. Where a Commissioner receives information from any source that a workman has died as a result of an accident arising out of and in the course of his employment, he may send by registered post a notice to the workmen's employer requiring him to submit, within thirty days of service of the notice, a statement, in the prescribed form, giving the circumstances attending the death of the workman, and indicating whether, in the opinion of the employer, he is not liable to deposit compensation on account of the death.

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2. If the employer is of opinion that he is liable to deposit compensation, he shall make the deposit within ten days of the service of the notice.
3. If the employer is of opinion that he is not liable to deposit compensation, he shall- in his statement indicate the grounds on which he disclaims liability.
4. Where the employer has so disclaimed liability, the Commissioner, after such inquiry as he may think fit, may inform any of the dependents of the deceased workman that it is open to the dependents to prefer a claim for compensation, and may give them such other further information as he may think fit.

10-B. Reports of fatal accident—

1. Where, by any law for the time being in force, notice is required to be given to any authority, by or on behalf of an employer, of any accident occurring on his premises which results in death, the person required to give the notice shall, within seven days of the death, send a report to the Commissioner giving the circumstances attending the death:

   Provided that where the [Provincial Government] has so prescribed, the person required to give the notice may instead of sending such report to the Commissioner send it to the authority to whom he is required to give the notice.
2. The [Provincial- Government] may, by notification in the 3[official Gazette], extend the provisions of sub-section (1) to any class of premises other than those coming within the scope of the sub-section, and may, by such notification, specify the persons who shall send the report to the Commissioner].

Medical Examination

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

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

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

(2) If a workman, on being required to do so by the employer under sub-section (1) or by the Commissioner at any time, refuses to submit himself for examination by a qualified medical practitioner or in any way obstructs the same, his right to compensation shall be suspended during continuance of such refusal or obstruction unless, in the case of refusal, he was prevented by any sufficient cause from so submitting himself.

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

(1) to be required to submit himself for medical examination voluntarily leaves without having been so examined the vicinity of the place in which he was employed, his right

to compensation shall be suspended until he returns and offers himself for such examination.

(4) Where a workman, whose right to compensation has been suspended under sub-section (2) or sub-section (3), dies without having submitted himself for medical examination as required by either of those sub-sections the Commissioner may, if he thinks fit, direct the payment of compensation to the dependents of the deceased workman.

(5) Where under sub-section (2) or sub-section (3) a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension, and, if the period of suspension commences before the expiry of the waiting period referred to in clause D of sub-section (1) of section 4, the waiting period shall be increased by the period during which the suspension continues.

(6) Where an injured workman has refused to be attended by a qualified medical practitioner whose services have been offered to him by the employer free of charge or having accepted such offer deliberately disregarded the instructions of such medical practitioner, then, [if it is proved that the workman has not thereafter been regularly attended by a qualified medical practitioner or having been so attended has deliberately failed to follow his instructions and that such refusal, disregard or failure was unreasonable] in the circumstances of the case and that the injury has been aggravated thereby, the injury and resulting disablement shall be deemed to be of the same nature and duration as they might reasonably have been expected to be if the workman had been regularly attended by a qualified medical practitioner [whose instructions he had followed], and compensation, if any, shall be payable accordingly.

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Remedies of employer against stranger

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

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

1. Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any workman, then in the event of the employer becoming insolvent or making a composition or scheme of arrangement with his creditors or, if the employer is a company, in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in any law for the time being in force relating to insolvency or the winding up of companies, be transferred to and vest in the workman, and upon any, such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so, however, that the insurers shall not be under any greater liability to the workman than they would have been under to the employer.
2. If the liability of the insurers to the workman is less than the liability of the employer to the workman, the workman may prove for the balance in the insolvency proceedings or liquidation.

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3. Where in any case such as is referred to in sub-section (1) the contract of the employer with the insurers is void or voidable by reason of non-compliance on the part of the employer with any terms or conditions of the contract (other than a stipulation for the payment of primia), the provision of that sub-section shall apply as if the contract were not void or voidable, and the insurers shall be entitled to prove in the insolvency proceedings or liquidation for the amount paid to the workman: Provided that the provisions of this sub-section shall not apply in any case in which the workman fails to give notice to the insurers of the happening of the accident and of any resulting disablement as soon as practicable after he becomes aware of the insolvency or liquidation proceedings.
4. There shall be deemed to be included among the debts which under section 49 of the [Insolvency (Karachi Division) Act.], 1909 **(III** of 1909)], or under section 230 of [the Companies Act, 1913 (VII of 1913).] are in the distribution of the property of an insolvent or in the distribution of the assets of a company being wound up to be paid to priority to all other debts, the amount due in respect of any compensation the liability wherefore accrued before the date of the order of adjudication of the insolvent or the date of the commencement of the winding up, as the case may be and those Acts shall have effect accordingly.
5. Where the compensation is a half-monthly payment, the amount due in respect thereof shall, for the purpose of this section, be taken to be the amount of the lump sum for which the half-monthly payment could, if redeemable, be redeemed if application were made for that purpose under section 7, and a certificate of the Commissioner as to the amount of such sum shall be conclusive proof thereof.
6. The provisions of sub-section (4) shall apply in the case of any amount for which an insurer is entitled to prove under sub-section (3) but otherwise those provisions shall not apply where the insolvent or the company being wound up has been entered into such a contract with insurers as is referred to in sub-section (1).
7. This section shall not apply where a company is wound up voluntarily merely for the purpose of reconstruction or of amalgamation with another company.

Returns as to Compensation

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

Provided that the employer shall not be so liable-

(a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding [four] days.

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

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

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

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

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

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Commissioners for Workmen's Compensation

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

Sec. 20 Appointment of commissioners:

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

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

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

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

Form of application:

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

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

(2)An application to a Commissioner may be made in such form and shall be accompanied by such fee, if any, as may be prescribed, and shall contain, in addition to any particulars which may be prescribed, the following particulars namely:

(a) a concise statement of the circumstances in which the application is made and the relief or order which the applicant claims;

(b) in the case of a claim for compensation against an employer, the date of service of notice of the accident on the employer, and if such notice has not been served or has not been served in due time, the reason for such omission;

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(c) the names and addresses of the parties; and

(d) except in the case of an application by dependants for compensation a concise statement of the matters on which agreement has and of those on which agreement has not been come to.

(3) If the applicant is illiterate or for any other reason is unable to furnish the required information in writing, the application shall, if the applicant so desires, be prepared under the direction of the Commissioner.

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

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

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

2.3 EMPLOYEES STATE INSURANCE ACT, 1948

Object of the Act

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

Applicability of the Act

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

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

Check Your Progress

1. What is the object of the Workmen's Compensation Act, 1923?
2. Who is authorized to administer the Workmen's Compensation Act?

Definitions

Employee

The term 'employee' as defined under Section 2(9) of the Act, refers to any person employed on wages in, or in connection with, the work of a factory or establishment to

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

Wages

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

Wages: 'Wages' means all remuneration paid in cash if the terms of the contract are fulfilled

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

(ii) Travelling allowance or the value of travelling concession

(iii) Sum paid to defray special expenses

(iv) Gratuity payable on discharge

Contributions

The main sources of finance are the contributions from employers and employees and one-eighth share of expenses by State Governments towards the cost of medical care. Employees' contribution has to be calculated individually for each employee at 1.75 per cent of the wages paid/payable for every wage period. The employers' contribution, however, may be calculated at the rate of 4.75 per cent of the total wages paid to all the employees covered under the ESI Scheme in each wage period, rounded to the next higher multiple of five paise. The total value of the combined employers' and the employees' share has to be deposited in the State Bank of India or in any other authorized bank or branch through a challan in quadruplicate as per the proforma on or before the 21st of the month following the calendar month in which the wages fall due. An employer who fails to pay his contribution within the periods specified shall be liable to pay interest and damages for late payment under Section 85(B) of the Act. The Act has laid down the purposes for which the fund may be expended. The accounts of the corporation shall be audited by auditors appointed by the Central Government.

Employees whose average daily wage is below ₹ 15 are exempted from payment of their contribution; only the employer's contribution will be payable at 4.75 per cent in respect of such employees.

'Contribution period' and 'benefit period' are fixed for the purpose of paying contributions and deriving benefits under the Act. In respect of the contribution period from 1 April to 30 September, the corresponding benefit period shall be from 1 January of the year following to 30 June, and in respect of the contribution period from 1st

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October to 31 March of the year following, the corresponding benefit period shall be from 1 July to 31 December of the year following. In the case of a newly employed person, the first contribution period shall commence from the date of his employment, and the corresponding first benefit period shall commence on the expiry of nine months from the said date (Rule 2 and Regulation 4). The daily rate at which sickness benefit is payable to an insured employee during the period of his sickness is called 'standard benefit rate'.

Registration

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

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

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

(a) Register of Employees

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

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

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

Benefits

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

(i) Maternity benefit

(ii) Disablement benefit

(iii) Sickness benefit

(iv) Medical benefit

(v) Dependants' benefit

(vi) Funeral benefit

Maternity Benefit

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

1. An insured woman shall be qualified to claim maternity benefit for a confinement occurring or expected to occur during a benefit period, if the contribution in respect of her were payable for not less than half the number of days of the corresponding contribution period.
2. Subject to the provisions of this Act, and the regulations, if any, an insured woman who is qualified to claim maternity benefit in accordance with sub-

section (1) noted above, shall be entitled to receive it at the daily rate specified in the First Schedule for all days on which she does not work for remuneration during a period of twelve weeks of which not more than six shall precede the expected date of confinement.

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

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

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

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

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

Disablement Benefit

Section 51 lays down that:

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

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

But in case the permanent disablement—whether total or partial—has been assessed provisionally for a limited period or finally, the benefit provided under clause (b) shall be payable for that limited period or, as the cause may be, for life.

Presumption as to Accident Arising in the Course of Employment— Section 51-A provides that for the purposes of this Act, an accident arising in the course of an insured person's employment shall be presumed, in the absence of evidence to the contrary, also to have arisen out of that employment.

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Accidents happening while acting in breach of regulation, law, and so on, (Section 51-B) accidents happening while travelling in employers transport; and accidents happening while meeting an emergency—all shall be deemed to arise out of employment and in the course of an insured person's employment. (Sections 51-C and 51-D).

Sickness Benefit

According the Section 47 of the Act, a person shall be qualified to claim sickness benefit for sickness occurring during any benefit period if the contribution in respect of him were payable for not less than half the number of days of the corresponding contribution period.

Sickness Benefit—Section 49 provides that subject to the provisions of the Act and the regulations, if any, a person qualified to claim sickness benefit in accordance with Section 47 shall be entitled to receive such benefit for his sickness.

But he shall not be entitled to the benefit for the first two days of sickness in the case of a spell of sickness following at an interval of not more than fifteen days, for which sickness benefit was last paid.

The benefit shall not be paid to any person for more than fifty-six days in any consecutive benefit periods.

Medical Benefit

Section 56 provides that an insured person or where such medical benefit is extended to his family, a member of his family whose condition requires medical treatment and attendance, shall be entitled to receive medical benefit. Such medical benefit may be given either in the form of out-patient treatment and attendance in a hospital or dispensary, clinic or other institution or by visits to the home of the insured person or treatment as in-patient in a hospital or other institution.

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

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

Dependant's Benefit

Section 52 lays down that if an insured persons dies as a result of an employment injury sustained as an employee under this Act (whether or not he was in receipt of any periodical payment for temporary disablement in respect of the injury) dependants benefit shall be payable in accordance with the provisions of the First Schedule to his dependants specified in sub-clause (i) and sub-clause (ii) of clause (6-A) of Section 2.

If the insured person dies without leaving behind him the dependants as aforesaid, the dependants benefit shall be paid to the other dependants of the deceased in accordance with the provisions of the First Schedule.

It is clear from these provisions that a dependant's benefit will be payable if the insured employee dies on account of an employment injury or an occupational disease arising out of and in the course of employment.

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Funeral Benefit

Under Section 46 (f), funeral expenses are payable to the eldest surviving member of the family or an insured person who has died. If the insured person did not have a family or was not living with his family at the time of his death, it shall be payable to the person who actually incurs the expenditure on the funeral. Such amount shall not exceed ₹ 100. The claim should be made within three months from the date of death or within the extended period.

Employees' State Insurance Corporation

Employees' State Insurance Corporation (ESIC) was established by the Central Government under the Employees' State Insurance Act, 1948. The major objective behind the establishment of the corporation was to protect the interest of workers in problems like Sickness, Maternity, etc. that result in the loss of wages or earning capacity of the workers. The major function performed by ESIC is to administer the scheme.

The Corporation shall be a body corporate with perpetual succession and a common seal and shall be competent to sue and be sued in its name [Section 3(2)].

Composition

According to Section 4 the Corporation shall consist of the following:

1. A Chairman to be nominated by the Central Government
2. A Vice-chairman to be nominated by the Central Government
3. Five persons to be nominated by the Central Government
4. One person each representing each of the states in which this Act is in force to be nominated by the state government concerned
5. One person representing the Union territories
6. Five persons representing the employers to be nominated by the Central Government in consultation with such organizations of the employees as may be recognized for the purpose by the Central Government
7. Five persons representing the employees to be nominated by the Central Government in consultation with such organizations of employees as may be recognized for the purpose by the Central Government
8. Two persons representing the medical profession to be nominated by the Central Government in consultation with such organization of the medical practitioners as may be recognized for the purpose by the Central Government
9. Three persons to be elected by the Parliament—two by Lok Sabha and one by Rajya Sabha
10. The Director General of the Corporation, ex-officio

Terms

The term of the members of the Corporation, mentioned above at No. 6, 7, 8, 9 and 10, shall be four years. The members of the Corporation referred to above at Nos. 1, 2, 3, 4 and 5, shall hold office during the pleasure of the Government nominating them.

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Standing Committee

Under Section 8, a Standing Committee of the Corporation shall be constituted from among its members, consisting of the following members:

(a) A chairman, nominated by the Central Government.

(b) Three members of the Corporation, nominated by the Central Government.

(c) Three members of the Corporation representing such three State Governments thereon as the Central Government may, by notification in the official Gazette, specify from time to time.

(d) Eight members elected by the Corporation as follows:

(i) Three members from among the members of the Corporation representing employees,

(ii) Three members from among the members of the Corporation representing the employers,

(iii) One member from among the members of the Corporation representing the medical profession,

(iv) One member from among the members of the Corporation elected by the Parliament.

(e) The Director-General of the Corporation, ex-officio.

According to Section 9 (i), save as otherwise provided expressly in this Act, the term of office of a member of the standing committee other than a member referred to above under Clauses (a), (b), or (c) of Section 8 shall be two years from the date on which his election is notified.

Provided that a member of the Standing Committee shall, notwithstanding the expiry of the said period of two years, continue to the election of his successor is notified.

Provided further that a member of the standing committee shall cease to hold office when he ceases to be a member of the corporation.

Sub-section (2) of section 9 provides that a member of the standing committee referred to above in clause (a), or (b) or clause (c) of section 8 shall hold office during the pleasure of the Central Government.

(b) Powers and functions of the standing committee subject to the general superintendence and control of the Corporation—the standing committee administers the affairs of the Corporation and may exercise any of the powers and perform any of the functions of the Corporation. It shall submit for the consideration and decision of the Corporation all such cases and matters as may be specified in the regulations made in this behalf. The standing committee may in its direction, submit any other case or matter for the decision of the Corporation (Section 18).

Medical Benefit Council

This is constituted under Section 10. It advises the corporation on matters connected with the administration of medical benefits. The Director-General, Health Services will be its chairman, ex-officio.

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Composition

Under Section 10(1), the Central Government shall constitute a Medical Benefit Council consisting of the following:

(i) The Director General, Health Services, ex-officio, Chairman

(ii) A Deputy Director General, Health Services, to be nominated by the Central Government

(iii) The Medical Commissioner of the corporation, ex-officio

(iv) One member each representing each of the state (other than Union territories in which this Act is in force) to be nominated by the state Government concerned

(v) Three members representing employers to be nominated by the Central Government in consultation with such organizations of employers as may be recognized for the purpose by the Central Government

(vi) Three members representing employees to be nominated by the Central Government in consultation with such organizations of employers as may be recognized for the purpose by the Central Government

(vii) Three members of whom not less than one shall be a woman, representing the medical profession to be nominated by the Central Government in consultation with such organizations of medical practitioners as may be recognized for the purpose by the Central Government.

Under sub-section (2) of Section 10, it is further provided that save as otherwise expressly provided in this Act, the term of office of a member of the Medical Benefit Council, other than a member referred to in any of the clauses above from (i) to (iv), shall be four years from the date on which his nomination is notified, provided that a member of the Medical Benefit Council shall, notwithstanding the expiry of the said period of four years, continue to hold-office until the nomination of his successor is notified. Sub-section (3) of Section 10 provides that a member of Medical Benefit Council referred to above under clause (ii) and (iv) shall hold office during the pleasure of the Government nominating him.

Duties of Medical Benefit Council—Under Section 22, the duties of the Medical Benefit Council area as follows:

(a) Advise the Corporation and the standing committee on matters relating to the administration of Medical Benefit, the Certification for the purposes, grant of benefit and other connected matters.

(b) Have such powers and duties of investigation as may be prescribed in relation to complaints against medical practitioners in connection with medical treatment and attendances.

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

(d) For resignation, cessation, and disqualification of the memberships of the Medical Benefit Council. They are the same as for the membership of the Corporation.

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Adjudication of Disputes and Claims

Chapter VI of the Employees' State Insurance Act contains Sections from 74 to 83. The whole chapter is devoted to adjudication of disputes and claims.

Constitution of Employees Insurance Court

1. Under Section 74 (1), the State Government shall, by notification in the Official Gazette, constitute an Employees' Insurance court for such local area as may be specified in the notification.
2. The court shall consist of such number of Judges as the State Government may think fit.
3. Any person who is or has been a Judicial Officer or is a legal practitioner of five years standing shall be qualified to be a Judge of the Employees' Insurance Court.
4. The State Government may appoint the same Court for two or more local areas or two or more Courts for the same local area.
5. Where more than one Court has been appointed for the same local area, the State Government may by general or special order, regulate the distribution of business between them.

Matters to be decided by Employee's Insurance Court

Under Section 75(1), if any question or dispute arises as to:

(a) whether any person is an employee within the meaning of this Act or whether he is liable to pay the employees' contribution; or

(b) the rate of wages or average daily wages of an employee for the purposes of this Act; or

(c) The rate of contribution payable by a principal employer in respect of any employee; or

(d) The person who is or was the principal employer in respect of any employee; or

(e) The right of any person to any benefit and as to the amount and the duration thereof; or

(f) Any direction issued by the Corporation under section 55-A on a review of any payment of dependants' benefits; or any other matter which is in dispute between a principal employer and the Corporation, or between a principal employer and immediate employer, or between a person and the Corporation or between an employee and a principal or immediate employee and a principal or immediate employer, in respect of any contribution or benefit or other dues payable or recoverable under this Act, or any other matter required to be or which may be decided by the Employees' Insurance Court under this Act, such question or dispute, subject to the provisions of Sub-section (2-A), shall be decided by the Employees' Insurance Court, in accordance with the provision of this Act.

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

(a) Claims for the recovery of contributions from the principal employer

(b) Claims by a principal employer to recover contributions from any immediate employer

(c) Claim against a principal employer under Section 68

(d) Claim under Section 70 for the recovery of the value of amount of the benefits received by a person when he is not lawfully entitled thereto, and

(e) Claim for the recovery of any benefit admissible under this Act.

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Case Study

Employees' State Insurance Act, 1948—Sections 2 (15-A) and 54-A

In ESI Corporation, Kanpur and Others vs. *Lallan, 2006 III LLJ* 595, a workman suffered injury in his right ear and he was hence referred by the Corporation to the Medical Board for medical examination for determination of disablement, if any. The Medical Board held that the test does not reveal hearing loss and there was no disablement injury, and, therefore, the workman was not entitled to any disablement benefit.

However, the workman without appearing before the Medical Appellate Tribunal, got examined himself by a private hospital, which stated that there was approximately loss of 40 dts. of hearing because of the injury. With the report of the private hospital, the workman approached the ESI Court. Accepting the said report, the ESI Court set aside the decision of the Medical Board. The Corporation went in appeal against the decision of the ESI Court before the Allahabad High Court. The High Court upheld the appeal and set aside the decision of the ESI Court, and ruled:

(i) The Act does not provide for the examination of the injured person to decide disablement benefit by any other doctor or hospital except the Medical Board constituted under the Act. If reports from a private doctor or of hospital are allowed, it will open the flood-gates for diverse reports and there will be chaos and confusion and it will be difficult for the Court to decide the matter, since the Act has provided for a Medical Board and also for an appearance before the Medical Appellate Tribunal, it is these two only which have the authority to give Reports, with regard to injury of an employee.

(ii) Where an Act provides procedure and forum, it is only the same which is to be accepted and no other procedure or forum can be sustained. There is no provision in the ESI Act, 1948, about the report of Private Medical Practitioner being admissible, unlike that of the Workmen's Compensation Act, 1923.

(iii) The ESI Court was, therefore, wrong in accepting the private hospital's report. Since the report of the Medical Board constituted under the Act says that there was no disablement of any kind, appeal has to be allowed.

2.3.1 Inspectors—Their Functions

Inspectors [Section 19]

1. If any question arises in any proceedings under this Act as to the liability of any person to pay compensation (including any question as to whether a person injured is or is not a workman) or as to the amount of duration of compensation (including any question as to the nature or extent of disablement) the question shall in default of agreement be settled by an inspector.

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2. No Civil Court shall have jurisdiction to settle decided or deal with any question which is by or under this Act required to be settled decided or dealt with by an inspector or to enforce any liability incurred under this Act.

Appointment of Inspector [Section 20]

1. The State Government may, by notification in the Official Gazette, appoint any person to be a Commissioner for Workmen's Compensation for such area as may be specified in the notification.
2. Where more than one Commissioner has been appointed for any area the State Government may by general or special order regulate the distribution of business between them. 334 (Module - V) Thakur's MBA Third Semester HB (Compensation Management) GTU
3. Any inspector may for the purpose of deciding any matter referred to him for decision under this Act choose one or more persons possessing special knowledge of any matter relevant to the matter under inquiry to assist him in holding the inquiry.
4. Every inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860).

Power of Commissioner to Require Further Deposit in Cases of Fatal Accident [Section 22A]

1. Where any sum has been deposited by an employer as compensation payable in respect of a workman whose injury has resulted in death and in the opinion of the inspector such sum is insufficient the inspector may by notice in writing stating his reasons call upon the employer to show cause why he should not make a further deposit within such time as may be stated in the notice.
2. If the employer fails to show cause to the satisfaction of the inspector, the inspector may make an award determining the total amount payable and requiring the employer to deposit the deficiency.

Powers and Procedure of Inspector [Section 23]

The inspector shall have all the powers of a Civil Court under the Code of Civil Procedure 1908 for the purpose of taking evidence on oath (which such Commissioner is hereby empowered to impose) and of enforcing the attendance of witnesses and compelling the production of documents and material objects and the inspector shall be deemed to be a Civil Court for all the purposes of section 195 and of Chapter XXVI of the Code of Criminal Procedure 1973.

Disputes and Claims

Section 10 of the Act prescribes that a claim for compensation shall be entertained by the commissioner only after a notice of the accident has been given to him. Such notice should be given as soon as practicable after the date of the accident. The claim of compensation however be preferred within 2 years form the date of accident or death. In case of deemed accident arising out of occupational disease the date of accident will be recorded as the first day on which the workman starts absenting himself continuously as a consequence of the disease. Failure to give notice shall not bar the entertainment of the claim by the commissioner under the following circumstances, namely:

1. If the death of a workman resulting from the accident occurred on the premises of the employer or at any place where the workman at the time of accident was working under the control of the employer and the workman died at such place or at such premises belonging to the employer and died without having left the vicinity of the premises or the place where the accident occurred; or
2. If the employer or any of the several employers or his manager has knowledge of the accident from any other source at or about the time when it occurred.

Every notice shall be served upon the employer. It may be served by delivering it at or sending it by registered post and addressed to the residence or any of office or place of business of the person on whom it is to be served.

Where a workman has given a notice of accident he should submit himself for medical examination if required by the employer. And such medical examination shall take place within 3 days from the date of service of the notice of accident to the employer Refusal to submit himself for medical examination will result in the suspension of the right of the workman for compensation during the period of refusal During the period of suspension of the right no compensation shall be paid to the workman.

Offences and Penalties

[18A. Penalties.—(1) Whoever—

(a) fails to maintain a notice-book which he is required to maintain under subsection (3) of section 10, or

(b) fails to send to the Commissioner a statement which he is required to send under sub-section (1) of section 10A, or

(c) fails to send a report which he is required to send under section 10B, or

(d) fails to make a return which he is required to make under section 16, shall be punishable with fine which may extend to [five thousand] rupees.

(2) No prosecution under this section shall be instituted except by or with the previous sanction of a Commissioner, and no court shall take cognizance of any offence under this section, unless complaint thereof is made [within six months of the date on which the alleged commission of the offence came to the knowledge of the Commissioner].

Miscellaneous Provisions

Workmen's Compensation Act, 1923: Provisions And Applicability: The Workmen's Compensation Act, 1923 is one of the important social security legislations. It aims at providing financial protection to workmen and their dependants in case of accidental injury by means of payment of compensation by the employers. This Act makes it obligatory for the employers brought within the ambit of the Act to furnish to the State Governments/Union Territory Administrations annual returns containing statistics relating to the average number of workers covered under the Act, number of compensated accidents and the amount of compensation paid.

Applicability of the Act

The Act extends to the whole of India except the States/Union Territories of Arunachal Pradesh, Mizoram, Nagaland, Sikkim and Daman & Diu and Lakshadweep. The

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Act applies to workers employed in any capacity specified in Schedule II of the Act which includes Factories, Mines, Plantations, Mechanically Propelled Vehicles, Construction Work and certain other Hazardous Occupations and specified categories of Railway Servants.

Main Provisions and Scope of the Act

Under the Act, the State Governments are empowered to appoint Commissioners for Workmen's Compensation for (i) settlement of disputed claims, (ii) disposal of cases of injuries involving death, and (iii) revision of periodical payments. Sub-section (3) of Section 2 of the Act, empowers the State Governments to extend the scope of the Act to any class of persons whose occupations are considered hazardous after giving three months notice to be published in the Official Gazette. Similarly, under Section 3(3) of the Act, the State Governments are also empowered to add any other disease to the list mentioned in Parts A and B of Schedule – II and the Central Government in case of employment specified in Part C of Schedule III of the Act.

2.4 SUMMARY

Some of the important concepts discussed in this unit are:

- The various provisions of the Workmen's Compensation and Employees State Insurance Acts.
- The objects, scope and the areas covered by the Act.
- The terms, 'dependant', 'partial disablement, 'total disablement' and 'workman'.
- The conditions under which an employee is entitled to claim the compensation and the situations in which an employer can deny it.
- The clauses relating to the amount of compensation and the method of calculating it.
- The terms 'employee', 'wages', 'contributions, 'registration' and 'benefits which include maternity benefit, disablement benefit, sickness benefit, medical benefit, dependant's benefit and funeral benefit.

2.5 ANSWERS TO 'CHECK YOUR PROGRESS'

1. The object of the Workmen's Compensation Act is to impose an obligation upon employers to pay compensation to workers for accidents arising out of and in the course of employment.
2. The Workmen's Compensation Act is administered by the State governments.
3. The object of the Employees State Insurance Act, 1948 is to provide sickness, disablement, medical and maternity benefits to the employees of factories and other industrial establishments as well as their dependants.

Check Your Progress

3. What is the object of the Employees State Insurance Act, 1948?
4. Define the term 'employee'.

4. As defined under Section 2(9) of the Employees State Insurance Act, 1948, the term 'employee' refers to any person employed on wages in, or in connection with, the work of a factory or establishment to which this Act applies.

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2.6 QUESTIONS AND EXERCISES

Short-Answer Questions

1. Define the term 'partial disablement'.
2. List the benefits granted to an insured worker under the Employees State Insurance Act, 1948.
3. What does the term 'wages' denote?
4. Mention the conditions under which an employer is liable to pay compensation to the employee.

Long-Answer Questions

1. What is Medical Benefit Council? Explain its duties.
2. Discuss the object and scope of the Workmen's Compensation Act, 1923.

2.7 REFERENCES

1. Janaki Ammal vs. Divisional Engineer, Highways, Kozhi Kode, MLJ 19.
2. AIR 1954 Bom. 180.
3. M/s Santan Fernandez vs. B.P. (India) Ltd., 58 Bom. L.R. 149.
4. Schedule III of the Principal Act has been wholly substituted by Section 6 of the Workmen's Compensation (Amendment) Act, 22nd of 1984.
5. Litica Martins vs. M/s Mackinnon & Co. Pvt. Ltd., AIR 1977 Goh, 12.
6. *Cremine* v. *Guest, Keen and Nettle folds Ltd., (1908) 1 KB 469, Indian Rare Earths Ltd.* v *A. Subaida Beev*i, 1981 Lab IC 1359.
7. *Richards* v *Morris,* (1915) 1 KB 221; *Varadarajulu Naidu* v. *M. Boyan,* AIR 1954 Mad 1113, *G.M., B.E.S.T. Undertaking* v. *Mrs. Agnes, AIR 1964 SC 193; E.S.I Corporation* v. *Smt. Suhara Beevi*, (1975) 2 LLJ 225 (Ker).
8. AIR 1958 SC 881.
9. AIR 1964 SC 193.
10. The recommendation of the I.L.O. is as follows:

    Each member should, under prescribed conditions, treat the following as industrial accidents:

    (a) accidents regardless of their cause, sustained during working hours at or near the place of work or at any place where the worker would not have been except for his employment;

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(b) accidents sustained within reasonable periods before or after working hours in connection with transporting, cleaning, preparing, securing, conserving, storing and packing work tools or cloths;

(c) accidents sustained while on the direct way between the place of work and:

(i) the employees's principal or secondary residence; or

(ii) the place where the employee usually takes his meals; or

(iii) the place where he usually receives the remuneration.

UNIT 3 INDUSTRIAL DISPUTES AND INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACTS

Structure

3.0 INTRODUCTION

This unit deals with the Industrial Disputes Act, 1947 and Industrial Employment (Standing Orders) Act, 1946. It elaborates on the meaning of 'industry' and answers the questions like what comes under industrial dispute and who can raise an industrial dispute. As the unit progresses, it makes you familiar with the industrial dispute award, its judicial interpretation and forms of the award. This unit discusses the terms, strike and its various forms, lockout, lay-off, retrenchment, transfer, closure and settlement of industrial dispute in detail.

In the later part, the unit focuses on the Industrial Employment (Standing Orders) Act 1946 and explains its object and various industrial establishments that are covered in this Act. Concept of Standing orders, various provisions regarding certification and operation of standing order and interpretation of standing orders are also described. Finally, the unit elaborates on Trade Union Act, registration procedure of trade unions and their rights and liabilities.

3.1 UNIT OBJECTIVES

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

- Understand the meaning of Industrial Disputes
- Interpret objects and various provisions of Industrial Dispute Act
- Describe the objects and provisions of Industrial Employment (Standing Orders) Act
- Discuss the meaning of standing orders
- Define Trade Unions and assess their rights and liabilities

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3.2 INDUSTRIAL DISPUTES ACT, 1947

Meaning of 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.

'Industry': Any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen

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

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

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

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

What is an industrial dispute

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

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

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

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

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

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

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

(i) The propriety or legality of an order passed by an employer under the Standing Orders
(ii) The application and interpretation of Standing Order
(iii) Discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed
(iv) Withdrawal of any customary concession or privilege
(v) Illegality or otherwise of a strike or lock-out
(vi) Wages including the period and mode of payment
(vii) Compensatory and other allowances
(viii) Hours of work and rest intervals
(ix) Leaves with wages and holidays
(x) Bonus, profit sharing, provident fund and gratuity
(xi) Shift working otherwise than in accordance with Standing Orders
(xii) Classification by grades
(xiii) Rules of discipline
(xiv) Rationalization
(xv) Retrenchment of workmen and closure of establishment

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

(a) Allegation of wrongful termination of services
(b) Compulsory retirement of employee
(c) Claim for reinstatement of dismissed workmen
(d) Dispute connected with minimum wages
(e) Disputes regarding payments to be made under Production Bonus Scheme
(f) Claim for compensation for wrongful dismissal
(g) Disputes regarding interpretation of Standing Orders
(h) Disputes relating to lock-out or *bona fide* and genuine closure of business
(i) Non-implementation of award and claim for compensation payable by workmen to the employer for loss caused by strike
(j) Demand of an employee relating to his confirmation on a post holding in an acting capacity

Who can raise a dispute

A dispute is said to have arisen when some demand is made by workmen and it is rejected by the management or vice versa, and the demand relates to the employment. The Act says that a workman can raise a dispute. However, it is pertinent to note that a dispute between an employer and a single workman does not fall under the preview of 'industrial dispute', but if the workmen as a body or a considerable section of them make a common cause with the individual workman, then such a dispute would be an industrial dispute. A dispute arising between a workman and the employer, if espoused by a body of workers, assumes the nature and character of an industrial dispute. Thus, an 'industrial dispute' is a collective dispute supported by either a trade union or a substantial number of fellow workers. The word collective does not mean substantial

majority. However, where only 5 out of 60, *i.e.* 1/12th of the employees in the establishment espouse the cause of the dismissed workmen, it cannot be considered an appreciable or substantial body of workmen for constituting the dispute as an industrial dispute.

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

'Wages': All remuneration expressible in terms of money, which would be payable to a workman, if the terms of employment were fulfilled, and includes dearness and other allowances, any travelling concession, commission on sales or promotion of business and value of house accommodation, supply of light, water, medical attendance or other amenity or any concession in supply of foodgrains, etc

Important Definitions

(i) **'Wages'** means all remuneration expressible in terms of money, which would be payable to a workman, if the terms of employment were fulfilled, and includes dearness and other allowances, any travelling concession, commission on sales or promotion of business and value of house accommodation, supply of light, water, medical attendance or other amenity or any concession in supply of foodgrains, etc. 'Wages', however, does not include bonus, employer's contributions to pension and provident fund and gratuity payable on termination of service.

(ii) 'Average pay' means average of the wages payable:

(a) for the preceding 3 complete calendar months, in case of monthly paid workmen

(b) for the preceding 4 complete weeks, in case of weekly paid workmen

(c) for the preceding 12 full working days, in case of daily paid workmen

If average pay in respect of a workman cannot be calculated in the aforesaid manner, it shall be calculated as the average of the wages payable to that workman during the period he actually worked.

(iii) 'Controlled industry' means any industry, the control of which by the Union has been declared by any Central Act to be expedient in the public interest.

(iv) 'Award' means an interim or a final determination of any industrial dispute or any question relating thereto, by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section l0A of the Act.

Industrial Disputes Award

Judicial Interpretation of 'Award'

'award' to mean: an interim or a final determination of any industrial dispute or any question relating thereto by any Labour Court, Tribunal or National Tribunal and includes an arbitration award made under Section 1 A.

Section 2 (b) of the Industrial Disputes Act, 1947, defines **'award'** to mean:

> an interim or a final determination of any industrial dispute or any question relating thereto by any Labour Court, Tribunal or National Tribunal and includes an arbitration award made under Section 1 A.

Thus, quantification of the back arrears and other attendant circumstances falls within the ambit of award.

The aforesaid definition of 'award' can be divided into two parts. The first part covers a determination, final or interim, of any industrial dispute and the second part

has to do with the determination of any question relating to an industrial dispute. The basic postulate common to both the parts of the definition is the existence of an industrial dispute, actual or apprehended. The 'determination' contemplated by the definition is of industrial dispute or questions relating thereto on merits. It is to be noted further that Section 2 itself expressly makes the definition subject to 'anything repugnant in the subject or context.' It, however, raises two questions: whether the order in terms of compromise allowing the dispute to be withdrawn is an 'award' and what is the nature and scope of the interim award? Let us turn to examine these problems.

Orders in terms of Compromise for Withdrawal — if Award. This problem has been the subject of much controversy. The High Courts are, however, divided in this regard. While the High Court of Bombay is of the view that the order is not an 'award', the High Court of Kerala took the opposite view by holding it to be an 'award'. The approach of the Bombay High Court seems to be more pragmatic and is in conformity with the accepted notion of industrial adjudication.

Interim Award

1. ***The Issues.*** The interim award involves several issues: (*i*) What is the nature of an interim award? (*ii*) What are its elements? (*iii*) Whether interim relief is an interim award.
2. ***Nature and Concepts of Award.*** The law has not defined the word 'interim' award that occurs in Section 2(b) of the Industrial Disputes Act, 1947. There are, however, cases that endeavour to delineate the expression. The Courts and Tribunals have adopted the dictionary meaning of the term 'interim' in determining the nature of 'interim' awards. For instance, in *Thakur Yugal Kishor Sinha* v. *State of Bihar*, the High Court of Patna adopted the meaning given in the Oxford Dictionary, namely, 'a temporary or provisional arrangement, adopted in the meanwhile'. The Court accordingly held that 'manifestly, the word 'interim' in such a context must mean a provisional or temporary arrangement made in a matter of urgency and subject to a final adjustment or complete determination of the dispute; for example, a payment on account pending final settlement of the amount as in the present case.'
3. ***Elements of Interim Award.*** Coming to the elements of an interim award, it may be noted that the following are the essential elements: (1) The order passed by the Labour Court, Industrial Tribunal or National Tribunal and Voluntary Arbitrator must have determined the dispute referred to it.
4. ***Interim Relief vis-à-vis Interim Award.*** The other question is whether the order granting interm relief is an 'award' within the meaning of Section 2 (b) of the Act. This question was left open by the Supreme Court in *Hotel Imperial* v. *Hotel Workers' Union and Delhi Cloth and General Mills* v. *Rameshwar Dayal*. The High Courts are, however, divided on this issue. While the Delhi, Calcutta, Patna and Punjab High Courts held that an order granting interm relief amounted to the interim award required to be published under Section 17 and enforceable under Section 17A, the Karnataka High Court took the opposite view and held that an order granting interim relief was not a determination of an industrial dispute and hence not an 'award'.

Forms of the Award

The award of a Labour Court, Tribunal, National Tribunal or Voluntary Arbitrator must be in writing and signed by the Presiding Officer. The award, which is not in accordance with this provision is void and inoperative in view of the mandatory terms of this section.

Certain Confidential Matters are not be included in any Award

The Labour Court, Tribunal, National Tribunal and Voluntary Arbitrator are prevented from including in their awards, the contents of any information claimed by the parties to any industrial dispute to be confidential.

The Language of an Award

There is no provision in the Industrial Disputes Act, 1947, or rules framed thereunder, to deal with the language of an award. However, the Court has laid down several norms regarding the use of language in the award. They are: (1) The language used in the award should not be inconsistent with a judicial approach. (2) The language used in the award should not be 'intemperate'. (3) The language of the award should be dignified. (4) Strong language should not be used in the award 'without realising the due significance and without considering whether the use is justified.'

Signing of an Award

Section 16 of the Industrial Disputes Act, 1947 requires that the award of a Labour Court, Tribunal or National Tribunal be signed by the Presiding Officer. Similarly, sub-section 4 of Section 10 A requires that every arbitration award shall be signed by the arbitrator or all the arbitrators, as the case may be. The provisions of the sections are mandatory. The award of the Labour Court Tribunal, National Tribunal or Arbitrator shall be void and inoperative in the absence of the signature of the Presiding Officer/ arbitrator(s) in view of the mandatory terms of Section 16.

Submission of an Award

Section 15 enjoins the Labour Court, Tribunal or National Tribunal to hold 'its proceedings expeditiously and shall, as soon as practicable on conclusion thereof, submit its award to the appropriate Government.' The non-submission would render the award inoperative. The provisions of the Section are inadequate for several reasons: First, a perusal of various reported decisions, however, reveals that despite the requirement of the Act to submit its award, 'as soon as it is practicable on the conclusion' of the proceedings, the time taken by the Tribunal is quite long. In fact, there are numerous instances are not lacking where the Tribunals have taken over three years. Second, Section 23 prohibits strikes and lockouts during the pendency of proceedings before an Arbitrator, Labour Court, Tribunal or National Tribunals and two months after the conclusion of such proceedings. And under sub-section (3) of Section 20, proceedings before an Arbitrator under Section 10A or before a Labour Court, Tribunal or National Tribunal 'shall be deemed to have commenced on the date of the reference of the dispute for arbitration or adjudication, as the case may be and such proceedings shall be deemed to have concluded on the date on which the award becomes enforceable under Section 17A'. Since the parties cannot exercise a legal strike or lockout during the pendency of proceeding before a Labour Court, Tribunal, National Tribunal or an

Arbitrator (under Section 10A), the need for the prescribed time limit within which the adjudication/arbitration authorities may submit their award is significant. Third, under Section 33, the management is debarred from exercising its prerogative during the pendency of proceedings before a Labour Court, Tribunal, National Tribunal or Arbitrator (under Section 10A) where a notification has been issued under Section 10 (3A). This provision also requires that the time limit under Section 15 should be certain. Fourth, to ensure industrial peace and harmony, which is the avowed objective of the Industrial Disputes Act, 1947, it is essential that the dispute be settled at an early date. Under the circumstances, it is suggested that Section 15 should be amended and the time limit should be prescribed for the submission of the award.

In *Secretary, Cheruvathur Beedi Workers' Industrial Co-operative Society* v. *Shyamala*, the Kerala High Court expressed its concern over the inordinate delay in the adjudication process as it affected the interest of the parties. Under Section 12(6) of the Act, the conciliation proceedings have to be completed within a fortnight and a report has to be sent to the government. When the reference order is passed, the government is obliged to prescribe the time limit for passing the award. Under Section 10 (2A), when an order is passed by the government, simultaneously, there is a direction that the award should be passed within the specified period prescribed. In the case of an individual dispute of the present nature, it is mandatory for an award to be passed within three months. Extensions should be provided only for specific reasons that have to be recorded.

Publication of the Industrial Award

1. ***The Legal Issue.*** Section 17 (1) of the Industrial Dispute Act, 1947, which deals with the publication of the award by the appropriate Government provides that:

   ..... every arbitration award and every award of Labour Court Tribunal or National Tribunal shall, within a period of thirty days from the date of its receipt by the appropriate Government, be published in such manner as the appropriate Government thinks fit.

   The aforesaid provisions raise several issues: (*i*) Whether the provisions of Section 17 are mandatory or directory, (*ii*) What will be the effect of withholding the publication of the award, (*iii*) Whether the publication of the award after the expiry of the statutory period of thirty days would make the award invalid or unenforceable, (*iv*) Does the interim award need to be published, and (*v*) Whether the award will be taken to have been published on the date of notification of the Government or on the date on which such notification appeared in the gazette.
2. ***The Judicial Response–Withholding the Publication of the Industrial Award.*** In *Sirsilk Ltd.* v. *Government of Andhra Pradesh*, the Supreme Court was faced with the problem of what to do in a situation where the settlement to a dispute had been arrived at between the parties on which an award had been given by the Industrial Tribunal but which had not been published. The Supreme Court solved this problem by directing the Government to withhold the publication of the award in view of the settlement.
3. ***Effect of non-publication of the Industrial Award within the Prescribed Period.*** The Supreme Court's decision in *Remington Rand of India* v. *The*

Workmen throws an interesting light on this question. In this case, the award was made by the Industrial Tribunal on 5 October 1966. It was received by the appropriate Government on 14 October 1966. But it was published in the Kerala Gazette on 15 November 1966. On the basis of these facts the appellant raised an objection, *inter alia*, that the award was inoperative and unenforceable as it was published after the expiry of the period fixed by Section 17 (1) of the Industrial Disputes Act, 1947. The Supreme Court, it appears, in an attempt to justify the delay in the publication of the award overruled the objection.

4. ***Publication of the Interim Award.*** There is no provision in the Industrial Disputes Act, 1947 to deal specifically with the publication of an interim award. As already stated, Section 17 deals with the publication of the award and since the award has been defined to include an interim determination of any industrial dispute or a question relating thereto by the Tribunal, the question that arise is whether the interim award should be published. This question has been the subject matter of controversy before Tribunals and Courts.

   It accordingly held that the interim award need not be published under Section 17.

Pendency of Proceedings before Arbitrators and Adjudicating Authorities

1. ***Commencement of Proceedings.*** Sub-section (3) of Section 20 of the IDA provides that:

   > Proceedings before an arbitrator under Section 10A or before a Labour Court, Tribunal or National Tribunal shall be deemed to have commenced on the date of reference of the dispute for arbitration or adjudication, as the case may be ...

   The meaning of the expression 'on a reference of the dispute for arbitration or adjudication' is, however, not free from doubt.

   A few of the decisions emphasized literal interpretation. Some of the Tribunals chose the middle course. For instance, in *Goenka Mica Syndicate* v. *Mohd. Yasin*, the Industrial Tribunal observed that:

   > According to the workings of Section 20 of the Act, the proceedings of the Tribunal commenced when the notification was received by the Tribunal ...

   It rejected the management's contention that the proceedings before a Tribunal should commence from the date when it is made known to the parties.

   There have been no decisions holding that the effective date of the commencement of adjudication proceedings, for the purposes of Section 23 of the Industrial Disputes Act, 1947, is the date of the party's knowledge of the reference. However, there are some cases in relation to Section 33 (where the provisions of Section 20(3) have been interpreted) and these decisions indicate that the effective date of 'reference of the dispute for adjudication' is the date on which parties receive, information of such reference.

2. ***Termination of Proceedings.*** The adjudication proceeding shall be deemed to have concluded on the date on which the award becomes enforceable under Section 17A.

   This provision is relevant not only for determining the legality or otherwise of strikes and lockouts but also for determining the period of regulation of management's prerogative under Section 33 of the Industrial Disputes Act, 1947.

NOTES

The Period of the Operation of the Award

1. ***The Commencement of the Period.*** Section 17A(4) of the Industrial Disputes Act, 1947 provides that:

> Subject to the provisions of sub-section (1) and sub-section (3) regarding the enforceability of an award, the award shall come into operation with effect from such date as may be specified therein, but where no date is specified, it shall come into operation on the date when the award becomes enforceable under sub-section (1), or sub-section (3), as the case may be.

These provisions indicate that (*i*) there is a difference between 'enforceability' of an award and its 'operation'; (*ii*) if for any reasons an award does not become 'enforceable' it can never come into 'operation'; and (*iii*) that the date on which an award comes into 'operation' may or may not be the date on which it becomes 'enforceable'.

Awards and decisions, however, reveal alarming misconceptions about the true import of sub-section (4) of Section 17 A of the Industrial Disputes Act, 1947. They use the statutorily explained concept of the date on which an award comes into operation in a manner that is inconsistent with the provisions of the Industrial Disputes Act, 1947.

A Tribunal may direct the grant of the benefits of its award from a date:

(*i*) Anterior to the date on which the demand was first made
(*ii*) On which the demand was first made
(*iii*) Posterior to the date on which the demand was first made but anterior to the date of reference
(*iv*) On which the reference was made
(*v*) Posterior to the date of reference but anterior to the date of the submission of the award
(*vi*) On which the award is submitted
(*vii*) Posterior to the date of submission of the award but anterior to the date on which it becomes enforceable
(*viii*) On which the award becomes enforceable
(*ix*) Posterior to the date on which the award becomes enforceable

The validity of granting the benefits of awards from any date anterior to the date on which the award becomes enforceable has frequently been questioned in the courts of law.

In a series of cases, the Supreme Court has emphasized that under Section 17A (4), the Tribunal is empowered to indicate the date on which an award shall come into operation and that date can be any one of the dates mentioned above. Where however, a Tribunal, without specifying the date on which an award shall come into operation, directs the grant of benefits from a specific date, the Supreme Court is of the view that an award comes into operation from that date.

2. ***Date of Award.*** The question came up for consideration in the Supreme Court in *Lloyds Bank Ltd.* v. *Lloyds Bank Union Staff Association*. In this case the award was published under Section 17 of the Industrial Disputes Act, 1947 by

the appropriate Government in a notification of the Ministry of Labour on 17.1.1950, but the notification appeared in the Gazette on 28.1.1950. The question, *inter alia*, for the consideration of the Supreme Court was on which date was the award to be taken to have been published. Answering this question the Supreme Court held that the award must be taken to have been published on 17.1.1950 and not on 28.1.1950.

3. ***The Termination of the Operation of the Award.*** Section 19(3) of the IDA provides that all awards shall remain in operation for a period of one year from the date on which the award becomes enforceable under Section 17A. The award becomes enforceable under Section 17A on the expiry of thirty days from the date of its publication under Section 17. Under the latter provision, the appropriate Government is under an obligation to publish the award within a period of thirty days of its receipt.

   The provisions of Section 19(3) are subject to two exceptions. *First*, the appropriate Government is empowered to reduce the period of operation of the award. *Second*, the appropriate Government is empowered to extend the period of operation by a period not exceeding one year at a time. The total period of operation of an award, however, is not to exceed three years. Of course, the appropriate Government may also take action under Sections 17A (1) (a), 17A (3) and (4) of the IDA.

   The scope of Section 19(3) on the prohibition contained in Section 23(c) was explained by the Supreme Court in *South Indian Bank Ltd.* v. *A.R. Chako*.

   So long as the award remains in operation under Section 19(3), Section 23(c) stands in the way of any strike by the workmen and lockout by the employer in respect of any matter covered by the award.

   When the award is in operation under Section 19(3), both Sections 23 and 29 would be applicable. Even after the expiry of the period of operation of the award under Section 19(3), the award continues to be binding upon the parties until a period of two months has elapsed from the date on which notice is given by any party or parties intimating its intention to terminate the award under Section 19(6). During this period when the award is not in operation but is only binding on the parties, Section 29 alone is applicable. After the period of its operation and also after the period for which the award is binding have elapsed, Sections 23 and 29 can have no operation. However, according to the Supreme Court, even after the expiry of the periods mentioned above, the award would continue to govern relations between the parties till it is displaced by another contract. It has already been stated that the Court did not state the circumstances under which an award is displaced by another contract and this particular concept has created other complications.

Enforcement of Settlement and Award

1. ***General.*** In order to ensure the compliance of the settlement and the award, the Industrial Dispute Act, 1947 specifically provides for the coercive processes. The settlement arrived at through the intervention of the Conciliation Officer or the Board of Conciliation and an award is enforceable by its own force and by the coercive machineries under the Act. It may also be enforceable by voluntary and persuasive processes.

2. ***Penal Provisions.*** The enforcement of the settlement and award is sought to be ensured by imposing penal liability on those who commit a breach thereof. Imprisonment extending up to six months or fine or both may be awarded for the breach of a settlement or an award. Besides, the Industrial Disputes Act, 1947 empowers the Court trying the offences (if it fines the offender) to order payment of the whole or any part of the fine realized to the injured party as compensation. But the Act fail to distinguish between the first and subsequent convictions.
3. ***Section 33C.*** Section 33C (1) provides for another mode of enforcement by providing the mode of recovery of the money due from an employer, *inter alia*, under the settlement or an award (where the amount to be executed is worked out or where it may be worked out without any dispute). But where the amount due to a workman is not stated in the settlement or award itself and there is a dispute as to its calculation, sub-section (2) of Section 33C will apply and the workman would be entitled to apply thereunder to have the amount computed, provided he is entitled to a benefit, whether monetary or non-monetary, which is capable of being computed in terms of money.
4. ***Conditions-Precedent for Making an Application.*** The simple statement of Section 32C (2) that:

> Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money.....

has raised several issues. The key question is: what is the significance of the expression 'entitled'? First, does it imply that the right of the workman to receive benefit from the employer has already accrued, *i.e.*, should there be any predetermined liability of the employer? Also, should the right to receive benefit have necessarily accrued under settlement or an award, or under the provisions of Chapter VA of the Act? Or can a workman put in an application for the computation of benefits to which he is otherwise entitled, *e.g.*, under an award or under an agreement, or under the statutes other than the Industrial Disputes Act, 1947? Second, does the expression 'entitled' imply a pre-ascertained identity of the employer and the workmen? Third, what is the nature of the benefit to which the workman must be entitled in order to move an application under Section 33C (2)? Can a workman request for the computation of only non-monetary benefits or only monetary benefits, or both? Let us consider these questions in detail.

(*i*) *Predetermined liability of employer:* It has been settled in a catena of cases of Tribunals and Courts that Section 33C (2) covers cases of workmen who claim the benefit to which the concerned workman is entitled. It has to be computed in terms of money even if the benefit on which their claim is based is disputed by their employers.

(*ii*) *Predetermined identity of parties*: The Labour Courts under Section 33C (2) of the Industrial Disputes Act, 1947 have the jurisdiction to determine the nature of work done by the concerned workmen and to decide the claims under Section 33 C. The benefits provided under Section 33C (2) include both monetary and 'other' benefits. They, however, have no jurisdiction to determine the status of the employees.

(*iii*) *Amount of money due:* What is meant by the expression 'amount of money due'? The Supreme Court in *N.A. Choudhary* v. *Central Inland Water Transport Corporation Ltd* observed that the expression raises one or more of the following kinds of disputes.

1. Whether there is any settlement or award as alleged
2. Whether any workman is entitled to receive from the employer any money at all under any settlement or an award, etc.
3. If so, what will be (the) amount
4. Whether the amount claimed is due or not

The Supreme Court held that if the right to get the money on the basis of a settlement or an award has not been established, no amount of money can be due. If it has been established, the amount due has to be calculated.

(*iv*) *Time limit:* Every application under the proviso to Section 33C shall be made within one year from the date on which the money becomes due to the workman from the employers. The appropriate government is, however, authorized to condone delay, even after the expiry of period of one year, if sufficient cause is shown by the applicant.

(*v*) *Who can make an application:* Under Section 33C (1), the application for the recovery of money due may be made by:

(*i*) The workmen entitled to money from the employer

(*ii*) Any other person authorized by him in writing on this behalf

(*iii*) The assignee, or heirs of the workman in case of his death

(*vi*) *Number of application:* Section 33 (5) permits any number of workmen who are employed by the same employer to make a single application for the recovery of the amount due on behalf of or in respect of such workmen.

(*vii*) *Nature and Scope of Section 33 C (2):* In *Punjab Beverages* v. *Suresh Chand*, Justice Bhagwati, speaking for the Court, explained the nature and scope of Section 33C (2) in the following terms:

It is now well-settled as a result of several decisions of this Court that a proceeding under Section 33C (2) is a proceeding in the nature of executive proceeding in which the Labour Court calculates the amount of money due to a workman from his employer, or, if the workman is entitled to any benefit that is capable of being computed in terms of money, proceeds to compute the benefit in terms of money. But the right to the money that is sought to be calculated or to the benefit that is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between the industrial workman, and his employer vide *Chief Mining Engineer, East India Coal Co. Ltd.* v. *Rameshwar*. It is not competent to the Labour Court exercising jurisdiction under Section 33 C (2) to arrogate to itself the function of an Industrial Tribunal and entertain a claim that is not based on an existing right but which may appropriately be made the subject matter of an industrial dispute in a reference under Section 10 of the Act, vide *State Bank of Bikaner* v. *R.L Khandelwal*. That is why Gajendragadkar J. pointed out in the *Central Bank of India Ltd.* v. *P.S.*

Raja Gopalam that if an employee is dismissed or demoted and it is his case that the dismissal or demotion is wrong, he cannot make a claim for the recovery of his salary or wages under Section 33C(2).

(*viii*) *Recovery of money due from employer under Section 33(C) (2) vis-à-vis jurisdiction of the Labour Court:* The Supreme Court in *Bombay Gas Co.* v. *Gopal Bhiwa* held that the claim under the Payment of Wages Act, 1936 may also be made under Section 33C(2).

In *Athani Municipality* v. *Labour Court*, the Court held that the jurisdiction of the Labour Court to entertain an application under Section 33C(2) was not barred by Section 20 (1) of the Minimum Wages Act, 1948 because the Labour Court was not a Court within the meaning of the Code of Civil Procedure or Limitation Act. However, in *State of Punjab* v. *Labour Court*, the Supreme Court was invited to consider whether employees were entitled to apply under Section 33 C(2) of the Industrial Disputes Act, 1947 for payment of gratuity.

5. ***Civil Remedy under the Civil Procedure Code not Barred.*** The amount due under a settlement or award can also be enforced by way of civil remedy. However, the High Courts are divided on the issue of whether the recourse to the remedy under Section 33C (2) would bar the remedy available under the Civil Procedure Code. In earlier cases, the Madras High Court took the view that the jurisdiction of Civil Court was barred whereas the Calcutta High Court was of the view that the provisions of Section 33C could not be pleaded as a bar to the jurisdiction of the Civil Court. The alternative remedies are independent of each other. But if a remedy is claimed under either of the two and fails on merit, an alternative claim is barred before another authority or Court.
6. ***Government's Power of Reference is not Barred by Section 33C.*** A remedy provided under Section 33C (2) does not take away the right of the Government to make a reference under Section 10 if the circumstances justify such a reference to an authority mentioned in the Act.
7. ***Duty of the Labour Court to Forward the Decision to the Government.*** Section 33C (4) requires that after the Labour Court decides the amount of money due or the money to which the workman in entitled, it shall forward its decision to the appropriate Government. On receipt of the decision of the Labour Court the Government shall proceed to recover the amount found due by the Labour Court. On having the amount determined, the concerned workman has to make an application to the appropriate Government for the recovery of the amount due to him.

Finality and Enforceability of Award

Section 17A provides that:

1. An award (including an arbitration award) shall become enforceable on the expiry of thirty days from the date of its publication under Section 17, provided that:
   (a) if the appropriate Government is of the opinion, in cases where the award has been given by a Labour Court or Tribunal in relation to an industrial dispute to which it is a party; or

(b) if the Central Government is of the opinion, in cases where the award has been given by a National Tribunal,

it will be inexpedient on public grounds affecting the national economy or social justice to give effect to the whole or any part of the award, the appropriate Government or as the case may be, the Central Government may, by notification in the official Gazette, declare that the award shall not become enforceable on the expiry of the said period of thirty days.

2. Where any declaration has been made in relation to an award under the proviso to sub-section (1), the appropriate Government or the Central Government may, within ninety days from the date of publication of the award under Section 17, make an order rejecting or modifying the award, and shall, on the first available opportunity, lay the award together with a copy of the order before the Legislature of the State if the order has been made by a State Government, or before Parliament if the order has been made by the Central Government.
3. Where any award as rejected or modified by an order made under sub-section (2) is laid before the Legislature of a State or before Parliament, such an award shall become enforceable on the expiry of fifteen days from the date on which it is so laid; and where no order under sub-section (2) is made in pursuance of a declaration under the proviso to sub-section (1), the award shall become enforceable on the expiry of the period of ninety days referred to in sub-section (2).
4. Subject to the provisions of sub-section (1) and sub-section (3) regarding the enforceability of an award, the award shall come into operation with effect from such date as may be specified therein, but where no date is so specified, it shall come into operation on the date when the award becomes enforceable under sub-section (1) or sub-section (3), as the case may be.

2. ***The Scope of Jurisdiction of the Supreme Court under Article 136 of the Constitution vis-à-vis Section 17(2).*** Article 136(1) of the Constitution provides that:

> Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgement decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

For over forty-five years the Supreme Court has been increasingly concerned with the question of the exercise of the power but it has not succeeded in determining the exact scope of interference under Article 136 of the Constitution. What is however beyond doubt is that no statutory provision or technical hurdles of any kind, like the finality of award under Section 17(2) of the Industrial Disputes Act, can stand in the way of the exercise of the powers under Article 136 of the Constitution. The power of the Supreme Court under Article 136 is meant to safeguard and guarantee that is injustice not perpetuated or perpetrated by the decisions of the Courts and Tribunals because certain laws have made the decision of the Courts and Tribunals final and conclusive.

3. ***Application of*** **Res judicata** ***in Industrial Disputes.*** It has now been settled in a catena of cases that the application of the technical rules of *resjudicata* is not applicable to industrial adjudication. The principle underlying this rule is that

industrial adjudications are intended for the long term but at the same time, they are liable to be modified by any change in the circumstances on which they are based. It has therefore been held that the subsequent reference and award made in circumstances different from those prevalent in the earlier reference and award would not permit the application of the principle of *resjudicata.* Similarly, the claim for modification of standing orders relating to the age of superannuation is not based on acquiescence and laches.

Power to Set aside the Exparte Award beyond 30 Days

The Supreme Court in *Grindlays Bank* v. *Central Government Industrial Tribunal,* while dealing with the contention that the Tribunal becomes *functus officio* on the expiry of 30 days from the date of publication on the award and therefore has no jurisdiction to set aside the ex-parte award, held that the proceedings with regard to a reference under Section 10 of the Act are not deemed to be concluded until the expiry of 30 days from the publication of the award and till then the Tribunal retains jurisdiction over the dispute referred to it for adjudication and upto that date it has the power to entertain an application in connection with such a dispute and that stage is not reached till the award becomes enforceable under Section 17A.

On the basis of the aforesaid decision, the High Court held that after the expiry of 30 days from the date of publication of the award, the Industrial Tribunal/Labour Court becomes *functus officio* and thus has no jurisdiction to entertain an application filed beyond the expiry of 30 days.

Payment of Full Wages Pending Proceedings in Higher Courts

Experience shows that when the Labour Court, Tribunal or National Tribunal directs the reinstatement of an aggrieved workman, employers very often challenge such an order in the High Court and the Supreme Court. This causes great hardship to the workman concerned. In order to discourage the dilatory tactics adopted by the employer on the ground of preliminary objection and technical pleas and long pendency of the dispute, the Parliament inserted Section 17B by the Industrial Disputes (Amendment) Act, 1982. The objects and reasons for enacting the Section are as follows:

> When Labour Courts passes awards of reinstatement, these are often contested by employer Supreme Court and High Courts. It was feared that the delay in the implementation of the award causes hardship to the workman concerned. It was, therefore, proposed to provide the payment of wages last drawn by the workman concerned, under certain conditions, from the date of the award till the case is finally decided in the Supreme Court or High Court.

Section 17B came into force with effect from 1 August 1984. Section 17B, which prescribes the payment of full wages to a workman pending proceeding in higher courts provides that:

> Where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, 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 workman had not been employed in any establishment during such period and an affidavit

by such workman 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 workman 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.

(a) Meaning and scope of the expression 'full wages last drawn'

This refers to whether the expression 'full wages last drawn' in Section 17B means wages drawn by a workman at the time of termination of his employment or wages which he would have drawn on the date of the award. Prior to the Supreme Court's decision, the High Courts were divided and held that 'full wages last drawn' could mean,

(*i*) Wages only at the rate last drawn and not at the same rate at which the wages are being paid to the workmen who are actually working

(*ii*) Wages drawn on the date of termination of the services plus the yearly increment and the Dearness Allowance to be worked out till the date of award

(*iii*) Full wages which the workman was entitled to draw in pursuance of the award and the implementation of which is suspended during the pendency of the proceeding

The first construction gives to the words full wages last drawn their plain and material meaning. The second as well as the third constructions read something more than their plain and material meaning into those words.

(b) Powers of the Supreme Court and High Courts to award a higher amount under Section 17B

In *Dena Bank* v. *Kirat Kumar T. Patel*, the Supreme Court ruled that the Courts are empowered to award a higher amount under Section 17B.

In Dena Bank II, the Supreme Court laid down the following principles:

(*i*) The import of Section 17B admits of no doubt that Parliament intended that the workman should get the last drawn wages from the date of the award till the challenge to the award is finally decided. Section 17B also does not preclude the High Courts or the Supreme Court under Articles 226 and 136 of the Constitution respectively from granting better benefits — more just and equitable on the facts of the case than contemplated by that provision. The High Court or the Supreme Court may, while entertaining the employer's challenge to the award, at its discretion, in appropriate cases, stay the operation of the award in its entirety or with regard to back wages only or with regard to reinstatement without interfering with the payment of back wages or on payment of wages in future irrespective of the result of the proceedings before it etc. and/or impose such conditions as to the payment of salary as on the date of the order or a part of the back wages and its withdrawal by the workman as it may deem fit in the interest of justice. The court may, depending on the facts of the case, direct payment of full wages last drawn under Section 17B of theAct.

(*ii*) Even though the amount paid by the employer under Section 17B cannot be directed to be refunded in the event he loses the case in the writ petition,

any amount over and above the sum payable under the said provision has to be refunded.

(c) Wages payable under Section 17B are non-recoverable

In *Syndicate Bank* v. *General Secretary, Syndicate Bank Staff Association*, the Supreme Court held that the wages paid to the employee in terms of Section 17B will neither be recovered nor adjusted by the bank.

(d) Where the party agrees to receive lump sum in lieu of reinstatement

In *Workmen of Hindustan Lever Ltd.* v. *Hindustan Lever Ltd*, the Tribunal directed the reinstatement of the workmen. The Allahabad High Court, on a writ petition filed by the management, set aside the award. Workmen were paid wages by the employer from the date of award till it was set aside by the High Court even though they did not work. On a special leave petition before the Supreme Court, the workmen agreed to receive lump sum in lieu of reinstatement over and above the amount already received by them. The Supreme Court accordingly disposed of the petition as per the terms of agreement and understanding and directed the management to pay the agreed sum within 4 weeks.

(e) Period of payment

In *Sri Varadaraja Textiles (Pvt) Ltd.* v. *Presiding Officer, Labour Court, Coimbatore*, the Madras High Court held that the payment should continue as long as the workman is in employment. The Court also held that on reaching the age of superannuation, the workman had lost his right to get wages last drawn under Section 17B as he would get wages only as per the award of the Labour Court, which amount had already been deposited by the employer.

(f) Burden of proof

Section 17B requires a workman to file an affidavit before the High Court or Supreme Court where the employer has preferred any proceedings against the award of reinstatement of the workmen that 'he had not been employed in any establishment' during the pendency of such proceedings. Thus, in *Viveka Nand Sethi* v. *Chairman J & K Bank Ltd*, the Supreme Court held that Section 17B could be applied where the workman did not file an affidavit before the Court. Once such an affidavit has been filed by the workman, he has discharged his onus. It is then for the employer to satisfy the High Court or the Supreme Court that the workmen had in fact not been employed or he had been receiving adequate remuneration during such period or part thereof. If the employer succeeds in satisfying the court in that respect, the court shall order that the wages contemplated in Section 17B shall not be payable by the employer to the workman for the period of pendency of proceedings before the court or part thereof.

(g) Constitutional remedies

1. ***General.*** Under Article 32 and 226 of the Constitution, the Supreme Court and the high courts in India are empowered to issue writs, orders or directions (including writs in the nature of *mandamus, quo warrants, prohibition and certiorari*) to any person or authority including any Government within their territories. The jurisdiction under Articles 32 and 226 are concurrent and independent of each other. But whereas the power of the Supreme Court under

Article 32 is confined to matters of enforcement of fundamental rights, the high court's power under Article 226 is wider inasmuch as it can issue writs not only for enforcement of fundamental rights, but for any other purpose. The power to issue writs is an integral and basic feature of the Constitution and cannot be taken away through any legislation. A high court's dismissal on the merits of a petition under Article 226 operates as *res judicata*, barring the same or similar petition under Article 32.

Broadly speaking, there are two general principles with regard to the exercise of the powers of the Supreme Court and the high courts, (*i*) The constitutional power of the Supreme Court and high courts to issue writs cannot be taken away or whittled down by any legislative device. (*ii*) Where adequate alternative remedy is available the high court will, unless fundamental rights are shelved, refuse to issue the writ. But the existence of an alternative remedy is a no bar where fundamental right is violated. We shall now briefly examine the writs that may be issued under Articles 32 and 226.

2. ***Writ of Certiorari.*** (*a*) *Principles of interference*. The issuance of a writ of *certiorari* involves two general principles. One of the fundamental principles with reference to the exercise of power is that the writ of *certiorari* may be issued against an inferior court or body exercising judicial or quasi-judicial functions. Accordingly, the following orders in labour matters, have been held to be quasi-judicial in nature and therefore subject to the writ of *certiorari*:

   (*i*) The award of the Industrial Tribunal constituted under the Industrial Disputes Act, 1947

   (*ii*) The award of the voluntary arbitrator appointed under the Industrial Disputes Act, 1947. On the other hand, the following orders in labour matter have been held to be executive orders and therefore not subject to the writ of *certiorari*.

   (1) Orders by the Government referring a dispute to an Industrial Tribunal under the Industrial Disputes Act 1947

   (2) Proceedings of a Conciliation Officer under the Industrial Disputes Act, 1947

   The other feature of a writ of *certiorari* is that in exercising the power the Court acts in a supervisory and not in an appellate capacity. In exercising the supervisory power the Court does not act as an appellate tribunal.

   (*b*) *Grounds of issuance*. Writs of *certiorari* can be issued on any one of the following grounds against the industrial awards:

   (*i*) Defects of jurisdiction

      (*a*) Want of jurisdiction

      (*b*) Excess of jurisdiction

      (*c*) Failure to exercise jurisdiction

   (*ii*) Violation of the principles of natural justice

      (*a*) No evidence rule

      (*b*) Against the evidence

      (*c*) Against the rules of natural justice

(*iii*) Misconduct of the arbitrators

(*iv*) Error apparent on the face of the record

(*v*) Misconception of law

(*vi*) Finding of facts suffering from an error of law

(*vii*) If no reasonable person would come to the conclusion that the arbitrator/ adjudicator has arrived at

3. ***Writ of Mandamus.*** A perusal of decided cases reveals that the writ of *mandamus* has been issued by the Courts on each of the following grounds:
   1. Where the fundamental rights had been infringed
   2. Where the State refused to exercise its statutory duty
   3. Where the *ultra vires* statute were enforced
   4. Where the authorities failed to perform the public duty
   5. Where there was error of law or violation of rules of natural justice
   6. Where there was abuse of discretion
4. ***Writ of Prohibition.*** An analysis of earlier judicial decisions reveals that the writ of *prohibition* may be issued on any one of the following grounds:
   1. Defects of jurisdiction
   2. Violation of principle of natural justice
5. ***Power of Superintendence of the High Court under Article 227 of the Constitution.*** Under Article 227, every high court has the power of superintendence over all lower courts and tribunals within its jurisdiction. This power is wider than the powers conferred on the High Courts to control inferior courts through writs under Article 226. However, the power under Article 227 is exercised sparingly and only in exceptional cases. The court does not interfere unless there is any grave miscarriage of justice or flagrant violation of law requiring interference. Moreover, in the exercise of the supervisory power under Article 227, the high court does not sit in appeal over the decision of any Court or Tribunal. It does not review or re-weigh the evidence or correct errors of law in the decision unless there is an error in the face of record or some grave miscarriage of justice or flagrant violation of law.

   Grounds of interference. The main grounds of interference under Article 227 are as follows:
   1. Defects, excess or want of jurisdiction
   2. Failure to exercise jurisdiction
   3. Violation of the principles of natural justice
   4. Error of Law
6. ***Provisions Relating to Appeal from the Decisions of the High Court in Labour Matters.*** Another course open to the aggrieved person is to invoke the Supreme Court in regular civil appeal from the decisions of the high courts under Articles 132 and 133. Article 132 confers jurisdiction on the Supreme Court with respect to matters 'involving a substantial question of law as to the interpretation of the Constitution.' Under Article 133, the Supreme Court may entertain regular civil appeals from the decisions of the high court in 'civil proceedings' where a certificate of fitness has been granted by the high court.

7. *Relief Under Article 136 of the Constitution from Industrial Awards.* (*a*) *General*. Apart from the provisions of writs under Articles 32 and 226, the Constitution also provides another remedy to persons aggrieved for obtaining special leave, *inter alia*, in labour matters. Under Article 136, the Supreme Court is empowered to grant special leave to appeal from any judgement, decree, determination, sentence or order in any cause or matter passed or made by any Court or Tribunal, other than those constituted by or under any law relating to armed forces in the territory of India.

(*b*) *Principles of interference.* Article 136 being a special provision, the Supreme Court evolved certain limiting principles for its use. *First*, the discretionary power under Article 136 should be exercised sparingly and in exceptional cases. *Second*, the discretionary power under Article 136 is exercisable notwithstanding (*i*) the Finality clauses of statutes, (*ii*) the statutory provisions, (*iii*) the Supreme Court Rules or other technical hurdles, provided the Court concludes that a person has been dealt with arbitrarily or has not been given a fair deal. *Third*, even where special leave has been granted in exercise of discretionary power under Article 136, no restriction can be imposed or applied at the time of final disposal of the appeal. *Fourth*, the exercise of the discretion would not be justified to give findings on matters that have become stale.

(*c*) *Grounds of interference*. A perusal of the decisions of the Supreme Court reveals that the Supreme Court has exercised its discretionary power under Article 136 against the award of the Tribunals on each of the following grounds:

(*i*) Excess, want or abuse of jurisdiction

(*ii*) Where the Tribunal has ostensibly failed to exercise a patent jurisdiction

(*iii*) Where a question of general public importance has been involved

(*iv*) Where there has been manifest injustice or a fundamental flaw in the law

(*v*) Where the problem has been approached wrongly

(*vi*) Violation of any of the principles of natural justice

(*vii*) Where the Court has erroneously applied the well accepted principles of jurisprudence

(*viii*) Baseless or perverse finding

(*ix*) Cases requiring elucidation and final decisions

(*x*) Where it has traversed beyond the terms of reference

(*xi*) Where it has not applied its mind to the real question

(*xii*) Where the procedure adopted has been against all notions of legal procedure

(*xiii*) Where it has ignored a material document

A survey of the Supreme Court's decisions reveals that the Court has considerably enlarged the scope of its interference under Article 136. Thus, in *Bharat Bank* v. *Employees of Bharat Bank*, the Court enunciated that it will interfere only on matters pertaining to the jurisdictions and procedure of the Tribunal below. But in *Bengal Chemical & Pharmaceutical Works Ltd.* v. *Their Employees*, the Court provided an additional ground for interference, namely, where an important question of law requiring elucidation and final decision was involved. Again, the court interfered where

the Tribunal erroneously applied established principles of jurisprudence, failed to apply its mind to the real question, approached the problem wrongly or ignored a material document.

NOTES

Public Utility Service

Section 2(n) of the IDA defines 'public utility services' to mean:

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

(*ia*) Any service in, or in connection with the working of, any major port or dock

(*ii*) Any section of an industrial establishment on the working of which the safety of the establishment or the workmen employed therein depends

(*iii*) Any postal, telegraph or telephone service

(*iv*) Any industry which supplies power, light or water to the public

(*v*) Any system of public conservancy or sanitation

(*vi*) Any industry specified in the First Schedule which the appropriate Government may, if satisfied that public emergency or public interest so requires, by notification in the Official Gazette, declare to be a public utility service for the purposes of this Act, for such period as may be specified in the notification, provided that the period so specified shall not, in the first instance, exceed six months but may, by a like notification, be extended from time to time, by any period not exceeding six months, at any one time if in the opinion of the appropriate government public emergency or public interest requires such extension.

It will be observed that there are two categories of public utility services (a) those that are mentioned in clauses; (i) to (v) of Section 2 (n) and (b) those, being listed in the First Schedule, are declared by the appropriate government to be 'public utility services'. The second of these two categories can be classified as a public utility service only for a period of six months from the date of Government notification though the Government is empowered to extend the period from time to time by successive notifications.

Lest the true scope of governmental power to impose additional restrictions on the use of instruments of economic coercion remains camouflaged in the provisions of the IDA, it is necessary to point out that appropriate governments are empowered to add to or subtract from the list of industries mentioned in the First Schedule. Thus, Section 40 of the Industrial Disputes Act, *inter alia*, specifically provides:

1. The appropriate government may, if it is of opinion that it is expedient or necessary in the public interest so to do, by notification in the Official Gazette, add to the First Schedule any industry, and on any such notification being issued, the First Schedule shall be deemed to be amended accordingly.
2. The Central Government may, by notification in the Official Gazette, add to or alter or amend the Second Schedule or the Third Schedule and on any such notification being issued, the Second Schedule or the Third Schedule, as the case may be, shall be deemed to be amended accordingly.
3. Every such notification shall, as soon as possible after it is issued, be laid before the Legislature of the State if the notification has been issued by a

NOTES

State Government or before the Parliament if the notification has been issued by the Central Government, or before the Parliament if the notification has been issued by the Central Government.

Accordingly, the First Schedule has grown in bulk. The First Schedule, as modified by the Central Government from time to time, now provides:

1. Transport (other than railways) for the carriage of passengers or goods, by land or water
2. Banking
3. Cement
4. Coal
5. Cotton textiles
6. Foodstuffs
7. Iron and steel
8. Defence establishments
9. Service in hospitals and dispensaries
10. Fire brigade service
11. India Government mints
12. India Security Press
13. Copper mining
14. Lead mining
15. Zinc mining
16. Iron ore mining
17. Service in any oilfield
18. .....
19. Service in the uranium industry
20. Pyrites mining
21. Security Paper Mills, Hoshangabad

The 1971 Amendment however, deleted item 18 from the First Schedule and added in it a sub-clause (ia) to the aforesaid clause (n) of Section 2. Thus, the concept of public utility service itself has undergone a change. It now includes not only those industries that directly affect health and safety to the members of the society but also those that are the basis of national economic reconstruction and development. In addition, State Governments have declared other industries to be public utility services.

In *Swadeshi Industries* v. *Its Workmen*, the company was running three different units, namely, (*i*) cotton textile weaving unit, (*ii*) silk unit, and (*iii*) art silk products manufacturing unit. The cotton textile industry was declared a 'public utility service' by the appropriate government. The workmen employed in the silk unit went on strike without giving any notice as required by the aforesaid Section 22. The company dismissed the striking workmen on the ground that they had gone on an illegal strike. The strikers, however, asserted that the silk unit was not a 'public utility service' and consequently Section 22 was not applicable. The Supreme Court agreed that *prima facie* the silk unit was not a public utility service. Further, since the company did not prove that the concerned workmen at the time of strike or prior to that had even worked in the cotton weaving unit; that the workmen employed in the silk unit were

required under the terms of employment to work in the cotton and that textile unit workers in the cotton textile unit were ever assigned to any of the striking workmen, the concerned workmen could not be said to be employed in a 'public utility service' within the meaning of Section 2 (n) and for the purposes of Section 22.

Earlier in *D.N. Banerjee* v. *P.R. Mukherjee*, the Supreme Court had referred to the provisions of Section 2 (n) and the First Schedule of the IDA to support the decision of the Court that local bodies were within the purview of the IDA.

Seven years later, Justice Gajendragadkar speaking for the Supreme Court referred to entry (q) in the First Schedule and even though he could not decide in *State of Bombay* v. *Hospital Mazdoor Sabha* on the basis of that entry as the Parliament had added that entry after the commencement of the proceedings in that case, he used it to demonstrate te legislative intent indicative of including services in hospitals within the purview of industry and added:

> After the addition of the relevant entry in the Section 1 it would not be open to anybody to suggest that services in hospitals does not fall under Section 2 (j).

Even so, Chief Justice Hidayatullah held in *Safdarjung Hospital* that though public conservancy or sanitation was an industry, services in Government or charitable hospitals did not fall within Section 2 (j).

Workman

Section 2 (s) of the Industrial Disputes Act, 1947, defines 'workman' to mean:

> any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person —
>
> (*i*) who is subject to the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957
>
> (*ii*) who is employed in the police service or as an officer or other employee of a prison
>
> (*iii*) who is employed mainly in a managerial or administrative capacity
>
> (*iv*) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature

Broadly speaking, the definition requires that a 'workman' must be:

(*a*) person, (*b*) employed, (*c*) in any industry, (*d*) to do the specified type of work, (*e*) for hire or reward, but excludes certain specified categories of persons.

The scope of the aforesaid expression has been the subject matter of judicial interpretation in a series of decided cases.

Strike

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

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

'strike' to mean: A cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal under a common understanding of any number of persons who are or have been so employed to continue to, work or to accept employment

Statutory Definition

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

> a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal under a common understanding of any number of persons who are or have been so employed to continue to, work or to accept employment.

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

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

1. ***Who goes on Strikes?*** The Industrial Disputes Act does not specifically mention who goes on strikes. However, the definition of a strike itself suggests that 'strikers' must be: (*a*) persons, (*b*) employed, (*c*) in any industry, (*d*) to do work.
2. ***Against whom do they go on Strike?*** Strike, we have already seen, is called by persons employed in any industry. Further, it is an instrument of economic coercion that seeks to deprive an 'employer' of labour input and thereby diminish through loss of production, his earning capacity in the hope that the resulting economic strain would compel him to come round to the strikers' point of view. If this analysis is correct, it follows that the person against whom a strike is called must be an employer. Further, the statutory regulation of strikes, namely:

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

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

   read with Rule 71 of the rules framed under Section 30 office Act and the prescribed form, makes it clear that a 'strike' is called against the

'employer', at least, the Act is concerned with only those strikes that are called against 'employers'.

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

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

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

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

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

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

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

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

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

Forms of Strikes

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

1. ***Stay-in-Strike, Sit-Down Strike, Pen-Down Strike, or Tool-Down Strike.*** Decision-makers and writers have used the expressions 'stay-in strike', 'sit-down strike', 'pen-down strike" and 'tool-down strike' as synonyms of each other.

   In *Punjab National Bank Ltd.* v. *Their Workmen*, one Sabbarwal, a typist and Secretary of the Punjab National Bank Employees' Union of Delhi, applied for 7 days' leave. The management declined to grant him leave. Even so Sabbarwal absented himself from duty. On resumption of duties, he was charge-sheeted for absence without leave. However, Sabbarwal refused to accept the show-cause notice. The management thereupon sent it to him by registered post and, pending further enquiry, suspended him. Thereupon, the Employee's Union instructed employees to stick to their seats and refuse to work until police intervened and threatened arrest or until orders of discharge or suspension were served on them. This the co-employees of Sabbarwal did. Meanwhile, a turbulent crowd gathered outside the premises of the Bank. Some of the persons in the crowd shouted slogans in support of the action of the employees. The management suspended 60 of the aforesaid participating employees. This led to a industry-wide strike in Delhi and Uttar Pradesh. The Bank gave notice that unless the strikers resumed their duties by a specified date, they would be treated as having voluntarily ceased to be employees and on their failure to report to duty on the specified date, terminated the services of 150 of its employees after giving them another chance to resume their duties.

   On these facts, a question arose as to what is the nature of the employees' activities in sticking to their seat but refusing to work. The Supreme Court recognized that the main grievance of the bank was that the employees not only sat in their places and refused to work but they did not vacate their seats when they were asked to do so by their superior officers.

However, it considered such an element of insubordination to be 'a different matter' and not relevant for interpreting the definition of 'strike'.

The Court also rejected the contention that the impugned activity amounted to criminal trespass:

> ... there are two essential ingredients which must be established before criminal trespass can be proved against the employees. Even if we assume that the employees' entry in the premises was unlawful or that their continuance in the premises became unlawful, it is difficult to appreciate the argument that the said entry was made with intent to insult or annoy the superior officers. The sole intention of the strikers obviously was to put pressure on the bank to concede their demands. Even if the strikers may have known that the strike may annoy or insult the bank's officer, it is difficult to hold that such knowledge would necessarily lead to the inference of the requisite intention ...

And on a plain and grammatical construction of the definition it held that:

> Refusal under common understanding to continue to work is a strike and if in pursuance of such common understanding the employees entered the premises and refused to take their pens in their hands, that would no doubt be a strike under Section 2 (q).
>
> We believe that the emphasis on literal interpretation resulted in ignoring the conceptual understanding of the phenomenon known as strike and in encouraging undesirable activities.

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

Workers adopt this practice to circumvent the statutory restrictions. On go-slow, however, when they are disciplined for misconduct, they assert that the practice amounts to a strike. Obviously, they cannot be permitted to blow hot and cold at the same time. But then the all-important question is whether this practice, popularly called 'go-slow' is 'strike'. The definition of 'strike' uses the phrases 'cessation of work', 'refusal to continue to work' and 'refusal to accept employment'. These phrases are not qualified by the expression 'total' or 'partial'. But in *Bharat Sugar Mills Ltd*. v. *Jai Singh*, Justice Das Gupta, speaking for the Supreme Court observed:

> Go-slow which is a picturesque description of deliberate delaying of production by workmen pretending to be engaged in the factory is one of the most pernicious practices that discontented or disgruntled workmen sometime resort to. It would not be far wrong to call this dishonest. For, while thus delaying production and thereby reducing the output, the workmen claim to have remained employed and thus to be entitled to full wages. Apart from this also, 'go-slow' is likely to be much more harmful than total cessation of work by strike. For, while during a strike much of the machinery can be fully turned off, during the 'go-slow' the machinery is kept going on a reduced speed which is often extremely damaging to machinery parts. For all these reasons 'go-slow' has always been considered a serious type of misconduct.

The aforesaid view was re-affirmed in *Bank of India* v. *T.S. Kelawala* wherein the Supreme Court observed that:

... go-slow is a serious misconduct being a covert and a more damaging breach of the contract of employment. It is insidious method of undermining discipline and at the same time a crude device to defy the norms of work. It has been roundly condemned as an industrial action and has not been recognised as an legitimate weapon of the workmen to redress their grievance.

3. ***Hunger Strike.*** Hunger strike is a strike with fasting by some or all strikers, or even outsiders super added to exert moral force or perhaps what may be more aptly described as coercion, for acceptance of the demands. Its usage, however, is complicated because, like the word strike, it is used to describe all protest fasts, whether or not the particular protest activity is in furtherance of an industrial dispute.
4. ***Lightning or Wildcat Strike.*** The characteristic feature of this type of withdrawal of labour is that the workmen suddenly withdraw their labour and bargain afterwards. Such strikes are prohibited in public utility services under the Industrial Disputes Act, 1947 and all industrial establishments in public utility services in UP, Maharashtra and Gujarat, where notice is required to be given. Further, the standing orders of the company generally require a notice. Since no notice is required in industrial establishment other than the public utility concern, a question arises whether the Act in such a situation would be a misconduct or unjustified strike. These questions have been the subject matter of judicial controversy.

   In *Swami Oil Mills* v. *Their Workmen*, certain workmen resorted to sudden lightning strike allegedly on failure of the Government to refer the dispute to the Tribunal. The question for consideration with respect to the strike was whether it was illegal or unjustified. The Tribunal held that the strike was not illegal and unjustified but observed that:

   It must be conceded that a sudden lightning strike, such as the one in question, without any previous notice to the management, cannot be looked upon as quite proper ...

   In *Sadul Textile Mills* v. *Their Workmen*, certain workmen struck work as a protest against the lay-off and the transfer of some workers from one shift to another without giving four days' notice provided by Standing Order 23. On these facts a question arose whether the strike was justified. The Industrial Tribunal answered it in the affirmative. Against this a writ petition was preferred in the High Court of Rajasthan. Reversing the decision of the Tribunal Justice Wanchoo observed:

   ... we are of opinion that what is generally known as a lightning strike like this takes place without notice... and each worker striking ... (is) guilty of misconduct under the standing orders ... and liable to be summarily dismissed ... (as)... the strike cannot be justified at all.

5. ***Work-to-Rule.*** In this form of concerted activity, employees, though remaining on the job, do the work literally in accordance with the rules or procedure laid down for the purpose, decline to do anything not mentioned therein, take all permissible time of the job, and do the work in such a manner that it results in dislocation of the work. Usually, rules of work are stretched and followed in such a manner that under the shelter of complying with rules the very purpose of these rules, namely, harmonious working,

for maximizing production, is frustrated. In these tactics, the workers literally work according to rules but in spirit therefore they work against them; though they are called 'work to rule' tactics, in substance they amount to work against rule tactics.

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

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

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

Lockout

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

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

The Statutory Definition

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

The temporary closing of a place of employment or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him.A delineation of the nature of this weapon of industrial warfare requires description

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of (*i*) the acts that constitute it; (*ii*) the party who uses it; (*iii*) the party against whom it is directed; and (*iv*) the motive that prompts it.

He concluded that this was a case of a lockout.

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

does not, of course, contemplate the severance of the relation of employer and employed: it would be surge in these circumstances, if a lockout did so. ... the words 'refusal by an employer to continue to employ any number of persons employed by him' in Section 2 (1) do not include the discharge of an employee. Court held that discharge was not covered in Section 2 (1) of the Act.

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

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

'layoff': The 'failure', 'refusal' or 'inability' on the part of employer to give employment to any number of workmen

Lay-off

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

(*a*) Shortage of coal

(*b*) Shortage of power

(*c*) Shortage of raw material

(*d*) Accumulation of stock

(*e*) Breakdown of machinery

(*f*) For any other reason

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

Management's Right to Lay-off

1. ***Under the Traditional Law.*** Under the traditional law, the management had a right to lay-off its workmen and adjust the labour force to the requirement of work. If the lay-off or adjustment of labour force happened to be in breach of contract of employment or otherwise wrongful, the aggrieved workmen were entitled to compensation. This right of management has been curtailed to a great extent by the modern labour legislation and judicial decisions following thereunder. They assert that the right of the management to lay-off their workmen and adjust labour force is not absolute. It has now been settled that the management has no common law right to lay-off its workmen.
2. ***Under the Standing Orders.*** Where the Standing Orders certified under the Industrial Employment (Standing Orders) Act, 1946 provide for lay-off, the

employers are allowed to lay-off their workmen in accordance with the provisions of the standing orders of their establishment. They have got no right to lay-off for reasons other than those laid down in the relevant clauses of the standing orders.

3. ***Under the Industrial Disputes Act, 1947.*** Chapters V-A and V-B recognize the management's right to declare lay-offs for reasons laid down therein. If any case is not covered by the provisions of the standing orders of the establishment, it will be regulated by the provisions of the Industrial Disputes Act, 1947. The Supreme Court, in *Workman of Dewan Tea Estate* v. *The Management*, while considering the management's right to lay-off observed that:

> The question which we are concerned with at this stage is whether it can be said that Section 25 C recognises a common law right of the industrial employer to lay-off his workmen? This question must, in our opinion, be answered in the negative. When the laying-off, of the workmen is referred to in Section 25 C, it is the laying-off as defined by Section 2 (*kkk*), and so, workmen who can claim the benefit of Section 25 C must be workmen who are laid-off for occasions contemplated by Section 2 (*kkk*).

The Court added:

> If any case is not covered by the standing orders, it will necessarily be governed by the provisions of the Act and lay-off would be permissible only where one or the other of the factors mentioned by Section 2 (*kkk*) is present and for such lay-off compensation would be awarded under Section 25 C.

However, in *Workmen* v. *Firestone Tyre and Rubber Co.*, the Supreme Court explained the aforesaid observation to indicate that:

> .... in the context, the sentence aforesaid means that if the power of lay-off is there in the standing orders but the grounds of lay-off are not covered by them, rather are governed by the provisions of the Act, then lay-off would be permissible only on one or the other of the factors mentioned in Clause (iii).

The Court added:

> There is no provision in (the Industrial Disputes) Act specifically providing that an employer would be entitled to lay-off his workmen for the reasons prescribed by Section 2 (*kkk*).

In case of compensation of lay-off, the position is quite different:

> If the terms of contract of service or the statutory terms engrafted in the standing orders do not give the power of lay-off to the employer, the employer will be bound to pay compensation for the period of lay-off which ordinarily and generally would be equal to the full wages of the concerned workmen. If, however, the terms of employment confers a right of lay-off on the management, then, in the case of an industrial establishment which is governed by Chapter V-A, compensation will be payable in accordance with the provisions contained therein. But no compensation will be payable in the case of an industrial establishment to which the provisions of Chapter V-A do not apply and it will be so as per the terms of the employment.Prohibition on Lay-off

Till 1976 there was no provision for preventing lay-off in the Industrial Disputes Act, 1947. In the seventies, a number of cases of large-scale lay-off were reported. This resulted in an all-round demoralizing effect on the workmen. In order to prevent avoidable hardship and to maintain a higher tempo of production and productivity, the Industrial Disputes Act, 1947 was amended in 1976, whereby restrictions were imposed

on the employer's right to lay-off by Section 25 M. However, following the decision of the Supreme Court in the *Excel Wear* case, some High Courts declared invalid the provisions contained in Section 25 M. In order to remove the anomaly, Section 25 M was re-drafted and substituted by the Industrial Disputes (Amendment) Act, 1984 which came into force with effect from 18.8.84. Section 25 M applies to every industrial establishment (not of seasonal character) in which not less than one hundred workmen were employed on the average per working day for the preceding twelve months. Thus, Section 25 M, which imposes prohibition on lay-off, provides:

1. No workman (other than a *badli* workman or a casual workman) whose name is borne on the muster rolls of an industrial establishment to which this chapter applies shall be laid-off by his employer except with the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereinafter in this section referred to as the specified authority), obtained on an application made in this behalf, unless such lay-off is due to shortage of power or natural calamity, and in the case of a mine, such lay-off is due also to fire, flood, excess of inflammable gas or explosion.
2. An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended lay-off and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
3. Where the workmen (other than *badli* workmen or casual workmen) of an industrial establishment being a mine, have been laid-off under sub-section (1) for reasons of fire, flood or excess of inflammable gas or explosion, the employer, in relation to such establishment, shall, within a period of thirty days from the date of commencement of such lay-off, apply, in the prescribed manner, to the appropriate Government or the specified authority for permission to continue the lay-off.
4. Where an application for permission under sub-section (1) or sub-section (3) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such lay-off, may, having regard to the genuineness and adequacy of the reasons for such lay-off, the interest of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.
5. Where an application for permission under sub-section (1) or sub-section (3) has been made and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.
6. An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (7), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.

7. The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (4) or refer the matter or, as the case may be, cause it to be referred to a Tribunal for adjudication, provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.
8. Where no application for permission under sub-section (1) is made, or where no application for permission under sub-section (3) is made within the period specified therein, or where the permission for any lay-off has been refused, such lay-off shall be deemed to be illegal from the date on which the workmen had been laid-off and the workmen shall be entitled to all the benefits under any law for the time being in force as if they had not been laid-off.
9. Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1), or, as the case may be, sub-section (3) shall not apply in relation to such establishment for such period as may be specified in the order.
10. The provisions of Section 25 C (other than the second proviso thereto) shall apply to cases of lay-off referred to in this section.

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

Penalty for Lay-off without Previous Permission

Section 25 Q prescribes penalty upon the employer contravening the provisions of Section 25 M. Thus, the employer who contravenes the provisions of Section 25 M is punishable with imprisonment for a term which may extend to one month or with fine which may extend to one thousand rupees or with both.

Procedure for Lay-off

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

Compensation for the Period of Lay-off

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

Retrenchment

The Context

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

Though the 1953 Amendment Act provided for notice and retrenchment compensation, it did not contain any provision for preventing retrenchment. Cases of large-scale retrenchment were reported time and again. Consequently, the State Government and National Apex bodies approached the Central Government to take

legislative measures for preventing arbitrary action of the management in retrenching their workmen. Accordingly, the Industrial Disputes (Amendment) Act, 1976 was enacted.

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

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

Nature of Retrenchment

1. ***General.*** Retrenchment generally means 'discharge of surplus labour or staff' by the employer on account of a long period of lay-off or rationalization or production processes or improved machinery or automation of machines or similar other reasons. It is adopted as an economy measure. The subsisting employer-workmen relationship is, however, terminated in case of retrenchment.
2. ***Retrenchment and Lockout.*** Retrenchment and lockout have some common phenomena of continuing business. Both are the acts of employer. Both involve subsisting employer-workmen relationship. But, there are weighty reasons to distinguish lockout from retrenchment on the basis of the status of employment relationship. Whereas there is a subsisting employer-workman relationship in lockout, that relationship is terminated in case of retrenchment. There is yet another basis of distinction, lockout is an instrument of economic coercion and

seeks to compel recalcitrant workmen to agree to the management's point of view, whereas retrenchment is a measure of economy and while it does affect workmen, the motive of bringing workmen to their knees by putting economic pressure on them is absent.

3. ***Retrenchment and Lay-off.*** Retrenchment and lay-off have some elements in common. Both are declared by the employer. Both require statutory compensation but they differ in many other respects. Whereas there is a subsisting employer-workmen relationship during lay-off that relationship is terminated in the case of retrenchment. There is yet another basis of distinction. While retrenchment is a permanent measure to remove surplus labour, lay-off is a temporary measure.
4. ***Retrenchment and Closure of Business.*** Retrenchment and closure of business have some common features. Both are the measures of economy by the employer; both require statutory compensation. In both the cases the employer-workmen relationship is terminated. But they differ in many other respects. In closure the industry is closed but in case of retrenchment the industry may be continuing.

Statutory Definition of Retrenchment

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

the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include:

(a) Voluntary retirement of the workman
(b) Retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf
(c) Termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein
(d) Termination of the service of a workman on the ground of continued ill-health

Procedure for Retrenchment

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

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

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

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

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

Closure

Section 2 (cc) of the Industrial Disputes (Amendment) Act, 1982 defines **'closure'** to mean 'the permanent closing down of a place of employment or part thereof'. Section 25-FFF imposes a liability on the employer, who closes down his business, to give one month's notice and pay compensation equal to fifteen days' average pay for every

'closure': The permanent closing down of a place of employment or part thereof

completed year of continuous service or any part thereof in excess of six months. In case of closure on account of unavoidable circumstances beyond the control of employer, the maximum compensation payable to a workman is his three months salary. However, unlike Section 25-F, payment of compensation in lieu of notice are not conditions precedent to closure. Thus, as a consequence of closure of the industry Section 25-F is not attracted and the rigour imposed thereunder stand excluded. By the Industrial Disputes (Amendment) Act, 1976, Section 25-O (which was amended in 1982) lays down the procedure for closing down an undertaking and Section 25-P makes special provision regarding restarting the undertakings closed down before the commencement of the Industrial Disputes (Amendment) Act, 1976.

Closure of a Portion of an Undertaking. So far as the closure of a portion of an undertaking or a part of an industrial establishment is concerned, the Supreme Court in *Workmen of the Straw Board Manufacturing Co. Ltd.* v. *M/s Straw Board Manufacturing Co. Ltd*. pointed out:

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

The Court added:

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

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

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

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

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

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

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

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

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

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

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

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

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

(*iv*) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on

shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.

Unfair Labour Practices

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

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

(i) To interfere with, restrain from, or coerce, workmen in the exercise of their right to organize, form, join or assist a trade union or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, that is to say:-

(a) Threatening workmen with discharge or dismissal, if they join a trade union;

(b) Threatening a lock-out or closure, if a trade union is organized;

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

(ii) To dominate, interfere with or contribute support, financial or otherwise, to any trade union, that is to say:-

(a) An employer taking an active interest in organizing a trade union of his workmen; and

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

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

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

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

(b) Discharging or dismissing a workman for taking part in any strike (not being a strike which is deemed to be an illegal strike under this Act);

(c) Changing seniority rating of workmen because of trade union activities;

(d) Refusing to promote workmen to higher posts on account of their trade union activities;

(e) Giving unmerited promotions to certain workmen with a view to creating discord amongst other workmen, or to undermine the strength of their trade union;

(f) Discharging office-bearers or active members of the trade union on account of their trade union activities.

(v) To discharge or dismiss workmen-

(a) By way of victimization;

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

(c) By falsely implicating a workman in a criminal case on false evidence or on concocted evidence;

(d) For patently false reasons;

(e) On untrue or trumped up allegations of absence without leave;

(f) In utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;

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

(vi) To abolish the work of a regular nature being done by workmen, and to give such work to contractors as a measure of breaking a strike.

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

(viii) To insist upon individual workmen, who are on a legal strike to sign a good conduct bond, as a pre-condition to allowing them to resume work.

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

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

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

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

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

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

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

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

II. On the part of workmen and trade unions of workmen [sec. 23 (w.e.f. 21-8-1984)]

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

(ii) To coerce workmen in the exercise of their right to self-organizations or to join a trade union or refrain from joining any trade union, that is to say :-

(a) For a trade union or its members to picketing in such a manner that non-striking workmen are physically debarred from entering the work places;

(b) To indulge in acts of force or violence or to hold out threats of intimidation in connection with a strike against non-striking workmen or against managerial staff.

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

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

(v) To stage, encourage or instigate such forms of coercive actions as wilful go slow", squatting on the work premises after working hours or 'gherao' of any of the members of the managerial or other staff.

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

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

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

Settlement of Industrial Disputes

Works Committee

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

Constitution of Works Committee

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

Rule 39 of the Industrial Disputes (Central) Rules, 1957 contemplates that the number of representatives of the workmen shall not be less than the number of representatives of the employer and further that the total number of members shall not exceed 20. Rule 40 contemplates that the representatives of the employer shall be nominated by the employer and shall as far as possible be officials in direct touch with or associated with the working of the establishment. Rule 41 envisages that the employer shall ask the registered trade union of the workmen in the concerned establishment to inform the employer in writing as to how many of the workmen are members of that union and how their membership is distributed among the sections, shops or departments of the establishment. In other words, the employer is required to ask the registered trade union to supply him the nominal roll of members of the trade union. The election held without consultation with the trade union is liable to be set aside. Rule 42 provides that on receipt of the said information from the registered trade union, the employer shall provide for the election of representatives of the workmen on the works committee in two groups: (1) those to be elected by the workmen who are members of the registered trade union and (2) those to be elected by the workmen who are not members of the registered union. It is further provided that the number of two groups should bear the same proportion to each other as the union members in the establishment

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

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

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

Functions of Works Committee

The main function of the works committee is 'to promote measures for securing and preserving amity and good relations between the employers and workmen and, to that end, to comment upon matters of their common interest or concern and endeavour to compose any material difference of opinion in respect of such matters.' The works committees are normally concerned with problems of day-to-day working of the concern and are 'not intended to supplant or supersede the union for the purpose of collective bargaining, they are not entitled to consider real or substantial changes in the conditions of service; their task is only to reduce friction that might arise between the workmen and management in the day-to-day working. The decision of the works committee is neither agreement nor compromise nor arbitrament. Further, it is neither binding on the parties nor enforceable under the Act. It is true that according to the Supreme Court the 'comments' of the works committee are not to be taken lightly but it is obvious that the observation has relevance only where a third party gets involved in the claim adjustment process. As between the disputants, these comments, has only persuasive value. By no stretch of imagination can it be said that the duties and functions of the works committee include the decision on such an important matter as an alteration in conditions of service.'

Operation and Assessment

We shall now turn to the functioning of the works committee and assess its working.

A survey of the functioning of the works committee reveals that during 1997, 869 works committees were actually formed in the central sphere establishment involving

816924 workers out of 1131 works committee to be formed involving 1179577 workers. Be that as it may, the works committee on the whole failed to deliver the goods. Several factors are responsible for the same. First, in the absence of strong industry-wide labour organization, the politically oriented plant trade unions consider works committee to be just another rival. The elaborate provisions for securing the representation of registered trade unions, for proportional representation of union and non-union workmen and the possibility of further splitting electoral constituencies into groups, sections, departments or shops not only accentuates the problem of rivalry but also weakens the strength of workmen in such committees. Second, notwithstanding the parity between the workmen's and employers' representatives, the fact that the Chairman of the committee is nominated by the employer from amongst his own representatives, has often helped the management to maintain an upper hand in the proceedings. Unwelcome items on the agenda are promptly declared to be out of order on one ground or the other. Absence of statutory provisions defining the jurisdiction of these committees only helps the recalcitrant employer. Lastly, although Tribunals and Courts feel that 'agreed solution between the works committee and the management are always entitled to great weight, and should not be readily disturbed' the fact remains that there is no machinery to enforce the decisions of these committees. Indeed, there is nothing to prevent by-passing the works committee. Perhaps it will be incorrect to say that most of the disputes that come up for adjudication have never been discussed in the works committee. Confronted with this situation particularly in the absence of statutory provisions, the Tribunals and Courts have invariably held that non-discussion is no bar to reference by the government.

Remedial Measures

The [First] National Commission on Labour suggested the following measures for the successful functioning of the works committee:

(*a*) A more responsive attitude on the part of the management

(*b*) Adequate support from unions

(*c*) Proper appreciation of the scope and functions of the works committee

(*d*) Whole-hearted implementation of the recommendations of the works committee

(e) Proper coordination of the functions of the multiple bipartite institutions at the plant level now in vogue

The Commission added:

> It is the creation of an atmosphere of trust on both sides. Unions should feel that management is not sidetracking the effective union through a works committee. Management should equally realise that some of their known prerogatives are meant to be parted with. Basic to the success of such unit level committees is union recognition.

The following steps should be taken for the success of the works committee: (*i*) Trade unions should change their attitude towards the works committee. The unions should feel that the management is not side-tracking the effective union through a works committee. (*ii*) The management should also realize that some of their known prerogatives are meant to be parted with. (*iii*) Recognition of trade unions should be made compulsory and the provisions thereof should be incorporated in the Trade Unions Act, 1926.

Grievance Settlement Authorities

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

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

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

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

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

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

(4) No reference shall be made under Chapter III with respect to any dispute referred to in this section unless such dispute has been referred to the

Grievance Settlement Authority concerned and the decision of the Grievance Settlement Authority is not acceptable to any of the parties to the dispute.

The Industrial Disputes (Amendment) Act, 1982 excludes hospitals, educational institutions, institutions engaged in any charitable, social or philanthropic service, khadi or village industries and every institution performing sovereign function. For these institutions, the Hospitals and other Institutions (Settlement of Disputes) Bill, 1982, enjoins upon an employer to constitute, within a specified period, a Grievance Settlement Committee for the resolution of individual disputes and a Consultative Council and a Local Consultative Council for the resolution of industrial disputes of a collective nature. The Bill also provides for the arbitration of disputes not resolved by teh Grievance Settlement Committee or the Local Consultative Council or Consultative Council. However, these provisions of the Industrial Disputes (Amendment) Act, 1982, have not yet been enforced, presumably because the Hospitals and other Institutions (Settlement of Disputes) Bill, 1982 has not so far been passed. Further, no rules have been framed under the unenforced Section 9C. The (Second) National Commission on Labour has recommended that a Grievance Redressal Committee for organizations employing 20 or more workers be constituted.

Conciliation

General

Conciliation: Process by which a third party persuades disputants to come to an equitable adjustment of claims

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

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

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

The statistics of the working of the conciliation machinery, however, reveal that the conciliation machinery on the whole is satisfactory in many states. It has, however,

made no remarkable success in India. Several factors may be accounted for the same. *First*, failure of conciliation proceeding may lead to the reference to adjudicating authorities under the Industrial Disputes Act, 1947. *Second*, lack of proper personnel, inadequate training and low status enjoyed by conciliation officers and too frequent transfer of conciliation officers result in the failure of conciliation. *Third*, undue emphasis on legal and formal requirements also leads to the failure of conciliation. *Fourth*, considerable delay in concluding the conciliation proceedings also makes the conciliation machinery ineffective. *Fifth*, the failure of the conciliation machinery has been attributed to lack of adequate powers of conciliation authorities.

Conciliation Authorities

1. Constitution of Conciliation Authorities

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

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

2. Qualifications and Experiences

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

3. Filling of Vacancies

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

4. Jurisdiction

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

5. Powers of Conciliation Authorities

(a) *Powers of Conciliation Officer.* The Act confers certain powers upon the conciliation officer to conciliate and mediate between the parties. The conciliation officer is deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code. He is empowered to enforce the attendance of any person for the purpose of examination of such person or call for and inspect the documents which he has ground for considering (*i*) to be relevant to the industrial dispute or (*ii*) to be necessary for the purpose of verifying the implementation of any award or carrying out any other duty imposed on him under the Act. For this purpose he enjoys the same power as are vested in the Civil Court under the Code of Civil Procedure, 1908. The conciliation officer is also empowered for the purposes of enquiry into any existing or apprehended industrial dispute to enter the premises occupied by any establishment to which the dispute relates, after giving reasonable notice. Failure to give any such notice does not, however, affect the legality of the conciliation proceedings.

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

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

6. Duties of Conciliation Authorities

Duties of Conciliation Officers. The Industrial Disputes Act provides for the appointment of conciliation officers, 'charged with the duty of mediating in and promoting the settlement of industrial disputes.' Where an industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice under Section 22 has been given, he shall hold conciliation

proceedings in the prescribed manner. He may do all such things that he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the disputes. Further, Section 12 (2) directs the conciliation officer to investigate 'without delay' the dispute and all matters affecting the merits and right settlement thereof. If the settlement is arrived at, the conciliation officer shall send a report together with a memorandum of settlement signed by the parties to the dispute, to the appropriate government or an officer authorized on his behalf. If no settlement is arrived at, the conciliation officer is required to send a report to the appropriate government containing (*i*) a full report setting forth the steps taken by him for ascertaining the facts and circumstances of the dispute and for bringing about a settlement thereof, (*ii*) a full statement of facts and circumstances leading to the dispute, and (*iii*) the reasons why a settlement could not be arrived at. It is a mandatory duty on the part of the conciliation officer to submit the failure report. His omission to do is culpable, if not motivated. Be that as it may, it is for the appropriate government to consider whether on the basis of the failure report and other relevant materials, it should refer the dispute for adjudication or not. If on consideration of the report, the appropriate government is satisfied that there is a case for reference to the Board or Adjudicating Authority, it may make a reference. Where it does not make a reference, it shall record and communicate to the parties concerned its reasons thereof. Sub-section 6 of Section 12 provides that the report 'shall be submitted' either within 14 days of the commencement of the conciliation proceedings or earlier if required by the appropriate government, or later if all the parties to the dispute agree in writing.

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

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

Section 12, however, raises several important issues:

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

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

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

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

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

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

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

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

(*v*) Whether a writ of *mandamus* can be issued to the conciliation officer, on whose intervention a settlement was arrived at between the management and workmen, directing him to take all measures to see that settlements are implemented or to prohibit the management from laying-off the staff. The Court answered the question in the negative and observed that the Commissioner of Labour, while acting under Section 12 as conciliation officer, was not empowered to adjudicate an industrial dispute. All that he could do was to try to persuade the parties to come to a fair and amicable settlement. In other words, his duties were only administrative and incidental to industrial adjudication. There was nothing either in the Act or in the rules empowering the Commissioner of Labour to implement the settlement arrived at between the parties under Section 12 (3). If any of the parties to the settlement were aggrieved by the non-implementation of the terms of settlement by the other party, then the remedy would be to move the Government for sanction to prosecute the party in breach of settlement under Section 29.

The scope of Section 12 was raised in *Manoharan Nair* v. *State of Kerala* where the Central Government rejected the demand of the trade unions regarding minimum wages and dearness allowance. Consequently, the workmen went on strike but later it was called off. The negotiations commenced on the Central Government's counter proposal but the trade unions rejected the proposal. The Regional Joint Labour Commissioner's efforts to convene another conference also failed. The Additional Labour Commissioner, however, succeeded in

persuading three of these unions to accept the Central Government's proposal and a settlement was arrived at to this effect, which was countersigned by the Additional Labour Commissioner. The validity of this settlement was challenged on two main grounds: (*i*) The conciliation officer erred in holding that the trade unions, who were parties to the settlement, represented the majority of the workmen in the establishment and (*ii*) the jurisdiction of the conciliation officer to resolve that dispute, which related to the matters mentioned in clause 6 did not bind the workmen in other matters. As to the first contention, the Kerala High Court, following the Supreme Court decision in *Ramnagar Cane & Sugar Co*. v. *Jatin Chakravarthy*, negatived it by holding that a settlement made with the minority would bind all the workmen of the establishment when it was countersigned by the conciliation officer unless a collusive settlement, designed to defeat certain kinds of claims, is arrived at with those who could not speak for even a small section of the interested workmen.

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

If the conciliation officer fails to effect a settlement, the appropriate government may, after considering the report of the conciliation officer, refer the dispute to a Board or adjudicating authorities and, in particular, not to a Court of Enquiry. The power is discretionary. But, if the appropriate government decides not to refer, it must record its reasons thereof and communicate the same to the parties concerned. It follows that the conciliation officers' report is considered by the appropriate government. But unlike the Board of Conciliation, the conciliation officer is not required to make recommendations for the determination of the dispute under the Act. It is suggested that the conciliation will prove to be more effective if the conciliation officer should also be required to make a recommendation to the appropriate government regarding whether or not the matter is fit for adjudication. It is also suggested that the recommendation of a conciliation officer should be given due consideration by the appropriate government.

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

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

7. Duties of Board of Conciliation

A Board to which a dispute is referred must investigate the dispute and all matters affecting the merits and the right settlement thereof and do all things for the purpose of

inducing the parties to come to a fair and amicable settlement of the dispute without delay.

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

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

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

8. Conciliation Proceedings

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

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

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

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

(*ii*) *Pendency of conciliation proceeding before a Conciliation Officer*. The opening clause of Sections 22 (1) (d), 22 (2) (d) and 33, namely, 'during the

pendency of any conciliation proceeding before a conciliation officer' prescribes the period of prohibition of strikes and lockouts in public utility services as well as on the exercise of management's prerogative. These critical words, however, have to be read with other provisions of the Act and the Rules framed thereunder.

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

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

A conciliation proceeding shall be deemed to have concluded:

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

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

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

The Supreme Court, however, in *Industry Colliery* while construing the word 'received' in Section 20(2) (b) interpreted it to mean 'when the report is actually received by the appropriate Government' and imposed criminal liability where the employer or the workmen could not possibly know that he was doing an illegal act by declaring a strike or lockout illegal and put a prohibition on the use of instruments of economic coercion by the parties, which can hardly be justified on the ground of maintaining harmonious labour management relations to facilitate settlement of disputes.

The facts are as follows: On 13 October 1949, the workmen gave a notice to the management under Section 22(1) of a one day strike to take place on 6 November 1949. The Regional Labour Commissioner (Central) held conciliation proceedings on 22 October 1949. The workmen declined to participate in the conciliation proceedings. On the same day, the Regional Labour Commissioner sent the failure report to the Chief Labour Commissioner stating that no settlement was arrived at in the conciliation proceedings and that he 'was not in favour of recommending a reference of the dispute to the Industrial Tribunal' for adjudication. The failure report of the Chief Labour Commissioner, Delhi was, however, received by the Ministry of Labour only on 19 November 1949. In the meanwhile, the workmen went on a one day strike as per their notice on 7 November 1949. The question arose whether the strike was illegal. This question depended on whether the strike occurred 'during the conclusion of such proceedings'. The Supreme Court pointed out that under Section 24 (1) a strike was illegal if it commenced or was declared during pendency of a conciliation proceedings .... and seven days after the conclusion of such proceedings, prohibited under clause (1) of Section 22 (1) and the proceeding was deemed to have concluded' where no settlement arrived at, when the report of the conciliation officer was received by the appropriate government. The Court dealt with the word 'received' occurring under Section 20(2) (b) as follows:

> ... while the word 'send' is used in Section 12 (4) and the word 'submitted' in Section 12 (6) the word used in Section 20 (2) (b) is 'received'. That word obviously implies

the actual receipt of the report. To say that the conciliation proceedings shall be deemed to have concluded when the report should, in the ordinary course of business, have been received by the appropriate Government would introduce an element of uncertainty, for the provision of Section 22 (1) (d) clearly contemplate that the appropriate Government should have a clear seven days time after the conclusion of the conciliation proceedings to make up its mind as to the further steps it should take. It is, therefore, necessary that the beginning of the seven days' time should be fixed to that there would be certainty as to when the seven days' time would expire. It is, therefore, provided in Section 20 (2) (b) that the proceedings shall be deemed to have concluded, where no settlement is arrived at, when the report is actually received by the appropriate Governments.

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

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

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

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

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

9. Settlement in Conciliation

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

(*a*) *Concept of settlement.* Section 2 (p) defines 'settlement' to mean a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding, where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorized in this behalf by the appropriate government and the conciliation officer.

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

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

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

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

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

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

The provision raises several problems. *First*, what if the parties do not sign it? *Second*, what is the position of an individual workman who is not a member of any union whatsoever and his erstwhile co-workers are not prepared to help him? *Third*, what is the position of an individual workman who is made a scapegoat by his own union?

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

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

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

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

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

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

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

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

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

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

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

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

Court of Inquiry

Constitution

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

Jurisdiction of the Court of Inquiry

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

Duties of the Court

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

Publication of the Report

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

Voluntary Arbitration

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

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

Process Involved in Reference of Dispute to Voluntary Labour Arbitrator

Choice of Dispute Settlement

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

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

The Conditions Precedent

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

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

Selection of Arbitrator

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

Arbitration Agreement

1. ***Agreement must be in writing.*** Once the parties agree to refer the dispute to arbitration, they are required to make such an arbitration agreement in writing.

2. ***Form of the Agreement.*** The other requirement of Section 10A (2)(d) is that the arbitration agreement should be in the prescribed form and Rule 7 of the Industrial Disputes (Central) Rules, 1957, provides that it should be in Form C. How far and to what extent the aforesaid requirement should be complied with formed the subject matter of dispute in *North Orissa Workers' Union* v. *State of Orissa*. The Court held that it is not necessary that the agreement must be made in the prescribed form 'C'. It would be enough if the requirements of that form are substantially complied with.
3. ***Signature of the Parties.*** Section 10A (2) further requires that an arbitration agreement be signed by the parties thereto in such manner as may be prescribed in the rules framed by the appropriate government. However, decided cases reveal that the validity of the award or arbitration agreement has often been questioned on the basis of non-compliance of signature of all parties on the arbitration agreement. This has been a ground for not issuing the notification by the appropriate government and enabling the government to refer such disputes to labour tribunals. This tendency of the appropriate government has, however, been scrutinised by the judiciary.
4. ***Consent of Arbitrator(s).*** Even though the Act does not expressly require that the arbitration agreement be accompanied by the consent of the arbitrator, the Industrial Disputes (Central) Rule, 1957 stipulates that the arbitration agreement be accompanied by consent, in writing, of the arbitrator or arbitrators. But for our purposes, it is enough if there is substantial compliance with this rule.
5. ***Submission of the Copy of Arbitration Agreement.*** Once an arbitration agreement has been entered into and executed in the prescribed form under Section 10A, a copy of the arbitration agreement shall be forwarded to the appropriate government and the conciliation officer. Non-submission of a copy of the arbitration agreement to the appropriate government would make the award made thereon outside the purview of Section 10A of the Industrial Disputes Act, 1947 because Section 10A (4) is interlinked with Section 10A (3) and only on satisfaction of the mandates of Section 10A would there be an investigation into the dispute and only then would the award be made by the Arbitrator and then forwarded to the appropriate government.
6. ***Publication of Arbitration Agreement.*** The appropriate government comes into the picture in the process of reference to the arbitrator only after the receipt of a copy of a valid arbitration agreement. If this is done:

> .... the appropriate Government shall, within one month from the date of the receipt of such copy publish the same in the official Gazette.

The aforesaid provision raises a question whether the publication of the agreement is mandatory or directory. A corollary of this issue is whether the appropriate government can override the wishes of the parties to refer the matter to the arbitration by making a reference to the Labour Court, Tribunal or National Tribunal. This issue may be discussed under two heads: (*i*) Publication of arbitration agreement, and (*ii*) Time of publication.

(*a*) *Publication of Arbitration Agreement.* In *Karnal Leather Karamchari Sangathan* v. *Liberty Footwear Co.*, the Supreme Court was invited to consider whether the publication of the arbitration agreement under Section

10A(3) is obligatory. The Supreme Court answered the question in the affirmative and observed:

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

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

(*b*) *Time for Publication.* The high courts are divided on the issue of whether the requirement of publication of agreement within one month is mandatory or directory. While the Division Bench of the Madhya Pradesh High Court in *K.P. Singh* v. *S.K. Gokhale* and the Orissa High Court in *North Orissa Workers' Union* v. *State of Orissa* has taken the view that the requirement is mandatory, the High Court of Punjab and Haryana in *Landra Engineering and Foundary Workers* v. *Punjab State*, the Delhi High Court in *Mineral Industrial Association* v. *Union of India*, Madhya Pradesh High Court in *Modern Stores Cigarettes* v. *Krishnadas Shah* and *Aftab-e-Jadid, Urdu Daily Newspapers* v. *Bhopal Shramjivi Patrakar Sangh* have taken the opposite view and held that the requirement is only directory. The decisions of these three high courts, which held the provisions to be directory said:

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

Voluntary Labour Arbitrator

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

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

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

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

character for a specified period. Having regard to these provisions, it may perhaps be possible to describe such an arbitrator in a loose sense, a statutory arbitrator.

NOTES

2. ***Conduct of the Arbitrator.*** The Industrial Disputes Act, 1947 does not prescribe how the conduct of the arbitrator should be regulated. However, the decided cases of the Supreme Court and high courts reveal that an arbitrator should be impartial and he must build up a relationship of confidence with both the parties. Thus, he or any of his near relatives should not accept any hospitality or favour from any party to the disputes before him, because justice should not only be done but it must be seen to be done. If he does accept any such favours, that would be an act of misconduct.Similarly, if he does not hear the party or exceeds his jurisdiction or fails to determine an important question referred to him, his decision is liable to be interfered.
3. ***Jurisdiction of the Voluntary Arbitrator.*** An arbitrator under Section 10A comes into existence when appointed by the parties and he derives his jurisdiction from the agreement of the parties. If the arbitrator decides matters not referred to him by the parties, he acts beyond his jurisdiction. For instance, in *Raza Textile Labour Union* v. *Mohan*, three disputes upon which the arbitrator gave the award were not covered by 167 matters of disputes which were referred to him. The Court quashed the award as these matters were beyond the jurisdiction of the arbitrator. Similarly, in *Rohtas Industries Ltd.* v. *Workmen*, the Patna High Court held that the award regarding dearness allowance was vitiated by the fact that it was not in accordance with the terms of agreement. Likewise, the Madras High Court in *Vaikuntam Estate* v. *Arbitrator* quashed the interim award of the arbitrator where he exceeded the terms of reference. Further, unlike the jurisdiction of adjudicatory bodies, the arbitrator cannot arbitrate upon matters 'incidental to' or 'any matter appearing to be connected or relevant' to the dispute. But unlike the adjudicatory authorities under the Act, the arbitrator has a wider power to decide upon all 'industrial dispute' referred to him under an arbitration agreement irrespective of whether it falls under Schedule II or III of the Industrial Disputes Act, 1947.
4. ***Powers of Arbitrator.*** Section 11A merely provides:

> Where an industrial dispute relating to the discharge or dismissal of a workmen has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge of dismissal as the circumstances of the case may require.

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

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

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

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

The Court added:

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

Signing of an Award

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

Submission of an Award

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

Publication

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Recommendation of the (Second) National Commission on Labour

The (Second) National Commission on Labour considers an arbitration to be a dispute settlement machinery that is better than adjudication.

Adjudication

The final stage in the settlement of industrial disputes (which the parties are unable to settle either through bipartite negotiations or through the good offices of the conciliation machinery or through voluntary arbitration) is compulsory arbitration, which envisages Governmental reference to statutory bodies such as the Labour Court, Industrial Tribunal or National Tribunal. Disputes are generally referred to adjudication on the recommendation of the conciliation officer who had dealt with it earlier. However, the appropriate government can at its discretion accept or reject his recommendation and accordingly refer or not refer the case for adjudication. The percentage of disputes referred to adjudication varies from state to state.

The system of adjudication by Labour Court, Tribunal and National Tribunal has perhaps been one of the most important instruments of regulating the rights of the parties in general and wages, allowances, bonus, working conditions, leave, holidays and social security provisions in particular. Such norms setting, which in advanced countries is done through the process of collective bargaining between the employers and the trade unions, had to be done in India through the adjudication system because the trade union movement was weak and in no position to negotiate with the employer on an equal footing. However, this system has been criticized for its unfavourable effects on the trade union movement. Further, undue dependence on compulsory adjudication has deprived the trade unions of the incentive to organize themselves on a strong and efficient basis and has rendered the unions into mere petitioning and litigant organizations arguing their cases before tribunals, etc. The system of adjudication has also been criticized because of long delays involved in the final settlement of disputes, particularly where one or the other party chooses to go in appeal against an award. Such delays, it is argued, are themselves responsible for much industrial strife. Be that as it may, there is no doubt that the labour judges occupy a very important position in adjudicating the disputes between the management and labour. The disputes that are brought before the labour judiciary involve huge stakes, both for the management as well as the workers.

Origin and Growth of Adjudication System

In the era of laissez faire, employers enjoyed unfettered right to 'hire and fire'. They had vastly superior bargaining powers and were in a position to dominate workmen in every conceivable way. They preferred to settle terms and conditions of employment of workmen and abhorred statutory regulation thereof, unless, of course, it was to their advantage. However, this tendency, coupled with the rise in the incidence of strikes and lockouts made it necessary for the Government to intervene in labour management relations. While voluntary and persuasive processes had been playing their role in settling industrial disputes since 1929, World War II marked the beginning of compulsory adjudication. Rule 81A of the Defence of India Rules, 1942 empowered the Government, *inter alia*, to refer any trade dispute to adjudicators and to enforce the awards. After the end of hostilities, these measures, with a number of innovations and modifications, were incorporated in the Industrial Disputes Act, 1947. The Act 'substitutes for free bargaining between the parties a binding award by an impartial Tribunal'. The Tribunal is not bound by contractual terms between the parties but can make a suitable award for bringing about harmonious relations between the employer and the workmen. 'The Industrial Tribunal is not lettered by any limitation on its power.

The only limitation on its power is to bring about harmonious relationship between the employer and the workmen.' In the original Act, only one constituting body, namely, the Industrial Tribunal was designated for the compulsory settlement of industrial disputes. Within a short span of nine years of its working it was found that a large number of cases were referred to it. This led to the introduction of a three tier system consisting of the Labour Court, Tribunal and National Tribunal in 1956.

Composition of Labour Court, Tribunal and National Tribunal

The issue of composition of the Labour Courts and Tribunals has an important bearing on their working. The present system of reference to adjudication is, however, open to severe criticism. First, from 'the workers' side it is often urged that with various restrictions placed on strikes, the recourse to judicial determination of disputes should not be barred by the Government'. Second, the decision to refer disputes or withhold reference is sometimes not made on any strict principle and the system is open to pressurization.

The Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 introduce a three-tier system for industrial adjudication. The machinery provided under the Act consists of Labour Courts, Industrial Tribunals and National Tribunals. The appropriate government is empowered under Section 7 and 7A to constitute one or more Labour Courts and Industrial Tribunals with limited jurisdiction, to adjudicate 'industrial disputes', and the Central Government is authorized under Section 7B to constitute the National Tribunal. The Labour Courts, Industrial Tribunals and National Tribunals are *ad hoc* bodies and consist of a single member called the presiding officer. The appointment of the tribunal may, however, be for a limited duration.

Appointment of Assessors. There is no provision for the appointment of assessors in Labour Courts, but in case of Industrial Tribunals or the National Tribunal the appropriate government may appoint two persons as assessors to advise the Tribunal in the proceedings before it. The assessors are supposed to be experts having special knowledge of the matter under consideration and can be appointed only when the dispute involves technical matters and requires expert knowledge for its settlement. This provision has never been used and for all practical purposes is defunct.

Appointment, Qualifications and Disqualifications of Presiding Officer of Labour Court, Tribunal and National Tribunal

Industrial peace, prosperity and progress depend upon the efficiency of the labour judiciary. The labour judiciary is thus the centre of the system of industrial adjudication in India. These appointments of the presiding officers of the labour judiciary are made by the appropriate Central Government. But at the same time in a large number of industries, the state is one of the parties that takes part as the employer. In this context, the method of appointment of the labour judiciary assumes great importance. It is absolutely necessary that the labour judges be highly qualified, experienced, independent and committed to the Constitution of India. In other words, the labour judiciary should be independent of the executive government as is the case of the judiciary under the Constitution. It is therefore desirable that the labour judiciary must be taken out of the control of the executive government.

The Supreme Court in *State of Maharashtra* v. *Labour Law Practitioner's Association and others* considered the relevant provisions of the Industrial Disputes

Act and the Bombay Industrial Relations Act and came to the conclusion that the labour court judges and the judges of the industrial court belong to 'Judicial Service', as that expression is understood in Charter VI of the Constitution of India.

According to the Court, the expression 'District Judge' covers a judge of any principal civil court of original jurisdiction and includes the hierarchy of specialized civil courts, such as Labour Courts and Industrial Courts. The term 'Courts' will cover all Tribunals, which are basically courts performing judicial functions, giving judgement, which are binding, they are exercising sovereign judicial power transferred to them by the state. Men who could be described as 'independent' and having sufficient judicial experience alone must, according to their Lordships, be selected as labour court judges. The Court accordingly held that persons presiding over Industrial and Labour Courts constitute a judicial service and their recruitment should be in accordance with Article 234 of the Constitution.

In case of Labour Courts, there is a wider range of alternatives in the qualifications for appointment. They are as follows: (*a*) he is, or has been, a Judge of a high court; or (*b*) he has, for a period of not less than three years, been a District Judge or an Additional District Judge; or (*c*) he has held any judicial office in India for not less than seven years; (*d*) he has been the Presiding Officer of a Labour Court constituted under any Provincial Act or State Act for not less than five years.

Recommendations of the (Second) National Commission on Labour

The (Second) National Commission on Labour has recommended that officials of labour departments at the Centre and the State who are of and above the rank of Deputy Labour Commissioners/Regional Labour Commissioners with ten years experience in the labour department and a degree in law should be made eligible for being appointed as presiding officers of Labour Courts.

Qualifications for appointment to Tribunals are the same as prescribed for Labour Courts in Section 7, clauses (a) and (b). Thus, the range of alternatives is narrower.

For National Tribunals, the range of alternative qualifications for appointment is further narrower. The qualification that the person is or has been a judge of a high court is common to all the Tribunals.

The requirements of Section 7C are applicable to all the three bodies, *i.e.*, Labour Courts, Tribunals and National Tribunals. Section 7C lays down disqualifications with regard to age and independence of persons appointed. It requires that the person to be appointed must be (*a*) an independent person and (*b*) has not attained the age of sixty-five years.

In actual practice however, it has been found that insistence is made on judicial qualification in the appointment of the Presiding Officer of the Labour Court and Industrial Tribunals. Further, generally retired personnel are chosen to serve as the Presiding Officer. It is submitted that the appointment should be made in consultation with the Chief Justice of a high court. This will ensure the appointment of independent persons by the appropriate government as the Presiding Officer of Labour Courts and Industrial Tribunals. Further, the appointment should be made on a permanent basis with promotional avenues open to them.

Jurisdiction of Labour Court, Tribunal and National Tribunal

The Labour Court has jurisdiction to adjudicate industrial disputes that may be referred to it under Section 10 of the Act by the appropriate government which relate to: (1) The propriety or legality of an order passed by an employer under the standing orders; (2) the application and interpretation of standing order; (3) discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed; (4) withdrawal of any customary concession or privilege; (5) illegality or otherwise of strike or lock out; and (6) all matters other than those specified in the Third Schedule.

The Industrial Tribunals have jurisdiction to adjudicate industrial disputes referred to it under Section 10, which relates to: (1) wages, including the period and mode of payment; (2) compensatory and other allowances; (3) hours of work and rest intervals; (4) leave with wages and holidays; (5) bonus, profit sharing, provident fund and gratuity; (6) shift working otherwise than in accordance with standing orders: (7) classification by grades; (8) rules of discipline; (9) rationalization; (10) retrenchment of workmen and closure of establishment; and (11) any other matter that may be prescribed.

The National Tribunals have jurisdiction to adjudicate industrial disputes which, in the opinion of the Central Government, involve questions of national importance or are of such a nature that industrial establishments situated in more than one state are likely to be interested in, or affected by, such disputes and which may be referred to them by the Central Government.

Under the Industrial Disputes Act, 1947, the Labour Court, Tribunal and National Tribunal can acquire jurisdiction only when there is in existence or apprehension of an industrial dispute and a reference of such dispute has been made by the appropriate government under Section 10. The Labour Courts, Tribunals and National Tribunals are also required to deal with complaints. Labour Courts are also required to decide the question of amount of money due under Section 33 C (2) of the Industrial Disputes Act, 1947.

Powers and Functions of the Labour Court, Tribunal and National Tribunal

The Labour Court, Tribunal and National Tribunal have a statutory duty to hold the proceedings expeditiously and shall, as soon as it is practicable on the conclusion thereof, submit their award to the appropriate government. They are empowered, subject to the rules in this behalf, to follow such procedure as they may think fit. The rules provide for the place and time of the hearing of the industrial dispute by adjudication or arbitration authorities as the case may be.

Power to Set Aside an Exparte Award

Even though there is no provision either in the Industrial Disputes Act or in the rules framed thereunder to empower the Labour Tribunals to set aside an exparte award, the Supreme Court, through the process of judicial legislation, has invested in them such powers. However, the Industrial Tribunal becomes *Functus officio* if the application is not moved within 30 days of the publication of the award in the official gazette. Thereafter, the interim award stands vacated. The Tribunal may also cancel the promotion order passed by the management where it finds that person superseded on account of *mala fide* or victimization. In this regard, the Tribunal may also frame rules of promotion in consultation with the management and union and direct the

management to give promotions or upgrade in accordance with those norms/rules. Industrial Tribunals, while deciding upon the wage scales of the employees of an establishment, have full liberty to propose *ad hoc* increase of salaries as a part of the revision of wages.

The Tribunal, however, under Section 36A, has no power to determine the question of propriety, correctness or validity of any provision or the powers conferred under any statute. Further, the Tribunal has no power to amend or modify its award after it becomes Final except to correct clerical mistakes and the powers under Section 11(3) could be exercised by the Tribunal after the proceedings pending before it have termin.

Power to Grant interim Relief

The Supreme Court in *Hotel Imperial* v. *Chief Commissioner* ruled that interim relief may be granted (*i*) if there is a prima facie case, (*ii*) if interference is necessary to protect a party from irreparable loss or injury, and (*iii*) for balance and convenience. The Bombay High Court in *Bharat Petroleum Corporation Ltd.* v. *R.J. Tiwari* held that even full wages may be granted by way of interim relief.

But 'where a quasi-judicial Tribunal or arbitrator records findings based on no legal evidence and the findings are either his *ipse dixit* or based on conjectures and surmises, the enquiry suffers from the additional infinity of non-application of mind and stands vitiated. The Industrial Tribunal or the arbitrator or a quasi-judicial authority can reject not only such findings but also the conclusion based on no legal evidence or... on surmises and conjectures unrelated to evidence on the ground that they disclose total non-application of mind.'

Powers of Tribunal under Section 11A

Quite apart from these, the Labour Court, Tribunal, National Tribunal and Voluntary Arbitrator are also empowered to go into the question of adequacy of the punishment. They are empowered under Section 11A to direct 'reinstatement of the workman on such terms and conditions, if any, as (they) think fit or give such relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case require'. The purpose for which Section 11A has been enacted is to enlarge the powers of the Labour Court, Tribunal or National Tribunal, as the case may be, so that in appropriate cases even if the Labour Court or the Tribunal finds that the enquiry had been held properly and the charge is borne out by the evidence, the Labour Court or the Tribunal may still give some relief to the worker if it finds the punishment to be disproportionate to the charges proved.

1. *Jurisdiction to record evidence under S. 11A*

1. It is exercisable even in cases where the opportunity of hearing was given and the principles of natural justice complied were with before passing the order of dismissal but the Appellate Authority found it necessary to record evidence in order to draw its own conclusion as to whether the person dismissed was or was not guilty of the charges framed against him.
2. Where the employer had filed an application to produce evidence in support of the charges and the Appellate Authority without disposing of that application set aside the order of dismissal merely on account of that omission.

3. Omission to afford opportunity during domestic enquiry is curable by adducing evidence before the Appellate Authority.

2. *Scope of consideration of Labour Court/Tribunal under S. 11A*

1. Domestic enquiry conducted by management found defective.
2. Labour Court granted opportunity to the management and workmen to adduce evidence.
3. On evidence, the Labour Court agreed with the management's conclusion that misconduct was proved and also declared the dismissal order justified.

3. *Production of additional evidence*

The Supreme Court in *Bharat Forge Company Ltd.* v. *A.B. Zodge* held that under Section 11A of the Industrial Disputes Act, 1947, the employer is entitled to adduce evidence for the first time before the Tribunal even if the employer had not conducted any enquiry or the enquiry conducted by him was found to be perverse. A domestic enquiry may be vitiated either for non-compliance of rules of natural justice or for perversity. Disciplinary action taken on the basis of a vitiated enquiry does not stand on a better footing than a disciplinary action with no enquiry. The right of the employer to adduce evidence in both the situations is well recognized.

4. *When can the Labour Court permit parties to adduce fresh evidence*

In *Rajendra Jha* v. *Labour Court*, the Supreme Court held that even when the application for permission to adduce further evidence is not made in the pleading, the Labour Court is empowered to permit the management to adduce evidence before the court and therefore, it should allow the parties to adduce evidence to prove the misconduct. However, the Court observed that the request of the employer to adduce evidence should be made at the earliest opportunity or delay be explained. However, such request must be made before the closure of the proceedings.

5. *Obligation of asking the parties to adduce evidence*

The Tribunal is neither under a duty to give opportunity to the parties to adduce evidence nor under an obligation to acquaint parties before it of their rights to adduce evidence under Section 11A.

6. *Recommendation of the (Second) National Commission on Labour*

The Second National Commission on Labour has recommended that Section 11A of the ID Act 1947 be retained. However, the law may be amended to the effect that where a worker has been dismissed or removed from service after a proper and fair enquiry on charges of violence, sabotage, theft and/or assault, and if the Labour Court comes to the conclusion that the grave charges have been proved, then the Court will not have the power to order reinstatement of the delinquent worker.

7. *Powers of the high court under Article 226*

The high court in exercise of writ jurisdiction can exercise similar powers and discretion as exercised by the Labour Court under Section 11A.

Powers of the Labour Court to Review the Award

It is restricted only to: (*i*) Typographical mistake or (*ii*) Accidental slip of omission.

Discharge or dismissal of a workman the date of its effect

When the domestic enquiry is found defective, it relates back to the date on which the management passed the order and not from the date of judgement.

Disposal of preliminary or technical objections

It has been held in a catena of cases that all issues preliminary or otherwise should be decided together so as to rule out the possibility of any litigation at the interlocutory stage.

Discretion of Labour Court to deny relief to workmen when the claim was made after a long time

In *Haryana State Co-operative Land Development Bank* v. *Neelam*, a typist was appointed on an *ad hoc* basis in a bank. Her services were finally terminated after 17 months of service. She joined some other establishment and continued to work there. While this was so, some of the employees who were placed and terminated similarly to the said typist approached the Labour Court and got certain relief. After more than 7 years the said typist also raised an industrial dispute. On reference, the Labour Court refused to grant any relief, *inter alia*, on the ground that there was no justification for such delay. Thereafter, the appellant filed an appeal before the Supreme Court. The Court upheld the award of the Labour Court by observing that: (*i*) The Industrial Disputes Act does not contain any provision which mandates the industrial court to grant relief in every case to the workman. The extent to which a relief can be moulded will inevitably depend upon the facts and circumstances obtaining in each case. In the absence of any express provision contained in the statute in this behalf, it is not for the Court to lay down a law which will have a universal application. (*ii*) It is trite that the Courts and Tribunals having plenary jurisdiction have discretionary power to grant an appropriate relief to the parties. The aim and object of the Industrial Disputes Act may be to impart social justice to the workman but the same by itself would not mean that irrespective of his conduct a workman would automatically be entitled to relief. The procedural laws like estoppel, waiver and acquiescence are equally applicable to the industrial proceedings. A person in certain situation may even be held to be bound by the doctrine of Acceptance *sub silentio*. The employee did not raise any industrial dispute questioning the termination of her services within a reasonable time. She even accepted an alternative employment and has been continuing therein. (*iii*) The conduct of the employee in approaching the Labour Court after more than seven years is a relevant factor in refusing to grant any relief to her. Such a consideration on the part of the Labour Court cannot be said to be an irrelevant one.

Other Powers of Tribunals

Every Labour Court, Tribunal and National Tribunal enjoys the same powers that are vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit. It can enforce the attendance of any person and examine him on oath, compel the production of documents and material objects, issue commission for examination of witness, make discovery and inspection, grant adjournment and receive evidence on affidavit.

The Tribunal is required to abide by the provisions of the Evidence Act in matters relating to the proof of a document and the claim for privilege. The Labour Court or the Industrial Tribunal while adjudicating n industrial dispute referred to it by the appropriate government may summon a party other than the employer and employee whose presence would help the concerned Court in the adjudication of the dispute finally, effectively and completely. Every enquiry by a Labour Court, Tribunal or National Tribunal is a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code and Sections 345, 346 and 348 of the Code of Criminal Procedure, 1973. But the legal practitioners are allowed to represent the parties before the adjudication authorities with the consent of the other parties to the proceedings and with the permission of the authorities. The proceedings are normally held in public, but the Labour Court, Tribunal or National Tribunal as the case may be can at any stage direct that any witness to be examined or the proceedings to be held in camera. These provisions reveal that the 'Tribunal in discharging functions is very near to those of a Court, although, it is not a Court in the technical sense of the words.'

Other Duties of Tribunals

In addition to the above, the Labour Court, Tribunal and National Tribunal has to act in a judicial capacity in settling the industrial dispute. The functions and duties of the Industrial Tribunal are very much like those of a body discharging judicial functions, although it is not a Court. The duty of the Tribunal was best described by the Supreme Court in *Hindustan Lever Ltd.* v. *The Management*. In this case, the Court held that it was the duty of the Tribunal that it 'cannot travel beyond the pleadings and are precluded or prohibited from raising to writ if the employer does not question the status of the workmen. It further added that the tribunal cannot *suo motu* raise the issue and proceed to adjudicate upon the same and throw out the reference on the sole ground that the concerned workman was not a workman within the meaning of the Act. In settling the industrial dispute, 'the Functions of the Tribunal is not confined to administration in accordance with law. It can confer rights and privileges on either parties which it considers reasonable and proper though they may not be within the terms of existing agreement. It is not merely to interpret to give effect to contractual rights or obligations of the parties but it can create new rights or obligations between them which it considers essential for them for keeping industrial peace.'

Filling of Vacancies

Section 8 authorizes the appropriate government to fill vacancies when the presiding officers of Labour Courts and Industrial Tribunals cease to be available. If for any reason a vacancy occurs, it is open to the Government to fill the same whether the vacancy is permanent or temporary. In the case of a National Industrial only the Central Government is empowered to fill the vacancy by appointing any person in accordance with the provisions of the Act. The high court cannot examine whether the services of a Tribunal have ceased to be available. It is for the appropriate government to say so. Section 8 does not apply to such Tribunals which are constituted for a limited period and so the proceedings could not be continued by the new Tribunal from the stage at which the same was left by the previous Tribunal.

Response of the [First] National Commission on Labour

The [First] National Commission on Labour set up by the Government of India in 1966 found the working of the industrial relations machinery under the Industrial Disputes Act, 1947 unsatisfactory. It therefore emphasized the need for 'a formal arrangement which is independent in character, expeditious in its functioning and which is equipped to build up the necessary expertise.' The Commission, therefore, recommended: (*i*) the setting up of a National Industrial Relations Commission by the Central Government to deal with disputes that involve a question of national importance or which are likely to affect establishments situated in more than one state. (*ii*) The setting up of an Industrial Relations Commission at the state level for the settlement of disputes for which the State Government is the appropriate government. (*iii*) The proposed National and State Industrial Relations Commission would be presided over by a person having the prescribed judicial qualifications and experience appointed by the Union and State Government respectively in consultation with the Chief Justice of India or Chief Justice of the high court concerned as the case may be, and the Union Public Service Commission or the State Public Service Commission as the case may be. The Commission shall also constitute two non-judicial members, who will be officers in the field of industry, labour or management. The main functions of the proposed machinery are three-fold: (*i*) adjudication of industrial disputes; (*ii*) conciliation; and (*iii*) certification of unions as representative unions; however, no step has yet been taken to implement these recommendations.

Court Fee

The [Second] National Commission on Labour has recommended levying a *token court fee* in respect of all matter coming up before Labour Courts and Labour Relations Commissions.

Representation of Parties

Section 36 of the Industrial Disputes Act deals with the representation of a party to a dispute. Under sub-section 1 of Section 36, a workman who is a party to a dispute shall be entitled to be represented in any proceeding under the Act by (*a*) any member of the executive or other office-bearer of a registered trade union of which he is a member; or (*b*) any member of the executive or other office-bearer of a federation of trade unions to which the trade union referred to in clause (*a*) is affiliated; (*c*) where the worker is not a member of any trade union, by any member of the executive or other office bearer of any trade union connected with, or by any other workmen employed in the industry in which the worker is employed and authorized in the prescribed manner.

Similarly, under Section 36(2), an employer who is party to a dispute shall be entitled to be represented in any proceeding under this Act by (*a*) an officer of an association of employers of which he is a member; (*b*) an officer of a federation of associations of employers to which the association referred to in clause (a) is affiliated; (*c*) where the employer is not a member of any association of employers, by an officer of any association of employers connected with, or by any other employer engaged in the industry in which the employer is engaged and authorized in such manner as may be prescribed.

Section 36 (3) however, imposes a total ban on the representation of a party to the dispute by a legal practitioner in any conciliation proceeding or in any proceedings before a Court of Enquiry.

Miscellaneous Provisions under the IDA, 1947- Offences by Companies, Conditions of Service to remain unchanged, etc.

32. Offence by Companies, etc:

Where a person committing an offence under this Act is a company, or other body corporate, or an association of persons (whether incorporated or not), every director, manager, secretary, agent or other officer or person concerned with the management thereof shall, unless he proves that the offence was committed without his knowledge or consent, be deemed to be guilty of such offence.

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

1. During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before an arbitrator ora Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall—
   (a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or
   (b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.
2. During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman,—
   (a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or
   (b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman: Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.
3. Notwithstanding anything contained in sub-section (2), no employer shall, during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute—
   (a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceedings; or

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

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

4. In every establishment, the number of workmen to be recognised as protected workmen for the purposes of sub-section (3) shall be one per cent. of the total number of workmen employed therein subject to a minimum number of five protected workmen and a maximum number of one hundred protected workmen and for the aforesaid purpose, the appropriate Government may make rules providing for the distribution of such protected workmen among various trade unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognised as protected workmen.

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

33A Special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceedings.

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

Sec. 34: Cognizance of offences.

1. No Court shall take cognizance of any offence punishable under this Act or of the abetment of any such offence, save on complaint made by or under the authority of the appropriate Government.

2. No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class], shall try any offence punishable under this Act.

35. Protection of persons:

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

38. Power to make rules

1. The appropriate Government may, subject to the condition of previous publication, make rules for the purpose of giving effect to the provisions of this Act.
2. In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—
   (a) the powers and procedure of conciliation officers, Boards, Courts, Labour Courts, Tribunals and National Tribunals including rules as to the summoning of witnesses, the production of documents relevant to the subject-matter of an inquiry or investigation, the number of members necessary to form a quorum and the manner of submission of reports and awards;
3. the form of arbitration agreement, the manner in which it may be signed by the parties, the manner in which a notification may be issued under sub-section (3A) of section 10A, the powers of the arbitrator named in the arbitration agreement and the procedure to be followed by him;
4. the appointment of assessors in proceedings under this Act.
5. the constitution of Grievance Settlement Authorities referred to in section 9C, (section 38.) the manner in which industrial disputes may be referred to such authorities for settlement, the procedure to be followed by such authorities in the proceedings in relation to disputes referred to them and the period within which such proceedings shall be completed;

Sec. 39: Delegation of powers

The appropriate Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act or rules made thereunder shall, in relation to

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such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also,—

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

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

Sec. 40: Power to amend Schedules

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

3.3 INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946

Coverage of the Act

Industrial Establishments Covered

The Act applies to every industrial establishment wherein one hundred or more workmen are employed, or were employed on any day of the preceding twelve months. Several states have extended the application of the Act to establishments employing 50 or more persons. The (second) National Commission on Labour has recommended that establishments employing 20 or more workers should have standing orders or regulations. There is no need to delimit the issues on which standing orders can or need to be framed. As long as the two parties agree, all manner of things including multi-skilling, production, job enrichment, productivity, and so on can also be added. These standing orders are prepared by the employer(s) in consultation with recognized unions/federations/centres, depending on the coverage, and where there is any disgreement between the parties, the disputed matter is determined by the certifying authority having jurisdiction, to which either of the parties may apply. Any amendment to the Standing Orders can be asked for by either party and agreed to by both parties or referred to the certifying authority or the Labour Court for determination. However, no demand for amendment can be made until at least a year has elapsed. The appropriate government may prescribe a separate Model Standing Order for units employing less than 50 workers. The employer has to append a copy of the Model Standing Orders or the Standing Orders, mutually agreed upon with the workers, to the appointment letter of every employee.

The problem with the aforesaid provision is whether the fall in the number of workmen below one hundred at any time would make the Act inapplicable. The Division Bench of the Bombay High Court in *Balakrishna Pillai* v. *Anant Engineering Works Pvt. Ltd.* answered it in the negative. The Court gave three reasons in support of its conclusion: First, the provisions of Section 1 (3) 'relate to initial application of the Act

Check Your Progress

1. What does an industry mean?
2. What is an industrial dispute?
3. What does a lockout mean?
4. What is the main function of works committee?

as the condition precedent *viz.*, the number of workmen.' 'There ... was nothing in the provisions of the Act providing for cessation or discontinuance of the application of the Act to an establishment on account of fall in the number of workmen or on any other account.' Second, 'the Act is a beneficial social legislation enacted for the purpose of defining with certainty the terms of contract of employment and thus guaranteeing the workmen their conditions of service.' Finally, 'an interpretation which promotes the objects and purposes of the Act will have to be preferred to one which will only defeat the same.'

The other issue connected with the aforesaid provision has to do with the scope of 'industrial establishment'. Section 2(e) defines 'Industrial establishment' to mean:

(*i*) an industrial establishment as defined in clause (*ii*) of Section 2 of the Payment of Wages Act, 1936; or

(*ii*) a factory as defined in clause (m) of Section 2 of the Factories Act, 1948; or

(*iii*) a railway as defined in clause (4) of Section 2 of the Railways Act, 1890; or

(*iv*) the establishment of a person who, for the purpose of fulfilling a contract with the owner of any industrial establishment, employs workmen.

The scope of the aforesaid definition has been delineated in a number of decided cases. Conflicting views have, however, been expressed on the issue of whether 'industrial establishment' covers the State Electricity Board. While the Allahabad and Patna High Courts included the same; the Madras High Court excluded it. The Supreme Court has, however, approved the view of the Allahabad and Patna High Courts. Further, the Employees' State Insurance Corporation has been excluded from the aforesaid definition and therefore, the provisions of IESOA do not apply to it. Decisions also indicate that the Standing Orders framed in an industrial establishment by an electrical undertaking do not cease to be operative on the purchase of the undertaking by the Board or enframing the regulation under Section 79 of the Electricity Supply Act, 1948. Courts have also held that the definition of 'industrial establishment' under IESOA, having been incorporated from the definition of that term in the Payment of Wages Act, 1936, the position of the latter Act at the time of the enactment of the 1946-legislation above would be material and any other subsequent addition or amendment to the 1936-Act would be of no avail.

The appropriate government is empowered to extend the provisions of the Act to an industrial establishment employing less than one hundred workmen by giving two months' notice and issuing notification in the official Gazette and specifying the number in the notification.

Employer under the Act

Section 2 (d) of the IESOA defines an 'employer' to mean the owner of an industrial establishment to which this Act for the time being applies, and includes:

(*i*) in a factory, any person named under clause (f) of sub-section (1) of Section 7 of the Factories Act, 1948 (Act 63 of 1948), as manager of the factory.

(*ii*) in any industrial establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf, or where no authority is so appointed, the head of the department.

(*iii*) in any other industrial establishment, any person responsible to the owner for the supervision and control of the industrial establishment. In *Hari Shankar Jain* v. *Executive Engineer, Rural Electricity Division*, the Allahabad High Court held that the employer would include the State Electricity Board since it was the owner of the industrial establishment by virtue of its compulsory purchase. It also held that 'unless there was any other provision to the contrary, even the State Government, if it happened to be the owner of an industrial establishment, would fall within the ambit of the definition of 'employer.'

Concept of Standing Orders

A. The Definition

Section 2 (g) of the Industrial Employment (Standing Orders) Act, 1946 (hereinafter referred to as IESOA) defines 'Standing Orders' to mean rules relating to matters set out in the Schedule.

Thus, the items that have to be covered by the Standing Orders in respect of which the employer has to make a draft for submission to the certifying officers are matters specified in the schedule.

B. Contents of the Schedule

The matters referred to in the Schedule are:

1. Classification of workmen, *e.g.*, whether permanent, temporary, apprentices, probationers, or *badlis*
2. Manner of intimating to workmen periods and hours of work, holidays, pay-days and wage rates
3. Shift working
4. Attendance and late coming
5. Conditions of procedure in applying for, and the authority which may grant leave and holidays
6. Requirements to enter premises by certain gates and liability to search
7. Closing and re-opening of sections of the industrial establishment and temporary stoppages of work and the rights and liabilities of the employer and workmen arising therefrom
8. Termination of employment, and the notice thereof to be given by the employer and the workmen
9. Suspension or dismissal for misconduct and acts or omissions which constitute misconduct
10. Means of redress for workmen against unfair treatment or wrongful exactions by the employer or his agents or servants
11. Any other matter that may be prescribed

The enumeration of the aforesaid items is not exhaustive. There seems to be no reason for including certain items and excluding many other important items. If the object of the IESOA is to 'give the workmen collective voice in defining the terms of

employment and to subject the terms of employment to scrutiny of quasi-judicial and judicial authorities', there is no reason to exclude many items from the terms of employment and conditions of service. It is significant to note that Section 73 (1) of the Industrial Relations Bill, 1978 provides that:

(*i*) The Central Government shall, by notification, make Standing Orders to provide for the following matters

(*a*) Classification of employees, that is to say: whether permanent, temporary, apprentice, probationers, *badlis*

(*b*) Conditions of service of employees, including matters relating to the issue of orders of appointment of employees, procedure to be followed by employees in applying for, and the authority which may grant leave and holidays

(*c*) Misconduct of employees, enquiry into such misconduct and punishment thereof

(*d*) Superannuation of employees

(*e*) Shift working of employees

The aforesaid provisions could have given great relief to workmen but they lapsed after the dissolution of the Parliament.

Quite apart from the aforesaid shortcomings, the matters enumerated in the Schedule have also been the subject matter of judicial interpretation in a number of decided cases. Some of the items that invited the attention of the Court may be noted:

Item 5. In *Bagalkot Cement Co.* v. *R.K. Pathan*, the Supreme Court has interpreted 'condition' in clause 5 of the Schedule 'in a broad and liberal sense' so as to include leave and holidays. In its view, 'to hold otherwise would defeat the very purpose of clause 5.'

Item 8. Prior to the Supreme Court decision in *U.P. Electricity Supply Co.* v. *T.N. Chatterjee*, the Madras and Orissa High Courts were divided on the issue whether the word 'termination' in Item 8 included 'termination of employment on attainment of age of superannuation'. Thus, in the *Hindu* v. *Secretary, Hindu Office*, the management of the *Hindu* had framed certain Standing Orders, one of the clause of which provided that every employee shall ordinarily retire from service after completing the age of fifty-eight years or thirty years of unbroken service, whichever is earlier. A question arose regarding whether such a clause in the Standing Orders was covered by any of the items of the Schedule of the Act. The Madras High Court held that the termination in Item 8 of the Schedule was wide enough to govern the case of superannuation. But in *Saroj Kumar* v. *Chairman, Orissa State Electricity Board*, the Court took the contrary view. It held that 'superannuation' was covered by 'termination' in Item 8. However, the controversy was set to rest by the Supreme Court in *U.P. Electricity Supply Co.* v. *Chatterjee*. It related to the retirement of certain employees on the completion of the age of 55 years or 30 years of service. The question that arose was whether termination in Item 8 covered 'superannuation.' The Court held that termination in Item 8 does not cover each and every form of termination or cessation of employment. In view of this, it held that it did not cover 'superannuation', which is automatic and does not require notice or any act on the part of the employer or the workmen. The Court agreed that if termination is to be read in a wider sense as meaning employment

coming to an end, there would be no necessity to have Item 9 because dismissal would then be covered by termination.

Item 9. The 'misconduct' under Item 9 for which an employee can be dismissed need not necessarily have been committed in the course of his employment. It is enough if it is of such a nature as to affect his suitability for a particular employment.

Item 11. This item refers to 'any other matter which may be prescribed.' When the appropriate government adds any item to the schedule, the relevant question to be asked is whether it refers to the conditions of employment or not. If it does, it would be within the competence of the appropriate government to add such an it'

Certification of Standing Orders

I. Submission of Draft Standing Orders by Employers

The Industrial Employment (Standing Orders) Act (hereinafter referred to as IESOA) requires every employer of an 'industrial establishment' to submit draft Standing Orders, *i.e.*, 'rules relating to matters set out in the Schedule' proposed by him for adoption in his industrial establishment. Such a draft should be submitted within six months of the commencement of the Act to the Certifying Officer. Failure to do so is punishable and is further made a continuing offence. The draft Standing Orders must be accompanied by particulars of workmen employed in the establishment as also the name of the trade union, if any, to which they belong. If the industrial establishments are of a similar nature, the group of employers owning those industrial establishments may submit a joint draft of Standing Orders.

II. Conditions for Certification of Standing Orders

Section 4 requires that Standing Orders shall be certified under the Act if:

(*a*) provision is made therein for every matter set out in the Schedule which is applicable to the industrial establishment

(*b*) they are otherwise in conformity with the provision of the Act

(*c*) they are fair and reasonable

Since the aforesaid conditions form the nucleous of valid Standing Orders, it is necessary to examine them in the light of decided cases.

A. Matters to be Set out in the Schedule

The draft standing orders should contain every matter set out in the schedule of the Act with the additional matter prescribed by the Government that is applicable to the industrial establishment. According to Section 4, the standing orders shall be certifiable if provisions are made therein for every matter stated in the schedule to the Act.

B. Matter not Covered by the Schedule

The Schedule contains Clauses 1 to 10, which deal with several topics in respect of which standing orders have to make provision, and Clause 11 refers to any other matter that may be prescribed. These items are not exhaustive and do not contain items on several subjects. The question that arise is whether it is permissible for the employers to frame Standing Orders in respect of the matters not provided in the Schedule of the Act.

The Supreme Court in *U.P. Electric Supply Co. Ltd.* v. *T.N. Chatterjee* left the question open when it observed that it was unnecessary to decide the question as to whether in the absence of any item in the Schedule any Standing Orders could be framed in respect of the matter which may be certified by the Certifying Officer, as fair and reasonable. On the other hand, the Supreme Court in *Rohtak and Hissar Electric Supply Co.* v. *U.P.* considered the question squarely and observed that:

> Then in regard to the matters which may be covered by the Standing Orders, it is not possible to accept the argument that the draft Standing Orders can relate to matters outside the Schedule. Take, for instance, the case of some of the draft Standing Orders which the appellant wanted to introduce; these had reference to the liability of the employees for transfer from one branch to another and from one job to another at the discretion of the management. These two Standing Orders were included in the draft of the appellant. These two provisions do not appear to fall under any of the items in the Schedule; and so, the certifying authorities were quite justified in not including them in the certified Standing Orders.

and later added that:

> .... The employer cannot insist upon adding a condition to the Standing Orders which relates to a matter which is not included in the Schedule.

C. Conformity with the Provisions of the Act

In *Indian Express Employees Union* v. *Indian Express (Madurai) Ltd.*, the Kerala High Court held that the framing of the Standing Orders is to be in conformity with the provisions of the Act. The same need not be in conformity with the appointment order or any office order of the establishment.

In *Rashtriya Chemicals and Fertilizers Ltd.* v. *General Secretary, FCI Workers Union,* the Division Bench of the Bombay High Court held that the word conformity means that it should not be inconsistent. In other words, merely because the Central Standing Orders prescribe the age of 58 years, it does not automatically mean that any thing other than 58 years is not in conformity.

In *Burn Standard and Company* v. *I.T.*, the Supreme Court depricated the practice of correction of date of birth at the fag end of the career of an employee.

D. Conformity with the Model Standing Orders

Where Model Standing Orders have been prescribed, the draft submitted by the employers must be in conformity with the Model Standings Orders provided under Section 15 (2) (b) 'as far as it is practicable.' Conformity cannot be equated with identity. In other words, it does not mean that the draft standing orders must be in identical words but it means that in substance, it must conform to the model prescribed by the appropriate government. The expression 'as far as is practicable' also confirms the view. This expression indicates that the appropriate authority may permit departure from the Model Standing Orders if it is satisfied that insistence upon such conformity may be impracticable. There is, however, no provision in the Act for making more beneficial provisions of the Model Standing Orders applicable in cases where certified standing orders exist.

In the absence of such a provision under Section 15 (2)(b), a question arose about whether the Standing Orders could contain matters not found in the Model

Standing Orders. This issue was raised in *S.K. Seshadari* v. *H.A.L.* In this case, the Standing Orders of Hindustan Aeronautics Ltd, *inter alia*, considered the following acts and omission to be misconduct, '(19) Gambling and money lending or doing any other private business within the Company's premises'.

The validity of these provisions was challenged on the ground that the Model Standing Orders did not provide that the aforesaid acts would constitute misconduct. Upholding the validity of these provisions, the Karnataka High Court observed that:

> [T]he mere fact that the Model Standing Orders do not provide for constituting particular act as misconduct, it does not mean that the Standing Orders cannot include such act or acts as constituting misconduct. Sub-Section (2) of Section 3 of the Act, merely provides that where Model Standing Orders have been prescribed, the Standing Orders shall have to be, so far as is practicable, in conformity with such Model Standing Orders. Model Standing Orders are framed in exercise of the Rule-making power. The rules cannot restrict the scope and ambit of the provisions contained in the Act. Thus, the question as to whether the Standing Orders are within the ambit of power conferred in that regard by the Act, has to be determined with reference to the provisions contained in the Act, more especially with reference to the Schedule which forms part of the Act. Providing for certain acts and omissions in the Standing Orders not already provided in the Model Standing Orders, does not make such a Standing Order invalid or beyond the power of the employer to make such a Standing order. Applicability of the Model Standing Orders depends upon the nature of the industrial establishment.

This view is in conformity with the object and scheme of the Industrial Employment (Standing Orders) Act.

Model Standing Order

Under the Act, Model Standing Orders are framed, and as soon as the Act applies to an industrial establishment, the employer is under an obligation to submit a draft amendment to the Model Standing Orders as desired by him and the Certifying Officer has to certify the same. These Model Standing Orders provide for minimum decent conditions of service. The Act took the first step in compelling the employer to give certain minimum conditions of service. These Model Standing Orders were framed as early as 1948 and there have been minor amendments here or there since. They have undoubtedly stood the test of time. But as industrial employees are becoming more and more aware of their rights, the concept of social justice is taking firm root. It is time these Model Standing Orders were comprehensively re-examined and revised.

The Model Standing Orders do not provide for any method or manner of recruitment, promotion, transfer or grievance procedure. Today, the employer enjoys an arbitrary discretion or an unfettered power to recruit anyone he likes. This definitely results in favouritism, nepotism and a class of loyal workers. It becomes counter-productive to healthy trade union activity.

Recommendation of the Second National Commission on Labour: The commission has recommended that the appropriate government may also frame Model Standing Orders, including the classification of acts of misconduct as major and minor, and provide for graded punishments depending on the nature and gravity of the misconduct, and publish them in the official gazette. Where an establishment has no

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standing orders, or where draft standing orders are still to be finalized, the Model Standing Orders shall apply.

Fairness or Reasonableness of Standing Orders

Prior to 1956, the Certifying Officer had no power to consider the question of reasonableness or fairness of the draft standing orders submitted to him by the employers. His only function was to see that the draft incorporated all matters contained in the Schedule and that it was otherwise certifiable under the Act. Such a power was also not conferred upon the appellate authority. However, this provision did not provide adequate safeguards against unfairness, in the standing orders and therefore caused great hardship on workmen.

In 1956, the Parliament amended the Act and thereby not only considerably widened the scope of the Act but also gave a clear expression to the change in legislative policy. Section 4, as amended by Act 36 of 1956, imposed a duty upon the Certifying Officer and Appellate Authority to adjudicate upon the fairness and reasonableness of the standing orders. If they found that some provisions were unreasonable, they must refuse to certify the same. While adjudicating the fairness or reasonableness of any standing orders, the Certifying Officer should consider and weight the social interest in the claims of the employer and the demand of the workmen.

Thus, the Parliament confers the right to individual workmen to contest the Draft Standing Orders submitted by the employer for certification on the grounds that they are either not fair or reasonable. Further, the workers can also apply for their modification and dispute the finality of the order of the appellate authority.

III. Procedure for Certification of Standing Orders

When the draft standing orders are submitted for certification, the Certifying Officer shall send a copy of the draft to the trade union, if any, or in its absence, to the workmen concerned, to file objections, if any, in respect of the draft standing orders, within fifteen days of the receipt of the notice. He is further required to provide a hearing opportunity to the trade union or workmen concerned as the case may be. After hearing the parties he shall decide whether or not any modification of or addition to the draft submitted by the employer is necessary to render the draft certifiable under the Act and shall make an order in writing accordingly. For the purpose, he shall inquire (*i*) whether the said Standing Orders are in conformity with the Model Standing Orders issued by the Government; and (*ii*) whether they are reasonable and fair. He shall then certify the Standing Orders with or without modification as the case may be. He shall send within seven days authenticated copies of the Standing Orders to the employers and to the trade unions or other representatives of workmen.

IV. Certifying Officers: Their Appointment, Jurisdiction, Powers and Duties

The term 'Certifying Officers' under IESOA refers to 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 Certifying Officer under the Act. He is 'the statutory representative of the Society.'

Section 11 (1) empowers the Certifying Officer and the Appellate Authority with all the powers of a Civil Court for the purposes of: (*i*) receiving evidence; (*ii*)

enforcing the attendance of witnesses; and (*iii*) compelling the discovery and production of documents. He shall also be deemed to be the 'Civil Court' within the meaning of Sections 345 and 346 of the Code of Criminal Procedure, 1973.

The aforesaid powers have been conferred upon the Certifying Officer and Appellate Authority so that they may summon any witness and may not find any difficulty in holding any inquiry when the Draft Standing Orders are submitted for certification to the Certifying Officer.

No oral evidence having the effect of adding to or otherwise varying or contradicting the Standing Orders finally certified under IESOA shall be admitted in any Court. Thus, Section 12 bars oral evidence in contradiction to the written Standing Orders. But there is no provision for prohibiting written agreement. However, in the case of a conflict arising between the general conditions of employment and the special terms contained in the Standing Orders—a written contract—the terms of special contract would prevail.

Section 11 (2) authorizes the Certifying Officer and the Appellate Authority to correct his own or his predecessor's in office, (*i*) clerical mistake; (*ii*) arithmetical mistake; and (*iii*) error arising therein from any accidental slip or omission.

Jurisdiction

The Supreme Court in *Bhilai Steel Project* v. *Steel Works Union* held that when the Standing Orders are under the consideration of the Certifying Officer and in the meanwhile if there is any amendment to the Industrial Employment (Standing Orders) Act, though the Certifying Officer had no jurisdiction at the time when he obtained the application to deal with the matter, during the pendency of the application if the law is repealed and that law is to deal with such an application, he can certainly entertain the same.

Section 4, we have already seen, imposes a duty upon the Certifying Officer/ Appellate Authority to:

(*i*) see whether the Standing Order provides for every matter set out in the schedule, which is applicable to industrial establishment

(*ii*) consider whether the Draft Standing Orders are in conformity with the provisions of the Model Standing Orders. If the Certifying Officer finds that some provisions of the standing orders as proposed by the employer relate to matters that are not included the schedule, he may refuse to certify them

(*iii*) to adjudicate upon the fairness or reasonableness of the provisions of any standing orders

The aforesaid duties are mandatory and have to be performed by the Certifying Officer. Further, the Certifying Officer/Appellate Authority is required to discharge these dudes in a fair and *quasi-judicial* manner.

V. Appeals against Certification

A. The Legislative Scheme

Section 6 of the Industrial Employment (Standing Orders) Act, 1946, *inter alia*, provides that any person who is aggrieved by the order of the Certifying Officer may

'within 30 days from the date on which the copies are sent', file an appeal to the Appellate Authority.

The scope of the aforesaid section was examined in *Badarpur Power Engineers' Association* v. *Dy. Chief Labour Commissioner*. In this case, the Delhi High Court held that:

> The word used in Section 6, on which emphasis has to be laid is 'from'. Section 9(1) of the General Clauses Act clearly provides that when in any Central Actor Regulation the word used is 'from' then, the first day in a series of days shall be excluded. Section 9 of the General Clauses Act was clearly applicable to the present case and the effect of the same would be that 7th January, 1991 had to be excluded while computing the period of limitation.

B. Finality of the Decision of the Appellate Authority

Section 6 also incorporates a finality clause, namely that the decision of the Appellate Authority 'shall be final'. This provision 'means that there is no further appeal or revision against that order'. This view finds support from Section 12, which lays down that once the Standing Orders are finally certified, no oral evidence can be led in any Court that has the effect of adding to or otherwise varying or contradicting such standing orders. Section 6 read with Section 12 indicates that the finality given to the certification by the Appellate Authority cannot be challenged in a Civil Court. But the finality given to the Appellate Authority order is subject to modification by him.

C. Appellate Authority: Its Nature and Constitution

Appellate Authority means an authority appointed by the appropriate government by notification in the official Gazette to exercise in such areas as may be specified in the notification, the functions of the Appellate Authority under the Act. But in relation to appeals pending before the Industrial Court or other authority immediately before the commencement of the Industrial Employment (Standing Orders) Amendment Act, 1963, that Court or authority shall he deemed to be the appellate authority.

A survey of the official statistics regarding persons authorized to act as appellate authority under the Act reveals that it is only in the States of Assam and Tripura that the Secretary of the labour department acts as the appellate authority. In the remaining States/Union Territories, such power is exercised by *quasi-judicial* Tribunals like the Industrial Tribunal/Labour Court. But in the State of West Bengal, such power is vested in the High Court. Looking to the *quasi-judicial* function exercised by the appellate authority in many states, it is desirable to have such functions performed by the industrial Tribunal/Labour Courts as in Assam and Tripura.

D. Powers of the Appellate Authority

The Appellate Authority can either confirm the standing orders in the form certified by the Certifying Officer or amend the said standing orders by making such modification thereof or addition thereto, as it thinks necessary so as to render the standing orders certifiable under the Act. It has, however, no power to set aside the orders of the Certifying Authority.Likewise, it has no power to remand the case because it has the power either to confirm or modify the award as it deems fit.

E. Duties of the Appellate Authority

The Act casts a duty upon the Appellate Authority to send copies of the orders made by it to the Certifying Officer, employer and trade union or other prescribed representatives of the workmen within seven days of the date of the order, '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.'

The aforesaid provision is akin to a provision requiring the drawing up of the degree in pursuance of the orders passed by a Civil Court. The Act requires the Appellate Authority to send copies to the authorities mentioned therein after effecting amendments or modification in terms of its order within seven days of the order. In other words, the obligation to draw up standing orders in conformity with the orders passed in appeal is placed before the appellate authority and that obligation has to be discharged within a period of seven days from the date of the order under sub-section (1).

VI. Date of Operation of Standing Orders or Amendments

Section 7 sets out the date on which the Standing Orders or amendments made thereto would become operative. It provides that the Standing Orders shall come into operation on the expiry of thirty days from the date on which authenticated copies thereof are sent as required by sub-section (5) of Section 3, or where an appeal is preferred on the expiry of seven days from the date on which the copies of the appellate order are sent under sub-section (2) of Section 6.

VII. Binding Nature and Effect of Certified Standing Orders

There is no specific provision in the Act dealing with the binding nature and effect of Standing Order. In the absence of any provision the Courts have held that a Standing Order certified under IESOA is binding upon the employers and employees of the industry concerned. However, the decided cases reveal that even though they are binding they do not have such force of laws as to be binding on Industrial Tribunals adjudicating on industrial dilute.

VIII. Posting of Standing Orders

The Act imposes a duty upon the employer to put up the text of the Certified Standing Orders in the English language and in the language of the majority of workmen on special boards maintained for the purpose, at or near the entrance through which the majority of workmen enter the industrial establishment and in all departments thereof where the workmen are employed. This section is held to be merely directory but non-compliance with the direction may result in the employer not succeeding in satisfying the Industrial Tribunal about the termination of service of an employee or other disciplinary action.

Act and Omission constituting Misconduct

Since 'misconduct' results in dismissal, it is necessary to understand the concept of misconduct.

The expression 'misconduct' has not been defined in any industrial legislation. However, under the Model Standing Order of the Industrial Employment (Standing Orders) Act, 1946, the following conducts shall be deemed to be misconduct:

(*a*) Willful insubordination or disobedience, whether alone or in combination with others, to any lawful and reasonable order of a superior

(*b*) Theft, fraud or dishonesty in connection with the employer's business or property

(*c*) Willful damage to or loss of employer's goods or property

(*d*) Taking or giving bribes or any illegal gratification

(*e*) Habitual absence without leave or absence without leave for more than 10 days

(*f*) Habitual late attendance

(*g*) Habitual breach of any law applicable to the establishment

(*h*) Riotous or disorderly behaviour during working hours at the establishment or any act subversive of discipline

(*i*) Habitual negligence or neglect of work

(*j*) Frequent repetition of any act or omission for which a fine may be imposed to a maximum of 2 per cent of the wages in a month

(*k*) Striking work or inciting others to strike work in contravention of the provisions of any law or rule having the force of law

A survey of decided cases indicates that acts such as absence without leave go-slow, habitual neglect of work, misappropriation of fund or material, disobedience and other subversive disciplines, including disobedience likely to endanger life, threatening a co-worker within premises, insulting behaviour by employee towards customers, etc. constitute misconduct.

3.4 TRADE UNION ACT, 1926

Concept and Objects rade Union: Concept

A trade union, also commonly known as a labour union, is a legal organization, consisting of workers who endeavour to achieve common goals in order to improve their work life conditions. Generally, a trade union comprises of individual workers and professionals working in an organization, and may also include its past workers. Trade Unions play a significant role in organizing and empowering workers. At the onset, the unions had to face many problems mainly due to the illiteracy and unawareness of the workers; so, there was a need for the trade union leaders to organize the disorganized.

The most important goal of trade unions has been to secure an equal distribution of the benefits of economic growth. They pursue the goal of ensuring transparent governance, execution of core labour standards, employment generation, social security and poverty reduction.

As the representatives of the union members, the leaders of the trade union, hold discussions with the employers to negotiate labor contracts (Collective bargaining). These negotiations may be around key areas like wages, work rules, redressal of complaints, rules related to recruitment and retrenchment, promotions, workplace benefits, security and other policies. The agreements negotiated by the union leaders are binding on the rank and file members and the employer and in some cases on other non-member workers. The political structure and the autonomy of Trade Unions are varied across different countries. Over the years, trade unionism has developed and evolved influenced by various political and economic factors.

Registration of Trade Unions

The Trade Unions Act, 1926 was enacted with a view to encourage the formation of permanent and stable trade unions and to protect their members from certain civil and criminal liabilities. The registration of a trade union is however not conclusive proof of its existence. The Societies Registration Act, 1960, Co-operative Societies Act, 1912 and the Companies Act, 1956 do not apply to trade unions and registration thereof under any of these Acts is void *ab initio*.

Every registered trade union is a body corporate by the name under which it is registered and 'shall have perpetual succession and a common seal with a power to sue and to be sued.' It is however not a statutory body. It is not created by statute or incorporated in accordance with the provisions of a statute. In other words, a registered trade union is neither an instrumentality nor an agency of the State discharging public functions or public duties. A registered trade union is an entity distinct from the members of which the trade union is composed. It has the power to contract and to hold property both moveable and immoveable and to sue and be sued by the name in which it is registered.

Disabilities of unregistered union

A trade union shall not enjoy any of the rights, immunities or privileges of a registered trade union unless it is registered.

Immunity from civil suit in certain cases

No Suit or other legal proceeding shall be maintainable in any civil court against any registered trade union or any officer or member thereof in respect of any act done in contemplation or in furtherance of a trade dispute to which a member of the trade union is a party on the ground only that such act induces some other person to break a contract of employment, or that it is an interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or of his labour as he wills.

Liability in tort

1. A suit against a registered trade union or against any members or officers thereof on behalf of themselves and all other members of the trade union in respect of any tortious act alleged to have been committed by or on behalf of the trade union shall not be entertained by any court.
2. Nothing in this section shall affect the liability of a trade union or any trustee or officers thereof to be sued in any court touching or concerning the specific property or rights of a trade union or in respect of any tortious act arising substantially out of the use of any specific property of a trade union except in respect of an act committed by or on behalf of the trade union in contemplation or furtherance of a trade dispute.

Liability in contract

Every registered trade union shall be liable on any contract entered into by it or by an agent acting on its behalf:

Provided that a trade union shall not be so liable on any contract which is void or unenforceable at law.

Objects in restraint of trade not unlawful in case of registered trade union.

The objects of a registered trade union shall not, by reason only that they are in restraint of trade be deemed to be unlawful so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise or to render void or voidable any agreement or trust.

Proceedings by and against trade unions.

1. A registered trade union may sue and be sued and be prosecuted under its registered name.
2. An unregistered trade union may be sued and prosecuted under the name by which it has been operating or is generally known.
3. A trade union whose registration has been cancelled or withdrawn may be sued and prosecuted under the name by which it was registered.
4. Execution for any money recovered from a trade union in civil proceedings may issue against any property belonging to or held in trust for the trade union other than the benevolent fund of a registered trade union.
5. Any fine ordered to be paid by a trade union may be recovered by distress and sale of any movable property belonging to or held in trust for the trade union in accordance with any written law relating to criminal procedure.
6. In any civil or criminal proceedings in which a registered trade union is a party such trade union may appear in such proceedings by anyone of its officers or by an advocate and solicitor.

Strikes and lock-outs

1. No trade union of workmen shall call for a strike, and no member thereof shall go on strike, and no trade union of employers shall declare a lock-out—
   (a) in the case of a trade union of workmen, without first obtaining the consent by secret ballot of at least two-thirds of its total number of members who are entitled to vote and in respect of whom the strike is to be called; and in the case of a trade union of employers, without first obtaining by secret ballot the consent of at least two-thirds of its total number of members who are entitled to vote;
   (b) before the expiry of seven days after submitting to the Director General the results of such secret ballot in accordance with section 40 (5);
   (c) if the secret ballot for the proposed strike or lock-out has become invalid or of no effect by virtue of section 40 (2), (3), (6) or (9);
   (d) in contravention of, or without complying with, the rules of the trade union;
   (e) in respect of any matter covered by a direction or decision of the Minister given or made in any appeal to him under this Act; or
   (f) in contravention of, or without complying with, any other provision of this Act or any provision of any other written law.
2. Any trade union which, and every member of its who, commences, promotes, organizes or finances any strike or lock-out which is in contravention of section (1) shall be guilty of an offence and on conviction, be liable to a fine not exceeding two thousand ringgit, or to imprisonment for a term not one year, or to both, and a further fine of one hundred ringgit for every day during which such continues.

3. Any member of a trade union of workmen who commences, participates in, or otherwise acts in e of, any strike which is in contravention of (1) shall forthwith cease to be a member of union, and thereafter such member shall not to become a member of any trade union except with the prior approval of the Director General and the trade union of which he has so ceased ember shall forthwith—
   (a) remove the name of such member from its membership register;
   (b) inform the Director General and the member conned of such removal; and
   (c) exhibit conspicuously in its registered office in a place where it may be easily read a list of members whose names are so removed.
4. The Director General may, where he is satisfied that (1) has been contravened by any person and union concerned has failed to carry out Unions of subsection (3), or where there is lay in so doing. After such investigation as necessary, order the trade union to remove the names of the members concerned from membership register.
5. The satisfaction of the Director General under subsection (1) has been contravened by any y be arrived at regardless as to whether or is any prosecution of any person for contravention of the said subsection (1).
6. Any registered trade union which, and every of its executive who, fails to comply with subsection (3) or with an order of the Director General under subsection (4) shall be guilty of an offense and shall, on conviction, be liable to a fine not exceeding one thousand ringgit, and a further fine of one hundred ringgit for every day during which such offense continues.
7. In every proceedings for an offence under this section the onus of proving that the requirements specified in subsection (1) have been complied with shall be on the trade union, the member of its executive or the member of the trade union, as the case may be.

Rights and Liabilities of Registered Trade Unions

An office-bearer or member shall be entitled to inspect the account-books and the list of members at such time as may be provided for in the rules of the trade union. Further, a member not under fifteen has a right to execute all instruments and give all acquittance necessary to be executed or given under the rules. The scope of the legal rights and privileges was delineated in *Secretary of Tamil Nadu Electricity Board Accounts Subordinate Union* v. *Tamil Nadu Electricity Board*. In this case, two workmen of the Tamil Nadu Electricity Board were allowed to do the full time union work. However, the board refused to extend this facility after about four years. On a dispute being raised, the government referred it to the Labour Court for adjudication. The Labour Court held that this was a mere concession granted to the office-bearers of the union and was not a part of service condition. Aggrieved by this order the trade unions preferred a writ petition before the Madras High Court. Three issues were raised, namely:

(*i*) Whether the workman had a legal right to do trade union activity without attending to the office duties?

(*ii*) Whether the withdrawal of permission to do trade union work on full time basis would affect the service conditions? and

(*iii*) Whether it is a privilege within the meaning of Item 8 of Schedule IV of the Act?

The Court answered all the issues in the negative and observed:

It is true that trade unionism has been recognized all over the world but that does not mean that an office-bearer or any trade union can claim, as of right, to do trade union activities during office hours. In a poor country like India, tax payers pay money not for the purpose of encouraging trade unionism, but in the fond and reverend hope that every person who is entrusted with the task of doing service will do his service. Whether he actually does service or not, there can be a fond expectation of the same. To allow one to claim as of light to do trade union activity without attending to the office duties, would in my opinion be an anachronism since it will amount to fleecing the tax payer in order to encourage the trade union activities. That is not the purpose for which the workman was appointed by the Electricity Board.

Penalties and Procedure

Failure to submit returns

In default or failure to submit returns or statements required under Section 28

(*i*) Every office-bearer

(*ii*) Other persons bound by the rules of the trade union to give or send the same,

(iii) If there is no such office-bearer or person, every member of the executive of the trade union shall be punishable with fine not exceeding Rs. 5. If the contravention is continued after conviction a further fine not exceeding Rs. 5 for each week during which the default was made shall be imposed. However, the aggregate fine shall not exceed Rs. 50.

The Act provides more deterrent punishment with a fine which may extend upto Rs. 500 upon persons wilfully making, or causing to be made any false entry in, or any omission from the general statement required by Section 28, or in or from any copy of rules or of alterations of rules or document sent to the Registrar under that Section.

Penalties for Supplying False Information Regarding Trade Unions

Quite apart from the penalties mentioned earlier, if any person with intent to deceive or with like intent gives (*i*) to any member of a registered trade union; or (*ii*) to any prospective member of such union any document purporting to be a copy of rules of a trade union or any alteration of such rules which he knows or has reason to believe that it is not a correct copy, or (*iii*) gives a copy of any rules of any unregistered trade union to any person on the pretence that such rules are the rules of a registered trade union shall be punishable with a fine which may extend to Rs. 200.

Cognizance of the Offence

Only a Presidency Magistrate or Magistrate of the first class can try any offence mentioned in Sections 31 and 32 of the Act. Similarly, no court shall take cognizance of any offence unless:

(i) A complaint has been made by the Registrar.

(ii) With his previous sanction by any person.

(iii) In the case of any offence under Section 32 by the person to whom such copy has been given.

(iv) The complaint is made within six months of the date on which the offence is alleged to have been committed.

Check Your Progress

5. Where can the Industrial Employment (Standing Orders) Act be applied?
6. What is a trade union?
7. What does a trade union comprise?

3.5 SUMMARY

Some of the important concepts discussed in this unit are:

- The various provisions of the Industrial Disputes and Industrial Employment (Standing Orders) Act.
- The meaning of 'industry' and 'industrial disputes'.
- The powers and duties of the authorities who are supposed to settle the industrial disputes.
- All the important terms such as strike, lockout, lay-off, retrenchment, transfer and closure, and unfair labour practices.
- The Industrial Employment (Standing Orders) Act and its objects and various industrial establishments that are covered in this Act.
- The concept of standing orders, various provisions regarding certification and operation of standing order and interpretation of standing orders.
- A discussion on Trade Union Act, registration procedure of trade unions and their rights and liabilities.

3.6 ANSWERS TO 'CHECK YOUR PROGRESS'

1. An industry means any business, trade, undertaking, manufacturing or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen.
2. An industrial dispute is a collective dispute supported by either a trade union or a substantial number of fellow workers.
3. The lockout is the refusal of the employer to continue to employ workmen.
4. The main function of works committee is to promote measures for securing and preserving amity and good relations between the employers and workmen.
5. The Industrial Employment (Standing Orders) Act can be applied to every industrial establishment wherein one hundred or more workmen are employed, or were employed on any day of the preceding twelve months.
6. A trade union is a legal organization, consisting of workers who endeavour to achieve common goals in order to improve their work life conditions.
7. A trade union comprises individual workers and professionals working in an organization, and may also include its past workers.

3.7 QUESTIONS AND EXERCISES

Short-Answer Questions

1. Define the term, 'Industrial Dispute.'
2. What do understand by the writ of mandamus?
3. List the public utility services.
4. Who is a workman?

Long-Answer Questions

1. What is retrenchment? Describe the nature and procedure of retrenchment.
2. Define the term Trade Union. Explain critically, its rights and liabilities.

UNIT 4 EMPLOYEES PROVIDENT FUNDS AND PAYMENT OF GRATUITY ACTS

Structure

4.0 INTRODUCTION

This unit makes you familiar with the provisions of Employees Provident Funds and Miscellaneous Provisions Act and the Payment of Gratuity Act.

The unit deals with the objects and the other schemes which are introduced for the welfare of the employees. It discusses the duties of an employer under the Employees' Provident Funds Scheme and modes of payment of contributions. As the unit progresses, it provides you with the information related to the Payment of Gratuity Act that include the objective of the Act and the employees who are covered under this Act. This unit discusses the qualifying conditions for the payment of gratuity, the rate of gratuity and computation of gratuity amount. In the later part of the unit the topics like determination of gratuity and the recovery of the amount of gratuity are discussed in detail.

4.1 UNIT OBJECTIVES

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

- Describe objectives and scope of employees' provident fund
- Discuss the membership criteria and geographical scope of the Act
- Analyse the applicability of Gratuity Act
- Understand the process of determination and payment of gratuity
- Learn to recover the gratuity amount in the case of any dispute

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4.2 EMPLOYEES PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952

The Perspective

Provident Fund is a form of retirement benefits, but unlike gratuity, where all the financial burden falls on the employer, this is contributory in the sense that besides putting in service, a worker also has to contribute a part of his wages. The scheme of Provident Fund has, till now, made headway and a good number of employees have been brought within the purview of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, as also its counterpart for the coal industry, namely, the Coal Mines Provident Fund and Bonus Schemes Act, 1948. The tea plantation workers in Assam receive the benefit of provident Fund under the Assam Tea Plantations Provident Fund Scheme Act, 1955. The seamen receive the benefit under the Seamen's Provident Fund Act, 1966. But still a vast majority of industrial workers have been kept beyond the purview of the Act. Thus, there is a need not only to extend the coverage of the statute, but also to extend the qualitative content of the scheme.

Prior to 1948, there was no compulsory statutory provision for provident fund benefits to industrial workers. The Provident Fund Act, 1925 was restricted in its application. Provident Fund Schemes were followed in some government employments and in the establishment of only some enlightened employers. In 1948, the Coal Mines Provident Fund and Bonus Schemes Act was enacted to provide for a compulsory contributory provident fund for the employees in the coal mines only. Still, a vast majority of industrial employees were not covered under any such schemes.

The experience gained out of the working of this Act and the persistent demand from the employees in other industries led to the passing of the Employees' Provident Fund Act in 1952. The Act provides for the institution of provident funds for the employees in factories and other establishments. By Labour Provident Fund Laws (Amendment) Ordinance and Act, 1971, provision has been made for family pension and life insurance benefits as well. The Employees' Family Pension Scheme became effective from 1 March 1971.

In the year 1976, the Act was further amended with a view to introducing yet another social security scheme to provide an insurance cover to the members of the provident fund in covered establishments without payment of any premium of such members, the insurance cover being linked to the deposits in the provident fund to the credit of the deceased employees. The Employees' Deposit Linked Insurance Scheme, thus, came into effect from 1 August 1976.'

The Employees' Provident Fund and Miscellaneous Provisions Act, 1952 is a piece of social legislation designed to insure workmen against old age and infirmity. It provides for the institution of provident fund for employees in factories and establishments.

The avowed object of the Act is to provide for security to the industrial worker on his retirement and for the benefits of dependants in case of his death.

The Employees' Provident Fund Act is essentially a measure for the welfare of the employees, an establishment and it falls under the purveiw of the Act, that the

employer is bound to make the contribution as provided for under Section 6. There is a statutory liability on the employer to pay the contribution at the rate mentioned in Section 6. Stringent provisions have been made for non-compliance with the requirement of the statute, and very drastic powers have been given to the authorities to recover the contribution due from an employer.

Permissible Area of Operation of the Act

1. Geographical scope

The Provisions Employees' Provident Funds and Miscellaneous Provisions Act, 1952, one of the important statutory measures in the arena of retiral benefits, extends to the whole of India except the state of Jammu and Kashmir.

2. Subjective scope

Sub-section (3) of Section 1 enumerates the subjective scope of the Act. Subject to the provision contained in Section 16, the Act applies to the following:

- Every establishment which is a factory engaged in any industry specified in the Schedule I and in which twenty or more persons are employed.
- Any other establishment employing twenty or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in the behalf.
- Establishments belonging to the notified category employing twenty or more persons – (five employees in case of cinema\theatre establishments and fifty employees in case of co-operative societies working without power).

Other aspects of the Act include:

- No infancy protection from 23 September 1997 by the Amendment Act 10 of 1998
- Provision for coverage on voluntary basis for non-applicable category
- Empowerment of the Central Government to exempt any class of establishment from the operation of the Act for a specified period

Membership

- Every employee to be enrolled for membership of the fund from day one, (eligibility requirement deleted from November, 1990 onwards)
- Membership compulsory for all except excluded employees
- Membership for all the schemes necessary—either of the statutory scheme or the exempted scheme
- Assigned responsibility for the employees of contractors

Exemption

An establishment/factory may be granted exemption under Section 17 if

(i) in the opinion of the appropriate government, the rules of its provident fund with respect to the rates of contributions are not less favourable than those specified in Section 6 of the Act, and

(ii) if the employees are also in enjoyment of other provident fund benefits which on the whole are not less favourable than the benefits provided under the Act or any scheme in relation to the employees in any other establishment of a similar character.

While recommending to the appropriate government grant of exemption under this section, the Employees' Provident Fund Organization usually takes into consideration the rate of contribution, the eligibility clause, the forfeiture clause and the rate of interest. Also, the totality of the benefits provided under the rules of the exempted funds is taken into consideration.

The Central Government is empowered to grant exemption to any class of establishments from the operation of the Act for a specified period, on financial or another grounds under Section 16(2). The exemption is granted by issue of notification in the Official Gazette and subject to such terms and conditions as may be specified in the notification. The exemption does not amount to total exclusion from the provisions of the Act. The exempted establishments are required to constitute a Board of Trustees according to the rules governing the exemptions to administer the fund, subject to overall control of the Regional Provident Fund Commissioner.

The Employees' Provident Fund Scheme, 1952

Contributions

The statutory rate of contribution to the provident fund by the employees and the employers, as prescribed in the Act, is 10 per cent of basic wage, dearness allowance, including cash value of food concession and retaining allowance, if any. The Act, however, provides that the Central Government may, after making such enquiries as it deems fit, enhance the statutory rate of contribution to 12 per cent of wages in any industry or class of 'establishments. Further, the employee may contribute more than 10 per cent or 12 per cent of wages.

The contributions received by the Provident Fund Organization from unexempted establishments as well as by the Board of Trustees from exempted establishments shall be invested after making payments on account of advances and final withdrawals, according to the pattern laid down by the Government of India from time to time. The exempted establishments are required to follow the same pattern of investments as is prescribed for the unexempted establishments. The provident fund accumulations are invested in government securities, negotiable securities or bonds, 7-year national saving certificates or post office time deposits schemes, if any.

Payment of Contribution: The employer shall at the first instance make the payment of the contribution payable by him and also the employee employed directly or through a contractor.

4.2.1 Duties of Employers under the Employees' Provident Funds Scheme

1. Every employer shall send of the Commissioner, within fifteen days of the commencement of his Scheme, a consolidated return in such form as the Commissioner may specify, of the employees required or entitled to become members of the Fund showing the basic wage, retaining allowance (if any) and

dearness allowance including the cash value of any food concession paid to each of such employees:

Provided that if there is no employee who is required or entitled to become a member of the Fund, the employer shall send a 'Nil' return.

2. Every employer shall send to the Commissioner, within fifteen days of the close of each month, a return—
   (a) in Form 5, of the employees qualifying to become members of the Fund for the first time during the preceding month together with the declarations in Form 2 furnished by such qualifying employees; and
   (b) in such form as the Commissioner may specify, of the employees leaving service of the employer during the preceding month.

   Provided that if there is no employee qualifying to become a member of the Fund for the first time or there is no employee leaving service of the employer during the preceding month, the employer shall send a 'Nil' return.
3. Every employer shall maintain an inspection note book in such form as the Commissioner may specify, for an Inspector to record his observations on his visit to the establishment.
4. Every employer shall maintain such accounts in relation to the amounts contributed to the Fund by him and by his employees as the Central Board may, from time to time, direct and it shall be the duty of every employer to assist the Central Board in making such payments from the Fund to his employees as are sanctioned by or under the authority of the Central Board.

Employer to Furnish Particulars of Ownership

Every employer in relation to a factory or other establishment to which the Act applies or is applied shall hereafter furnish to the Commissioner particulars of all the branches and departments, owners, occupiers, directors, partners, managers or any other person or persons who have the ultimate control over the affairs of such factory or establishment and also send intimation of any change in such particulars, within fifteen days of such change, to the Commissioner by registered post.

4.2.2 Mode of Payment of Contributions-submission of Returns/ Forms

1. The employer shall, before paying the member his wages in respect of any period or part of period for which contributions are payable, deduct the employee's contribution from his wages which together with his own contribution as well as an administrative charges of such percentage of the pay, basic wages, dearness allowance, retaining allowance, if any, and cash value of food concessions admissible thereon for the time being payable to the employees other than an excluded employee, and in respect of which Provident Fund contributions are payable as the Central Government may fix, he shall within fifteen days of the close of every month pay the same to the Fund by separate bank drafts or cheques on account of contributions and administrative charges.

   Provided that if payment is made by a cheque on an outstation bank, the actual bank collection charges in respect of both the contributions and the administrative

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charges shall be included in the amount for which the cheque is drawn in respect of the administrative charges.

Provided further that where there is no branch of the Reserve Bank or the State Bank of India at the station where the factory or other establishment is situated, the employer shall pay to the Fund the amount mentioned above by means of Reserve Bank of India (Government) Drafts at par, separately on account of contributions and administrative charges.

2. The employer shall forward to the Commissioner, within twenty-five days of the close of the month, a monthly consolidated statement, in such form as the Commissioner may specify, showing recoveries made from the wages of each employee and the amount contributed by the employer in respect of each such employee.

   Provided that an employer shall send a 'NIL' return, if no such recoveries have been made from the employees.

   Provided that in the case of any such employee who has become a member of the Family Pension Fund under the Employees' Family Pension Scheme, 1971, the aforesaid form shall also contain such particulars as are necessary to comply with the requirements of that Scheme.

3. Notwithstanding anything contained in sub-paragraph (2), in respect of such establishments as are notified by the Commissioner to be annually posted establishments, the employer shall forward to the Commissioner, within twenty-five days of the close of each month, a monthly abstract in such form as the Commissioner may specify showing, *inter alia*, the aggregate amount of recoveries made from the wages of all the members and the aggregate amount contributed by the employer in respect of all such members for the month. The employer shall also send to the Commissioner, within one month of the close of the period of currency, a Consolidated Annual Contribution Statement in Form 6A, showing the total amount of recoveries made during the period of currency from the wages of each member and the total amount contributed by the employer in respect of each such member for the said period. The employer shall maintain on his record duplicate copies of the aforesaid monthly abstract and the Consolidated Annual Contribution Statement for production at the time of inspection by an Inspector.

Submission of Contribution Cards to the Commissioner

Every employer shall, within one month from the date of expiration of the period of currency of the contribution cards employed by him in respect of members, send the contribution cards to the Commissioner together with a statement in Form 6.

Provided that when a member leaves service, the employer shall send the contribution card in respect of such member before the twentieth day of the month following that in which the member left the service.

Provided further that in the case of any such employee who has become a member of the family Pension Fund under the Employees' Family Pension Scheme, 1971, the aforesaid Form shall also contain such particulars as are necessary to comply with the requirements of that Scheme.

Check Your Progress

1. Define Provident Fund.
2. When was the Employees' Provident Fund Act introduced?

4.2.3 Appointments of Inspectors and their Duties

Under Section 13 of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 the Inspector is appointed by the appropriate Government for the purpose of the Act and the Scheme. Under sub-section (2) of the said section, the Inspector has the following duties:

1. To collect information and require the employer or any contractor from whom any amount is recoverable under section 8A to furnish such information, as he may consider necessary.
2. To enter and search any establishment or any premises connected therewith.
3. To require any one found in charge of the above-mentioned establishment or premises to produce before him for examination any accounts, books, registers or other documents.
4. To examine the employer or contractor from whom any amount is recoverable.
5. To make copies of or take extract from any book, register or any other document maintained in relation to the establishment and also to seize such documents as he may consider relevant.
6. To exercise such other powers as the scheme may provide.

4.2.4 Transfer of Accounts and Liabilities in Case of Transfer

Transfer of Accounts: (Section 17-A)

Section I7A of the Act provides for the transfer of accounts of an employee in case if his leaving the employment and taking up employment in another establishment and to deal with the case of an establishment to which the Act applies and also to which it does not apply. The option to get the amount transferred is that of the employee. Where an employee of an establishment to which the Act applies leaves his employment and obtains re-employment in another establishment to which the Act does not apply, the amount of accumulations to the credit of such employee in the Fund or, as the case may be, in the provident fund in the establishment left by him shall be transferred to tile credit of his account in the provident fund of the establishment in which he is re-employed, if the employee so desires and the rules in relation to that provident fund permit such transfer. This transfer has to be made with in such time as may be specified by the Central Government in this behalf. Conversely, when an employee of an establishment to which this Act does not apply leaves his employment and obtains re-employment in another establishment to which this Act applies, the amount of accumulations to the credit of such employee in the provident fund of the establishment left by him, if the employee so desires that the rules in relation to such provident fund permit, may be transferred to the credit of his account in the fund or as the case may be, in the provident fund of the establishment in which he is re-employed.

Liability of a transferee employer in case of transfer of establishment by the employer (Section 17-B)

Where an employer in relation to an establishment, transfers that establishment in whole or in part by sale, gift, lease or licence or in any other manner whatsoever, the employer and the person to whom the establishment is so transferred shall Jointly or severally be liable to pay the contribution and other sums due from the employer under

any provisions of the Act of the Scheme or the Pension Scheme, as the case may be, in respect of the period up to the date of such transfer. It is provided that the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer.

Section 17-B deals with the liability of transferor and transferee in regard to the money due under-

(a) the Act: or

(b) the Scheme;

(c) Pension Scheme.

in the case of transfer of the establishment brought in by sale, gift, lease, or any other manner whatsoever, the liability of the transferor and the transferee is joint and several, but is limited with respect to the period upto the date of the transferor. Also the liability of the transferee is further limited to the assets obtained by him from the transfer of the establishment.

4.2.5 Court's Power under the Act

1. Where an employer is convicted of an offence of making default in the payment of any contribution to the Fund the Pension Fund or the Insurance Fund or in the transfer of accumulations required to be transferred by him under sub-section (2) of section 15 or sub-section (5) of section 17 the court may in addition to awarding any punishment by order in writing require him within a period specified in the order (which the court may if it thinks fit and on application in that behalf from time to time extend) to pay the amount of contribution or transfer the accumulations as the case may be in respect of which the offence was committed.
2. Where an order is made under sub-section (1) the employer shall not be liable under this Act in respect of the continuation of the offence during the period or extended period if any allowed by the court but if on the expiry of such period or extended period as the case may be the order of the court has not been fully complied with the employer shall be deemed to have committed a further offence and shall be punished with imprisonment in respect thereof under section 14 and shall also be liable to pay fine which may extend to one hundred rupees for every day after such expiry on which the order has not been complied with.

Payment of Gratuity Act: A social security measure intended to provide some protection to persons employed in industrial and commercial establishments against the risk of old age

Gratuity: Gratuity is a kind of reward or retirement benefit which an employer pays out of his gratitude to an employee for his long and faithful service at the time of his retirement or termination of service

4.3 PAYMENT OF GRATUITY ACT, 1972

Payment of Gratuity Act, 1972 is a social security measure intended to provide some protection to persons employed in industrial and commercial establishments against the risk of old age. **Gratuity** is a kind of reward or retirement benefit which an employer pays out of his gratitude to an employee for his long and faithful service at the time of his retirement or termination of service. The Payment of Gratuity Act, 1972, came into force on 16th September 1972. It has been amended six times in 1984, 1987, 1994, 1998, 2009 and 2010. The Act extends to the whole of India. But in so far as it relates to plantations or ports, it does not extend to the State of Jammu and Kashmir [Sec. 1(2)]. The act not only provides for the payment of gratuity but it also provides the machinery to adjudicate and decide cases arising between the employer and employee in regard to payment of gratuity. The Payment of Gratuity Act, 1972, also aims to achieve the

constitutional goal of economic and social justice. As the Supreme Court in *Som Parkash Rekhi* v. *Union of India*, made the following observation:

> 'We live in a welfare State, in a socialist republic under a Constitution with profound concern for the weaker class including workers. Welfare benefits such as pension, payment of provident fund and gratuity are in fulfillment of the Directive Principles under Chapter IV of the Constitution.'

Objective of the Act

The Act provides for a scheme of compulsory payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, motor transport undertakings, shops or other establishments and for matters connected therewith or incidental thereto.

Applicability

The Act applies to the following:

1. Every factory, mine, oilfield, plantation, port and railway company
2. Every shop or establishment within the meaning of any law being in force for the time 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
3. Every motor transport undertaking in which ten or more persons are employed or were employed on any day of the preceding twelve months
4. 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

A shop or establishment once covered shall continue to be covered even if the number of persons employed therein at any time falls below ten.

Employees Covered by the Act

All persons employed for wages to do 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 (already discussed above), are eligible for payment of gratuity under the Act, provided they have rendered continuous service for five years or more. The Act is, however, not applicable to:

1. apprentices
2. persons holding a post under the Central Government or a State Government and are governed by any other Act or rules providing for payment of gratuity [Sec. 2(*e*)].

Thus, the Payment of Gratuity Act, 1972 provides for a scheme of compulsory payment of gratuity by managements of factories, mines, oilfields, establishments employing 10 or more persons; in the event of superannuation, retirement, resignation and death or disablement due to accident or disease.

All the employees are eligible for payment of gratuity, irrespective of their wages/salary. The payment of gratuity is dependent on fulfillment of certain conditions prescribed in the Act. It is to be calculated at the rate of 15 days salary/wages for every completed year of service, subject to a maximum of ₹10 lakhs. The right of a

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workman to claim gratuity can be forfeited by the employer in case of dismissal for gross misconduct.

Important Definitions

1. **Appropriate Government** [Sec. 2(*a*)]: In relation to any of the following establishments, 'appropriate Government' means the Central Government:
    1. an establishment belonging to, or under the control of, the Central Government
    2. an establishment having branches in more than one State
    3. a factory belonging to, or under the control of, the Central Government
    4. major port, mine, oilfield or railway company

    In any other case, 'appropriate Government' means the State Government
2. **Completed year of service** (Sec. 2(*b*)]. It means continuous service of one year.

3. **Continuous service.** According to Section 2-A:
    (a) 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), lay-off, strike or a lock-out or cessation of work not due to any fault of the employee concerned.
    (b) Where an employee (not being an employee employed in a seasonal establishment) is not in continuous service (as defined above) for any period of one year or six months, he shall be deemed to be in continuous service:
        (i) For the period of one year, if during the period of twelve months preceding the date with reference to which calculation is to be made, the employee has actually worked under the employer for not less than:
            - 190 days, in the case of an employee employed below the ground in a mine, or in an establishment which works for less than 6 days a week
            - 240 days, in any other case
        (ii) For the period of six months, if during the period of six months preceding the date with reference to which the calculation is to be made, the employee has actually worked under the employer for not less than:
            - 95 days, in the case of an employee employed below the ground in a mine, or in an establishment which works for less than 6 days a week
            - 120 days, in any other case.

            For the above purpose, the number of days on which an employee has actually worked under an employer shall include the days on

which:

- 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
- He has been on leave with full wages, earned in the previous year
- He has been absent due to temporary disablement caused by accident arising out of and in the course of his employment
- In the case of a female, she has been on maternity leave. However, the total period of such maternity leave should not exceed 12 weeks

(c) Where an employee, employed in a seasonal establishment, is not in continuous service (as defined above) 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 75 percent of the number of days on which the establishment was in operation during such period.

4. **Controlling authority** (Sec. 3): The appropriate Government may, by notification in the Official Gazette, appoint any officer to be a controlling authority, who shall be responsible for the administration of this Act and different controlling authorities may be appointed for different areas. Thus, both the Central and State Governments are required to appoint their own officers as controlling authorities for administering this Act.

   The Central and State Governments have also been empowered to frame suitable rules for carrying out the purposes of this Act, and to appoint inspectors with sufficient powers for enforcement of the Act (Secs. 7A, 7B and 15).

5. **Employee** [Sec. 2(*e*)]: '**Employee**' means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express on 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 (already discussed earlier), 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.

6. **Employer** [Sec. 2(*f*)]: In relation to any establishment, factory, mine, oilfield, plantation, port, railway company or shop belonging to or under the control of the Central Government or a State Government, 'employer' means a person or authority appointed by the appropriate Government for the supervision and control of employees. Where no person or authority has been so appointed, 'employer' means the head of the Ministry or the Department concerned.

   In relation to any of the above mentioned establishments belonging to or under the control of any local authority, 'employer' means the person appointed by such authority for the supervision and control of employees or where no person has been so appointed, the chief executive officer of the local authority.

   In any other case, **'employer'** means the person, who, or the authority which, has the ultimate control over the affairs of the establishment, factory, mine, oilfield,

'**Employee**'**:** 'Employee' means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express on 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

'employer': 'employer' means the person, who, or the authority which, has the ultimate control over the affairs of the establishment, factory, mine, oilfield, plantation, port, railway company or shop

plantation, port, railway company or shop, and where the said affairs are entrusted to any other person, whether called a manager, managing director or by any other name, such person.

7. **Retirement** [Sec. 2(*q*)]: 'Retirement' means termination of the service of an employee otherwise than on superannuation. This definition covers the termination of service due to any reason except by superannuation, *e.g.* termination due to closure of unit or retrenchment.
8. **Superannuation** [Sec. 2(*r*)]: 'Superannuation', in relation to an employee, means the attainment by the employee of such age as is fixed in the contract or conditions of service as the age on the attainment of which the employee shall vacate the employment. Literally the term superannuation means retirement of an employee because of advanced age.
9. **Wages** [Sec. 2(*s*)]: 'Wages' means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and include dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance.

   'Incentive wages' are included in the definition of 'wages' as contained in Section 2(*s*) of the Act [*Anglo-French Textiles Ltd., Pondicherry* vs. *Presiding Officer, Labour Court*, (1981), Lab. I.C. 202 Mad.].

Payment of Gratuity (Sec. 4)

Qualifying condition for payment of gratuity [Sec. 4(1)]: Every employee covered by the Act is entitled to receive gratuity after he has rendered continuous service for five years or more, when his employment is terminated:

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

The qualifying condition of minimum five years continuous service is not necessary where termination of the employment of any employee is due to death or disablement. For this purpose 'disablement' means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

In the case of death of an employee, gratuity payable to him is to be paid to his nominee, and if no nomination has been made, it is payable to his heirs. Where any such nominees or heirs is a minor, the share of such minor is to 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.

Rate of gratuity [Sec. 4(2)]: Gratuity is payable at the rate of 15 days wages for every completed year of service, or part thereof in excess of six months. In the case of an employee who is employed in a seasonal establishment and who is not so employed throughout the year, gratuity is to be paid at the rate of 7 days wages for each season. Persons who remained in employment throughout the year in a seasonal establishment (*for example,* employed in the Accounts Department in a permanent capacity in a sugar factory which is a seasonal factory) are entitled to gratuity at the rate of 15 days

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wages for every completed year of service like workers in non-seasonal establishments.

Computation of gratuity [Sec. 4(2) (4) (5)]: For calculating gratuity, the rates of 15 or 7 days wages are to be based on the rate of wages last drawn by the employee concerned. In the case of piece-rated employee, daily wages are to be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and for this purpose, the wages paid for any over-time work shall not be taken into account. In the case of a monthly rated employee, 15 days wages are to be calculated by dividing the monthly rate of wages last drawn by him by 26 and multiplying the quotient by 15.

For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced.

Nothing in this Act shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

Maximum gratuity [Sec. 4(3)]: The amount of gratuity payable to an employee must not exceed ₹10 lakhs. This monetary ceiling was raised from ₹3,50,000 to ₹10,00,000 by the Payment of Gratuity (Amendment) Act, 2010, with effect from 24th May, 2010.

Forfeiture of Gratuity [Sec. 4(6)]: Gratuity can be forfeited under two situations:

1. The gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.
2. The gratuity payable to an employee may be wholly or partially forfeited if the services of such employee have been terminated:
    - for his riotous or disorderly conduct or any other act of violence on his part
    - for any act which constitutes an offence involving moral turpitude, if such an offence has been committed by him in the course of his employment

Any decision to forfeit gratuity can be taken only after affording opportunity of hearing to the employee. The offence of theft involves moral turpitude within the meaning of this sub-section [*Bharath Gold Mines Ltd.* vs. *Regional Labour Commr*., (1987) 1 LLN 308 (Kant) (DB)].

Determination and Payment of Gratuity (Sec. 7)

Application for gratuity: The rules relating to the application for payment of gratuity are as follows:

(a) The employee who has become eligible for payment of gratuity, or his nominee, as the case may be, should send an application to the employer within 30 days from the date of gratuity becoming payable. However, where the date of superannuation or retirement is known, the employee may apply before 30 days of the date of superannuation or retirement.

(b) In case of death of the employee without making nomination, his legal heir, who is eligible for payment of gratuity, may make an application to the employer for the payment of gratuity within one year from the date of gratuity becoming payable.

(c) An application for payment of gratuity filed after the expiry of periods specified above must also be entertained by the employer, if there is sufficient cause for the delay.

Determination of gratuity: As soon as gratuity becomes payable to an employee, his employer has to determine the amount of gratuity, irrespective of the fact whether an application for payment of gratuity has been made or not. He has to give notice in writing to the person to whom the gratuity is payable as well as to the controlling authority of the area specifying the amount of gratuity so determined.

Moreover, the employer shall arrange to pay the amount of gratuity within 30 days from the date it becomes payable to the person to whom the gratuity is payable. If the amount of gratuity payable by the employer is not paid within a period of 30 days, the employer shall pay, for the date on which the gratuity becomes payable to the date on which it is paid, simple interest at the rate of 10% p.a. (or at such rate as notified by the Government from time to time for repayment of long-term deposits) on the amount of gratuity. No such interest shall, however, be payable if the delay in the payment is due to the default of the employee and the employer has obtained permission from the controlling authority for the delayed payment on this ground.

Disputed claim of gratuity: If there is any dispute:

- As to the amount of gratuity payable to an employee, or
- As to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, *or*
- As to the person entitled to receive the gratuity,

the employer must deposit with the Controlling Authority such amount as he admits to be payable by him as gratuity.

Where there is a dispute with regard to any matter or matters specified above, the employer or employee or any other person raising the dispute may make an application to the Controlling Authority for deciding the dispute. After making necessary enquiries and giving to the parties reasonable opportunity to be heard in determining the matter or matters in dispute, if the Controlling Authority finds that any amount in excess to the amount deposited by the employer is payable, he will direct the employer to pay such amount.

The Controlling Authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto.

Appeal: Any person aggrieved by the order of the Controlling Authority can prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government for this purpose, within 60 days of receiving the order. This time limit may be extended by a further period of 60 days for a sufficient cause. But no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the Controlling Authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited, or deposits with the Appellate Authority such amount.

The appropriate Government or the Appellate Authority, as the case may be, after hearing the parties, may confirm, modify or reverse the decision of the Controlling Authority.

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Recovery of Gratuity (Sec. 8)

If the amount of gratuity payable is not paid by the employer, within the prescribed time, to the person entitled thereto, the aggrieved person shall raise an application to the Controlling Authority. Thereupon the Controlling Authority shall issue a certificate for that amount to the Collector, after giving the employer a reasonable opportunity of showing cause against the issue of such certificate. The Collector shall recover the amount together with compound interest thereon at the rate 15% per annum (or at such rate as notified by the Government from time to time) from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto. However, the amount of interest payable must not exceed the amount of gratuity.

Nomination. In case of death of the employee, nomination facility naming legal heirs to receive gratuity is necessary. The provisions of the Act are presented below.

1. Each employee, who has completed one year of service, shall make, within such time, in such form and in such manner, as may be prescribed, nomination for the purpose of the second proviso to sub- section (1) of section 4.
2. An employee may, in his nomination, distribute the amount of gratuity payable to him under this Act amongst more than one nominee.
3. If an employee has a family at the time of making a nomination, the nomination shall be made in favour of one or more members of his family, and any nomination made by such employee in favour of a person who is not a member of his family shall be void.
4. If at the time of making a nomination the employee has no family, the nomination may be made in favour of any person or persons but if the employee subsequently acquires a family, such nomination shall forthwith become invalid and the employee shall make, within such time as may be prescribed, a fresh nomination in favour of one or more members of his family.
5. A nomination may, subject to the provisions of sub- sections (3) and (4), be modified by an employee at any time, after giving to his employer a written notice in such form and in such manner as may be prescribed, of his intention to do so.
6. If a nominee predeceases the employee, the interest of the nominee shall revert to the employee who shall make a fresh nomination, in the prescribed form, in respect of such interest.
7. Every nomination, fresh nomination or alteration of nomination, as the case may be, shall be sent by the employee to his employer, who shall keep the same in his safe custody.

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Application of Gratuity By a Nominee

To

[Give here name or description of the establishment with full address]

Sir/Gentlemen,

I beg to apply for payment of gratuity to which I am entitled under sub-section (1) of section 4 of the Payment of Gratuity Act, 1972 as a nominee of late…… [name of the employee] who was an employee of your establishment and died on the ……. The gratuity is payable on account of the death of the aforesaid employee while in service/superannuation of the aforesaid employee on …… retirement of/resignation of the aforesaid employee on …… after completion of …… years of service/total disablement of the aforesaid employee due to accident or disease while in service with effect from the …… Necessary particulars relating to my claim given in the statement below:

Statement

1. Name of applicant nominee.
2. Address of full in applicant nominee.
3. Marital status of the applicant nominee (unmarried/married/widow/widower)
4. Name in full of the employee.
5. Marital status of employee.
6. Relationship of the nominee with employee.
7. Total period of service of the employee.
8. Date of appointment of the employee.
9. Date and cause of termination of service of the employee.
10. Department/Branch/Section where the employee last worked.
11. Post last held by the employee with Ticket or Serial No., if any.
12. Total wages last drawn by the employee.
13. Date of death and evidence/witness as proof of death of the employee.
14. Reference No. of recorded nomination, if available.
15. Total gratuity payable to the employee.
16. Share of gratuity claimed.

    1. I declare that the particulars mentioned in the above statement are true and correct to the best of my knowledge and belief.
    2. Payment may please be made in cash/crossed or open bank cheque
    3. As the amount payable is less than Rupees one thousand, I shall request you to arrange for payment of the sum due to me by Postal Money Order at the address mentioned above after deducting Postal Money Order commission therefrom.

Yours faithfully,

Place — Signature/Thumb impression of

Date — the applicant nominee.

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Penalties

Section 9 deals with punishments for contravention of the provisions of the Act. It provides as follows:

(a) For false representation: It provides for penalty for knowingly making or causing to be made any false statement or false representation for avoiding any payment to be made by himself under this Act or of enabling any other person to avoid such payment. The penalty is imprisonment for a term upto six months, or fine upto ₹10,000, or both.

(b) For contravention of the Act: Sub-section (2) provides for punishment to the employer who contravenes or makes default in complying with any of the provisions of this Act or any rule or order made thereunder. The punishment may be in the form of imprisonment for a term which shall not be less than 3 months but which may extend to 1 year, or with fine which shall not be less than ₹10,000 but which may extend to ₹20,000 or with both.

(c) For non-payment of gratuity: Where the offence relates to non-payment of any gratuity payable, the minimum punishment is imprisonment for a term of 6 months, which may extend to 2 years. But if the Court trying the offence is of the opinion that a lesser term of imprisonment or the imposition of fine would meet the ends of justice, it may reduce the punishment.

Miscellaneous

- Gratuity amount cannot be attached in execution of any decree or order of any civil, revenue or criminal court
- Notwithstanding anything contained in any other enactment, instrument or contract, the provisions of this Act would prevail
- The Act confers power on the appropriate government to make rules for the purpose of carrying out the provisions of this Act.
- The Act also empowers the appropriate government to appoint inspectors with various powers to inspect documents and ensure the payment of gratuity to the employees as prescribed under the Act.

Case Study

1. *Gujarat State Road Transport Corporation vs. Ramesh Kumar Kantilal, (2002) III LLJ 227*

Payment of Gratuity Act, 1972–Section 6(4)

An employee of the Gujarat State Road Transport Corporation retired from service after serving the Corporation for a period of about 35 years. As he was not paid gratuity, he approached the Controlling Authority under the Payment of Gratuity Act who directed the Corporation to release the gratuity amount with 10 percent simple interest. The Appellate Authority also confirmed the same. The Corporation challenged the orders of both the authorities before the Gujarat High Court, stating that a departmental inquiry was pending against the said workman for certain irregularities which resulted in loss to the Corporation of a certain amount and under the circumstances if the gratuity amount is released, it would be difficult for the Corporation to recover the amount, when the guilt is proved in the inquiry.

The High Court, however, dismissed the petition of the Corporation and directed that the gratuity amount should be paid without any further delay and ruled:

1. Sub-section (6) of Section 4 of the Act gives power to the employer to withhold the amount of gratuity when service has been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of property, belonging to employer. But in this case there are no similar facts. The Corporation has not terminated the services of the workman and no decision of termination has been taken by the Corporation.
2. On the contrary, the workman retired from service as permitted by the Corporation. The Corporation has issued no due certificate from each department of the Corporation. Therefore, considering the provision of the Section, the Corporation is not authorized to forfeit or withhold the amount of gratuity till the departmental inquiry against the workman is over.
3. The Controlling Authority as well as the Appellate Authority have rightly come to the conclusion that because of the pendency of departmental inquiry, the amount of gratuity could not be withheld by the Corporation. This Court has taken a similar view in *GSRTC* vs. *Devendra Mulvantri Vaidya* 2006 I LLJ 324, where it stated that the employer was not entitled to forfeit the gratuity of the employee in cases where criminal prosecution was pending or a departmental inquiry was pending.

Payment of Gratuity Act, 1972 – Section 2(e)

2. *General Manager, Yellamma Cotton, Woollen and Silk Mills, Davangere vs Regional Labour Commissioner (Central) and Appellate Authority and Others, 2006 III LLJ 607)*

Some individuals joined Mills as 'Trainees' and later they were confirmed as permanent employees. They opted for voluntary retirement under a Scheme announced by the management and claimed gratuity on retirement, for the period they worked as trainees also. A question arose whether such trainees were entitled to the payment of gratuity. The Karnataka High Court answered the questions in the negative and ruled:

1. There is ample authority to support the proposition that a trainee cannot be held to be entitled to gratuity. A trainee, could, at best be, considered as a 'workman' in terms of the definition under Section 2(s) of the Industrial Disputes Act, 1947, but in the absence of any statutory provision under the Payment of Gratuity Act, 1972, which could be pressed into service, a trainee cannot be held entitled to gratuity.
2. It is not possible to subscribe to the view in *S. Arunachalam* vs *the Managing Director, Southern Structurals, Madras and Others* 2001 II LLJ 1457 (Mad). On the other hand, the several decided cases under the Apprentices Act, 1961 where apprentices are held to be 'trainees' and hence not entitled to wages like regular employee – would render the tenor of Section 2(e) of the Payment of Gratuity Act entirely unfavourable to the claimants.
3. Further, in the light of the judgment of the Supreme Court in the case of *Lalappa Lingappa and Others* vs *Laxmi Vishnu Textile Mills Ltd, Sholapur* AIR 1981 SC 852 =1981 (2) *SCC* 238 = 1981 I LLJ 308, that there can be no claim towards gratuity for the years during which the employee remains absent

without leave and had actually worked for less than 240 days and also to the effect that Badli employees are not covered by the substantive part of the definition of continuous service and are not entitled to payment of gratuity for the Badli period, the same has to be held against the claimants.

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4.4 SUMMARY

Some of the important concepts discussed in this unit are:

- Provident Fund is a form of retiral benefits, but unlike gratuity, where the entire financial burden falls on the employer.
- The scheme of provident fund has, till now, made headway and a good number of employees have been brought within the purview of the 'Employees' Provident Fund and Miscellaneous Provisions Act, 1952.
- The Employees' Provident Fund and Miscellaneous Provisions Act, 1952 is a piece of social legislation designed to insure workmen against old age and infirmity.
- The Central Government is empowered to grant exemption to any class of establishments from the operation of the Employees' Provident Fund and Miscellaneous Provisions Act, for a specified period, on financial or another ground under Section 16(2).
- In the case of death of an employee, gratuity payable to him is to be paid to his nominee, and if no nomination has been made, it is payable to his heirs.
- 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 include dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance.
- Payment of Gratuity Act, 1972 is a social security measure intended to provide some protection to persons employed in industrial and commercial establishments against the risk of old age.
- Gratuity is a kind of reward or retirement benefit which an employer pays out of his gratitude to an employee for his long and faithful service at the time of his retirement or termination of service

4.5 ANSWERS TO 'CHECK YOUR PROGRESS'

1. Provident fund is a form of retirement benefits.
2. The Employees' Provident Fund Act was introduced in 1952.
3. Gratuity is a kind of reward or retirement benefit which an employer pays out of his gratitude to an employee for his long and faithful services at the time of his retirement or termination of service.
4. The Gratuity Act was introduced in 1972.

Check Your Progress

3. Define Gratuity.
4. When was the Gratuity Act introduced?

NOTES

4.6 QUESTIONS AND EXERCISES

Short-Answer Questions

1. List the duties of an employer under the Employees' Provident Fund Scheme.
2. What are the objectives of the Gratuity Act?
3. Define the term 'employee'.
4. Who is an employer?

Long-Answer Questions

1. Explain the qualifying conditions for payment of gratuity.
2. What are the ways to recover the gratuity amount in the case of any dispute?

UNIT 5 PAYMENT OF BONUS ACT, 1965

NOTES

Structure

5.0 INTRODUCTION

In this unit you will study about the scope and coverage area of the Payment of Bonus Act. The unit also describes the establishments that are exempted from paying bonuses to their employees. You will also learn about the methods of calculating bonus, payment of minimum and maximum bonus, time limit and mode of payment of bonus. As the unit progresses, it focuses on the eligibility criteria for availing the benefit of bonus and the reasons which are responsible for disqualification. The obligations of employer regarding the payment of bonus and rights of both employees and employers are also covered in this unit.

5.1 UNIT OBJECTIVES

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

- Explain the scope and coverage area of the Payment of Bonus Act.
- Learn how the bonus amount is calculated and paid.
- Know the maximum and minimum amount of bonus paid.
- List the reasons for eligibility and disqualification criteria.
- Describe set-on and set-off of allocable surplus.

5.2 PAYMENT OF BONUS ACT, 1965: IMPORTANT PROVISIONS

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5.2.1 Objects

Broadly speaking, the scheme of the Act is four dimensional:

(i) To impose statutory liability upon the employers of the establishments covered by the Act to pay bonus to employees in the establishments

(ii) To define the principles for payment of bonus according to the prescribed formula

(iii) To provide for the payment of minimum and maximum bonus and linking the payment of bonus with the scheme of 'set-off and set-on'

(iv) To provide machinery for enforcement of the liability for the payment of bonus, with a view to minimize the disputes on this account

Scope and coverage

The Act extends to the whole of India and is applicable to every factory (as defined under the Factories Act) and to every other establishment wherein twenty or more workmen are employed on any day during an accounting year. The Central/State Government can, however, extend its provisions to any establishment employing less than twenty but more than ten people. For the purpose of calculating the number of employees for the applicability of the Act, part-time employees are also included, irrespective of the amount of salary drawn by them. The employment of twenty or more persons on even one day in a year is sufficient to attract the provisions of the Act.

Any factory or establishment to which this Act applies shall continue to be governed by its provisions irrespective of the fact that the number of employees working therein has fallen below twenty or the number specified by the government, as the case may be.

For the purpose of counting the number of employees and calculation of bonus, employees working in the branches/departments of the same establishment whether situated in the same place or in different establishments, functioning in the same premises, shall not be clubbed together.

Where for any accounting year a separate balance sheet and profit and loss account are prepared and maintained in respect of any department or branch, then such department or branch shall be treated as a separate establishment for the purpose of computation of bonus for that year, unless such department or branch was, immediately before the commencement of that accounting year, treated as part of the establishment for the purpose of computation of bonus.

5.2.2 Eligibility for Bonus

Bonus to public undertaking employees

According to Section 8, every employee shall be entitled to be paid bonus by his employer in an accounting year, 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.

Disqualification for bonus

Section 9: notwithstanding anything contained in this Act, an employee shall be disqualified from receiving bonus under this Act, if he is dismissed from service for the following reason:

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(a) Fraud

(b) Riotous or violent behaviour while on the premises of the establishment

(c) Theft, misappropriation or sabotage of any property of the establishment

Bonus is payable only annually and it cannot be directed to be paid on a half-yearly basis.

Every employee receiving salary or wages up to ₹3,500 per month and engaged in any kind of work whether:

(i) Skilled, unskilled or manual,

(ii) Managerial staff,

(iii) Supervisory staff,

(iv) Administrative staff,

(v) Technical staff, or

(vi) Clerical staff

is entitled to bonus for every accounting year, if he has worked for at least thirty working days in that year.

A probationer is eligible for bonus. Bonus is payable to daily wage workers as well. An apprentice is not eligible for bonus.

Exempted establishment

The employees of the LIC, Seaman as defined under the Merchant Shipping Act, Central/State Government Establishments and local authority, Indian Red Cross Society, University and Educational and Educational Institution, Hospitals, Chambers of Commerce, RBI, IFCI and any financial corporation under the State Financial Corporation Act, UTI, Development Bank of India, any other financial institution being an establishment in public sector notified by the Central Government, Social Welfare Institutions, Inland Water Transport Corporation are not entitled to bonus under this Act.

Quite apart from above institutions, the appropriate government is also empowered to exempt an establishment or class of establishment from the operation of any of the provisions of the Act.

5.2.3 Computation of Bonus: Available Surplus and Direct Tax Payable by the Employer

The method for calculation of annual bonus is as follows:

1. Calculate the gross profit in the manner specified in:
   (a) First Schedule, in case of a banking company, or
   (b) Second Schedule, in any other case.

NOTES

2. Calculation of available surplus
   (a) Gross Profit = X
   (b) Depreciation admissible u/s 32 of the Income Tax Act = A
   (c) Development rebate or investment allowance or development allowance = B
   (d) Direct Taxes which the employer is liable to pay in the accounting year = C
   (e) Such further Sums specified in the Third Schedule = D

   Available Surplus = X – (A + B + C + D)
3. Calculation Allocable Surplus

   Allocable Surplus = 67 per cent of Available Surplus in case of company other than Banking Company; 60 per cent in other cases.
4. Make adjustment for 'Set-on' and 'Set-off'. For calculating the amount of bonus in respect of an accounting year, allocable surplus is computed after considering the amount of set-on and set-off from the previous years, as illustrated in the Fourth Schedule.
5. The allocable surplus so computed is distributed among the employees in proportion to the salary or wages received by them during the relevant accounting year.
6. In the case of an employee receiving salary or wages between ₹2,500 and ₹,500 per month, the bonus payable to him is to be calculated as if his salary or wages were ₹2,500 per month only.

5.2.4 Payment of Bonus

Payment of minimum bonus

Section 10: provides that 'subject to the other provisions of this Act, every employer shall be bound to pay to every employee in respect of the accounting year commencing on any day in the year 1979 and in respect of every subsequent accounting year, a minimum bonus which shall be 8.33 per cent of the salary or wage earned by the employee during the accounting year or ₹100, whichever is higher, whether or not the employer has any allocable surplus in the accounting year. However, where an employee has not completed fifteen years of age at the beginning of the accounting year, the minimum bonus will be either 8.33 per cent or ₹60 instead of ₹100, whichever is higher.

Contracting out is void

All contracts or agreements depriving the employees of their right to receive minimum bonus shall be void and not enforceable.

Payment of maximum bonus

Section 11 provides:

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 20 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.

Time limit and mode of payment of bonus

Bonus should be paid in cash and within eight months from the close of the accounting year or within one month, where there is a dispute, from the date of enforcement of the award or coming into operation of a settlement, following an industrial dispute regarding the payment of the bonus. However, an employer may apply for extension of a period of eight months up to two years, if there is a sufficient cause.

5.2.5 Adjustment of Customary or Interim Bonus Linked with Production or Productivity

Where the employee enters into an agreement or settlement with his employer for the payment of an annual bonus linked with production or productivity in lieu of bonus based on profits, he shall be entitled to receive bonus due to him under such agreement or settlement, subject to a minimum of 8.33 per cent and a maximum of 20 per cent of the salary or wages earned by him during the relevant accounting year. The Payment of Bonus Act principally dealt with profit bonus, hence customary bonus, or bonus as an implied term or condition of service was outside the purview of the Bonus Act.

Section 31A: provides that 'notwithstanding anything contained in this Act,

(i) Where an agreement or a settlement has been entered into by the employees with their employer before the commencement of the Payment of Bonus (Amendment) Act, 1976 (23 of 1976), or

(ii) Where the employees enter into any agreement or settlement with their employer after such commencement,

For the payment of an annual bonus linked with production or productivity in lieu of bonus based on profits payable under this Act, then such employees shall be entitled to receive bonus due to them under such agreement or settlement, as the case may be:

Provided that any such agreement or settlement whereby the employees relinquish their right to receive the minimum bonus under Section 10 shall be null and void in so far as it purports to deprive them of such right.

Such employees shall not be entitled to be paid such bonus in excess of 20 per cent of the salary or wage earned by them during the relevant accounting year.

Calculation of bonus with respect to certain employees

Section 12 provides that 'where the salary or wage of an employee exceeds ₹2500 per month the bonus payable to such employee under Section 10 or, as the case may be, under Section 11, shall be calculated as if his salary or wage were ₹2500 per month.

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Proportionate reduction in bonus in certain cases

Section 13 provides that 'where an employee has not worked for all the working days in an accounting year, the minimum bonus of ₹100 or, as the case may be, of ₹60, if such bonus is higher than 8.33 per cent of his salary or wage for the days he has worked in that accounting year, shall be proportionately reduced'.

Thus, the minimum bonus is to be proportionately reduced by reference to the number of days an employee has worked. The bonus is payable on the salary or wages earned by an employee in respect of an accounting year. The payment received by way of encashment of leave cannot be taken into account for the payment of bonus.

Computation of the number of working days for the purposes of Section 14

Section 14: provides that an employee shall be deemed to have worked in an establishment in any accounting year also on the days on which

(a) He has been laid-off under an agreement or as permitted by standing orders under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Industrial Disputes Act, 1947 (14 of 1947), or under any other law applicable to the establishment;

(b) He has been on leave with salary or wage;

(c) He has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(d) The employee has been on maternity leave with salary or wage, during the accounting year.

Thus, **'working days'** include days of leave, lay-off, and so on.

'Working days': Include days of leave, lay-off, and so on

Adjustment of Customary or Interim Bonus Payable under the Act

Section 17 provides that 'in cases where, in any accounting year,

(a) An employer has paid a *puja* bonus or any 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,

the employer shall be entitled to deduct the amount of bonus so paid from the amount of bonus payable by him to the employee under this Act in respect of that accounting year and the employee shall be entitled to receive only the balance.

5.2.6 Deduction from Bonus Payable under the Act

According to Section 18, wherein 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.

Deductions permissible from bonus

The following amounts can be adjusted against the amount of bonus payable:

(1) Any customary/festival/interim bonus paid

(2) Any financial loss caused by misconduct of the employee

Forfeiture of bonus

An employee shall be disqualified from receiving bonus in the following cases:

(i) If he is dismissed from service for fraud

(ii) If he is guilty of riotous or violent behaviour, theft or misappropriation

(iii) If he is responsible for sabotage of any property of the establishment, not only for the year in which he is so dismissed but also for the past years remaining unpaid to him.

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5.2.7 Set-on and Set-off

If in an accounting year, the allocable surplus exceeds the amount of maximum bonus payable, then such excess shall be carried forward for being set on in the succeeding four accounting years, whereafter the amount of set-on remaining unutilized shall lapse. The amount to be carried forward should not exceed 20 per cent of the salary or wages for that accounting year.

If there is no allocable surplus or if the allocable surplus falls short of the minimum bonus payable, then such deficiency is to be met out of the amount brought forward for being set on from the previous accounting year, if any.

If there is still any deficiency, then such amount is to be carried forward for being set off in the succeeding four accounting years, whereafter the amount of set-off remaining unadjusted shall lapse.

While calculating bonus for the succeeding accounting years, the amount of set-on and set-off carried forward from the earliest accounting year shall first be taken into account.

Example— M/s ABC has an allocable surplus of ₹20,000 in 1993. The minimum bonus payable was ₹2,000.

Maximum bonus (@ 20 per cent) was ₹4,800. Bonus paid ₹4,800.

Amount of set-on carried forward to next year = (allocable Surplus-bonus paid), restricted to 20 per cent of salary or wages i.e., ₹4,800.

In 1994, allocable surplus was nil and minimum bonus payable was ₹2,500. Amount of set-on (1993) adjusted and bonus paid = ₹2,500.

Balance amount of set-on (1993) carried forward to 1995 = ₹2,300.

In 1995, the allocable surplus was nil and the minimum bonus payable was ₹2,800. The amount of set-on (1993) adjusted in the next years.

5.2.8 Bonus in Case of New Establishment (Up to Seven Years)

In the first five accounting years following the year in which the employer begins to sell his goods or render services, bonus is payable only in respect of that accounting year,

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in which the employer derives 'profits'. Bonus for this year is to be calculated according to the provisions of the Act (as discussed above) excepting the provisions of set-on and set-off.

In the seventh accounting year, set-on or set-off is to be made of the excess or deficiency carried forward from the fifth, sixth and seventh accounting years.

From the eighth accounting year onwards, bonus is to be calculated as in case of any other establishment.

5.2.9 Obligations and Rights of Employers and Employees

Obligations of employers

The main obligations of an employer are as follow:

(1) To calculate and pay the annual bonus as required under the Act

(2) To maintain the following registers:
   (a) Register showing the computation of allocable surplus in Form A
   (b) Register showing set-on and set-off of the allocable surplus in Form B
   (c) Register showing details of the amount of bonus due to each employee, deductions therefrom and the amount disbursed in Form C.

(3) To submit an annual return of bonus paid to employees during the year in Form D to the Inspector within thirty days of the expiry of the time limit specified for the payment of bonus.

(4) To cooperate with the Inspector, produce before him the registers/records maintained, and such other information as may be required by them.

(5) To get his account audited as per the directions of a Labour Court/Tribunal or of any other such authority issued under Section 25.

Rights of employers

An employer has the following rights:

(1) The right to forfeit bonus of an employee who has been dismissed from service for fraud, riotous or violent behaviour, theft, misappropriation or sabotage of any property of the establishment.

(2) Right to make permissible deductions from the bonus payable to an employee, such as, festival/interim bonus paid and financial loss caused by misconduct of the employee.

(3) Right to refer any dispute relating to application or interpretation of any provision of the Act to the Labour Court or Labour Tribunal.

Rights of employees

(1) Right to claim bonus payable under the Act and to make an application to the Government, for the recovery of bonus due and unpaid, within one year of its becoming due.

(2) Right to refer any dispute to the Labour Court or Tribunal. Employees, to whom the Payment of Bonus Act does not apply, cannot raise a dispute regarding bonus under the Industrial Disputes Act.

5.2.10 Offences and Penalties

Any person who contravenes the provisions of the Act or rules made thereunder or fails to comply with any direction or requisition made is punishable with imprisonment up to six months or with a fine up to ₹1000, or both.

In the case of offences by a company, firm, body corporate or an association of individuals, the director, partner or principal officer responsible for the conduct of its business, as the case may be, shall be deemed to be guilty of that offence and punished accordingly, unless the person concerned proves that the offences were committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

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5.3 PRESUMPTIONS ABOUT ACCURACY OF BALANCE SHEET AND PROFIT AND LOSS ACCOUNT

The authority dealing with investigation and settlement of industrial disputes of the kind referred to in Sec. 22, may presume that the statements and particulars in the Balance Sheet and the Profit and Loss Account of a company or a corporation (other than a Banking Company) are accurate, provided the balance sheet and the profit and loss account of the company are duly audited by the Comptroller and Auditor General of India or by a qualified auditor under the Companies Act 1956.

In such a case, the corporation or the company need not prove their accuracy by filing an affidavit or by any other mode.

The authority who can presume accuracy is any arbitrator or a tribunal under the industrial disputes Act 19472 or under any corresponding law relating to investigation and settlement of industrial dispute in force in a state to which any dispute between an employer and his employees with respect to bonus payable under the Act or with respect to the applicability of the Act to an establishment in the public sector is referred.

Where the authority is satisfied that the statements and particulars contained in the balance sheet and the profit and loss account of the corporation or the companies are not account, it may take necessary steps to find out the accuracy of such statements or particulars.

The authority, on an application made by any trade union being a party to the dispute or where there is no trade union by the employees' party to the dispute, may require any clarification relating to any item in the Balance Sheet or the Profit and Loss Account from the Employer Corporation or company.

If the authority is satisfied that such clarification is necessary, it may, by order direct the employer corporation or company to furnish to the trade union or the employees such classification within such time as may be specified in the direction. The corporation or the company shall comply with the direction.

Check Your Progress

1. When was the Payment of Bonus Act introduced?
2. What is the basic criterion for paying the bonus?
3. Who can be disqualified from receiving bonus?

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5.4 SUMMARY

Some of the important concepts discussed in this unit are:

- The employment of twenty or more persons on even one day in a year is sufficient to attract the provisions of the Payment of Bonus Act.
- Bonus should be paid in cash and within eight months from the close of the accounting year or within one month, where there is a dispute, from the date of enforcement of the award or coming into operation of a settlement, following an industrial dispute regarding the payment of the bonus.
- Every employee shall be entitled to be paid bonus by his employer in an accounting year, 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.
- While calculating bonus for the succeeding accounting years, the amount of set-on and set-off carried forward from the earliest accounting year shall first be taken into account.
- The Payment of Bonus Act principally dealt with profit bonus, hence customary bonus, or bonus as an implied term or condition of service was outside the purview of the Bonus Act.
- Any person who contravenes the provisions of the Act or rules made thereunder or fails to comply with any direction or requisition made is punishable with imprisonment up to six months or with a fine up to `1000, or both.

5.5 ANSWERS TO 'CHECK YOUR PROGRESS'

1. The Payment of Bonus Act was introduced in 1965.
2. The basic criterion for paying bonus is the salary or the wages earned by an employee in respect of an accounting year.
3. An employee who is dismissed from the service for committing fraud, any riotous or violent behaviour in the work premises or theft, or damaging organizations' property can be disqualified from receiving bonus.

5.6 QUESTIONS AND EXERCISES

Short-Answer Questions

1. Define the Payment of Bonus Act.
2. Who are entitled for bonus?
3. How is bonus amount calculated?
4. What are the reasons of disqualifying an employee from receiving bonus?

Long-Answer Questions

1. Explain the scope and coverage area of the Payment of Bonus Act.
2. Describe in detail the rights of employees and employers in the light of the Payment of Bonus Act.

UNIT 6 PAYMENT OF WAGES ACT AND MINIMUM WAGES ACT

NOTES

Structure

6.0 INTRODUCTION

This unit discusses various objectives and provisions relating to responsibility for payment of wages. It also explains the fixation of wage periods, time of payment, various types of deductions and maintenance of records of payment made. As the unit progresses, it makes you familiar with the objectives of minimum wages Act and various procedures for fixing and revising minimum rate of wages. In addition, the unit also focuses on the power given to the authorities to settle any kind of disputes arising out of deductions from wages or delay in payment or any other issue.

6.1 UNIT OBJECTIVES

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

- Understand the various provisions relating to responsibility for payment of wages
- Learn the objectives and applications of the Payment of Wages Act
- Discuss the criteria of fixing the wages and procedures for fixing and revising minimum wages
- Know about the powers given to authorities for adjudication of claims

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6.2 PAYMENT OF WAGES ACT, 1936

The Payment of Wages Act, 1936 was enacted to regulate the payment of wages to certain classes of persons employed in industry. The regulation seeks to (i) ensure regular and prompt payment of wages, and (ii) prevent exploitation of wage-earners by prohibiting arbitrary fines and deductions from wages.

Section 2(vi) of the Payment of Wages Act defines 'wages' to mean 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:

- Any remuneration payable under any award or settlement between the parties or order of a court
- Any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period

Application of the Act

The Payment of Wages Act, 1936 extends to the whole of India. It applies to the following persons:

(i) Persons employed in any factory

(ii) Persons employed (otherwise than in factory) upon any railway by a railway administration either directly or through a subcontractor, by a person fulfilling a contract with a railway administration

(iii) Persons employed in an industrial or other establishment specified in sub-clauses (a) to (g) of Clause (ii) of the section.

The Act empowers the State Government to extend the application of the whole or part of the Act to any class of persons employed in the establishment or class of establishments specified by the Central/State Government under Section 2(h) (ii).

The Act applies to persons drawing less than six thousand five hundred rupees a month.

6.2.1 Obligations of Employers and Employees

Section 3 makes every employer responsible for the payment of all wages required to be paid under the Act to the persons employed by him. Quite apart from this, the following persons shall also be responsible for the payment of wages for persons employed otherwise than by a contractor:

(i) In a factory, the person named as manager of a factory under the Factories Act, 1948

(ii) In industrial or other establishments, the person responsible to the employer for the supervision and control of the industrial or other establishment

(iii) In the railways (otherwise than in factories), the employer is the railway administration, therefore, the person nominated in this behalf

6.2.2 Rules for Payment of Wages

Fixation of Wage Period

Section 4 imposes an obligation on every person responsible for the payment of wages under Section 3, to fix periods in respect of which such wages shall be payable. Such wage period shall not exceed one month.

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Time of Payment of Wages

Section 5 of the Act lays down that the wages of every person employed upon or in:

(a) Any railway, factory or other establishment upon or in which less than 1,000 persons are employed, shall be paid before the expiry of the seventh day.

(b) Any other railway, factory, 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.

(c) 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 a 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.

(d) 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 date on which his employment is terminated.

Exemption from Compliance with the Time Limit for Payment of Wages

The Act empowers the state governments to exempt the person responsible for the payment of wages to persons employed in railways (otherwise than in a factory), or to persons employed as daily-rated workers in the Public Works Department of the state from the operation of this section. However, no such order shall be made without the consultation of the Central Government.

Wages to be Paid on a Working Day

Payments of wages, unless otherwise provided shall be made on a working day.

Wages to be Paid in Currency Coins or Currency Notes

All wages shall be paid in currency coins or currency notes or in both.

Payment by Cheque

An employer may, after obtaining the written authorization of the employed person, pay him wages either by cheque or by crediting the wages in his bank account.

6.2.3 Authorized Deductions from Wages

Deduction from Wages

(a) **Concept of deduction:** The following shall be deemed to be **deductions** from wages:

(i) Every payment made by the employed person to the employer, or his agent

Deductions: Every payment made by the employed person to the employer, or his agent

(ii) Any loss of wages resulting from the imposition, for good and sufficient cause, upon a person employed, of any of the following penalties:

- The withholding of increment or promotion (including the stoppage of increment at an efficiency bar)
- The reduction to a lower post or time scale or to a lower stage in a time scale
- Suspension

(b) **Deductions that may be made from wages:** Deductions authorized under the Act are enumerated in Section 7(2). Any other deduction is unauthorized. Further, the authorized deductions can be made only in accordance with the provisions of the Act. The authorized deductions are as follows:

(i) Fines

(ii) Deduction for absence from duty

(iii) 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

(iv) Deduction for house accommodation supplied by the employer or by the Government or any housing board set up under any law for the time being in force (whether the Government or the board is the employer or not) or any other authority engaged in the business of subsidizing house accommodation which may be specified, in this behalf by the state government by notification in the Official Gazette

(v) Deductions for such amenities and services supplied by the employer as the state government or any officer specified by it in this behalf may, by general or special order, authorize

Explanation

The word 'services' in this clause does not include the supply of tools and raw materials required for the purpose of employment.

(a) Deductions for recovery of advances of whatever nature (including advances for travelling allowance or conveyance allowance), and the interest due in respect thereof, or for adjustment of overpayment of wages

(b) Deductions for 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

(c) Deductions for recovery of loans granted for house building or other purposes approved by the state government, and the interest due in respect thereof

(d) Deductions of income tax payable by the employed person

(e) Deductions required to be made by order of a Court or other authority competent to make such an order

(f) Deductions for subscriptions to and for the repayment of advances from any provident fund to which the Provident Funds Act, 1925, applies or any recognized provident fund as defined in Section 58a of the Indian income Tax

Act, or any provident fund approved in this behalf by the state government, during the continuance of such approval

(g) Deductions for payment to co-operative societies approved by the state government or any officer specified by it in this behalf or to a scheme of insurance maintained by the Indian Post Office

(h) Deductions made with the written authorization of the person employed for the payment of any premium on his life insurance policy to the Life Insurance Corporation Act, 1956, or for the purchase of securities of the Government of India or of any state government or for being deposited in any post office savings bank in furtherance of any savings scheme of any such government

(i) Deductions made with the written authorization of an employed person, for the payment of his contribution to any fund constituted by the employer or a trade union registered under the Trade Unions Act, 1926 for the welfare of the employed persons or the members of their families, or both, and approved by the state government or any officer specified by it in this behalf, during the continuance of such approval

(j) Deductions made, with the written authorization of the employed person, for payment of the fees payable by him for the membership of any trade union registered under the Trade Unions Act, 1926

(k) Deductions for the payment of insurance premium on Fidelity Guarantee Bonds

(l) Deductions for the recovery of losses sustained by a railway administration on account of acceptance by the employed person of counterfeit or base coins or mutilated or forged currency notes

(m) Deductions for the recovery of losses sustained by a railway administration on account of the failure of the employed person to invoice, to bill, to collect or to account for the appropriate charges due to that administration, whether in respect of fares, freight, demurrage and wharfage charges or in respect of sale of food in catering establishments or in respect of sale of commodities in grain shops or otherwise

(n) Deductions for the recovery of losses sustained by a railway administration on account of any rebates or refunds incorrectly granted by the employed person where such loss is directly attributable to his neglect or default

(o) Deductions made with the written authorization of the employed person, for contribution to the Prime Minister's National Relief Fund or to such other funds as the Central Government may, by notification in the Official Gazette, specify

(p) Deductions for contributions to any insurance scheme framed by the Central Government for the benefit of its employees

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Limits on the Total Amount of Deductions

Section 7(3) lays down that the total amount of deductions that may be made under Section 7(2) in any wage-period from the wages of any employed person shall not exceed:

(i) in cases where such deductions are wholly or partly made for payments to co-operative societies under clause (j) of sub-section (2), 75 per cent of such wages

(ii) in any other case, 50 per cent of such wages. If the total deductions authorized under sub-section (2) exceed 75 per cent or, as the case may be, 50 per cent of the wages, the excess may be recovered in the prescribed manner.

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Fines [Section 7(2)(a) and 8]

1. The fine shall be imposed on any employed person only for acts and omissions with the approval of the state government or of the prescribed authority, as has been 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 on which the employment is carried or in the case of persons employed upon a railway (otherwise than in a factory), at the prescribed place or places.
3. The fine shall not be imposed on any employed person unless he has been given an opportunity of showing cause against the fine.
4. The total amount of fine that may be imposed in any one wage-period on any employed person shall not exceed an amount equal to 3 per cent of the wages payable to him in respect of that wage-period.
5. No fine shall be imposed on any employed person who is under the age of fifteen years.
6. No fine imposed on any employed person shall be recovered from him in installments or 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 the omission in respect of which it was imposed.
8. All fines and all realization 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.

Explanation

All the amounts realized have to be credited to a common fund maintained for the staff as a whole and shall be applied to such purposes as are approved by the prescribed authority.

Deductions for Absence from Duty [Sections 7(2)(b) and 9]

The Act authorizes the employer to make deductions from the wages of an employed person when he remains absent from any place or places of duty where he is required to work

This absence may be for the whole day or any part of the period during which he is required to work,

Amount of deductions

The amount of deductions for absence from duty shall not exceed a sum that bears the same relationship to the wages payable in respect of the wage period as the period of absence does to such wage period [Section 9(2)].

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However, if ten or more employed persons, acting in concert, absent themselves without due notice which is required under the terms of their contracts of employment, and without reasonable cause, such deductions from such persons may include such amounts not exceeding his wages for 8 days, as may by any such term be due to the employer in lieu of due notice.

Deductions for Damage to or Loss of Goods or for Loss of Money [Section 7(2)(c) and 10]

Section 7(2)(c) authorizes deductions from wages (i) for damage to or loss of goods expressly entrusted with the employed person for custody, or (ii) for loss of money for which an employed person is required to account, where such damage or losses are directly attributable to his neglect or default. However, before making any such deduction, the employed person shall be given an opportunity to show cause against the deductions or if any other prescribed procedure has been laid down in this respect, the same must be followed. The deductions are subject to the provisions laid down in Section 10, namely:

1. The total amount of deductions under this head should not exceed the actual amount of damage or loss caused to the employer due to the negligence or default of the employed person [Section 10(10)].
2. The person responsible for payment of wages under Section 3 should record all such deductions and realization thereof, in a register, in such form and containing such particulars as may be prescribed [Section 10(2)].

Deductions for House-accommodation [Section 7(2)(d) and 11]

Section 7(2)(d) authorizes the employer, government or any housing board set up under any law for the time being in force, to deduct from the wages an amount for house accommodation. Any other authority engaged in the business of subsidizing house accommodation which may be specified by the state government by a notification in the Official Gazette.

Conditions of Deduction

The deductions in respect of house accommodation are subject to the following conditions prescribed under Section II:

1. The house accommodation amenity has been accepted by the employed person as a term of his employment or otherwise. However, no deduction can be allowed if it is the duty of the employer to supply the same.
2. The amount of deduction in respect of such accommodation should not exceed the value of such facility.

Deductions for other Amenities and Services [Sections 7(2)(e) and 12]

A deduction may be made from the wages of an employed person for various amenities and services like transport, supply of electricity, water, and so on, provided to him. Such deduction can be made if:

1. The amenity or service has been accepted by the employed person as a term of his employment.

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2. The state government or any officer specified by it in this behalf has authorized the supply of such facilities.
3. The above deductions are subject to such conditions as the state government may impose.
4. The amount of deduction shall not exceed an amount equivalent to the value of such amenities or services supplied.

The word 'services' for the above purpose does not include the supply of tools and raw materials required for the purpose of employment.

Deductions for Recovery of Advances [Sections 7(2)(i) and (12)]

Section 7(2)(f) authorizes deductions for:

(i) The recovery of advance of whatever nature

(ii) The interest due on such advance

(iii) Adjustment of over payment of wages

Conditions

The deductions under Section 7(2) (f) are subject to the following conditions:

1. The recovery of the advance of money given before employment began should be made from the first payment of wages in respect of a complete wage period, but no recovery shall be made where the advance is given for travelling expenses [Section 12 (a)].
2. Where the money was advanced after the employment began, the deduction, to recover such advances should be subject to such condition as the state government may impose.
3. Deductions for the recovery of such advances not already earned should be subject to the rules made by the state government in this respect. Such rules may provide (i) the extent to which such advances may be given, and (ii) the installments by which they may be recovered [Section 12(b)].

Deductions for the Recovery of Loans for House Building and other Purposes

(a) **Loans granted from welfare fund [Section 7(2) (ff)]**

Section 7(2) provides that deductions may be made from wages for the recovery of such loan from any fund constituted for the welfare of the labour together with the interest due in respect thereof in accordance with the rules approved by the state government, and the interest due in respect thereon.

(b) **Loans for house building or other purposes [Sections 7(2) (fff) and 12 (A)]**

Section 7(2) provides that for the recovery of loan granted (i) for house/building or (ii) other purposes approved by the state government, deductions can be made with interest due thereon. This would be subject to the rules made by the state government with regard to (i) the extent to which such loan may be granted, and (ii) the rate of interest payable thereon.

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Deductions for Income Tax [Section 7(2) (g)J]

Section 7(2) authorizes the employer to deduct income tax from the employed person.

Deduction under the Order of Court of Authority [Section 7(2) (h)]

Section 7(2) (h) authorizes the deductions required to be made under the order of a Court or other Authority competent to make such an order.

Deductions in respect of Provident Fund [Section 7(2) (i)]

The Act authorizes the employer to deduct from the wages of an employed person the following:

Schemes under the Provident Fund Act, 1925.

1. Recognized Provident Fund under Section 58A of the Indian Income Tax Act, 1922 (Now, Income tax Act, 1961)
2. Any scheme approved by the state government

Deductions for Payment to Co-operative Societies [Section 7(2) (j) and 13]

Section 7(2) (g) authorizes deductions for any payment to co-operative societies under the following conditions:

1. The co-operative society is approved by the state government or any official specified by it in this behalf.
2. The deductions are in conformity with rules made for this purpose by the state government (Section 13).

Deductions for Payment to a Scheme of Insurance of a Post Office

[Section 7(2) (k)J]

Deductions for payments to a scheme of insurance maintained by the Indian Post Office are allowed provided such deductions are made subject to such conditions as the state government may impose under Section 13.

Deductions for Payment of Life Insurance Premium [Section 7(2)(k)]

Deductions can be made for payment of any premium to the Life Insurance Corporation of India on the life insurance policy of the employed person, subject to the following conditions:

(i) With written authorization of the employed person

(ii) Such conditions as may be specified by the state government

Deductions for the Purchase of Government Securities [Section 7(2) (k)]

Deduction can be made for the purchase of securities of the following:

(i) The Government of India

(ii) Any state government

Deductions for Payment to Post Office Saving Bank

Section 7(2)(k) permits deductions for making deposits in any Post Office Saving Bank in furtherance of any savings scheme of the Central or any state government. But these deductions are subject to:

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(i) The written authorization of the employed person

(ii) Such conditions as may be imposed by the state government

Deductions for Payment of Contribution to Certain Funds [Section 7(2)(kk)]

Deductions can be made with the written authorization of the employed person for the payment of his contribution to any fund constituted by the employer or a trade union registered under the Trade Unions Act, 1926, for the welfare of the employed persons or the members of their families or both and approved by the state government or any officer specified by it in this behalf, during the continuance of such approval.

Deductions for Payment of Certain Fees [Section 7(2)(kkk)]

Deductions can be made with the written authorization of the employed person for payment of the fees payable by him for the membership of any trade union registered under the Trade Unions Act, 1926.

Deductions in respect of Fidelity Guarantee Bond

The Government may impose a deduction on this account from the wages of an employed person with the written authorization of the employed person concerned and subject to such condition.

Deductions for Certain Losses in the Case of Railway Administration

The Act authorizes deductions to be made from the wages of an employed person in a railway administration for the recovery of losses sustained by a railway administration due to the following:

(i) Acceptance by the employed person of counterfeit or base coins or mutilated or forged currency notes [Section 7(2)(m)].

(ii) Failure of the employed person to invoice, bill, collect, or account for the appropriate charges due in respect of (a) fares, freight, demurrage, warfare and carnage, or (b) sale of food in catering establishments, or (c) sale of commodities in grain shops or otherwise [Section 7(2)(n)].

(iii) Any rebates or refund incorrectly granted by the employed person in this respect shall not exceed the amount of the damage or loss caused to the employer by the neglect or default of the employed person [Section 19(1)].

But before making any deduction in respect of the aforesaid losses, an opportunity should be given to such employed person to show cause against the deduction. If any other procedure has been prescribed in this respect, the same should be strictly observed before any such deduction [Section 10 (I-A)].

Deductions for Payment to Prime Minister's National Relief Fund or any other Fund

The Act authorizes deductions to be made with the written authorization of the employed person, for contribution to the Prime Minister's National Relief Fund or to such other fund as the Central Government may, by notification in the Official Gazette, specify.

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Deductions for Contribution to Insurance Schemes

Deductions can be made for contributions to any insurance scheme framed by the Central Government for the benefit of its employees.

Contracting out

Under Section 23, any contract or agreement, whether made before or after the commencement of this Act, where an employed person relinquishes any right conferred by this Act, shall be null and void in so far as it purports to derive him of such rights.

13A. Maintenance of registers and records.

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

14. Appointment of Inspectors

1. An Inspector of Factories appointed under sub-section (1) of section 8 of the Factories Act, 1948 (63 of 1948), shall be an Inspector for the purposes of this Act in respect of all factories within the local limits assigned to him.
2. The State Government may appoint Inspectors for the purposes of this Act in respect of all persons employed upon a railway (otherwise than in a factory) to whom this Act applies.
3. The State Government may, by notification in the Official Gazette, appoint such other persons as it thinks fit to be Inspectors for the purposes of this Act, and may define the local limits within which and the class of factories and industrial or other establishments in respect of which they shall exercise their functions.
4. An Inspector may, (a) make such examination and inquiry as he thinks fit in order to ascertain whether the provisions of this Act or rules made thereunder are being observed; (b) with such assistance, if any, as he thinks fit, enter, inspect and search any premises of any railway, factory or industrial or other establishment at any reasonable time for the purpose of carrying out the objects of this Act; (c) supervise the payment of wages to persons employed upon any railway or in any factory or industrial or other establishment; (d) require by a written order the production at such place, as may be prescribed, of any register or record maintained in pursuance of this Act and take on the spot or otherwise statements of any persons which he may consider necessary for carrying out the purposes of this Act; (e) seize or take copies of such registers or documents or portions thereof as he may consider relevant in respect of an offence under this Act which he has reason to believe has been committed by an employer; (f) exercise such other powers as may be prescribed: Provided that no person shall be compelled under this sub-section to answer any question or make any statement tending to incriminate himself.

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

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

14A. Facilities to be afforded to Inspectors

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

6.2.4 Authorities under the Payment of Wages Act

Section 15 empowers the state governments to appoint an authority by the issue of notification for a specified area to hear and decide and dispose of all claims arising out of deductions from wages or delay in payment of wages of persons employed or paid in the area, including all matters incidental to such claims.

(i) **Who may be appointed.** Any of the following persons may be appointed as an authority for the above purposes:

(a) Presiding officers of a 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

(b) Any Commissioner for Workmen's compensation

(c) Other officer with experience as a judge in a civil court or as a Stipendiary Magistrate

(ii) **Who may file the application.** If the payment of wages is delayed beyond the due date or deductions are made from wages contrary to the provisions of the Act, an application for recovering the same can be filed either by an employee himself or a legal practitioner or an official of a registered trade union duly authorized in writing by the employee, the inspector or by any other person with the permission of the authority hearing the claim. If there are several employees borne on the same establishment and if their wages for the same period have remained unpaid after the due date, a single claims application can be filed on behalf of all such employees.

Similarly, if several applications are filed by employees belonging to the same unpaid group, the authority can deal with them as if it was a single application by an unpaid group.

Limitation

Every such application has to be presented within one year from the date on which the payment of wages was due or from the date on which deductions from wages were made. The authority has, however, been given the power to condone the delay in filing such application on its being satisfied that there was a 'sufficient cause' for not filing the application within the time prescribed.

15. Claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims.-

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1. The State Government may, by notification in the Official Gazette, appoint a presiding officer of any Labour Court or Industrial Tribunal, constituted under the Industrial Disputes Act, 1947 (14 of 1947) or under any corresponding law relating to the investigation and settlement of industrial disputes in force in the State or any Commissioner for Workmen's Compensation or other officer with experience as a Judge of a Civil Court or as a stipendiary Magistrate to be 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 State 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.

2. Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person, or any payment of wages has been delayed, such person himself, or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf, or any Inspector under this Act, or any other person acting with the permission of the authority appointed under sub-section (1), may apply to such authority for a direction under sub-section (3):

   Provided that 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: Provided further that any application may be admitted after the said period of 1*[twelve months] when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.

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 inquiry (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 twenty- five rupees in the latter, and even if the amount deducted or the delayed wages are paid before the disposal of the application, direct the payment of such compensation, as the authority may think fit, not exceeding twenty-five rupees:

Provided that 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

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(b) the occurrence of an emergency, or the existence of exceptional circumstances, such that the person responsible for the payment of the wages was unable, though exercising reasonable diligence, to make prompt payment, or

(c) the failure of the employed person to apply for or accept payment.

Let us consider an example of the decision arrived at with regard to the Payment of Wages Act, 1936, Sections 1(6), 2(i) and 15. In *Damodaran P. and others* v. *M.K. Krishna Kutty,* [(2006) 3 LLJ 407], an employee whose salary was ` 850 per month, filed a claim petition under Section 15 of the Payment of Wages Act, 1936, claiming arrears of wages. The employer resisted the claim, contending that the employee was employed in a managerial capacity and hence he was not entitled to any claim under the Payment of Wages Act and the Authority under the Act had no jurisdiction to deal with the claim. Finally, the matter reached the Kerala High Court. The High Court held that the employee was entitled to make a claim under the said Act, for the following reasons:

(a) Section 2 (s) of the Industrial Disputes Act, 1947, while defining 'workman', specifically excluded persons employed mainly in a managerial or administrative capacity and persons employed in supervisory capacity drawing more than ₹ 1,600/- per month. Unlike the provisions under the Industrial Disputes Act, there is no exclusion or exemption for persons employed in a managerial capacity or administrative capacity under the Payment of Wages Act.

(b) The only condition is that the person who is filing the petition should be employed during the relevant time. Section 1 (6) of the Act makes it clear that the Act is applicable to all employed persons whose salary is less than ₹ 1,600/- per month.

(c) The definition of 'workman' under the Industrial Disputes Act, 1947 cannot be adopted for the term 'employed person' used in the Payment of Wages Act, 1936. The petitioner admittedly was employed in the establishment during the period for which claim for arrears of wages was made and his salary was below ₹ 1,600/- per month.

(d) In view of the above admitted facts, the petitioner is entitled to claim under the Payment of Wages Act and his claim cannot be rejected on the ground that he was employed in a managerial capacity.

6.3 MINIMUM WAGES ACT, 1948

6.3.1 Objects of the Act

The preamble of the Act denotes the objects for regulating minimum wage in the Schedule employments. The primary objects of minimum wage regulation are:

1. Prevention of sweating or payment of unduly low wages to unorganized workers.
2. Maintenance of industrial peace.
3. Elimination of unfair competition between the employers.
4. When there is no strong workers organization, State regulation is necessary to protect workers from exploitation.

5. Regulation of minimum wage will tend to increase the efficiency of workers.
6. Minimum wage regulations compels the employer to reorganize his business and eliminate waste.

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Explaining the object of the Minimum Wages Act, the Supreme Court in M/s *Bhikusa Yamasa Kshtriya* v. *Sangamma Akola Taluka Bidi Kamgar Union* observed:

> The object of the Act is to prevent exploitation of the workers, and for that purpose it aims at fixation of minimum wages which the employer must pay. The legislature undoubtedly intended to apply the Act to those industries or localities in which by reason of causes such as unorganized labour or absence of machinery for regulation of wages, the wages paid to workers were, in the light of the general level wages, and subsistence level, inadequate".

Similarly, in *U. Unichay* v *State of Kerala*, the Supreme Court observed that 'What the Act purports to achieve is to prevent the exploitation of labour. For that purpose the Act authorises the appropriate Government to take steps to prescribe minimum rates of wages in the scheduled industries.

6.3.2 Applicability of the Act

The Minimum Wages Act, 1948, applies to employment that kind of which is enumerated in the schedule of the Act and in certain cases may extend to other employment added by the appropriate Government.

'**Scheduled Employment**' means an employment specified in the Schedule or any process or branch of work forming part of such employment.'

Scheduled Employment: Employment specified in the Schedule or any process or branch of work forming part of such employment

The Schedule is divided into two parts namely, Part I and II. When originally enacted, Part I of the Schedule had 12 entries. Part II relates to employment in agriculture. It was realized that it would be necessary to fix minimum wages in many more kinds of employment to be identified in course of time. Accordingly, powers were given to the appropriate government to add more kinds of employments to the schedule by following the procedure laid down in Section 27 of the Act. As a result, the state governments and the central Government have made several additions to the schedule and it differs from state to state.

6.3.3 Fixation of Minimum Rates of Wages

Section 3 of the Act empowers the appropriate government to fix the minimum rates of wages payable to the employees of scheduled employment specified in Part I and Part II of the Schedule or shall review such wages at such intervals it may think fit, not exceeding five years.

By Section 3, an obligation has cast on the appropriate government to fix the minimum wage for employees employed in the scheduled employments or in any new employment added to the schedule under Section 27. Section 3(1) (a) conferes authority on the appropriate government to fix minimum rates of wages after complying with the procedure laid down in the Act and the rules made thereunder.

Under the proviso to Sub-section 3(1) of Section 3, the appropriate government may fix the minimum rates of wages for:

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1. A part of the state instead of the whole state
2. Any specified class or classes of employment in the whole of the state
3. Any specified class or classes of employment for a part of the state
4. A type of employment under any specified local authority
5. A type of employment under any class of local authority.

In the case of employment specified in Part II of the schedule, the minimum rates of wages need not be fixed for the entire state. A part of the state may be left out altogether. In the case of employment in Part I, the minimum rates of wages must be fixed for the entire state, no part of the state being omitted.

Different rates of wages:

Section 3(3) empowers the appropriate government to fix or revise minimum rates of wages for:

1. Different scheduled employment
2. Different classes of work in the same scheduled employment
3. Adults, adolescents, children and apprentices
4. Different localities.

6.3.4 Review of the Wages Already Fixed

Section 3(1) (b) provides for a review and revision of the minimum wages already fixed within a period of five years of the earlier fixation. There is no limitation indicated upon the power of the state government to issue any notification when it is reviewing and revising the minimum rates of wages, and the state government has the power to apply the revised rate of wages only to parts of the state. A notification fixing minimum wages must clearly state whether it is being done for the first time or is a revision. But where the appropriate government due to any reason has not revised the minimum wages fixed by it within the period of five years, it is authorized to do so even after the expiry of five years, and until the wages are revised, the minimum rates of wages already fixed will continue to be in force.

The appropriate government is authorized to fix or revise different minimum rates of wages for different scheduled employments or different classes of work in the same scheduled employment or for different localities and for adults, adolescents, children and apprentices. The reason for such fixation or revision of wages is that the condition of employment even in the same industry would be found to be different in different areas. Further, the employers in the various areas would have varying capacity to pay wages to their employees, the profits earned would be unequal in different areas, and certain conditions may be peculiar to some industry in a particular area.

Fixation of wage period

The minimum rates of wages may be fixed in accordance with the wage period that is, by the hours or by the day or by the month or by any other larger period.

Procedure for Fixing and Revision of Minimum Wages

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Section 5 of the Act provides the procedure for fixing and revising minimum wage. Two methods are enumerated in the Section itself. It is at the discretion of the State to adopt any one.

1. The appropriate government shall appoint as many committees or sub-committees as it considers necessary to hold enquiries and advise it in respect of the fixation or revision of minimum rates of wages.
2. The appropriate government shall by notification in the official Gazette publish its proposal for the information of interested and affected parties and specify a day not less than two months from the date of notification on which the proposals will be taken into consideration. After receiving objections from the parties, the Government may consider and fix or revise minimum rates of wages with a fresh notification to be published in Official Gazette.

The appropriate government after considering the advice of the committee appointed for the purpose and all representations received may by notification fix or revise the minimum rates of wage in respect of each scheduled employment which shall come into force after expiry of three months unless otherwise provided in the notification. Thus for fixing or revising minimum rates of wages, the appropriate Government may constitute the committees or sub-committees.

Sec. 7. Advisory Board.

For the purpose of coordinating the work of committees and sub-committees appointed under section and advising the appropriate Government generally in the matter of fixing and revising minimum rates of wages, the appropriate Government shall appoint an Advisory Board.

Sec. 8. Central Advisory Board:

1. For the purpose of advising the Central and State Governments in the matters of the fixation and revision of minimum rates of wages and other matters under this Act and for coordinating the work of the Advisory Boards, the Central Government shall appoint a Central Advisory Board.
2. The Central Advisory Board shall consist of persons to be nominated by the Central Government representing employers and employees in the scheduled employments, who shall be equal in number, and independent persons not exceeding one-third of its total number of members; one of such independent persons shall be appointed the Chairman of the Board by the Central Government.

Composition of Committee/Advisory Board

Each of the Committees, sub-committees, and the Advisory Board shall consist of persons to be nominated by the appropriate government representing:

(i) employers in the scheduled employment;

(ii) employees in the scheduled employment.

who shall be equal in number and independent persons not exceeding one third of its total members; one of such independent persons shall be appointed as Chairman by the appropriate government [Section 9].

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The Mode of Payment of Minimum Rates of Wages

The wages to the workers are paid either in cash. However, where there is a custom to pay wages wholly or partly in kind, the appropriate government may authorize the payment partly or wholly in kind by the issue of notification. Further, if the appropriate government is of the opinion that provision should be made for the supply of essential commodities at concessional rates, it may authorize the supply of these articles at concessional rates. The cash value of wages in kind and of concessions in respect of supplies of essential commodities at concessional rates, in such cases, is to be estimated in the manner prescribed under the rules [Section 11].

Payment of Minimum Rates of Wages

The Act imposes an obligation upon the employer to pay minimum rates of wages without any deduction to the workers employed in a scheduled employment wherever the appropriate government has fixed such wages by notification under Section 5 with respect to that employment [Section 12].

Wages of Workers who Work for Less than a Normal Working Day

If a worker whose minimum rate of wages has been fixed in a prescribed manner works for any day for a shorter period than the requisite number of hours constituting a normal working day for him then he would be entitled to receive wages for the full day from the employer except when he willfully fails to work for the normal working day without any fault on the part of the employer and for such default or other similar cases the rules provide that the wages may be deducted [Section 15].

Wages for Two or More Classes of Work

Where an employee does two or more classes of work to which a different rate of minimum wages is applicable, then the employee is entitled to receive wages from his employer in proportion to the time occupied by him in each class of work, calculated on the basis of minimum rates fixed for each of the classes of work [Section 16].

Minimum Time Rate wages for Piece Work

Where an employee is employed on piece work for which minimum rates has not been fixed but instead the appropriate government has fixed minimum time rates of wages under this Act, then the employer is required to pay to the employee engaged on piece work minimum wages not less than minimum time rate wages [Section 17].

6.3.5 Maintenance of Records and Display of Notices

Every employer is required to maintain registers and records containing following particulars:

(a) Particulars of employees employed by him

(b) The work performed by them

(c) The wages paid to them

(d) The receipts given by the employees

(e) Any other information as prescribed.

Claims and Procedure

(i) Introduction

The appropriate government is empowered to appoint by notification in the Official Gazette an authority to hear and decide for any specific are claims arising out of (i) payment of less than minimum rates of wages, (ii) overtime rates and (iii) payment for work done on a day of rest to the employees employed by an employer of that area [Section 20(1)].

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(ii) Who can be appointed as authority

Any one of the following persons may be appointed as an Authority to decide any claims relating to the matters specified above:

(a) Any Commissioner for Workmen's Compensation

(b) Any officer of the Central Government exercising functions as a Labour Commissioner for any region

(c) Any officer of the State Government not below the rank of Labour Commissioner

(d) Any officer with experience as a Judge of Civil or Stipendiary Magistrate.

(e) (i) The employee himself, or (ii) any practitioner, or (iii) any officer of a registered Trade Union Authorized in writing to Act of his behalf, or (iv) any inspector or any person acting with the permission of the Authority before whom the claim is preferred may make an application.

(iii) Time for making claims

The application for claim is required to be presented within six months from the data on which the minimum wages or other amount becomes payable. But application can be admitted after six months if the applicant satisfies the Authority that he could not make the application within the prescribed time for 'sufficient cause'.

(iv) Procedure for deciding claims

When an application for the claim is entertained, the Authority is required to hear the applicant and the employer and afford them all reasonable facilities to present their case and hold any enquiry which he may deem necessary. If after holding an enquiry into the merit of the claim the Authority comes to the conclusion that the employer has made a default, then it may direct the employer to pay the difference between the minimum wage payable to him and the wages actually paid to him.

(v) Recovery of amount

The Authority before whom the claim is preferred by a worker against an employer is vested with a power to order the recovery of the amount due in favour of a worker as it was a fine imposed on the employer in case the Authority happens to be a Magistrate. But in case the Authority is other than a Magistrate, then on the application of the Authority to the Magistrate vested with a power to decide a claim under the Act, the amount due to the worker can be recovered on the orders of the Magistrate like a fine [Section 20(5)].

6.3.6 Power of Appropriate Government

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Rule-making power.

26. Rule-making power.- (1) The State Government may make rules to regulate the procedure to be followed by the authorities and Courts referred to in sections 15 and 17.

(2) The State Government may, 6***, by notification in the Official Gazette, make rules for the purpose of carrying into effect the provisions of this Act.

(3) In particular and without prejudice to the generality of the foregoing power, rules made under sub-section (2) may—

(a) require the maintenance of such records, registers, returns and notices as are necessary for the enforcement of the Act 7*[prescribe the form thereof and the particulars to be entered in such registers or records];

(b) require the display in a conspicuous place on premises where employment is carried on of notices specifying rates of wages payable to persons employed on such premises;

(c) provide for the regular inspection of the weights, measures and weighing machines used by employers in checking or ascertaining the wages of persons employed by them;

(d) prescribe the manner of giving notice of the days on which wages will be paid;

(e) prescribe the authority competent to approve under sub-section (1) of section 8 acts and omissions in respect of which fines may be imposed; 108H

(f) prescribe the procedure for the imposition of fines under section 8 and for the making of the deductions referred to in section 10;

(g) prescribe the conditions subject to which deductions may be made under the proviso to sub-section (2) of section 9;

(h) prescribe the authority competent to approve the purposes on which the proceeds of fines shall be expended;

(i) prescribe the extent to which advances may be made and the instalments by which they may be recovered with reference to clause (b) of section 12;

1*[(ia) prescribe the extent to which loans may be granted and the rate of interest payable thereon with reference to section 12A;

(ib) prescribe the powers of Inspectors for the purposes of this Act;]

(j) regulate the scales of costs which may be allowed in proceedings under this Act;

(k) prescribe the amount of court-fees payable in respect of any proceedings under this Act, 2***;

(l) prescribe the abstracts to be contained in the notices required by section 25; 1* 3*xxx

3*[(la) prescribe the form and manner in which nominations may be made for the purposes of sub-section (1) of section 25A, the cancellation or variation of any such nomination, or the making of any fresh nomination in the event of

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the nominee predeceasing the person making nomination, and other matters connected with such nominations:

(lb) specify the authority with whom amounts required to be deposited under clause (b) of sub-section (1) of section 25A shall be deposited, and the manner in which such authority shall deal with the amounts deposited with it under that clause;]

1*[(m) provide for any other matter which is to be or may be prescribed.]

(4) In making any rule under this section the State Government may provide that a contravention of the rule shall be punishable with fine which may extend to two hundred rupees.

(5) All rules made under this section shall be subject to the condition of previous publication, and the date to be specified under clause (3) of section 23 of the General Clauses Act, 1897 (10 of 1897), shall not be less than three months from the date on which the draft of the proposed rules was published.

1*[(6) Every rule made by the Central Government under this section shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in 5*[two or more successive sessions], and if, before the expiry of the session 5*[immediately following the session or the successive sessions aforesaid], both Houses agree in making 108I 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.]

6.3.7 Offences under the Act

Penalty for offences under the Act

20. Penalty for offences under the Act.- (1) Whoever being responsible for the payment of wages to an employed person contravenes any of the provisions of any of the following sections, namely, 1*[section 5 except sub-section (4) thereof, section 7, section 8 except sub-section (8) thereof, section 9, section 10 except sub- section (2) thereof, and sections 11 to 13], both inclusive, shall be punishable with fine 2*[which shall not be less than two hundred rupees but which may extend to one thousand rupees].

(2) Whoever contravenes the provisions of section 4, 3*[sub- section (4) of section 5, section 6, sub-section (8) of section 8, sub-section (2) of section 10] or section 25 shall be punishable with fine which may extend to 2*[five hundred rupees].

4*[(3) Whoever being required under this Act to maintain any records or registers or to furnish any information or return—

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

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

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

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(d) refuses to answer or wilfully gives a false answer to any question necessary for obtaining any information required to be furnished under this Act; shall, for each such offence, be punishable with fine 2*[which shall not be less than two hundred rupees but which may extend to one thousand rupees].

(4) Whoever—

(a) wilfully obstructs an Inspector in the discharge of his duties under this Act; or

(b) refuses or wilfully neglects to afford an Inspector any reasonable facility for making any entry, inspection, examination, supervision, or inquiry authorized by or under this Act in relation to any railway, factory or 2*[industrial or other establishment]; or

(c) wilfully refuses to produce on the demand of an Inspector any register or other document kept in pursuance of this Act; or 108E

(d) prevents or attempts to prevent or does anything which he has any reason to believe is likely to prevent any person from appearing before or being examined by an Inspector acting in pursuance of his duties under this Act; shall be punishable with fine 1*[which shall not be less than two hundred rupees but which may extend to one thousand rupees]

(5) If any person who has been convicted of any offence punishable under this Act is again guilty of an offence involving contravention of the same provision, he shall be punishable on a subsequent conviction with imprisonment for a term 1*[which shall not be less than one month but which may extend to six months and with fine which shall not be less than five hundred rupees but which may extend to three thousand rupees]:

Provided that for the purpose of this sub-section, no cognizance shall be taken of any conviction made more than two years before the date on which the commission of the offence which is being punished came to the knowledge of the Inspector.

(6) If any person fails or wilfully neglects to pay the wages of any employed person by the date fixed by the authority in this behalf, he shall, without prejudice to any other action that may be taken against him, be punishable with an additional fine which may extend to 1*[one hundred rupees] for each day for which such failure or neglect continues.]

6.3.8 Penalties

- The penalties shall be imposed on any employed person only for acts and omissions with the approval of the state government or of the prescribed authority, as has been specified by notice under sub-section (2).
- A notice specifying such acts and omissions shall be exhibited in the prescribed manner on the premises on which the employment is carried or in the case of persons employed upon a railway (otherwise than in a factory), at the prescribed place or places.
- The penalties shall not be imposed on any employed person unless he has been given an opportunity of showing cause against the penalty.
- The total amount of penalty that may be imposed in any one wage-period on any employed person shall not exceed an amount equal to 3 per cent of the wages payable to him in respect of that wage-period.

- No penalties shall be imposed on any employed person who is under the age of fifteen years.
- No penalty shall be imposed on any employed person shall be recovered from him in installments or after the expiry of sixty days from the day on which it was imposed.
- Every penalty shall be deemed to have been imposed on the day of the act or the omission in respect of which it was imposed.
- All penalties and all realization 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.

6.4 SUMMARY

Some of the important concepts discussed in this unit are:

- The Payment of Wages Act, 1936 was enacted to regulate the payment of wages to certain classes of persons employed in industry.
- The Act empowers the state governments to exempt the person responsible for the payment of wages to persons employed in railways (otherwise than in a factory), or to persons employed as daily-rated workers in the Public Works Department of the state from the operation of this section.
- An employer may, after obtaining the written authorization of the employed person, pay him wages either by cheque or by crediting the wages in his bank account.
- The preamble of the Act denotes the objects for regulating minimum wage in the Schedule employments.
- Scheduled Employment means an employment specified in the Schedule or any process or branch of work forming part of such employment.
- The appropriate government is empowered to appoint by notification in the Official Gazette an authority to hear and decide for any specific are claims arising out of (i) payment of less than minimum rates of wages, (ii) overtime rates and (iii) payment for work done on a day of rest to the employees employed by an employer of that area.

6.5 ANSWERS TO 'CHECK YOUR PROGRESS'

1. The Payment of the Wages Act was introduced in 1936.
2. The purpose of enacting the Payment of the Wages Act was to regulate the payment of wages to certain classes of persons employed in industry.
3. The minimum wages Act was introduced in 1948.
4. The scheduled employment means, an employment specified in the Schedule or any process or branch of work forming part of such employment.

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Check Your Progress

1. When was the Payment of the Wages Act introduced?
2. What was the purpose of enacting the Payment of Wages Act?
3. When was the Minimum Wages Act introduced?
4. What does 'scheduled employment' mean?

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6.6 QUESTIONS AND EXERCISES

Short-Answer Questions

1. Define the term 'Wages'.
2. What are the rules for payment of wages?
3. What are the objects of the Minimum Wages Act?
4. Mention the conditions necessary for deduction of wages.

Long-Answer Questions

1. What do you understand by deduction of wages? Discuss different types of deductions.
2. Describe the procedures of fixing and revising of minimum wages.

MODEL QUESTION PAPER

MBA Degree Examination

Third Semester

Time: 3 Hours **Maximum: 100 Marks**

PART A (5 × 8 = 40 marks)

Answer any FIVE of the following:

1. How are the terms 'factory' and 'occupier' defined under the Factory Act, 1948?
2. Discuss the provisions relating to welfare of workers under the Factory Act, 1948.
3. What do the terms 'dependant', 'partial disablement', 'total disablement' and 'workmen' mean under the Workmen's Compensation Act, 1923?
4. How is compensation distributed under the Workmen's Compensation Act, 1923?
5. Discuss the meaning of industrial disputes under the Industrials Disputes Act, 1947.
6. Discuss the membership criteria of the Employees Provident Funds and Miscellaneous Provisions Act, 1952.
7. Explain the scope of the Payment of Bonus Act, 1965.
8. Discuss the provisions relating to authorized deductions from wages under the Payment of Wages Act, 1936.

PART B (4 × 15 = 60 marks)

Answer any FOUR of the following:

9. Evaluate the health and safety provisions under the Factory Act, 1948.
10. What are the provisions relating to working hours, annual leave and wages under the Factory Act, 1948?
11. Discuss the various types of benefits granted to all insured workers under the Employees State Insurance Act, 1948.
12. Explain the rights and liabilities of trade unions.
13. Describe how gratuity is determined under the Payment of Gratuity Act, 1972.
14. Explain the procedure for calculation and payment of bonus under the Payment of Bonus Act, 1965.
15. Discuss the criteria of fixing and revising minimum wages under the Minimum Wages Act, 1948.