



**SATHYABAMA**

**INSTITUTE OF SCIENCE AND TECHNOLOGY  
(DEEMED TO BE UNIVERSITY)**

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**SCHOOL OF MANAGEMENT STUDIES  
DEPARTMENT OF MANAGEMENT STUDIES**

**UNIT I - ADVANCED LABOUR LAWS**

**SBAA7017**

## **UNIT-I**

### **INTRODUCTION**

#### **LABOUR LAWS IN INDIA**

- The term 'labour' means productive work especially physical work done for wages.
- Labour law is the body of laws, administrative rulings, and precedents which address the legal rights of, and restrictions on, working people and their organizations.

#### **Nature of Labour Laws**

- It treats an individual as a worker or employer and will only affect an individual in the capacity of a worker or employer.
- It deals with the problems arising out of occupational status of individuals such as hours of work, wages, working conditions, trade unions, industrial disputes.
- It is governed by social justice than general justice.
- It protects workers and secures justice for them.

#### **Need for Labour Laws**

The following conditions necessitated laws specifically for labour:

- Industrial Revolution changed the society from agricultural society to industrial society which necessitated labour laws to specifically address labour issues.
- Working class was excessively exploited by the employers.
- Rules of capitalism like, 'Hire and fire', 'Master and Servant', 'Carrot and Stick' were in practice.
- Law of contract governed the relationship between workers and employers and no special laws for workers.
- Anti-combination laws were in place, which treated union of workers as criminal conspiracy.
- Work place was characterized by Longer working hours, low wages, lack of safety and welfare provisions, employment of young children

- State adopted the policy of laissez faire and did not interfere in employer-employee issues.

### **Factors influencing Labour laws in India**

Labour laws originated as a result of struggle for emancipation of working class from the clutches of aggressive capitalism and to transform the status from slave to partner. The views expressed by important nationalist leaders during the days of national freedom struggle largely influenced the labour laws earlier. Other factors that contribute to the formation or influential in shaping the Indian labour legislations are:

- prevailing social and economic conditions
- debates of the Constituent Assembly
- human rights (right to work of one's choice, right against discrimination, prohibition of child labour, just and humane conditions of work, social security, protection of wages, redress of grievances, right to organize and form trade unions, collective bargaining and participation in management)
- International Conventions, Standards and Recommendations emerge from UN and ILO
- deliberations of the various Sessions of the Indian Labour Conference and the International Labour Conference.
- recommendations of the various National Committees and Commissions (eg; First National Commission on Labour (1969), National Commission on Rural Labour (1991), Second National Commission on Labour (2002))
- provisions of the Constitution
- judicial pronouncements on labour related matters specifically pertaining to minimum wages, bonded labour, child labour, contract labour etc.

The need for protecting and safeguarding the interest of labour as human beings has been enshrined in Chapter-III (Articles 16, 19, 23 & 24) and Chapter IV (Articles 39, 41, 42, 43, 43A & 54) of the Constitution of India keeping in line with Fundamental Rights and Directive Principles of State Policy.

Under the Constitution of India, Labour is a subject in the concurrent list where both the Central and State Governments are competent to enact legislations. As a result, a large number of labour laws have been enacted catering to different aspects of labour namely, occupational health, safety, employment, training of apprentices, fixation, review and revision of minimum wages, mode of payment of wages, payment of compensation to workmen who suffer injuries as a result of accidents or causing death or disablement, bonded labour, contract labour, women labour and child labour, resolution and adjudication of industrial disputes, provision of social security such as provident fund, employees' state insurance, gratuity, provision for payment of bonus, regulating the working conditions of certain specific categories of workmen such as plantation labour, beedi workers etc.

The Labour laws can be categorized as follows:

- 1) Labour laws enacted by the Central Government, where the Central Government has the sole responsibility for enforcement.
- 2) Labour laws enacted by Central Government and enforced both by Central and State Governments.
- 3) Labour laws enacted by Central Government and enforced by the State Governments.
- 4) Labour laws enacted and enforced by the various State Governments which apply to respective States.

### **Objectives of Labour laws**

- To safeguard the workers against exploitation.
- To maintain harmonious relationship between employees and employers.
- To provide and improve the welfare, amenities of workers.
- To settle industrial disputes
- To ensure the protection of interest of women and children
- To provide a guarantee of fundamental rights at work

## **INTERNATIONAL LABOUR ORGANISATION (ILO)**

- The International Labour Organization (ILO) was founded in 1919 as part of the Treaty of Versailles.
- ILO Headquarters is located in Geneva, Switzerland.
- Its unique tripartite structure gives an equal voice to workers, employers and governments to ensure that the views of the social partners are closely reflected in labour standards and in shaping policies and programmes.
- In 1946, it became the first specialised agency of the United Nations. The ILO embodies a vision of universal, humane conditions of labour to attain social justice and peace among nations.
- International Labour Organisation was one of the first organisations to deal with labour issues. The ILO's original and most important task has been the development, promotion, and monitoring of international labour standards. To date, the organisation has created 189 globally applicable, legally binding Conventions and 202 legally non - binding Recommendations for the regulation of labour conditions.

### **Objectives of ILO**

- to promote and realize standards and fundamental principles and rights at work
- to create greater opportunities for women and men to secure decent employment
- to enhance the coverage and effectiveness of social protection for all
- to strengthen tripartism and social dialogue on work -related issues

### **Labour Standards of ILO**

- The Labour standards of ILO emphasises on fundamental rights at work
- They are
- freedom of association and the right to organise
- the right to collective bargaining
- the abolition of forced labour
- a minimum age for employment and the effective abolition of child labour
- the prohibition of workplace discrimination

- the mandate for equal pay for women and men for work of equal value.

The main subject areas of the international labour standards include the fundamental rights at work, called core labour standards of the ILO. These are freedom of association and the right to organise; the right to collective bargaining; the abolition of forced labour; a minimum age for employment and the effective abolition of child labour; the prohibition of workplace discrimination, equal pay for women and men for work of equal value.

The ILO has two main decision making bodies:

- the International Labour Conference held in June each year – also known as World Parliament of Labour and
- the Governing Body.

In each of the two bodies, the national governments hold half of the seats, and employers' and workers' organisations one quarter each of the voting power. This feature of tripartite representation is to ensure that the views of the social partners are closely reflected in labour standards and in shaping policies and programmes. It makes the ILO unique within the family of the United Nations and more democratic than other organisations in the multilateral system.

### **Labour welfare**

Labour welfare relates to taking care of the well-being of workers by employers, trade unions, governmental and non-governmental institutions and agencies. Welfare includes anything that is done for the comfort and improvement of employees and is provided over and above the wages.

- According to ILO, labour welfare can be defined as a term, which is understood to include such services, facilities, and amenities as may be established in or in the vicinity of undertakings to enable the persons employed in them to perform their work in healthy, congenial surroundings and to provide them with amenities conducive to good health and high morale.
- Oxford dictionary- “Labour welfare is efforts to make life worth living for workmen.”  
The need for providing such services and facilities arise from the social responsibility of

industries, a desire for upholding democratic values and a concern for employees. Welfare includes anything that is done for the comfort and improvement of employees and is provided over and above the wages.

- Welfare services are divided into two groups –
  - (a) Welfare services within the premises of the factory (intra-mural) such as – drinking and washing facilities, bathing, creche, canteen, rest room, shelter, prevention of fatigue and safety devices and
  - (b) Welfare amenities outside the establishment (extra-mural) include social security measures like social insurance, social assistance, recreation, sports, workers' education, etc.
- It also includes, cooperative credit societies transportation, housekeeping. Scope of labour welfare takes care of workers' life from cradle to grave as employees' state insurance scheme provides medicine to a worker child and provides funeral benefit to a worker after his last minutes in this world.
- Statutory/Non-statutory provisions

### **Objectives of Labour Welfare**

- to minimize exploitation of workers.
- to provide social comfort to employees.
- to enable workers to live a life with dignity, status and self-respect.
- to support overall development of employees.
- to provide financial support indirectly to the employees.
- to contribute in developing sense of responsibility and belongingness among employees.
- to improve working conditions at the workplace for employees.
- to maintain and retain the existing workforce.
- to reduce rate of absenteeism from work and labour turnover from job.
- to improve lives of employees comfortable and happy.
- to improve productivity and efficiency of employees at workplace.
- to provide healthy and proper working conditions.
- to ensure betterment of employees and families and society as a whole.

### **Qualification of welfare officers**

A welfare officer to be appointed should possess- (i) a university degree; (ii) degree or diploma in social sciences, social work or social welfare from any recognised institution; and (iii) adequate knowledge of the language spoken by the majority of the workers in the area where the factories, mines and plantations are situated.

- The National Commission on Labour - the managements to appoint a person exclusively to look after the welfare of their workers and help them in discharging their statutory obligations in respect of welfare measures.
- The Committee on Labour Welfare, recommended that- the management should designate one of the existing officers to their personnel department as welfare officer to fulfill the purpose of the law. The management should ensure that only such officers of the personnel department are designated to look after the welfare activities as are properly qualified to hold these posts and have aptitude for welfare work.

### **Functions of Labour Welfare Officers**

In actual practice, the welfare officer has been entrusted with the following functions:

#### **(a) Supervision of:**

- (i) Safety, health and welfare programmes; housing, recreation, and sanitation services;
- (ii) Looking after the working of the joint committee;
- (iii) Grant of leave with wages; and
- (iv) Redressal of workers' grievances.

#### **(b) Counselling Workers on:**

- (i) Personal and family problems;
- (ii) Adjusting to work environment; and
- (iii) Understanding rights and privileges.

**(c) Advising the Management on Matters of:**

- (i) Formulating welfare policies;
- (ii) Apprenticeship training programmes;
- (iii) Meeting statutory obligations to workers;
- (iv) Developing fringe benefits; and
- (v) Workers' education and use of communication media.

**(d) Establishing Liaison with Workers to:**

- (i) Understand the various limitations under which they work;
- (ii) Appreciate the need of harmonious industrial relations in the plant;
- (iii) Interpret company policies to workers; and
- (iv) Persuade workers to come to a settlement in the event of a dispute.

**(e) Establishing Liaison with the Management to:**

- (i) Appreciate the workers' viewpoint on various matters;
- (ii) Intervene on behalf of the workers in matters under the consideration of the management;
- (iii) Help different department heads to meet their obligations;
- (iv) Maintain harmonious industrial relations in the plant; and
- (v) Suggest measures for the promotion of the general well-being of workers.

**(f) Working with the Management and Workers to:**

- (i) Maintain harmonious industrial relations in the plant;
- (ii) Arrange a prompt redressal of grievances and speedy settlement; and
- (iii) Improve the productivity and productive efficiency of the enterprise.

**(g) Working with the Public to:**

- (i) Secure a proper enforcement of the various provisions of the Acts as applicable to the plant by establishing contact with factory inspectors, medical officers and other inspectors;
- (ii) To help workers to make use of community services.



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**UNIT I - ADVANCED LABOUR LAWS**

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**UNIT-II**  
**LAW RELATING TO WORKING CONDITIONS**  
**THE FACTORIES ACT, 1948**

**Introduction**

Indian Factory laws are based on British Factory law. First factories Act in India is passed in the year 1881 with the objective of protecting children and to provide for some health and safety measures. Subsequently it is amended in 1891, 1911, and 1922 based on recommendations of various commissions and committees. Factories Act of 1948 came into force on the 1<sup>st</sup> day of April, 1949 to protect the health of employees from injury by overwork, unwholesome or dangerous conditions of labour, especially the younger and weaker employees. Subsequently, the Act has been amended the years 1949, 1950, 1951, 1954, 1970 and 1976. The last amendment to the Factories Act, 1948 was made in the year 1987, wherein a separate Chapter was inserted relating to hazardous process.

**Objects of the Factories Act, 1948**

Factories Act, 1948 is enacted to regulate the conditions of work in manufacturing establishments which come within the definitions of the term factory as used in the Act.

The objective of the Act is to regulate health, safety welfare, and annual leave and enact special provision in respect of young persons, women and children who work in the factories.

**Applicability**

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

This Act is administered by the Ministry of Labour and Employment through Director General Factory Advice Service & Labour Institute and by the State Governments through Factory Inspectorates

## **DEFINITIONS**

### **Factory (Sec.2 (m))**

Factory means any premises including the precincts thereof

- i) whereon **10 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
- ii) whereon **20 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

### **Manufacturing Process (Sec. 2 (k))**

- It means any process for –
- Making, altering, repairing, ornamenting, finishing, packing, oiling, washing, leaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or
- Pumping oil, water, sewage, or any other substance, or
- Composing types of printing, printing by letter press, lithography, photogravure or other similar process or book-binding or
- Constructing, reconstructing, repairing, refitting, finishing, breaking up ships or vessels, or Preserving or storing of any article in cold storage

### **Worker (Sec.2 (l))**

A worker means a person employed, directly or by through any agency (any a contractor) with or without the knowledge of the principal employer. He may be employed for or without remuneration. But he must be employed in a manufacturing process, or in cleaning some part of the machinery or premises used for the manufacturing process, or in some other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process.

**Adult (Sec. 2(a))**

An 'adult' means a person who has completed his 18<sup>th</sup> year of age.

**Adolescent (Sec. 2(b))**

An 'adolescent' means a person who has completed his 15<sup>th</sup> year of age but has not completed his 18<sup>th</sup> year.

**Child (Sec. 2(c))**

A 'child' means a person who has not completed his 15<sup>th</sup> year of age.

**Young Person (Sec. 2(d))**

A 'young person' means a person who is either a child or an adolescent.

**Competent Person (Sec.2(ca))**

As introduced in by the Amendment Act of 1987, competent person in relation to any provision of the Act, means a person or an institution recognized as such by the Chief Inspector. The recognition must be for the purpose of carrying out tests, examinations and inspections required to be done in a factory under the provisions of the Act. With regard to

**Hazardous Process (Sec.2.(cb))**

It means any process or activity in relation to an industry specified in the First Schedule where, unless special care is taken, raw material used therein or the intermediate or finished products, by-products, wastes or effluents thereof would –

- Cause material impairment to the health of the persons engaged in or connected therewith, or
- Result in the pollution of general environment

**Occupier (Sec.2(h))**

'Occupier' of a factory means the person who has **ultimate control over the affairs** of the factory. In the case of a firm or other association of individuals, any one of the partners or

members thereof shall be deemed to be the occupier. In the case of a company, the directors shall be deemed to be the occupier. 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 shall be deemed to be the occupier.

### **Approval, licensing and registration of factories (Sec.6)**

Under Sec.6, the State Government is empowered to make rules on the following matters

- submission of plans to the Chief Inspector or the State Government ;
- Obtaining previous permission in writing, of the State Government or the Chief Inspector for the site on which the factory is to be situated and for the construction or extension of any factory
- considering applications for permission for the submission of plans and specifications;
- prescribing the nature of plans and specifications and by whom they shall be certified;
- registration and licensing of factories and prescribing the fees payable for such registration and licensing and for the renewal of licences;
- licence not to be granted or renewed unless the notice specified in section 7 has been given.

If on an application is made for the approval of site for construction or extension of the factory and required plans and specifications have been submitted to the State Government or Chief Inspector by registered post, no order is communicated to the applicant within three months from the date on which it is so sent, the permission applied for shall be deemed to have been granted.

### **Appeal against refusal to grant permission**

If the State Government or the 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 from the date of such refusal, appeal

- to the Central Government against the order of the State Government,
- to the State Government in any other case.

### **Notice by occupier (Sec.7)**

- Sec. 7 imposes a condition on the occupier that at least fifteen days before he begins to occupy or, use any premises as a factory (before 30 days of resumption of work in case of seasonal factories that work for 180 days), send to the Chief Inspector a written notice containing-
  - (a) the name and situation of the factory;
  - (b) the name and address of the occupier;
  - (bb) the name and address of the owner of the premises or building
  - (c) the address to which communication relating to the factory may be sent;
  - (d) the nature of the manufacturing process-
  - (e) the total rated horse power installed or to be installed in the factory
  - (f) the name of the manager of the factory for the purposes of this Act;
  - (g) the number of workers likely to be employed in the factory of this Act;
 and such other particulars as may be prescribed.

Whenever a new manager is appointed, the Occupier shall send to the Inspector a written notice and to the Chief Inspector a copy thereof within seven days from the date on which such person takes over charge. During a period for which no person has been designated as manager, the occupier himself, shall be deemed to be the manager of the factory for the purposes of this Act.

### **Inspector (Sec.8)**

#### **Appointment**

- The State Government may, by notification in the Official Gazette, appoint any person to be a Chief Inspector to exercise the powers conferred on him by the Factories Act.
- No person 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 shall act as an Inspector.

#### **Power of Inspectors**

- Enter, the premises of a factory with assistants who are in the service of the Government or any local or other public authority or with an expert,

- Make examination of the premises, plant, machinery, article or substance
- Inquire into any accident or dangerous occurrence, whether resulting in bodily injury, disability or not, and take on the spot or otherwise statements of any person which he may consider necessary for such injury
- Require the production of any prescribed register or any other document relating to the factory;
- 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
- Direct the occupier that any premises or any part thereof, or anything lying therein, shall be left undisturbed for so long as is necessary for the purpose of any examination;
- 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;
- In case of any article or substance found in any premises, being an article or substance which appears to him as having caused or is likely to cause danger to the health or safety of the workers, direct it to be dismantled or subject it to any process of test;
- Exercise such other powers as may be prescribed.

#### **Additional powers**

- To require medical examination of a 'young person' working in a factory
- To take sample of any substance used, or intended to be used, in a factory for the purpose of finding out if the substance is injurious to the health of the workers.

#### **Penalty for obstructing Inspector**

- Whoever wilfully obstructs an Inspector in the exercise of any power conferred on him or under the Act, or fails to produce on demand by an Inspector any registers or documents, shall be punished with imprisonment up to 6 months or with fine up to Rs.10,000 or with both.

## **Certifying Surgeons (Sec.10)**

### **Appointment**

The State Government may appoint qualified medical practitioners to be certifying surgeons for specified local limits or factories. But no person shall be appointed a certifying surgeon who is or becomes the occupier of a factory or is or becomes directly or indirectly interested therein.

### **Duties**

- the examination and certification of young persons
- the examination of persons engaged in factories in dangerous occupation or processes; and
- the exercising of such medical supervision as may be prescribed for any factory where –
- 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
- by reason of any change in the manufacturing process carried on or in the substances used therein, there is a likelihood of injury to the health of workers employed in that manufacturing process;
- young persons are, or are about to be, employed in any work which is likely to cause injury to their health

## **HEALTH PROVISIONS**

Chapter III (Sec. 11 to 20) of the Act deals with the provisions ensuring the health of the workers in the conditions under which work is carried on in factories. These provisions are as follows;

### **1. Cleanliness (Sec.11)**

Every factory should be kept clean and free from effluvia arising from any drain, privy or other nuisance. The following rules to be followed to maintain the factory in a clean condition:

- Accumulation of dirt and refuse shall be removed daily by sweeping or by any other effective method.

- Floor of every workroom shall be cleaned at least once in every week by washing, using disinfectant, where necessary, or by some other effective method.
- All inside walls and partitions, all ceilings or tops of rooms and all walls, sides and tops of passages and staircases shall be painted, varnished, be repainted or re-varnished at least once in every period of five years, if painted in non-washable paint. Otherwise to be repainted and revarnished once in 3 years.
- All doors and window frames and other wooden or metallic framework and shutters shall be kept painted or varnished and the painting or varnishing shall be carried out at least once in every period of five years.

### **2. Disposal of Wastes and Effluents (Sec.12)**

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

### **3. Ventilation and Temperature (Sec.13)**

Effective and suitable provisions should be made in every factory for securing and maintaining in every workroom; adequate ventilation by the circulation of fresh air; and such a temperatures will secure to workers therein reasonable conditions of comfort and prevent injury to health

### **4. Dust and Fume (Sec.14)**

Effective measures should be taken to prevent inhalation of dust and fume that may produce in the course of manufacturing process.

### **5. Artificial Humidification (Sec.15)**

In any factory where the humidity of air is artificially increased, the State Government may make rules prescribing standards of humidification; regulating the methods used for artificially increasing humidity of the air; and directing prescribed test for determining

the humidity of the air to be correctly carried out and recorded; and prescribing methods to be adopted for securing adequate ventilation and cooling of the air in the workrooms.

#### **6. Overcrowding (Sec.16)**

No room in any factory should lie overcrowded to an extent injurious to the health of the workers employed therein. At least 14.2 cubic meters of space for every worker shall be provided

#### **7. Lighting (Sec.17)**

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

In every factory effective provision shall be made for the prevention of glare, either directly from a source of light or by reflection from a smooth or polished surface and the formation of shadows to such an extent as to cause eye-strain or the risk of accident to any worker.

#### **8. Drinking (Sec.18)**

- In every factory effective arrangements should be made to provide and maintain at suitable points conveniently' situated for all workers employed therein a sufficient supply of wholesome drinking water.
- All such points shall be legibly marked "drinking water" in a language understood by a majority of the workers employed in the factory, and no such point shall be situated within six meters of any washing place, urinal, latrine, spittoon or an open drain carrying effluent or any other source of contamination.
- In every factory wherein more than two hundred and fifty workers are ordinarily employed, provision shall be made

#### **9. Latrines and Urinals (Sec.19)**

In every factory sufficient latrine and urinal accommodation of prescribed types should be provided conveniently situated and accessible to workers, separately for male and female workers, at all times while they are at the factory. Such facility shall be adequately lighted and ventilated and maintained in a clean and sanitary condition at all times. Sweepers shall be employed whose primary duty it would be to keep clean latrines, urinals and washing places.

#### **10. Spittoons (Sec.20)**

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

### **SAFETY PROVISIONS – Chapter IV (Secs. 21 to 41)**

#### **1. Fencing of Machinery (Sec.21)**

- (i) every moving part of a prime mover and every flywheel connected to a prime mover,
- (ii) the headrace and tailrace of every water-wheel and water turbine;
- (iii) any part of a stock-bar which projects beyond the head stock of a lathe; and
- (iv) every part of an electric generator, a motor or rotary converter, every part of transmission machinery, and every dangerous part of any other machinery shall be securely fenced by safeguards of substantial construction and to be constantly maintained.

#### **2. Work on near machinery in motion (Sec.22)**

Only the trained adult male worker, wearing tight fitting clothing which should be supplied by the Occupier, should be allowed to work near the machinery in motion. No woman or young person shall be allowed to clean, lubricate or adjust any part of a prime mover or of any transmission machinery while the prime mover or transmission machinery is in motion.

#### **3. Employment of young persons on dangerous machines (Sec.23)**

No young person shall be employed on dangerous machinery, unless he is fully instructed as to the danger arising in connection with the machine and the precautions to be observed and he has received sufficient training in work at the machine.

**4. Striking gear and devices for cutting off power (Sec.24)**

Suitable arrangements should be made to provide striking gear and devices for cutting off power in case of emergencies.

**5. Self – acting machine (Sec.25)**

Sufficient precautions should be taken with regard to self-acting machines to avoid accidents.

**6. Casing of new Machinery (Sec.26)**

To prevent danger, all machinery driven by power should be encased and effectively guarded.

**7. Prohibition of employment of women and children near cotton openers (Sec.27)**

Woman worker and children should not be employed in any part of the factory for pressing cotton in which a cotton-opener is at work. If the feed-end of a cotton-opener is in a room separated from the delivery end by a partition extending to the roof, women and children may be employed on the side of the partition where the feed-end is situated.

**8. Hoists and Lifts (Sec.28)**

Every hoist and lift shall be of good mechanical construction, sound material and adequate strength and should be periodically inspected by the Competent Person at least once in every period of six months, the maximum safe working load shall be plainly marked on every hoist or lift, and no load greater than such load shall be carried.

**9. Lifting machines, chains, ropes and lifting tackles (Sec.29)**

Lifting Machines, Chains, Ropes and Lifting Tackles in a factory should be periodically inspected by the Competent Person. They shall be examined once in every 12 months. Cranes should not approach within 6 metres of a place where any person is employed or working.

**10. Revolving Machinery (Sec.30)**

Where process of grinding is carried on, a notice indicating the maximum safe working peripheral speed of every grind-stone or abrasive wheel etc., should be fixed to the revolving machinery.

**11. Pressure plant (Sec.31)**

Where any plant or machinery or any part thereof is operated at a pressure above atmospheric pressure, effective measures should be taken to ensure that the safe working pressure of such plant or machinery or part is not exceeded.

**12. Floors, Stairs and means of access (Sec.32)**

Floors, stairs and means of access should be soundly constructed and properly maintained.

**13. Pits, sumps, openings in floors, etc (Sec.33)**

Pits, sumps opening in floor etc., should be either securely covered or fenced.

**14. Excessive weights (Sec.34)**

No workman shall be employed in any factory to lift, carry or move any load so heavy as to be likely to cause him injury.

**15. Protection of eyes (Sec.35)**

Necessary protective equipment should be provided to protect the eyes of the workman, where the working involves risk of injury to the eyes.

**16. Precautions against dangerous fumes (Sec.36)**

Suitable precautionary arrangements should be taken against dangerous fumes, gases etc. No person shall be required or allowed to enter any chamber, tank, vat, pit, pipe, flue or other confined space in any factory in which any gas, fume vapour or dust is likely to be present to such an extent as to involve risk to persons. No person shall be allowed unless he is wearing suitable breathing apparatus and a belt securely attached to a rope the free end of which is held by a person outside the confined space.

**17. Precautions regarding the use of portable electric light (Sec.36 -A)**

No portable electric light or any other electric appliance of voltage exceeding twenty-four volts shall be permitted for use inside any chamber, tank, vat, pit, pipe, flue or other confined space, unless adequate safety devices are provided.

**18. Precautions against explosive or inflammable dust, gas, etc (Sc.37)**

Every practicable measure should be taken to prevent any explosion where the manufacturing process produces dust, gas, fume or vapour etc.

**19. Precautions in case of fire (Sec. 38)**

Every practicable measure should be taken to prevent the outbreak of fire and its spread, both internally and externally.

**20. Power to require specifications of defective parts or tests of stability (Sec.39)**

The Inspector of Factories can ask the Occupier or the Manager of the Factory to furnish drawings, specification etc., of any building, machinery or a plant, in case he feels that condition of such building, machinery or the plant may likely to cause danger to human life.

### **21. Safety of buildings and machinery (Sec.40)**

The Inspector of Factories can suggest suitable measures of steps to take by the Occupier or Manager for implementation, when he feels the condition of any building, machinery or a plant may likely to cause danger to human life.

### **22. Maintenance of buildings (Sec.40-A)**

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

### **23. Safety officers (Sec.40-B)**

Wherein 1000 or more workmen are employed in a factory, the Occupier should appoint a Safety Officer to look after the safety aspects of the factory.

### **24. Power to make rules to supplement the above provision (Sec.41)**

The State Government may make rules requiring the provision in any factory for securing the safety of persons employed therein as it may deem necessary.

## **WELFARE MEASURES**

Chapter V (Secs.42 to 50) of the Act deals with facilities for the welfare of workers. The various provisions in this regards are as follows:

### **1. Washing Facilities (Sec.42)**

Adequate and suitable washing facilities should be provided in every factory. Separate and adequately screened facilities shall be provided for the use of male and female workers and such facilities shall be conveniently accessible and shall be kept clean.

## **2. Facilities for storing and drying clothing (Sec.43)**

Provision should be made to provide suitable places for keeping clothing not worn during working hours and for the drying of wet clothing.

## **3. Facilities for sitting (Sec.44)**

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

## **4. First – Aid Appliances (Sec.45)**

First-Aid Boxes with the prescribed contents should be provided and maintained so as to be readily accessible during all working hours at the rate of at least one Box for every 150 workmen. In every factory wherein more than 500 workers are employed there should be provided and maintained an Ambulance containing the prescribed equipment and in the charge of such medical and nursing staff.

## **5. Canteens (Sec.46)**

In every factory wherein more than 500 workers are employed there should be provided and maintained an Ambulance containing the prescribed equipment and in the charge of such medical and nursing staff.

## **6. Shelters, Rest rooms and lunchrooms (Sec. 47)**

In every factory wherein more than 150 workers are employed adequate and suitable shelters or rest rooms and a suitable lunch room, with provision for drinking water, where workers can eat meals brought by them, should be provided and maintained for the use of the workers. The shelters or rest rooms or lunch rooms shall be sufficiently lighted and ventilated and shall be maintained in a cool and clean condition.

## **7. Crèches (Sec.48)**

In every factory wherein more than 30 women workers are ordinarily employed there should be provided and maintained a suitable room for the use of children under the age of six years of such women, Such rooms shall provide adequate accommodation, shall be adequately lighted and ventilated, shall be maintained in a clean and sanitary condition and shall be under the charge of women trained in the care of children and infants.

#### **8. Welfare Officers (Sec.49)**

In every factory wherein more than 500 or more workers are employed, the Occupier should employ in the factory such number of Welfare Officers as may be prescribed.

#### **9. Power to make rules (Sec.50)**

The State Government may make rules—

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

### **WORKING HOURS OF ADULT**

The rules as to the regulation of hours of work of adult workers in a factory and holidays are as follows;

#### **Working hours**

**1. Weekly Hours (Sec.51)** – No worker shall be allowed to work for more than 48 hours in any week

**2. Daily Hours (Sec.54)** – No worker shall be required or allowed to work for more than 9 hours in any day.

**3. Intervals for Rest (Sec.55)** – No worker shall work for more than 5 hours before he has an interval for rest of at least half an hour. Even in exceptional case also, the total number of hours worked without an interval shall not exceed 6 hours.

**4. Spread over (Sec.56)** – No worker shall be work more than 10 and ½ hours in a day including the rest interval. The Chief Inspector may, for reasons to be specified in writing increase the spreadover up to twelve hours.

**5. Night shifts (Sec.57)** —Where a worker in a factory works on a shift which extends beyond midnight, a holiday for a whole day shall mean in his case a period of twenty-four consecutive hours beginning when his shift ends. The following day for him shall be deemed to be the period of twenty-four hours beginning when such shift ends, and the hours he has worked after midnight shall be counted in the previous day.

**Extra wages for overtime (Sec.59)**

**1. Wages at twice the ordinary rate** –a worker who works for more than 9 hours in any day or 48 hours in any week, shall be entitled to get twice his ‘ordinary rate of wages’. Ordinary rate of wages include the basic wages plus such allowances, including the cash equivalent and does not include a bonus and wages for overtime work.

**Restriction on double employment (Sec.60)**

No adult worker shall be required or allowed to work in any factory on any day on which he has already been working in any other factory.

**Notice of periods of work for adult workers (Sec.61)**

There shall be displayed and correctly maintained in every factory, a notice of periods of work for adults, showing clearly for every day the periods during which adult workers

may be required to work. The periods of work are to be fixed beforehand. The notice shall contain details including weekly and daily hours, weekly holidays, intervals for rest, spread over and shifts. If the workers are classified into groups according to the nature of the work, then details of number of workers in each group shall be provided in the notice.

### **Register of adult workers (Sec.62)**

The manager of every factory shall maintain a register of adult workers showing names of the workers, nature of work, groups, shift details and other particulars may be prescribed. No adult worker shall be required or allowed to work in any factory unless his name and other particulars have been entered in the register of adult worker.

### **Holidays**

#### **1. Weekly holidays (Sec.52)**

No adult worker shall be allowed to work on the first day of the week which is a Sunday. But manager can substitute for Sunday any of the 3 days preceding or following it, however, deliver a notice at the office of the inspector of his intention to require the worker to work on that day.

#### **2. Compensatory Holidays (Sec.53)**

If a worker is not provided of any of the weekly holidays, he shall be allowed compensatory holidays of equal number to the holidays so lost. Such compensatory holidays shall be allowed within the month or within 2 months immediately following that month.

### **EMPLOYMENT OF YOUNG PERSONS**

#### **1. Prohibition of employment of young children (Sec.67)**

No child who has not completed his 14<sup>th</sup> year shall be required or allowed to work in a factory.

#### **2. Non-adult worker to carry tokens (sec.68)**

- a. a certificate of fitness for such work is in the custody of the manager of the factory, and
- b. such child or adolescent carries, while he is at work, a token giving a reference to such certificate

### **3. Certificate of Fitness (Sec.69) from Certifying Surgeon:**

Certifying surgeon shall examine a child worker and issue a certificate of fitness if the child is physically fit for the work. Certificate is valid for 12 months.

#### **Certificate of fitness to entitle a young person to work as child or adult**

- a. **a child** –young person who has completed his 14<sup>th</sup> year can work as a child if he is issued certificate of fitness
- b. **an adult** –young person who has completed his 15<sup>th</sup> year can work as an adolescent

#### **Effect of certificate of fitness**

No female adolescent or a male adolescent who has not attained the age of seventeen years but who has been granted a certificate of fitness to work in a factory as an adult, shall be required or allowed to work in any factory except between 6 A.M. and 7 P.M

#### **Working hours and notice of periods of works for children (Sec.71 and 72)**

- Working hours of children is limited to 4 and ½ hour, in any day
- Child workers are not allowed to work during the nights and period of work of children is limited to 2 shifts.
- Child workers are entitled to weekly holidays.
- Child workers are prohibited to work in a factory if he or she has already been working in another factory.
- Female child are allowed to work only between 8 A.M to 7 P.M.
- If a factory employs child workers, Notice of periods of work of child workers to be displayed in the factory.

- Periods of work to the child to be fixed beforehand
- Register of child workers showing names of the workers, nature of work, groups, shift details shall be maintained by the factory manager.

### **Safety provisions for young persons**

- Child worker cannot be allowed to work on or near machinery in motion.
- Young persons cannot be employed on dangerous machines.
- Young persons are prohibited to work on or near cotton – openers.
- Young persons cannot be employed on dangerous operations.

### **EMPLOYMENT OF WOMEN**

- Women are prohibited to work on or near machinery in motion
- Women are prohibited to work on or near cotton – openers
- Crèche facility to be provided if a factory employs 30 or more women employees.
- Women shall not be required or allowed to work in a factory for more than 48 hours in any week or 9 hours in any day.
- Restriction on employment of women – women are required or allowed to work in a factory only between the hours of 6 A.M. and 7 P.M.
- Women are prohibited on dangerous operations.

### **Annual leave with wages (Sec. 79)**

(1) Every worker who has worked for a period of 240 days or more in a factory during a calendar year shall be allowed during the subsequent calendar year, leave with wages for a number of days calculated at the rate of -

(i) if an adult, one day for every twenty days of work performed by him during the previous calendar year;

(ii) if a child, one day for every fifteen days of work performed by him during the previous calendar year.

- the days of lay-off, maternity leave to a female worker not exceeding 12 weeks, and the leave earned in the previous year shall be included in this period of 240 days.

(2) 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 for the leave to which he was entitled.

(i) where the worker is discharged or dismissed or quits employments before the expiry of the second working day from the date of such discharge, dismissal or quitting; and

(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.

(3) 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.

(4) If a worker does not in any one calendar year takes the whole of the leave allowed to him, any leave not taken by him shall be added to the leave to be allowed to him in the succeeding calendar year:

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

A worker, who has applied for leave with wages but has not been given such leave in accordance with any scheme laid down, shall be entitled to carry forward the leave refused without any limit.

(5) A worker may at any time apply in writing to the manager of a factory not less than 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:

The application shall be made not less than thirty days before the date on which the worker wishes his leave to begin, if he is employed in a public utility service. The number of times in which leave may be taken during any year shall not exceed three.

(6) If a worker wants to avail himself of the leave with wages due to him to cover a period of illness, he shall be granted such leave even if the application for leave is not made within the time specified

(7) For the purpose of ensuring the continuity of work, the occupier or manager of the factory, in agreement with the Works Committee for the factory constituted under section 3 of the Industrial Disputes Act, 1947, or a similar Committee constituted under any other Act or if there is no such Works Committee or a similar Committee in the factory, in agreement with the representatives of the workers therein chosen in the prescribed manner, may lodge with the Chief Inspector a scheme in writing whereby the grant of the leave allowable under this section may be regulated.

(8) A scheme shall be displayed at some conspicuous and convenient place in the factory and shall be in force for a period of twelve months from the date on which it comes into force, and may thereafter be renewed with or without modification for a further period of twelve months at a time, by the manager in agreement with the Works Committee or a similar Committee.

(9) An application for leave made complying the rules cannot be refused without solid reasons.

(10) If a worker is terminated by the occupier before he has taken the entire leave to which he is entitled, or if having applied for and having not been granted such leave, the worker quits his employment before he has taken the leave, the occupier of the factory shall pay him the amount for the period of leave not taken, before the expiry of the second working day after such termination.

## **PENALTIES AND PROCEDURE**

Secs. 92 to 106 (Chapter X) provides for penalties for certain offences and procedural matters.

### **General penalty for offences (Sec.92)**

- If any occupier and manager of the factory shall each be guilty of an offence and punishable with imprisonment for a term up to 2 years, or with fine up to Rs.1, 00,000 or with both.
- If it continued after conviction, they shall be punishable with a further fine which may extend to Rs.1, 000 for each day. Subsequent conviction for the same offence is punishable with imprisonment upto three years or fine from Rs.10,000 to Rs.2,00,000 or both.
- In case of any death or serious bodily injury, the fine shall not be less than Rs.25, 000 in the case of an accident causing death and Rs. 5, 000 in case of accident causing serious bodily injury (Permanent loss or injury, etc). Repeating the offence after the first conviction is punishable with a fine which will not be less than Rs.35,000 in case the accidents results in death and Rs.10,000 if it causes serious bodily injury.

Penalty for the contravention of provisions relating to hazardous process

- If a person fails to comply with or contravenes any provisions relating to compulsory disclosure of information by the occupier or specific responsibility of the occupier in relation to hazardous process or right of the workers to warn about imminent danger or the relevant rules, he is punishable with imprisonment up to 7 years and with a fine which may extend to Rs.2, 00,000. In case the failure or contravention continues after the first conviction, the offender is punishable with an additional fine which may extend to Rs.5, 000 for every day during which the failure or contravention continues. If the failure or contravention continues beyond a period of one year after the date of conviction, the offender is punishable with imprisonment for a term which may extend to 10 years.

#### **Penalty for obstructing inspector**

- Persons wilfully obstruct an inspector in the exercise of any power conferred on him by the Act or fail to produce any required registers or documents, or conceal or prevent any worker from appearing before or being examined by an inspector, are punishable with

imprisonment for a term which may extend to 6 months or with fine which may extend to Rs.10,000 or with both.

#### **Penalty for offence by a medical practitioner**

- If a medical practitioner fails to send report of contracting of a disease specified in the Third Schedule to the Chief Inspector, he is punishable with a fine which may extend to Rs.1,000.

#### **Enhanced Penalty after conviction (Sec.94)**

- If any person who has been convicted subsequently, he shall be punishable with imprisonment for a term may extend to 3 years or with fine shall not less than Rs.10,000 but which may extend to Rs.2,00,000 or with both.
- In case of any death or serious bodily injury, he shall be fined with Rs.35,000 in the case of death and Rs.10,000 in the case of bodily injury.

#### **AMENDMENTS- The Factories (Amendment) Bill, 2016**

- The Factories (Amendment) Bill, 2016 was introduced in Lok Sabha on August 10, 2016 by the Minister for Labour and Employment, Mr. Bandaru Dattatreya.
- The Bill amends the Factories Act, 1948. The Act regulates the safety, health and welfare of factory workers. The Bill amends provisions related to overtime hours of work.
- Power to make rules on various matters: The Act permits the state government to prescribe rules on a range of matters, including double employment, details of adult workers to be included in the factory's register, conditions related to exemptions to certain workers, etc. The Bill gives such rule making powers to the central government as well.
- Powers to make rules for exemptions to workers: Under the Act, the state government may make rules to (i) define persons who hold management or confidential positions; and (ii) exempt certain types of adult workers (e.g. those engaged for urgent repairs) from

fixed working hours, periods of rest, etc. The Bill gives such rule making powers to both, the central and state governments.

- Under the Act, such rules will not apply for more than five years. The Bill modifies this provision to state that the five-year limitation will not apply to rules made after the enactment of this Bill.
- Overtime hours of work in a quarter: The Act permits the state government to make rules related to the regulation of overtime hours of work. However, the total number of hours of overtime must not exceed 50 hours for a quarter. The Bill raises this limit to 100 hours. Rules in this regard may be prescribed by the central government as well.
- Overtime hours if factory has higher workload: The Act enables the state government to permit adult workers in a factory to work overtime hours if the factory has an exceptional work load. Further the total number of hours of overtime work in a quarter must not exceed 75. The Bill permits the central or state government to raise this limit to 115.
- Overtime in public interest: The Bill introduces a provision which permits the central or state government to extend the 115-hour limit to 125 hours. It may do so because of (i) excessive

## **THE APPRENTICES ACT, 1961**

### **Introduction**

Prior to the enactment of the Apprentices' Act, 1961, the model standing orders framed under the Industrial Employment (standing orders) Act, 1946 contained some statutory provisions relating to apprentices. These provisions were found to be inadequate with the passage of time.

The Act came into force on 1<sup>st</sup> march, 1962. The latest amendment to the act was made in 2007.

### **Object of the Act**

The industrial growth of the country, leads to a need for establishing specific law of the training and employment conditions of the apprentices. The Apprentices Act, 1961 was enacted with the objective of regulating the program of training of apprentices in the industry by utilizing the facilities available therein for imparting on-the-job training.

### **Scope and Coverage of the Act**

The act extends to the whole of India [sec. 1(2)]. It applies to any area or any industry in any area if the central government by notification in the official gazette specifies that area or industry to which it shall apply [sec .1 (4)].

### **Who is an apprentice?**

The term 'apprentice' is derived from the French word apprendre which means 'to learn'. Sec. 2(aa) of the act defines 'apprentice' as "a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship."

### **Nature of apprenticeship contract**

- To sum up:-
- Apprentices are mere trainees and not employees or workers.
- They are not employed for wages.
- The employer is not bound to employ them after the period of apprenticeship is over.

**Definitions:****All India Council [sec. 2(a)]**

It means the all India council of technical education established by the resolution of the government of India in the former ministry of education (No. F.F. 16 – 10/44 E. III dated the 30<sup>th</sup> November, 1945).

**Apprenticeship Adviser [sec. 2(b)]**

‘Apprenticeship adviser’ means the central apprenticeship adviser appointed under sec 26 (1) or the state apprenticeship adviser appointed under sec. 26 (2).

**Apprenticeship Council [sec. 2 (c)]**

‘Apprenticeship council’ means the central apprenticeship council or the state apprenticeship council established under sec. 24 (1).

**Apprenticeship Training [sec. 2(aaa)]**

It means a course of training in any industry or establishment undergone in pursuance of a contract of apprenticeship and under prescribed terms and conditions which may be different categories of apprentices.

**Appropriate Government [sec .2 (d)]**

It means the central government in relation to :

- the central apprenticeship council , or
- the practical training of graduate or technician apprentices, or of technician (vocational) apprentices ; or
- any establishment of any railway, major port, mine or oilfield ; or
- any establishment owned, controlled or managed by
- the central government or a department of the central government

- a company in which not less than 51 per cent of the share capital is held by the central government or partly by that government and partly by one or more state governments,
- a corporation (including a co-operative society) established by or under a central act which is owned, controlled or managed by the central government.

### **Designated Trade [sec. 2(e)]**

It means any trade or occupation or any subject field in Engineering or Technology or any Vocational Course which the central Government, after consultation with the central apprenticeship council, may, by notification in the official gazette, specify as a designated trade for the purposes of the Act.

### **Qualifications for being engaged as an Apprentice (Sec. 3)**

A person shall not be qualified for being engaged as an apprentice to undergo apprenticeship training in any designated trade, unless he-

- is 14 years of age or above, and
- Satisfies the standards of education and physical fitness as may be prescribed for apprenticeship training.

### **Reservation of Training Places (sec. 3-A)**

The number of training places to be reserved for the scheduled castes and scheduled tribes shall be such as may be prescribed, having regard to the population of the scheduled castes and the scheduled tribes in the state concerned [(sec. 3-A (2)].

### **Contract of Apprenticeship (Sec. 4)**

For engaging any person as an apprentice to undergo apprenticeship training in a designed trade, has to satisfy the following conditions:

- A contract of apprenticeship must be entered into between the apprentice (for with his guardian. If he is a minor) and the employer [sec. 4(1)].

- The contract of apprenticeship must be sent by the employer to the apprenticeship adviser for registration [sec. 4(4)]. Where, the central government, after consulting the central apprenticeship council.
- A contract of apprenticeship of a minor would fall in the category of necessary services, as it is for the benefit of the minor. A minor can therefore enter into a legal binding contract of apprenticeship if he satisfies the conditions laid down in the act .
- He has attained the age of 14 years ;
- He satisfies the prescribed standards of education and physical fitness (sec . 3) and
- His guardian has entered into a contract of apprenticeship with the employer [sec. 4 (1)].

#### **Period of apprenticeship training (Sec. 6)**

The period of apprenticeship training, which shall be specified in the contract of apprenticeship, shall be

- As fixed by the National council if the apprentice undergoes training in a school or other institution recognised by the National Council
  
- As fixed by the Board or State Council of Technical Education if the apprentice undergoes training in a school or other institution recognised by the Board or State Council of Technical Education

#### **Number of apprentices for a designated trade (Sec. 8)**

- The Central Government shall, after consulting the Central Apprenticeship Council, by order notified in the Official Gazette, determine for each designated trade the ratio or trade apprentices to workers other than unskilled workers in that trade.
- The Apprenticeship Adviser may, by notice in writing, require an employer to engage such number of trade apprentices within the ratio determined by the Central Government for any designated trade in his establishment.

### **Novation of Contract of Apprenticeship (Sec. 5)**

- The employer with whom the contract of apprenticeship has been entered into is for any reason unable to fulfill his obligations under the contract.
- It is agreed, with the approval of the apprenticeship adviser, between the employer, the apprentice or his guardian and any other employer that the apprentice shall be engaged as an apprentice under the other employer for the unexpired portion of the period of apprenticeship training.
- The apprenticeship adviser has to approve the agreement.
- The agreement is to be registered with the apprenticeship adviser.

### **Termination of Apprenticeship Contract (Sec. 7)**

Apprenticeship contract is terminated

- On the expiry of the period of apprenticeship training [sec. 7(1)].
- By order in writing terminating the contract by the apprenticeship adviser [sec. 7 (3)].
- On novation of contract of apprenticeship [(sec. 5)].

### **Health, Safety and Welfare of Apprentices [sec. 14]**

Where any apprentices are undergoing training in a factory, the provisions of chapters III, IV and V of the factories act, 1948 shall apply in relation to the health, safety and welfare of the apprentices as if they were workers within the meaning of that Act.

### **Hours Of Work, Overtime, Leave and Holidays (sec. 15):**

#### **Hours of work**

- The total number of hours per week which an apprentice has to work shall be 42 to 48 hours (including the time spent on related instruction).
- Trade apprentices undergoing basic training shall ordinarily work for 42 hours per week (including the time spent on related instruction).

- Trade apprentices during the second year of apprenticeship shall work for 42 to 45 hours per week (including the time spent on related instruction).
- Trade apprentices during the third and subsequent years of apprenticeship shall work for the same hours of work per week as other workers in the establishment

### **Overtime**

- An apprentice shall not be required or allowed to work overtime except with the approval of the apprenticeship adviser.

### **Leave and Holidays:**

As per Rule 9 of the apprenticeship Rules, 1962, an apprentice is entitled, in case of establishment where proper leave rules do not exist or the total leave of different types admissible to the workers is less than 37 days in a year, to the following leave :

#### **Casual Leave:**

It shall be admissible for a maximum period of 12 days in a year.

#### **Medical Leave:**

It shall be admissible for a maximum period of 12 days in a year.

#### **Extraordinary Leave:**

Extraordinary leave up to a maximum of 10 days in a year may be granted to the apprentice, after he has exhausted his casual and medical leave.

### **Holding of Test and Grant of Certificate (Sec. 21)**

Every trade apprentice who has completed the period the training shall appear for a test to be conducted by the National Council for Vocational Training (NCVT) to determine his proficiency in the designated trade in which he has undergone his apprenticeship training [sec . 21 (1)]. The apprentice who passes the test shall be granted a certificate of proficiency in the trade by the national council [sec. 21 (2)].

### **Offer and Acceptance of Employment (Sec. 22):**

It is not obligatory on the part of the employer to offer any employment to any apprentice who has completed the period of his apprenticeship training in his establishment. Likewise, it is not obligatory on the part of the apprentice to accept any employment under the employer [sec. 22 (1)]. But a contract of apprenticeship may contain a condition that the apprentice shall, after the successful completion of the apprenticeship training, serve the employer. In such a case, the employer shall, on the completion of training by the apprentice, be bound to offer suitable employment to the apprentice.

#### **Records and Returns (Sec. 19)**

Every employer shall maintain records of the progress of training of each apprentice undergoing apprenticeship training in his establishment in the prescribed form [sec. 19 (1)]. He shall also furnish such information and returns in such form, to such authorities and at such intervals, as may be prescribed [sec. 19 (2)].

#### **Settlement of Disputes (Sec. 22)**

Any dispute to be referred to apprenticeship adviser for decision and Appeal to be made to apprenticeship council.

#### **The Apprentices (Amendment) Bill, 2014**

- The Apprentices (Amendment) Bill, 2014 was introduced in Lok Sabha on August 7, 2014. It proposes to amend the Apprentices Act, 1961.
- The Act regulates the training of apprentices in the industry. An Inter-Ministerial Group (IMG) had recommended various changes to the Act to make apprenticeship more responsive to youth and industry. The Statement of Objects and Reasons states that the amendments proposed in the Bill are based on IMG's recommendations.

**Definitions:** The Bill amends the definition of appropriate government to include an establishment operating in four or more states to be regulated by the central government. It also amends the definitions of: (i) designated trade, (ii) graduate or technician

apprentice, (iii) trade apprentice, (iv) industry and (v) worker. The Bill adds two definitions: (i) optional trade, and (ii) portal-site.

**Minimum age for an apprentice:** The Act sets the minimum age for being engaged as an apprentice at 14 years. The Bill adds that the minimum age for apprenticeship in designated trades related to hazardous industries shall be 18 years.

**Number of apprentices:** The Act says that the central government, after consulting the Central Apprenticeship Council (CAC) established under the Act shall determine the ratio of trade apprentices to workers (except unskilled workers) for each designated trade. The Bill states that the central government shall prescribe the number of apprentices to be engaged by an employer for designated trade and optional trade.

**Cooperation between employers for training:** The Bill permits multiple employers to come together, either themselves or through an approved agency (vs. only themselves as per the Act), to provide apprenticeship training (vs. practical training as per the Act) to apprentices under them.

**Practical training to apprentices:** The Act states that every employer shall make suitable arrangements in his workshop for imparting practical training to apprentices, as per the programme approved by the Adviser. The Bill removes the requirement for Adviser's approval.

**Basic training to apprentices:** The Act states that trade apprentices who have not received prior institutional training shall be imparted basic training before admission in the workshop for practical training. The Bill specifies that such training can be provided in any institute with adequate facilities.

**Syllabus and equipment for practical training:** The Act states that the syllabus and equipment for practical training shall be as approved by the central government (with CAC consultation). The Bill limits the provision for training in a designated trade only.

**Grant of certificate:** The Act specifies that every trade apprentice should appear for a proficiency test conducted by the National Council for Vocational Training (NCVT), on completion of his training. On passing the test, NCVT shall grant him a certificate of proficiency. The Bill adds that such tests may be conducted and certificates may be granted by other authorized agencies as well.

**Hours of work, overtime, leave and holidays:** The Act states that the weekly and daily hours of work and leave entitlements of an apprentice shall be as prescribed by Rules. The Bill states that the hours of work and leave will be as per the discretion or policy of the employer.

**Offences and penalties:**

The Act specifies certain offences which are punishable with imprisonment up to six months or with a fine (quantum unspecified) or both. The Bill specifies the amount/maximum amount of the fine and **removes the provision for imprisonment** for such offences.

**Power to make Rules:** The Act permits the central government (after consulting with the CAC) to make Rules for implementing the Act. The Bill states that these powers shall include the power to make Rules retrospectively with effect from a date on or after the President grants his assent to the Bill. No Rule shall have a retrospective effect if it prejudicially affects the interests of any person to whom such Rule may be applicable.

## **THE CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986**

There was no law to regulate the working conditions of children in most of the employments where they are not prohibited from working and are working under exploitative conditions.

### **Objectives of the Act**

- To ban the employment of children, i.e., those who have not completed their fourteenth year, in specified occupations and processes;
  - To lay down a procedure to decide modifications to the Schedule of banned occupations or processes;
  - To regulate the conditions of work of children in employments where they are not, prohibited from working;
  - To lay down enhanced penalties for employment of children in violation of the provisions of this Act, and other Acts which forbid the employment of children;
- to obtain uniformity in the definition of "child" in the related laws.

### **Definitions**

**"appropriate Government"** means, in relation to an establishment under the control of the Central Government or a railway administration or a major port or a mine or oilfield, the Central Government, and in all other cases, the State Government.

**"child"** means a person who has not completed his fourteenth year of age;

**"establishment"** includes a shop, commercial establishment, workshop, farm; residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment;

**"occupier"**, in relation to an establishment or a workshop, means the person who has the ultimate control over the affairs of the establishment or workshop;

**"week"** means a period of seven days beginning at midnight on Saturday night or such other night as may be approved in writing for a particular area by the Inspector;

**"workshop"** means any premises (including the precincts thereof) wherein any industrial process is carried on, but does not include any premises to which the provisions of section 67 of the Factories Act, 1948 (63 of 1948), for the time being, apply

### **The Child Labour Act, 1986 – Amendment Act, 2016 of India**

A complete prohibition has been imposed on employment of child labour (i.e. a person below the age of 14 years) in any establishment whether hazardous or not. A child is permitted to work only to help family, in family enterprise or as child artist after school hours or during vacations. The amendment has introduced the concept of adolescent labour for the first time. An adolescent has been defined as a person between the ages of 14-18 years. The amendment permits employment of adolescent labour except in hazardous processes or occupation. The number of hazardous occupations and processes has been reduced from 83 to only 3.

Further, the list of hazardous industries has been drastically decreased, this may allow the employers in industries like chemical mixing units, cotton farms, battery recycling units, and brick kilns etc. (which are actually hazardous) to employ adolescent labour, which they may even get at a much cheaper

### **Child Labour Technical Advisory Committee.-**

(1) The Central Government may, by notification in the Official Gazette, constitute an advisory committee to be called the Child Labour Technical Advisory Committee

(hereafter in this section referred to as the Committee) to advise the Central Government for the purpose of addition of occupations and processes to the Schedule.

(2) The Committee shall consist of a Chairman and such other members not exceeding **ten**, as may be appointed by the Central Government.

(3) The Committee shall meet as often as it may consider necessary and shall have power to regulate its own procedure.

(4) The Committee may; if it deems it necessary so to do, constitute one or more sub-committees and may appoint to any such sub-committee, whether generally or for the consideration of any particular matter, any person who is not a member of the Committee.

(5) The term of office of, the manner of filling casual vacancies in the office of, and the allowance, if any, payable to, the Chairman and other members of the Committee, and the conditions and restrictions subject to which the Committee may appoint any person who is not a member of the Committee as a member of any of its sub-committees shall be such as may be prescribed.

## **REGULATION OF CONDITIONS OF WORK OF CHILDREN**

### **Hours and period of work.**

(1) No child shall be required or permitted to work in any establishment in excess of such number of hours as may be prescribed for such establishment or class of establishments.

(2) The period of work on each day shall be so fixed that no period shall exceed three hours and that no child shall work for more than three hours before he has had an interval for rest for at least one hour.

(3) The period of work of a child shall be so arranged that inclusive of his interval for rest, under sub-section (2), it shall not be spread over more than six hours, including the time spent in waiting for work on any day.

(4) No child shall be permitted or required to work between 7 p.m. and 8 a.m.

(5) No child shall be required or permitted to work overtime.

(6) No child shall be required or permitted to work in any establishment on any day on which he has already been working in another establishment.

**Weekly holidays.**

Every child employed in an establishment shall be all each week, a holiday of **one** whole day, which day shall be specified by the occupier in a notice permanently exhibited in a conspicuous place in the establishment and so specified shall not be altered by the occupier more than once in three months.

**Notice to Inspector**

(1) Every occupier in relation to an establishment in which a child was employed or permitted to work immediately before the date of commencement of this Act in relation to such establishment shall, within a period of thirty days from such commencement, send to the Inspector within whose local limits the establishment is situated, a written notice containing the following particulars, namely:-

- (a) the name and situation of the establishment;
- (b) the name of the person in actual management of the establishment;
- (c) the address to which communications relating to the establishment should be sent; and
- (d) the nature of the occupation or process carried on in the establishment.

(2) Every occupier, in relation to an establishment, who employs, or permits to work, any child after the date of commencement of this Act in relation to such establishment, shall, within a period of thirty days from the date of such employment, send to the Inspector within whose local limits the establishment is situated, a written notice containing the particulars as are mentioned in sub-section (1).

**Maintenance of register.**

There shall be maintained by every occupier in respect of children employed or permitted to work in any establishment, a register to be available for inspection by an Inspector at all times during working hours or when work is being carried on in any such establishment, showing-

- (a) the name and date of birth of every child so employed or permitted to work;
- (b) hours and periods of work of any such child and the intervals of rest to which he is entitled;
- (c) the nature of work of any such child; and
- (d) such other particulars as may be prescribed.

#### **Display of notice containing abstract of sections 3 and 14.**

Every railway administration, every port authority and every occupier shall cause to be displayed in a conspicuous and accessible place at every station on its railway or within the limits of a port or at the place of work, as the case may be, a notice in the local language and in the English language containing an abstract of sections 3 and 14.

#### **Health and safety (As per Factories Act, 1948)**

The appropriate Government may, by notification in the Official Gazette, make rules for the health and safety of the children employed or permitted to work in any establishment or class of establishments

#### **Offences and Penalties**

- The offences under the Act have now been made compoundable and cognizable notwithstanding the provisions of the Criminal Procedure Code. The CL Act provides for rehabilitation of children and adolescent who have been victims under the provisions of the CL Act. It provides for setting up of the Child and Adolescent Labour Rehabilitation Fund in which all the amounts of penalty have to be realised.

- Liability has been affixed upon the parents and guardian of the affected child/children separately from the employers.
- The Act provides for increased penalty and imprisonment which shall not be less than 6 months and may extend upto 2 years and fine which may vary between Rs.20, 000 to Rs. 50,000. Previously, the violations under the CL Act were punishable with imprisonment of not less than three months which could extend to one year or/and with fine of ten thousand rupees which could extend to twenty thousand rupees.

### **THE CONTRACT LABOUR ACT, 1970**

- Contract labour constitutes a large section of the vast multitude of unworthy gained labour.
- In spite of the various ills associated with it, the system provides needed employment to a large number of workers in a various projects and jobs. Some of the jobs are of purely temporary nature requiring on a casual basis. Others require special skills to be hired for short periods. The contract labour act came into force on

#### **Objectives of the Act**

- To regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances
- To prevent exploitation of contract labour and to provide better conditions of work.

#### **Applicability**

It applies—

(a) to every establishment in which twenty or more workmen are employed or were employed on any day of the preceding twelve months as contract labour;

(b) to every contractor who employs or who employed on any day of the preceding twelve months twenty or more workmen

It shall not apply to establishments in which work only of an intermittent or casual nature is performed.

## **DEFINITIONS**

### **Contract Labour {Sec.2(1)(b)}**

A workman shall be deemed to be employed as "contract labour" in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer.

### **Contractor [sec.2(1)(c)]**

“Contractor” in relation to an establishment, means a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles off manufacture to such establishment through contract labour or who supplies contract labour for any work of the establishment and include a sub-contractor.

### **Licensing of Contractor (sec. 11to15)**

Every contractor should apply for license, sending the prescribed fee and deposit. The licensing officer is the **Inspector of Factories** in respect of all factories and the Inspector of labour in respect of all other establishments, other than plantations and the Inspector of plantations in respect of all plantations. The license granted is **valid for one year** and it should be renewed.

"principal employer" means–

(i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the Government or the local authority, as the case may be, may specify in this behalf,

- (ii) in a factory, the owner or occupier of the factory and where a person has been named as the manager of the factory under the Factories Act, 1948 (63 of 1948) the person so named,
- (iii) in a mine, the owner or agent of the mine and where a person has been named as the manager of the mine, the person so named,
- (iv) in any other establishment, any person responsible for the supervision and control of the establishment.

### **Registration of Establishments Employing Contract Labour**

#### 1) Appointment of registering officers

The appropriate government may, by an order notified in the Official Gazette- (a) appoint such persons, being Gazette Officers of government, as it thinks fit to be registering officers for the purpose of this chapter; and

(b) define the limits, with in which a registering officer shall exercise the powers conferred on him by or under this Act.

2) Registration of certain establishments: 1) Every principal employer of an establishment to which this Act applies shall, within such period as the appropriate government may, by notification in the Official Gazette, fix in this behalf with respect to establishment generally or with respect to any class of them, make an application to the registering officer in the prescribed manner for registration of the establishment

### **Certificate of registration**

If the application for registration is complete in all respects, the registering officer shall register the establishment and issue to the principal employer of the establishment a certificate of registration containing such particulars as may be prescribed.

### **Revocation of registration in certain cases:**

If the registering officer is satisfied, either on a reference made to him in this behalf or otherwise, that the registration of any establishment has been obtained by misrepresentation or suppression of any material fact, or that for any other reason the registration has become useless or

ineffective and, therefore requires to be revoked, the registering officer may, after giving an opportunity to the principal employer of the establishment to be heard and with the previous approval of the appropriate government, revoke the registration.

### **Licensing of Contractors**

#### Appointment of licensing officers

The appropriate government may, by an order notified in the Official Gazette-

- (a) appoint such person, being Gazetted Officers of government, as it thinks fit to be licensing officers for the purposes of this chapter; and
- (b) define the limits, within which a licensing officer shall exercise the powers conferred on licensing officers by or under this Act.

No contractor to whom this Act applies, shall undertake or execute any work through contract labor except under and in accordance with a license issued in that behalf by the licensing officer.

Subject to the provisions of this Act, a license under sub-section may contain such conditions including, in particular, conditions as to hours of work, fixation of wages and other essential amenities in respect of contract labor as the appropriate government may deem fit to impose in accordance with the rules

### **Grant of licenses**

- 1) Every application for the grant of license shall be made in the prescribed form and shall contain the particulars regarding the location of the establishment, the nature of process, operation or work for which contract labor is to be employed and such other particulars as may be prescribed.
- 2) The licensing officer may make such investigation in respect of the application received under sub-section (1) and in making any such investigation the licensing officer shall follow such procedure as may be prescribed.

### **Health and Welfare Provisions:**

- If work is likely to continue for six months while the contract are numbering 100 or more than a canteen has to be provided(section16)
- If the contract work is likely to continue for three months or more, where they have to work during night, the contractor should provide a rest room to the contract workmen.(section17)
- Wholesome drinking water should be provided to the contract labour (section18).
- Latrines &Urinals should be provided for the contract labour.
- Washing facilities should be provided.
- First aid facilities (section19) the contractor is to provide and maintain a first aid box equipped with the prescribed contents at every principal place.

#### **Responsibility for payment of wages**

- A contractor shall be responsible for payment of wages to each worker employed by him as contract labor and such wages shall be paid before the expiry of such period as may be prescribed.
- Every principal employer shall nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.
- It shall be the duty of the contractor or ensure the disbursement of wages in the presence of the authorized representative of the principal employer.

#### **Maintenance of Registers &records:**

The rules under the act provide for the maintenance of registers and records by the principal employers and the contractor giving such particulars of contract labor employed, the nature of work performed by the contract labor, the rate of wages paid to the contract labor and such other particulars in such form as may be prescribed.

#### **Liability of Principal Employer:**

If the contractor does not provide canteen, rest room or wholesome drinking water or public utility service required under the Act, the principal employer should provide the same and expenses incurred by him in that regard can be get reimbursed by the contractor. Wages should be paid by the contractor to the contract labour in the presence of the representative of the principal employer. In case the contractor fails to pay wages or makes short payment, the principal employer should make the payment of wages in full and get the same reimbursed by the contractor.

**Penalties:**

For obstruction of the provision, they shall be punishable with imprisonment up to 3 months or fine up to Rs.500 or both. For contravention of provision of employment of the contract labour, the punishment is imprisonment up to 3 months or fine up to Rs.1000 or both. For continuing offence, the fine is up to Rs.100 for every day contravention and other offences imprisonment up to 3 months or fine up to Rs.1000.

**THE SHOPS AND ESTABLISHMENT ACT, 1947**

**Objective**

The shops and Establishments Act, 1947 provides for the regulation of conditions of work in the shops, commercial establishments, restaurants, theatres and other establishments, certain for other purposes.

**Definitions**

“**Shop**” means any premises where any trade or business is carries on or where services are rendered to customers and includes offices, store rooms, godowns, and warehouses whether in

the same premises or otherwise, used in connection with such business but does not include a restaurant, eating house or commercial establishment.

**“Establishment”** means a shop, commercial establishment, restaurant, eating hotel or theatre or any public place amusement includes such establishment as the Govt may by notification, declare to be an establishment for the purpose this Act.

### **PROVISIONS APPLICABLE TO SHOPS (SECTION7-11):**

#### **Opening and closing hours of job**

No shop shall be opened earlier or closed later than such hours as fixed by the Govt. any customer who was being served or was waiting to be served in any shop at the hour fixed for its closing may be served in the quarter of an hour.

#### **Daily and weekly hours of work in shops**

No person employed in a shop shall be allowed to work therein for more than eight hours in any day hours and 48 hours in any week. If any person is working in exceeding time, He should be paid extra wages.

#### **Closing of shops and granting holidays:**

Every shop is to remain entirely on the one day of the week. The shop keeper should specify that day in a notice exhibited on a conspicuous place in the shop and the day to be specified in the shop and the day so specified is not to be altered by the shopkeeper more than once in three months. Every person in a shop is allowed in each week a holiday of one whole day.

#### **Employment of children and young person's:**

They are allowed to work between only 6 a.m to 7 p.m. young persona are not allowed to work more than 7 hours in any day and 40 hours in any week. They are not allowed to work overtime (sec17-19).

#### **Cleanliness, ventilation, lights and precautions against fire:**

The premises of every establishment should be kept very clean by lime washing, colour washing, painting, varnishing and disinfecting. Proper ventilation and sufficient lighting should be provided in accordance with such standards and by such methods prescribe by the Inspector. Precautions should be taken against Fire (section20-24)

### **Annual holidays with Wages (sec 25-28)**

- Every person employed in any establishment **after 12 months of continuous** service, is entitled to annual holidays with wages or a period of 12months , such holidays with wages may be accumulated upto maximum of 24 days. He is entitled to:
- 12 days leave with wages on the ground of sickness incurred
- 12 days casual leave with wages on any reasonable ground
- While calculating a period of 12 months continuous service the following interruptions in service need not be considered.
- On account of sickness, accident or authorized leave not exceeding 90 days in the aggregate for all three, or
- By a lock-out , or
- By a strike which is not a illegal strike or
- By intermittent period of involuntary unemployment not exceeding 30 days in aggregate.

### **PROVISION RELATING TO WAGES (SEC. 29-41)**

- Every employer is responsible, for the payment of wages to persons employed by him.
- To fix wage period; no wage period shall exceed **one month**.
- To pay overtime amount in respect to overtime work at a rate twice the ordinary waged.
- To pay wages before expiry of the **fifth day after** the, last day of the wage period.
- To pay wages on a working day
- To -pay all wages in current coins or current notes or both
- To pay the wages without deductions of any kind

### **Dismissal Service:**

The services of a person employed continuously for a period of not less than six months shall not be dispensed with by an employer except for reasonable cause and without giving such person at least one month notice of wages in lieu of such notice.

### **Offence and Penalties**

- An employer who contravenes any provisions of the Act or any rule or order made under it, if no other penalty is provided for the offence, is punishable with a fine which may extend to Rs.250 for the first offence and to Rs.500 for every subsequent offence after the first conviction
- Any person, who voluntarily obstructs an Inspector Officer in exercise of the powers conferred on him or any person lawfully assisting him or who fails to comply with any lawful directions, made by the Inspecting Officer is punishable with imprisonment which may extend to 6 months or with fine which may extend to Rs.250 or with both
- Any person, who gives a malicious or vexatious application to the prescribed authority relating to deductions from wages or delayed payment, may be directed to pay penalty not exceeding Rs.25 to the employer or other person responsible for the payment of wages.



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**SCHOOL OF MANAGEMENT STUDIES  
DEPARTMENT OF MANAGEMENT STUDIES**

**UNIT III - ADVANCED LABOUR LAWS**

**SBAA7017**

**UNIT-III**  
**LAW RELATING TO MONETARY BENEFITS**  
**THE PAYMENT OF WAGES ACT, 1936**

**OBJECTIVES**

The Payment of Wages Act, 1936 was enacted with the following objectives

- Ensuring regularity of payment
- Ensuring payment in legal tender
- Preventing arbitrary deductions
- Restricting employers' right to impose fines
- Providing remedy to workers

**SCOPE AND COVERAGE OF THE ACT**

The Act Covers -

- Persons employed in any factory
- Persons employed upon any railway by a railway administration or either directly or through a subcontractor, by a person fulfilling a contract with a railway administration
- Persons employed in any of the following industrial or other establishment
  - Tramway service or motor transport
  - Air transport
  - Dock
  - Inland vessel
  - Mine, quarry or oil-field
  - Plantation
  - Workshop or other establishments
  - Establishments relating to construction, development or maintenance of buildings, roads, bridges or canals, etc
  - Any other establishment or class which appropriate government may specify by notification in the official gazette.

- The wage ceiling for coverage under the Act was **enhanced by the central government to Rs.21,000. (The Payment of Wages (Amendment) Bill, 2017)**

### **Definitions**

**Wages-** "wages" means all remuneration (whether by way of salary, allowances, or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment,.

### **RULES FOR PAYMENT OF WAGES (Sec. 3 to 6)**

#### **Responsibility for payment of wages (Sec. 3)**

- Every employer shall be responsible for the payment to persons employed by him of all wages required to be paid under the payment of wages act (sec.3). but in the case of persons employed (otherwise than by a contractor) in factories, industrial establishments or upon railways, the following persons shall also be responsible for the payment of wages:
  - In factories, the person named as the manager;
  - In industrial or other establishment, the person, if any, who is responsible to the employer for the supervision and control of the industry or other establishment.
  - Upon railways (otherwise than in factories), the person nominated by the railway administration in this behalf for the local area concerned.
  - In case of a contractor, a person designed by such contractor.
  - In any other case, a person designated as responsible for complying with the provisions of the act.

#### **Fixation on wage-periods (Sec.4)**

Every person responsible for the payment of wages under sec 3 shall fix periods, known as wage-periods, in respect of which such wages shall be payable [sec .4 (1)]. A wage-period shall not exceed one month [sec 4 (2)].

**Time of payments of wages (sec 5):**

- Wages to be paid before 7<sup>th</sup> or 10<sup>th</sup> day:
- In a railway, factory or industrial establishment in which less than 1,000 persons are employed, wages shall be paid on or before the expiry of 7<sup>th</sup> day of the following wage-period.
- In a railway, factory or industrial establishment in which more than 1,000 persons are employed, wages shall be paid on or before the expiry of 10<sup>th</sup> day of the following wage-period.
- Wages in case of termination of employment.
- When the employment of any person is terminated by the employer, the wages earned by him shall be paid before the expiry of the 2<sup>nd</sup> working day from the day in which his employment is terminated.
- **Exemption:** The appropriate government may exempt the person responsible for the payment of wages from the operation of the above provisions in certain cases [sec .5 (3)].
- Wages to be paid on a working day: All payment of wages shall be made on a working day [sec. 5 (4)].

**Medium of payment of wages (sec .6):**

In order to avoid these difficulties and save the worker from carrying cash on the pay day and mispending it, the employer can pay him the wages either by cheque or by crediting the wages in bank account by the written authorization of the employed person.

**Method of payment of wages:**

- The payment of wages (Amendment) Bill, 2017 was introduced on February 2017. The Bill amends the 1936 Act to permit the employer to pay an employee's wages:
- in coin or currency notes; or
- by cheque or
- by crediting them into his bank account.

- The bill removes the requirement of obtaining written authorization for payment of wages by cheque or through a bank account.
- However, the relevant Central or State Government may specify certain industrial or other establishments where the employer should pay his employees only by cheque or crediting the wages in his bank account

**Deduction from wages (Section-7):**

The wages of an employed person shall be paid to him without deductions of any kind except those authorized by or under this Act (Sec.7(1))

**Authorized Deductions-Sec. 7 (2)**

- Fines (a)
- Absence from duty (b)
- Damage or lose of goods money directly attributable to neglect default(c)
- House accommodations supplied by the employer (d)
- Amenities and services provided by the employer (e)
- Recovery of advances or for adjustment of overpayment of wages (f)
- Deductions for recovery of loans made from any fund constituted for the welfare of labour (ff)
- Deductions for recovery of loans granted for house-building or other purposes approved by Appropriate Government (fff)
- Income tax payable by the employed person (g)
- By order of court or other competent authority (h)
- Any recognized provident fund or repayment of advances (i)
- Payment to cooperative societies approved.(j)
- Payment of any premium on his life insurance policy to the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 (k)
- Payment of contribution to any fund constituted by the employer or a trade union registered under the Trade Union Act, 1926 for the welfare of the employed persons or the members of their families(kk)

- Payment of the fees payable by him for the membership of any trade union registered under the Trade Unions Act, 1926 (kkk)
- Deductions for payment of insurance premia on Fidelity Guarantee Bonds (l)
- Deductions for 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 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 (n)
- Deductions for 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(o)
- Deductions, made with the written authorisation of the employed person, for contribution to the Prime Ministers National Relief Fund or to such other Fund as the Central Government may, by notification in the Official Gazette, specify (p)

#### **Limit on deductions [sec. 7 (3)]**

The total amount of deductions in a wage-period from the wages of any employed person shall not exceed 75 per cent of such wages in cases where such deductions are wholly or partly made for payments to co-operative societies. In any other case, they shall not exceed 50 per cent of such wages [sec. 7 (3)].

#### **Maintenance of Registers and Records (sec 13-A)**

- Every employer shall maintain registers and records giving the following particular of the persons employed by him:
  - The work performed by them;
  - The wages paid to them;
  - The deductions made from their wages ; and
  - The receipts given by them [sec 13-A (1)].

- The register and records shall be in such form as may be prescribed. They shall be presented for a period of 3 years after the date of the last entry made therein [sec 13-A (2)].

**Penalty for offences under the Act (Sec. 20)**

**Penalty for delaying payment of wages within the prescribed period or making unauthorized deductions**

The person who is responsible to pay shall be punishable with fine which shall not be less than Rs. 1,500 but which may extend to Rs 7,500 [sec 20 (1)].

**Penalty for not paying wages on a working day or in current coin or not recording fines or not displaying the abstracts of the Act**

The person who is responsible to pay shall be punishable with a fine which may extend to **Rs. 3,750** for each offence [Sec. 20 (2)].

**Penalty for failure to maintain, furnish records and returns.**

The person who is responsible to pay shall, for each such offence, be punishable with fine which shall not be less than Rs.1,500 but which may extend to Rs. 7,500 [Sec. 20 (3)].

**Penalty for obstructing the Inspector.**

Whoever obstruct the Inspector from doing his duties shall be punishable with fine which shall not be less than Rs. 1,500 but which may extend to Rs. 7,500 [sec. 20(4)]

**Subsequent offence:**

The employer shall be punishable on a subsequent conviction with imprisonment for a term which shall not be less than 1 month but which may extend to 6 month, or with fine which shall not be less than Rs.3, 750 but which may extend to Rs. 22,500 or with both

[sec.20 (5)]. But no cognizance shall be taken of an earlier conviction made more than 2 years before the date of the commission of the present.

## **THE MINIMUM WAGES ACT, 1948**

### **Objective of the Act**

The purpose of minimum wage laws was to prevent the exploitation of labour and payment of unduly low wages in those industries, where workers were least organized and where employment of women workers and children predominated. Another objective of laws regulating the quantum of wages is to fix just and fair wages, taking into account the circumstances prevailing in the industries concerned and the economy as a whole so as to avoid industrial disputes.

The object of the Act is to secure the welfare of the workers in a competitive market by fixing the minimum of wages in employments

### **Scope of the Act**

The Act empowers the central and the state governments, as the case may be, to fix minimum rates of wages in respect of workers employed in the following industries or employments listed in the schedule of the Act, which contains Parts I and II.

### **Definitions**

“**competent authority**” - means the authority appointed by the appropriate Government by notification in its Official Gazette to ascertain from time to time the cost of living index number applicable to the employees employed in the scheduled employments specified in such notifications.

**“cost of living index number”**- in relation to employees in any scheduled employment in respect of which minimum rates of wages have been fixed, means the index number ascertained and declared by the competent authority by notification in the Official Gazette to be the cost of living index number applicable to employees in such employment.

**"scheduled employment"** means an employment specified in the Schedule, or any process or branch of work forming part of such employment`

## **SCHEDULED EMPLOYMENT**

### **PART-I**

- Any Manufacturing Process carried out in Any Factory as defined to Section 2(m) or Section 85 of the Factories Act other than those notified under Part-I or Part-II of the Schedule of Minimum Wages Act, 1948
- Any Oil Mills
- Automobile Engineering Workshops including Servicing & Repairs
- Baking Process including Biscuit Manufactory
- Brick Kiln Industry
- Cashew Processing Establishments
- Cement Concrete Pipes and Cement Ware Manufactory excluding Stone Ware Pipes Manufactory
- Chemicals and Pharmaceuticals
- Cinema Industry
- Clubs and Canteens
- Coffee Plantations
- Colour Printing and Yarn Dyeing
- Construction or maintenance of Roads and Building Operations
- Construction of Projects including Dams and Multi purpose projects
- Cotton Carpet Weaving Establishments

- Cotton Ginning and Pressing Factories
- Distilleries and Breweries
- Domestic Workers
- Electronic Industry
- Fisheries and Sea Foods
- Garment and Allied Manufacturing Industry
- Glass Industry
- Gold Covering and Gold Coating Industry
- Handloom Weaving Establishments
- Handloom (Silk) Weaving Establishments
- Additional Categories in Handloom Weaving Establishments
- Hospitals, Nursing Homes and Clinics Other than Government Hospitals and Dispensaries
- Hostels of all Colleges and all other Educational Institutions
- Hotels and Restaurants and Eating
- Jute and Coir Industry
- Khandasari Factories
- Lime Stone Kilns
- Marketing Societies Consumer Co-operative Societies and Co- operative Banks
- Match and Fire Works
- Mesta used Twine Mills
- Metal Foundaries and General Engineering
- Mica Works
- Mini and Tiny Cement Factories
- Motion Picutre Industry including Production, distribution and Publicity
- Paper and Paper Boards including Straw Board including hand made paper manufactory
- Petrol Bunks
- Powerloom Industry

- Printing Presses including Litho and Offset Printing
- Private Motor Transport
- Professional such as Chartered, Cost Accounts, Auditors including Tax Consultants and Clerks working with Advocates
- Public Motor Transport
- Rice Mills Flour Mills or Dall Mills including Roller Flour Mills
- Salt Pans
- Seed Processing Unit
- Shops and Commercial Establishments
- Factories
- Soft Drinks and Aerated Water Manufacturing Units
- Steel Mills and Steel Re-Rolling Mills
- Stone Breaking and Stone Crushing Operations
- Tanneries and Leather Manufactory
- Tiles and Potteries
- Tobacco (excluding Beedi making) Manufactory
- Tobacco (including beedi making) Manufactory
- Toddy Tapping including selling and Conveyance Indus
- Wood Working Establishment including Furniture excluding Timbering Operation
- Woolen Carpet making and Shawl Weaving Establishments
- Safai Karmacharis
- Security Services
- Spinning Mills
- Non-Teaching Staff working in Private Educational Institutions including Tutorial Institutions and Computer Coaching Centres

## **PART-II**

- Agriculture
- Betal Vines

- Cashew and Coconut Gardens
- Dairy Farming including Cattle Feeding units and Conveyance
- Forestry and Timbering Operations
- Horticulture
- Poultry Farming Including Feeding Units and Conveyance
- Sericulture

## **FIXITION AND REVISION OF WAGES [SECS.3 TO 5]**

### **Fixing of minimum rates of wages (sec. 3)**

- The Appropriate Government shall fix the minimum rates of wages for employments specified in Part I and Part II of the SHEDULE
- Instead of fixing minimum rates of wages for the whole state, fix such rates for a part of the State or for any specified class or classes of such employment in the whole state or part thereof;
- Shall review the minimum rates at such intervals as it may think fit, not exceeding **5 years**, and revise if necessary.

### **Minimum number of employees**

The appropriate government may refrain from fixing minimum rates of wages in respect of any scheduled employment in which there are in the whole State less than 1000 employees engaged in such employment.

### **Minimum rates**

- a minimum rate of wages for time work -minimum time rate
- a minimum rate of wages for piece work a - minimum piece rate
- a guaranteed time rate for employees employed on piece work

- Minimum rate for overtime

**Different minimum rates: Different minimum rates may be fixed for-**

- Different scheduled employment;
- Different classes of work in the same schedule employment;
- Adult, adolescents, children and apprentices; and
- Different localities [sec. 3 (3)(a)].

Further in fixing or revising minimum rates of wages under sec.3, minimum rates of wages may be fixed by anyone are more of the following wage-period, namely;

- By the hour,
- By the day,
- By the month, or
- By such other large wage-period as may be prescribed.

**Minimum rate of wages-It includes**

- A base rate of wages and a special allowance.
- A basic rate of wages with or without the cost of living allowance, and the cash value of the concessions in respect of suppliers of essential commodities at concessional rates, where so authorized; or
- An all inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any [sec. 4 (1)].

**PROCEDURE FOR FIXING AND REVISING MINIMUM WAGE (SEC. 5)**

**Appointment of committees:**

The appropriate Government shall appoint as many committees and sub-committees as it considers necessary to hold inquiries and advise it in respect of fixation or revision of minimum rates of wages, as the case may be [sec. 5(1)(a)];

**Publication of proposals in the official gazette:**

The appropriate Government shall by notification in the **Official Gazette**, publish its proposals for the information of persons likely to be affected by the fixation or revision of minimum rates of wages. It shall also specify a date on which the proposals will be taken into consideration. The date so specified **shall not be less than 2 month** from the date of the notification [sec. 5(1)(b)]. The fixation or revision shall come into **force on the expiry of 3 month** from the date of the issue of notification, unless the notification otherwise provides [sec. 5(2)].

### **Consultation with Advisory Board**

Where the appropriate Government proposes to revise the minimum rates of wages by the mode specified in SEC. 5(1)(b), it shall also consult the advisory Board (constituted under sec. 7) [Proviso to sec. 5 (2)]

Government is not bound to accept the recommendation of the committee appointed under sec. 5(1)(a).

### **Correction of errors (sec. 10)**

The appropriate Government may, at any time, by notification on the official Gazette, correct Clerical or arithmetical mistakes in any order fixing or revising minimum rates of wages under the Act, or errors arising therein from any accidental slip or omission [sec. 10 (1)]. Every such notification shall, as soon as may be after it is issued, be placed before the Advisory Board (constituted under sec. 7) for information [sec. 10 (2)]

## **ADVISORY BOARD AND CENTRAL ADVISORY BOARD (SECS. 7 TO 9 AND 29)**

### **Advisory board (sec. 7)**

For the purpose of co-ordinating the work of committees and sub-committees appointed under Sec. 5 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. 7).

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

**Composition of committees and advisory board (sec. 9):**

Each of the committees, sub-committees and the Advisory Board shall consist of persons to be nominated by the appropriate Government **representing employers and employee** in the schedule employment, who shall be equal in number, and independent persons shall be appointed the Chairman by the appropriate government

**Central Advisory Board (Sec. 8)**

The central Government shall appoint a Central Advisory Board for the purpose of advising the central and state Government on the matter of the fixation and revision of minimum rates of wages and other matters under the Act, and for co-ordinating the work of the Advisory Boards

**Composition of the central advisory boards [sec. 8 (1)].**

It shall consist of persons nominated by the Central Government representing employers and employees in the scheduled employments, who shall be equal in number, and independent persons not exceeding 1/3<sup>rd</sup> of its total number of members.

**Safeguards in payment of minimum wages (secs. 11 to 18)**

**Wages in kind (sec. 11)**

Minimum wages payable under this Act shall be paid in cash [Sec.11 (1)]. But where it has been the custom to pay wages wholly or partly in kind, the appropriate government may by notification in the official Gazette, authorize the payment of minimum wages either wholly or partly in kind

**Payment of minimum rate of wages (sec. 12)**

If minimum wages are fixed for a scheduled employment, the employer cannot pay less than the minimum rate of wages fixed for that class of employees.

### **Fixing hours for a normal working day, etc. (sec. 13)**

the appropriate government may –

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

### **Rates of over time (sec. 14)**

If the employees work for more than the regular working hours, they shall be paid overtime wages for the excess hours worked.

### **Wage of worker who work for less than normal working day (sec. 15)**

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

### **Wages for two or more classes of work (sec. 16)**

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

### **Minimum time rate wages for piece work (sec. 17)**

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

**Maintenance of registers and records (sec. 18)**

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

The appropriate government may make rules for the issue of wage books or wage slips to employees employed in any scheduled employment.

**Penalties for certain offences (sec. 22)**

An employer who pay less than the minimum rates of wages for that employee's class of work, or less than the amount due to him under the provisions of the Act, or contravenes any rule or order made under sec. 13, shall be punishable with imprisonment for the term of one year or fine which may extent to Rs. 50,000, or with both (sec. 22)

**General provision for punishment of other offences (sec. 22-a)**

For violation of any of the general provisions, fine which may extend up to Rs. 50,000 may be imposed

## **EQUAL REMUNERATION ACT, 1976**

### **Objectives of the Act**

The Equal Remuneration Act in India provides for payment of equal remuneration to men and women workers, for same work or work of similar nature for the prevention of discrimination, on the ground of gender, against women, in the matter of employment and for matters connected therewith or incidental thereto.

The purpose of the act is to make sure that employers do not discriminate on the basis of gender, in matters of wage fixing, transfers, training and promotion.

**Duty of employer to pay equal remuneration to men and women workers for same work or work of a similar nature (Sec.4)**

(1) No employer shall pay to any worker, employed by him in an establishment or employment, remuneration, whether payable in cash or in kind, at rates less favourable than those at which remuneration is paid by him to the workers of the opposite sex in such establishment or employment for performing the same work or work of a similar nature.

(2) No employer shall, for the purpose of complying with the provisions of sub-section (1), reduce the rate of remuneration of any worker.

(3) Where, in an establishment or employment, the rates of remuneration payable before the commencement of this Act for men and women workers for the same work or work of a similar nature are different only on the ground of sex, then the higher (in cases where there are only two rates), or, as the case may be, the highest (in cases where there are more than two rates), of such rates shall be the rate at which remuneration shall be payable, on and from such commencement, to such men and women workers

#### **No discrimination to be made while recruiting men and women workers (Sec.5)**

On and from the commencement of this Act, no employer shall, while making recruitment for the same work or work of a similar nature, [or in any condition of service subsequent to recruitment such as promotions, training or transfer,] make any discrimination against women except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force:

Provided that the provisions of this section shall not affect any priority or reservation for Scheduled Castes or Scheduled Tribes, ex-servicemen, retrenched employees or any other class or category of persons in the matter of recruitment to the posts in an establishment or employment.

#### **Advisory Committee. Sec. 6**

(1) For the purpose of providing increasing employment opportunities for women, the appropriate Government shall constitute one or more Advisory Committees to advise it with regard to the extent to which women may be employed in such establishments or employments as the Central Government may, by notification, specify in this behalf.

Every Advisory Committee shall consist of not less than ten persons, to be nominated by the appropriate Government, of which one-half shall be women.

In tendering its advice, the Advisory Committee shall have regard to the number of women employed in the concerned establishment or employment, the nature of work, hours of work, suitability of women for employment, as the case may be, the need for providing increasing employment opportunities for women, including part-time employment, and such other relevant factors as the Committee may think fit.

**Power of appropriate Government to appoint authorities for hearing and deciding claims and complaints (Sec.7)**

- (1) The appropriate Government may, by notification, appoint such officers, not below the rank of a Labour Officer, as it thinks fit to be the authorities for the purpose of hearing and deciding-
- (a) complaints with regard to the contravention of any provision of this Act
  - (b) claims arising out of non-payment of wages at equal rates to men and women workers for the same work or work of a similar nature

The authority, after giving the applicant and the employer an opportunity of being heard, and after such inquiry as it may consider necessary, direct, the employer to take adequate steps so as to ensure that there is no contravention of any provision of this Act.

Any employer or worker aggrieved by any order made by an authority may, within 30 days from the date of the order, make an appeal to such authority. On hearing the appeal the authority may confirm, modify or reverse the order.

**Duty of employers to maintain registers -Sec.8**

Every employer shall maintain such registers and other documents in relation to the workers employed by him as may be prescribed.

### **Inspectors -Sec.9**

The appropriate Government may, by notification, appoint such persons as it may think fit to be Inspectors for the purpose of making an investigation as to whether the provisions of this Act, or the rules made thereunder, are being complied with by employers, and may define the local limits within which an Inspector may make such investigation.

**Penalties. --** (1) If after the commencement of this Act, any employer, being required by or under this act, so to do

(a) omits or fails to maintain any register or other document in relation to workers employed by him, or

(b) omits or fails to produce any register, muster-roll or other document relating to the employment of workers,

(c) omits or refuses to give any evidence or prevents his agent, servant, or any other person in charge of the establishment, or any worker, from giving evidence, or

(d) omits or refuses to give any information,

he shall be punishable with simple imprisonment for a term which may extend to 1 month or with fine which may extend to 10,000 rupees or with both.

If, after the commencement of this Act, any employer—

makes any recruitment in contravention of the provisions of his Act, or makes any payment or remuneration at unequal rates to men and women worker, for the same work or work of a similar nature, or makes any discrimination between men and women workers in contravention of the provisions of this Act, he shall be punishable with fine which shall not be less than 10,000 rupees but which may extend to 20,000 rupees or with imprisonment for a term which shall be not less than 3 months but which may extend to 1 year or with both for the first offence, and with imprisonment which may extend to 2 years for the second and subsequent offences.

If any person being required so to do, omits or refuses to produce to an Inspector any register or other document or to give any information, he shall be punishable with fine, which may extend to five thousand rupees.

### **THE PAYMENT OF GRATUITY ACT, 1972**

Gratuity is a kind of retirement benefit, like provident fund or pension. It is a payment which is intended to help an employee after his retirement whether the retirement is the result of the result of superannuation or of some physical disability.

#### **OBJECTIVES**

It became necessary, therefore, to have a central law on the subject so as

- To ensure a uniform pattern of payment of gratuity to the employees throughout the country, and
- To avoid different treatment to the employees of establishments having branches in more than one state when, under the condition of their service, the employees were liable to transfer from one state to another. Hence The Payment of Gratuity Act, 1972.

The act provides for a scheme of compulsory payment of gratuity by managements of factories, mines, oilfields, plantations, ports, railway companies, shops and other establishments employing 10 or more persons in the event of superannuation, retirement, resignation and death or disablement due to accident or disease. The payment of gratuity is dependent on fulfilment of certain conditions prescribed in the act. It is to be calculated at the rate of 15 days' salary for every completed year of service, subject to a maximum of Rs.20, 00,000. The right of a workman to claim gratuity can be forfeited by the employer in certain cases.

### **Definitions**

#### **Completed Year of Services [sec 2.(b)]:**

“It means continuous services for 1 year.”

#### **Continuous service [sec 2(c)]:**

“Continuous service, means continuous service as defined in sec. 2-A. An employee shall be said to be in continuous services 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,

- Lay-off,
- Strike,
- A lock-out, or cessation of work not due to any fault of the employee. (sec 2-A, clause)

An employee shall be deemed to be in continuous service-

if he/she has actually worked under the employer for not less than –

(I) 190 days, in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and

(ii) 240 days, in any other case;

If the employee works in a establishment that is seasonal or which works for less than 6 days in a week, then continuous service means 95 days in the case of an employee employed below the ground in a mine and 120 days in any other case .

**Explanation:**

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 (20 of 1946), or under the Industrial Disputes Act, 1947 (14 of 1947), or under any other law applicable to the establishment;

(i) he has been on leave with full wages, earned in the previous year;

(ii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and

(iii) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.

If an employee employed in a seasonal establishment, he shall be considered to be in continuous service under the Employer for such period if he has actually worked for not less than 75 per cent of the total working days.

**Retirement [sec 2(q)]:**

“It means termination of the service of an employee otherwise than on superannuation.” The definition of the terms ‘retirement’ is framed in the widest terms. Except for superannuation, any termination of service would amount to ‘retirement’ for the purposes of the act.

**Superannuation [new sec. 2(r)]** as submitted by the amendment act of 1984]:

The term ‘superannuation’ means retirement of an employee on attainment of a certain age.

### **Controlling authority (Sec.3)**

The appropriate Government may, by notification, 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.

### **Gratuity payable on termination of employment:**

Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous services for not less than 5 years –

- On his superannuation,
- On his retirement or resignation, or
- On his death or disablement due to accident or disease [sec. 4(1)].

The completion of continuous service of 5 years shall not be necessary where the termination of the employee is due to death or disablement [proviso 1 to sec 4(1)]. In the case of the death of an employee, gratuity payable to him shall be paid to his nominee. If no nomination has been made

In the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority

### **Rate of gratuity**

For every completed year of service or part thereof in excess of 6 months, the employer shall pay gratuity to an employee at the rate of 15 days' wages based on the rate of wages last drawn by the employee concerned [sec. 4(2)].

A month being a period of 30 days inclusive of rests days and holidays, if wages have to be calculated at monthly rate, 15 days' wages would be what an employee would earn within a period of 15 days and not in 15 working days

**Maximum gratuity:**

The amount of gratuity payable to an employee shall not exceed Rs. 2,50,000 [sec 4(3)]. The amendment Act of 1994 replaced the existing ceiling of 20 months' wages for payment of gratuity by a monetary ceiling of Rs. 50,000. The amendment act of 1997 raised it to Rs.2,50,000. The amendment Act of 1998 has raised it to Rs.3,50,000. The amendment Act of 2000 has raised it to Rs.10,00,000 has been increased to Rs.20,00,000 in the Gratuity Amendment Act, 2017.

**Better terms of gratuity:**

An employee may sometimes be entitled to receive better terms of gratuity under any award or agreement or contract with the employer. In such a case, nothing in sec. 4 shall affect the right of the employee to receive better terms [sec. 4 (5)].

**Forfeiture of gratuity:**

[Sec. 4(6)] deals with cases in which gratuity payable to an employee may be forfeited, notwithstanding anything contained in sec 4(1). According to it, the gratuity of an employee whose service has been terminated for any act, wilful omission or negligence causing any damage or loss to or destruction of, property belonging to the employer, shall be forfeited to the extent of damage or loss so caused [sec 4(6) (a)].

**NOMINATION**

Each employee, as defined in the act, is required to make a nomination within a specified period and in the specified manner. The rules relating to nomination are as follows:

**Nomination within 90/30 days:** each employee, who has completed 1 year of service, after the commencement of the payment of gratuity (central) rules, 1972, shall make within 90 days and each employee who completes 1 year of service after the date of the commencement of these rules within 30 days of completion of 1 year of service, a nomination [sec 6(1) read with rule 6 (1)].

**Distribution of amount of gratuity:** An employee may in his nomination, distribute the amount of gratuity payable to him to more than one nominee. [sec. 6(2)].

**Nomination in favour of family members:** 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. To protect the interests of the family, it has been specifically provided that any nomination made by such employee in favour of a person who is not a member of his family shall be void [sec. 6 (3)].

**Modification of nomination:** a nomination may be modified by an employee at any time, after giving to his employer a written notice of his intention to do so [sec. 6(5)].

**Death of nominee:** if a nominee predeceases the employee, the interest of the nominee shall revert to the employee. The employee shall then make a fresh, nomination in respect of such interest [sec. 6 (6)].

**Safe custody of nomination:** every nomination, fresh nomination or alternation 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 [sec. 6 (7)]. Further, it shall take effect from the date of receipt of the same by the employer [rule 6 (6)].

## **DETERMINATION AND RECOVERY OF GRATUITY [sec. 7 and 8]**

## **Determination of the Amount of Gratuity (Sec.7)**

### **Application for gratuity**

A employee who is eligible for payment of gratuity under the Act, or any person authorized, in writing, to Act on his behalf, shall send an application to the employer ordinary within 30 days from the date the gratuity became payable for payment of such gratuity. But where the date of superannuation or retirement of an employee is known, the employee may apply to the employer before 30 days of the date of superannuation or retirement [sec 7(1), rule 7 (1)].

The other rules relating to application for gratuity are as follows:

- A nominee of an employee who is eligible for payment of gratuity shall apply ordinarily within 30 days from the date the gratuity became payable to him [rule 7 (2)].
- A legal heir of an employee who is eligible for payment of gratuity shall apply ordinarily within 1 year from the date the gratuity became payable to him by the employer [rule 7 (3)].
- An application for payment of gratuity filed after the expiry of the periods specified in rule 7 shall be entertained by the employer, if the applicant adduces sufficient cause for the delay [rule 7 (5)].

### **Determination of gratuity**

As soon as gratuity becomes payable the employer shall determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable. Notice is also to be given to the controlling authority specifying the amount of gratuity so determined. This exercise is to be done by the employee irrespective of the fact whether an application for payment of gratuity has been made or not [sec 7 (2)].

### **Payment of gratuity:**

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 [sec. 7 (3)]. The limit of 30 days for the payment of gratuity has been introduced by the amendment act of 1987.

### **Payment of interest**

This is a new provision made by the amendment act of 1987. If the amount of gratuity payable by the employer is not paid within a period of 30 days, the employer shall pay simple interest at such rate, not exceeding the rate notified by the central government from time to time for repayment of long-term deposits.

### **PENALTIES AND OFFENCES [Sec. 9 to 11)**

#### **Penalties (sec .9) for false statement or false representation:**

If any person knowingly makes or causes to be made any false statement or false representation for the purpose of avoiding any payment to be made by himself under the act or of enabling any other person to avoid such payment, he shall be punishable with imprisonment for a term which may extend to 6 months, or with fine which may extend to Rs. 10,000 or with both [sec. 9 (1)].

Contravening or making default in complying with any provisions of the Act or rule or order made under it is punishable with imprisonment from 3 months to 1 year or fine from Rs.10,000 to Rs.20,000 or with both.

Non-payment of gratuity payable under the Act is punishable with imprisonment from 6 months to 2 years or with fine from Rs.10,000 to Rs.20,000 or with both.

Failure to make payment by way of premium to compulsory insurance or contribution to an approved gratuity fund is punishable with fine up to Rs.10,000 and in the case of a continuing offence with a further fine which may extend to Rs.1,000 each day during which the offence continue.

## **THE PAYMENT OF BONUS ACT, 1965**

### **MEANING**

The dictionary meaning of the word 'bonus' is 'something to the good', 'especially extra dividend to the shareholders of a company', 'distribution of profits to insurance policy-holders' or 'gratuity to workmen beyond their wages'. It is the last meaning of the word which has acquired significance for labour-management relations in India.

### **OBJECTIVES OF THE ACT**

- The object of the act is to provide for the payment of bonus to persons employed in certain establishments,
- To impose statutory liability upon an employer of every establishment covered by the act to pay bonus to employees
- To prescribe formula for calculating bonus
- To provide for payment of minimum and maximum bonus and linking the payment of bonus with the scheme of 'set-off' and 'set-on', and
- To provide for redressal machinery

A minimum bonus of 8.33 per cent of the wages or salary. Bonus is no longer linked with production and profitability. Liability for bonus is a statutory liability and not a contingent liability (section 10).

### **APPLICATION OF THE ACT**

The act extends to the whole of India [sec. 1(2)].

It applies to:-

- Every factory [as defined in sec . 2(m) of the factories act, 1948];
- Every other establishment in which 20 or more persons are employed on any day during any accounting year [sec. 1(3)].

## **Eligibility**

Any employee who draws salary or wage up to Rs. 21,000 is eligible for claiming bonus

## **DEFINITIONS**

**Accounting year** means-

- (i) in relation to a corporation, the year ending on the day on which the books and accounts of the corporation are to be closed and balanced;
- (ii) in relation to a company, the period in respect of which any profit and loss account of the company laid before it in annual general meeting is made up, whether that period is a year or not;
- (iii) in any other case-
  - (a) the year commencing on the 1st day of April; or
  - (b) if the accounts of an establishment maintained by the employer thereof are closed and balanced on any day other than the 31st day of March, then, at the option of the employer, the year ending on the day on which its accounts are so closed and balanced

## **Available surplus [sec .2 (6)]**

It means the available surplus computed under sec. 5.

The other relevant sections which deal with calculation of available surplus are secs. 4, 6 and 7. Under sec. 4 gross profits are to be calculated in the manner specified in the first and second schedules.

The available surplus in respect of any accounting year is the gross profit for that year after deducting there from the sums referred to in sec. 6 (sec. 5).

According to sec. 6 the sums to be deducted from the gross profit as priority charges are

- any amount of depreciation,
- any amount by way of development rebate or investment allowance or development allowance,

- any direct tax calculated according to the provisions of sec. 7 (which deals with calculation of direct tax by the employer), and other sums mentioned in the third schedule

**Available surplus** = gross profit [derived as per First Schedule in case of banking company or Second Schedule in case of other than banking companies of this act] – (minus) Depreciation, investment allowance or development allowance [Section 6] - (minus) direct taxes payable [Section 7] - (minus) further sums as are specified in respect of the employer in the Third Schedule of this act consist of dividend payable (preference shares), reserves and % of paid up equity share capital [investment].

**Allocable surplus Sec. 2(4)**

Allocable surplus is 67% of the available surplus (other than banking companies) or 60% of the available surplus (banking companies and companies linked with abroad)

Payment of bonus calculated on the allocable surplus which is derived by the above calculation.

### **Set-On and Set-Off Of Allocable Surplus [Sec 15]**

#### **Set-On (In case of huge profits,)**

Excess allocable surplus remain after paying the maximum bonus of 20% on the wage or salary of the employee, Should be carried forward to the next following year to be utilized for the purpose of payment of bonus in case of the shortage of the allocable surplus or losses occur. This is called as Set-On

#### **Set-Off (in case of losses occur)**

When there are no profits (available surplus or allocable surplus) or the amount falls short or deficiency for payment of minimum bonus to employees 8.33%, such deficiency amount should be adjusted to the current accounting year from the Set-On amount which was carried forward in case of excess allocable surplus in the previous year. This is called as Set-Off.

## **Illustration**

In this Schedule, the total amount of bonus equal to 8.33 per cent of the annual salary or wage payable to all the employees is assumed to be Rs.1,04,167. Accordingly, Maximum bonus to which all the employees are entitled to be paid (20% of the annual salary or wage of all the employees) would be Rs. 2,50,000.

## **ELIGIBILITY AND DISQUALIFICATION FOR BONUS**

### **Eligibility for Bonus (SEC. 8)**

Every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of the act, provided he was worked in the establishment **for not less than 30 working days** in that year (sec .8). where an employee has not worked for all the working days in any accounting year, the bonus payable to him under sec. 10 shall be proportionately reduced (sec .13).

### **Disqualification of Bonus (SEC .9)**

An employee shall be disqualified from receiving bonus under the act, if he is dismissed from service for –

- Fraud, or
- Riotous or violent behavior while on the premises of the establishment, or
- Theft, misappropriation or sabotage of any property of the establishment.

### **Payment of minimum bonus. [Sec 10]**

Bonus should be paid along with the salary

- Every year, every employer shall be bound to pay bonus to every employee.
- a minimum bonus which shall be 8.33% cent of the salary or wage earned by the employee during the accounting year or 100/- rupees, whichever is higher.
- Bonus shall be payable in case of profits or losses in the accounting year.

### **Payment of Maximum Bonus [Sec 11]**

In case the allocable surplus amount [Section 2(4)] exceeds the minimum bonus (8.33%) payable amount to employees, the employer is bound to pay extra percentage of bonus. But maximum of 20% of bonus is payable to the every employee on the wage or salary earned during the year.

#### **Computation of number of working days. [Sec 14]**

An employee shall be deemed to have worked in an establishment in any accounting year also on the days on which -

- (a) He has been laid off
- (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.

#### **The Payment of Bonus (Amendment) Act, 2015**

The amendments have increased the wage threshold for determining applicability of the Act from INR 10,000 to INR 21,000 per month.

Where the salary or wage of an employee exceeds Rs.7,000/- per month, the bonus payable to such employee under Sec.10, or as the case may be, under Sec.11, shall be calculated as if his salary or wage were Rs.7,000/- per month.

Payment of Bonus Act not to apply to certain classes of employees. [Section 32]

- Life Insurance Corporation ,
- The Indian Red Cross Society or any other institution of a like nature,
- Universities and other educational institutions ,
- Institutions (including hospitals, chambers of commerce and society welfare institutions) established not for purposes of profit,
- Employees employed through contractors on building operations,
- Employees employed by the Reserve Bank of India,

- The Industrial Finance Corporation of India,
- Financial Corporations,
- the National Bank for Agriculture and Rural Development,
- the Unit Trust of India,
- the Industrial Development Bank of India

### **Special provisions [Sec 16]**

In case of new establishments up to 5 years, employees' bonus is payable only in case of profits only but not in losses by the management or employer.

### **Deduction of certain amounts from bonus payable. [sec 18]**

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.

### **Time limit for payment. [Sec 19]**

- Bonus should be paid within a period of 8 months from the close of the accounting year.
- Maximum extended period for payment of bonus is 2 years, but with the permission of the government only

### **Recovery of bonus due from an employer [Sec 21]**

- If any amount is due to employee as bonus from his employer, he can write and apply to the government for the recovery of the bonus from the employer.
- application shall be made within one year from the date on which the money became due to the employee from the employer

### **Reference of dispute under this Act. [Sec 22]**

Where any dispute arises between an employer and his employees with respect to the bonus payable under this Act such dispute shall be deemed to be an industrial dispute within the meaning of the Industrial Dispute Act, 1947. All disputes shall be referred to the Labour courts or the industrial tribunals

#### **Maintenance of registers, records, etc. [Sec. 26]**

- Every employer shall prepare and maintain such registers, records and other documents in such form and in such manner as may be prescribed.

#### **Inspectors. [Sec 27]**

The Government may, by notification in the official Gazette, appoint such persons as it thinks fit to be Inspectors for the purpose of this Act and may define the limits within which they shall exercise jurisdiction.

#### **Powers**

Inspector can any reasonable time can enter in the premises and inspect or examine the records, accounts, books, registers and any other documents and ask the employer to furnish any information..

#### **Penalties [SEC. 28]**

If any person contravenes any of the provisions of the act or any rule made there under, he shall be punishable with imprisonment for a term which may extend to 6 months, or with fine which may extend to RS. 1,000 or with both. Likewise, if any person to whom a direction is given or a requisition is made under the act fails to comply with the direction or requisition, he shall be subject to a like penalty.

#### **Special provision with respect to payment of bonus linked with production or productivity. [Section 31A]**

Any agreements made between the employee and employee regarding the nonpayment of bonus is not valid. If any such agreement is made in between the employer and employee, government

permission is needed.

Employees are not entitled receive bonus excess than 20% of their wage or salaries.



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**SCHOOL OF MANAGEMENT STUDIES  
DEPARTMENT OF MANAGEMENT STUDIES**

**UNIT IV - ADVANCED LABOUR LAWS**

**SBAA7017**

**UNIT IV**  
**LAW RELATING TO INDUSTRIAL RELATIONS**

**THE INDUSTRIAL DISPUTE ACT 1947**

An Act to make provision for the investigation and settlement of industrial disputes, and for certain other purposes.

**Definitions**

According to sec.2 (k) of the industrial disputes act 1947, an industrial disputes means any dispute or difference between;

- employers & employers or
- between employers & workmen or between
- workmen & workmen,
- which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person.

**Distinction between a Grievance& a Dispute:**

- Grievance is the earlier stage of a dispute. If ignored by the mgt and allowed to grow, it later on turns into a dispute.
- grievance can be even unexpressed. But a dispute can be never unexpressed.
- grievance is generally small in dimension. Disputes are generally larger in dimensions as they form collective action of a large no of individuals.

**Causes of Disputes:**

**1. Economics causes:**

Demand for higher wages

Dissatisfaction with the method of job  
evaluation Wrongful deductions from the  
wages  
`Faulty  
incentive  
schemes Lack  
of fringe  
benefits  
Lack of promotional avenues,

**2. Psychological causes:**

Lack of opportunity for  
advancement growth Non-  
recognition for seniority  
Faulty transfer  
policy  
Authoritarian  
administration  
Poor relations with peers &superiors

**3. Organizational causes:**

Non-  
recognition of  
unions Unfair  
practices  
Violation of collective  
agreements Standing orders  
and labour laws Duality of  
command and supervision  
Faulty superiors

**4. Physical causes:**

Poor

working  
condition  
Worn-out  
plant  
Complex  
technology  
Poor layout  
Inadequate maintenance

### **Forms of disputes:**

#### **Strike**

According to sec.2 (Q) of the ID act, 1947,"strike means a cessation of work by a body of persons employed in any way industry acting in combination or a concerted refusal under a common understanding of any know of persons who are or have been so employed to continue to work to accept employment".

#### **Ingredients of strike:**

- these should be in industry within the meaning of sec.2 (j) of the ID act, 1947 in which the striking persons should be employed.
- there should be stoppage of work in pursuance of to a concerted plan in combination.
- there should be contract of employment between the striking workmen and the industry.

#### **Forms of Strikes:**

- stay-in-strike
- sit-down strike,
- pen-down strike
- go-slow strike
- Hunger strike
- lightening or wild-cat strike

- Work to Rule.

### **Lock out Sec 2(l)**

Lock out as temporary or the suspension of work , or the refusal by an employees to continue to employ any persons employed by him.

### **Essentials of a Lock Out:**

- a. There is a temporary closing of the place of employment or suspension or withholding of the work by the employee in some form.
- b. there is an element of demands for which the place of employment is locked out or closed.
- c. there is an intention to re-employ the workers if they accept the demands.

### **Lay off (sec.2(kkk)):**

Lay-off means the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery [or natural calamity or for any other connected reason] to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched.

### **Essentials of Lay Off:**

- There must be a failure or refusal inability of the employer to continue employees in his employment.
- the employees laid off must be on the muster rolls of the establishment on the day of lay-off.
- the failure, refusal of inability to give employment may be due to above reasons.
- the employees must have not been retrenched.

### **Difference between Lock out and Lay Off:**

1). Lock out it the employer refuses to give employment. Because of closing of a place of employment or suspension. Lay off is employer refuses to give employment because of shortage of coal, power or raw materials, calamity etc....

Lock out is resorted to by the employer to coerce or pressurize the workman to accept his demands. Lay off is for the trade reasons beyond the control of employees.

Lock out is due to an ID and continues during the the period of disputes. Lay off is not concerned with a dispute with a workman.

**Closure: sec.2 (cc):**

It means the permanent the closing down of a place of employment or past thereof.

**Difference between Lockout& closure:**

Lock out and closure of a business is often confused.

**Differences are:**

- In the case of lock out it is only the place of business which is closed; While in the case of closure of a business not only the place of business but the business itself is closed.
- Lock out is a weapon of coercion in the hands of employer; Closure is generally for trade reasons.
- Lock out is no severance but only suspension of relationship; Closure is severance of employment of relationship.
- A lock out is caused by the existence of an ID. Whereas closure need not be in consequence of an ID

**RETRENCHMENT: Sec.2 (00);**

It means 'to end', conclude, or cease'. The term as used in the ID Act means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than punishment inflicted by way of disciplinary action.

**Retrenchment' however does not include;**

- a. Voluntary retirement
- b. Retirement of the workman on reaching the age of super nation.

- c. Termination of the service as a result of the non renewal of the contract of employment.
- d. Termination of the service of a workman on the ground of continued ill- health.

**Difference between ‘retrenchment’ and ‘Closure’:**

- Retrenchment is the termination by the employers of the service of a workman for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action. Closure is closing down of the business for trade reasons and it affects all workmen.

- Retrenchment is terminated on account of surplus labour. Closure is on account of total closure of work by an employer.
- in retrenchment, the trade is remains uninterrupted as it continues. While closure is itself discontinued.

**Settlement** - means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer

**Award** - means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under section 10A

**Types of Work Stoppages:**

- Strike for definite period
- Indefinite strike /fight to finish
- Sectional/organizational strike
- Picking
- Stay out or in strike
- Procession
- Gate meeting
- Lunch boycott
- Wearing of black badges/clothes
- Slogan shouting/such other demonstration
- Morcha
- Dharna
- Bandh

- Ghaero
- Tool down.pen down strike
- Go-slow strike
- Work to rule
- Boycott

## **INDUSTRIAL DISPUTLES SETTLEMENT MACHINERIES:**

### **General methods of resolving ID:**

#### **Voluntary method**

- Collective bargaining
- Code of discipline 1958
- Arbitration
- Permanent negotiation machinery
- Joint consultative machinery
- Tri-patrite bodies

### **VOLUNTARY LEVEL:**

#### **Code of discipline:**

Indian labour conference held at New Delhi July 1957, formulated a “code of discipline” for Indian organizations through discussions.

This code of discipline is developed for the purpose maintaining discipline both in public & private sector organs .This code is voluntary & statutory. However all major employers & unions has adopted the for implementation .the codes consists of three set principle to be followed by the parties to labour relations. These are under

- Management and union agrees
- Management agrees
- Union agrees

#### **Permanent negotiation machinery:**

Among the voluntary institutions we may also mention PNM which is operating in the railways and post and telegraph industries.

#### **Joint consultative machinery:**

JMC deals with issues related to service condition in the govt sector. This is not only covers the under the definition of workmen under the ID Act, but also class 3 and class 4 employers of different ministers and the subordinate organs, which may not be industrial in characters.

### **Tripartite bodies:**

There are a number of tripartite bodies which operate the central /state level, some of those are follows;

- Indian labour conference –once in a year
- Standing labour committees-recommended by ILC and central Govt.
- Wage boards
- State labour advisory board – at state level
- Central implementation and evaluation committee – concerned with implementation of law and award

Industrial committee – for improving productivity and working condition, recommendation are submitted to ILC for consideration and acceptance.

### **STATUTORY SETTLEMENT OF INDUSTRIAL DISPUTES**

Sec.2 to 9, provides an elaborate and effective machinery for bringing about industrial peace by setting up various authorities for the investigation and settlement of IDs. These authorities are;

#### **Conciliation:-**

The authorities that make use of conciliation as a method of settlement if IDs, are;

- works committee
- conciliation officers
- board of conciliation &
- court of inquiry

#### **Adjudication:-**

The aforesaid authorities Endeavour to compose any industrial difference of opinion or settle the ID before it may be adjudicated upon by-

- Labour courts,
- Industrial tribunal &
- National Tribunal

The various authorities which constitute the machinery for the prevention of ID are discussed in the next page;

**Conciliation machinery:**

**Works committee (sec.3)**

In the case of any industrial establishment in which 100 or more than are employed or have been employed on any day preceding 12 months, the appropriate Govt ,may by general or special require the employer to constitute a works committee.

The committee shall consist of equal no of employee representatives and employer representation.

**Powers and Duties:**

- a. Promote measures for securing & preserving amity & good relations between the employers and workers to that.
- b. Comment upon matters of their common interests or concern
- c. Endeavour to compose any material difference opinion in respect of such matters. These include labour welfare, recreations, training, crèches & hospitals, wages, hrs of work, bonus, gratuity, promotions and transfer.

**Conciliation Officers:(sec-4)**

- The appropriate Govt, by notification in the official Gazette, appoint such no. of persons as it think to be conciliation officers. The duties of the conciliation officers shall be to meditate in promote the settlement of ID.
- Appointment:
- A conciliation officer may be appointed for a specified area or for specified industries in a specified area or for more specified industries. He may be appointed either permanently or for a limited period. He shall be deemed to be a public servant. He should submit the report within 14 days of commencement of such proceedings or within such shorter period as may of period fixed by the appropriate Govt. If it thinks fit the app.Govt may make reference to Board, if not, it will record and communicate to the parties the reasons.

**Duties:**

- To hold conciliation proceedings
- To investigate the disputes
- To send a report & memorandum of settlement to appropriate Govt
- To send a full report to the appropriate Govt. setting forth steps taken by him in case of no settlement is arrived at and the reasons in his opinion with facts.

**Boards of conciliation:****Appointment & conciliation:**

- The may by notification in the official gazette constitute a board of conciliation for promoting the settlement of an ID.
- It consists of chairman & 2 or 4 members. As the Government thinks fit. Quorum is required.

**Reference of disputes:**

Where the Govt at any time, by order in writing refer the dispute to a board for promoting settlement.

**Duties:**

- To bring about a settlement of the dispute.
- To send a report & memorandum of settlement to the A.Govt
- To send a full report to the appropriate Govt. setting forths steps taken by him in case of no settlement is arrived at.
- To communicate reason to the parties if no further reference made.
- To submit report within 2 month
- Report of the bond to be in writing & to be signed & its publication.

**Powers:**

Power to enter premises

Powers of civil court:

- enforcing the attendance of any person & examining him on oath.
- compelling the production of documents & materials & witnesses
- issuing commissions for the examination of witnesses;
- in report of each other matters as may be prescribed.

Conciliation is a process where the dispute between the employer and workmen are referred to a third party and the third party helps them to come to an agreement. However he is not the ultimate decision maker. He helps the disputants to come to a consensus. For the purpose of conciliation only, the appropriate governments appoint conciliation officers and constitute board of conciliation as mentioned above. This process has come out successful in many industrialized countries.

The conciliation proceedings generally commence from the reference of the disputes by the appropriate government. During the pendency of the conciliation proceedings, strikes and lockouts are prohibited in public utility services.

Intervention by the Conciliation Officer is mandatory in case where an Industrial Dispute has arisen in a Public Utility Service and a notice of strike or lockout (Under Section 22) has been served.

### **Courts of Inquiry: (sec-6)**

Appointment & constitution:

- (1) The appropriate government may, as occasion arises by notification in the Official Gazette, constitute a Court of Inquiry for inquiring into any matter appearing to be connected with or relevant to an industrial dispute.
- (2) A court may consist of one independent person or of such number of independent persons as the appropriate government may think fit and where a court consists of two or more members, one of them shall be appointed as the Chairman.
- (3) A court, having the prescribed quorum, may act notwithstanding the absence of the Chairman or any of its members or any vacancy in its number

The court has to inquire into matters referred to it by the appropriate government and submit its report within 6 months from the commencement of the inquiry. The report shall be published within 30 days of its receipt.

### **Adjudication machinery:**

#### **Adjudication:**

Adjudication means a mandatory settlement of Industrial Disputes by labour courts, Industrial Tribunals or National Tribunals under the Act or by any other corresponding authorities under the analogous state statutes. The ultimate remedy of unsettled dispute is by way of reference by the appropriate government to the adjudicatory machinery for adjudication. The adjudicatory authority resolves the Industrial Dispute referred to it by passing an award, which is binding on the parties to such reference.

There is no provision for appeal against such awards and the same can only be challenged by way of writ under Articles 226 and 227 of the Constitution of India before the concerned High Court or before the Supreme Court by way of appeal under special leave under Article 136 of the Constitution of India.

Its main aim is to promote industrial peace

Secs. 7 to 9 pertain to the constitution of adjudication authorities under the Act. These authorities are:

#### **Labour courts- Sec.7**

The appropriate government may, by notification in the Official Gazette, constitute one or more Labour Courts for the adjudication of industrial disputes relating to any matter specified in the Second Schedule and for performing such other functions as may be assigned to them under this Act.

The proceeding of labour court is called as adjudication and the judgment is called as award.

A Labour Court shall consist of one person only to be appointed by the appropriate government.

**Qualification of proceeding officer:**

- He is or has been high court judge.
- He has been a district judge or an additional judge for not less than 3 years. (or)
- He has held any judicial office in India for not less than 7 years
- He has been the proceeding officer of labour court constituted under any Provincial Act or State Act for not less than 5 years.

**Disqualification;-**

- If the court issues an order; or
- Attainment at the age of 65 years & above

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

**The labour court has to adjudicate upon industrial disputes specified in second schedule of the act which includes:**

- the propriety or legality of any order passed by an employer under Standing Orders
- the application of interpretation of Standing Orders
- Discharge or dismissal of workmen including re-instatement and such other reliefs
- Withdrawal of any customary concession or privilege
- Illegality or of strikes or lockouts
- All matters other than those specified in third schedule

**Industrial Tribunal:- (Sec.7A)**

The appropriate Government may, by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the Second Schedule or the Third Schedule of the ID Act, 1947

A Tribunal shall consist of one person only to be appointed by the appropriate Government.

A person shall not be qualified for appointment as the presiding officer of a Tribunal unless—

- he is, or has been, a Judge of a High Court; or
- he has, for a period of not less than three years, been a District Judge or an Additional District Judge

The appropriate government may, if it so thinks fit, appoint two persons as assessors to advise the Tribunal in the proceeding before it`

**Matters specified in Third schedule are:**

- Wages, including the period and mode of payment
- Compensatory and other allowances
- Hours of work and rest intervals
- Leave with wages and holidays
- Bonus, profit sharing, provident fund and gratuity
- Shift working otherwise than in accordance with standing orders
- Classification by grades
- Rules of discipline
- Rationalisation
- Retrenchment of workmen and closure of establishment and
- Any other matter that may be prescribed.

**National tribunal:**

A national tribunal can be constituted by the central Govt to deal with a dispute which in the opinion of the central govt involves a question of national importance or is of such a nature that industrial establishments situated in more than one state are likely to be interested in or affected by such dispute.

The subject matter of this dispute may relate to matters covered by the second and third schedule of the ID Act, 1947. A high court judge will be appointed as proceeding officer. The award is to be published by the Central Govt.

Powers and duties are same as labour court.

**Prohibition of strikes and Lockouts Sec.22**

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

- (a) without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking; or
- (b) within fourteen days of giving such notice; or
- (c) before the expiry of the date of strike specified in any such notice as aforesaid; or
- (d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

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

- (a) without giving them notice of lock-out as hereinafter provided, within six weeks before locking-out; or
- (b) within fourteen days of giving such notice; or
- (c) before the expiry of the date of lock-out specified in any such notice as aforesaid. or
- (d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

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

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

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

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

### **General prohibition of strikes and Lockouts- Sec.23**

No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out-

- during the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings;
- during the pendency of proceedings before a Labour Court , Tribunal or National Tribunal and two months, after the conclusion of such proceedings
- during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings
- during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award.

## **II-legal strikes and Lockouts- Sec.24**

A strike or lock-out shall be illegal if-

- it is commenced or declared in contravention of section 22 or section 23; or
- it is continued in contravention of an order made under sub-section (3) of section 10 [or sub-section (4A) of Section 10A].

Where a strike or lock-out in pursuance of an industrial dispute has already commenced and is in existence at the time of the reference of the dispute to a Board, an arbitrator, a Labor Court, Tribunal or National Tribunal, the continuance of such strike or lock-out shall not be deemed to be illegal, provided that such strike or lock out was not at its commencement in contravention of the provisions of this Act or the continuance thereof was not prohibited under sub-section(3) of section 10 [or sub-section (4A) of section 10A].

A lock-out declared in consequence of an illegal strike or a strike declared in consequence of an illegal lock-out shall not be deemed to be illegal.

## **THE TRADE UNION ACT, 1926**

An association of workmen primarily formed for protecting and advancing the interests of its members.

### **Definitions**

An association carried on mainly for the purpose of protecting and advancing the members economic interests in connection with their daily work

Prof. C.D.H.Cole

According to Sec.2(h) of the Trade Union Act, a Trade Union means “Any combination formed for the purpose of regulating relations between;

- a. Employers and employers
- b. Employees and employees
- c. Employers and employees

The activities of a trade union are regulated by the labour department of the state government, particularly by the registrar of trade unions.

### **Why do people join trade union?**

1. To oppose management
2. To participate in union activities
3. To exercise leadership
4. To fall in line with others
5. To get employment

## **Trade union structure**

1. Craft Union
2. Industrial union
3. General union

### **Craft Union**

Workers belonging to a particular trade/craft organize themselves into a separate union. They may be working in same or many different organizations. Examples: drivers as a craft/trade working in an industry organize a craft union. Earlier coal loaders of railways or pilots guild of India

### **Industrial union**

“One Union in work place” or “one union, one organization”, advocated by V.V.Giri. NLC planning commission and all sensible authorities. It means all workmen of a particular organization are members of one union – may be mechanics, office staff, accounts people, drives, quality department hospital staff, electricians, etc. a further improvement is “One union, one Industry”. The workmen of all organization engaged in one particular type of business. **For example** – textiles are covered in one union.

### **General Union**

All workmen from different types of organizations, but working in the same industrial centre, town or a geographical area, form a common trade union. It could comprise of manufacturing industries, banks, and agriculture, etc. most for common threats. Example-

Jamshedpur labour union comprise of all workmen in and around Jamshedpur (in addition to being members in their industrial unions) for development of the region.

## **Federations of India**

### **All India Trade Union Congress (AITUC)**

The most important year in the history of Indian Trade union movement was 1920, when the all Indian trade union congress was formed consequent up on the necessity of electing delegates for the ILO –started by congress party, with Lala Lajpat Rai as first president. Later on it fell into the hands of communists.

### **Indian National Trade Union Congress (INTUC)**

Because the communists infiltrated the AITUC, the moderates started looking for a way out. In 1947, the efforts of Indian National Congress party resulted in the establishment of ITUC. INTUC started gaining membership from its inception itself. Upto today this is the official trade union wing the congress party.

### **Hindu Mazdoor Sabha**

The socialists separated from AITUC and former Hindu Mazdoor Sabha in 1948

### **Bharatiya Mazdoor Sangh (BMS)**

It was formed in 1955 – official labour wing of BJP party – the largest federation

### **Hind Mazdoor sabha**

This was formed in the year 1965. Also belong to group of socialists.

### **United Trade Union Congress**

Started in 1947, with basic idea of non-violent approach – started by communists

### **Centre of Indian Trade Unions**

Started in 1970 – by communists – extreme ideas

### **Objectives of a Trade Union**

- To defend or improve the wages and working conditions of workers and to bring about a change in the economic order.
- To overthrow capitalism and to bring about a revolutionary and fundamental change in the political order
- To replace managerial dictatorship by workers' democracy and to bring about a change in the social order

### **Functions of Trade Unions**

The various functions of a trade union under these four heads;

### **Functions relating to trade union members**

- To safeguard workers against all sorts of exploitation by the employer, by union leaders and by political parties
- To protect workers from the atrocities and unfair labour practices of the management
- To ensure healthy, safe and conducive working conditions
- To exert pressure for enhancement of rewards associated with the work only after making a realistic assessment of its practical implication
- To ensure a desirable standard of living by providing various types of social services
- To guarantee a fair and square deal and social justice
- To remove the dissatisfaction and redress the day-to-day grievances and complaints of workers
- To encourage workers participation in management
- To make the workers conscious of their rights and duties
- To stress the significance of settling disputes through negotiation
- To raise the status of trade union members in the industry

### **Functions relating to industrial organization**

- To highlight industrial organization to promote identity of interest
- To increase production quantitatively as well as qualitatively
- To help in the maintenance of discipline
- To create opportunities for workers participation in management
- To help in the removal of dissatisfaction and redress of grievances and complaints
- To promote cordial and amicable relations between workers and management
- To create favourable opinion of the management towards trade union in improve their status in industrial organization
- To exert pressure on the employer to enforce legislative provisions beneficial to the workers and to keep away from various types of unfair labour practices
- To facilitate communication with the organization

- To impress upon the management the need to adopt reformed and not punitive, approach towards workers faults

**Functions relating to trade union and organization**

- To formulate policies and plans consistent with those of the industrial organization and society at large
- To improve financial position by fixing higher subscription by realizing the union dues and by organizing special fund raising campaigns
- To preserve and strength trade union democracy
- To train members to assume leadership position

- To improve the network communication between trade union and its members
- To curb inter-union rivalry and thereby to help in the creation of unified trade union movement
- To keep away from advocating the adoption of unfair labour practices
- To eradicate various types of isms like casteism, regionalism and linguism within the trade union movement
- To save the union organization from the exploitation by vested interests – personal and political
- To continuously review the relevance of union objectives in the context of social change, and to change them accordingly
- To prepare and maintain the necessary records
- To manage the trade union organization on scientific lines
- To publicize the trade union objectives and functions, to know people's reaction towards them, and to make necessary

### **Functions relating to society**

- To render all sorts of constructive co-operation in the formulations and implementation of plans and policies
- To actively participate in the development of programs
- To launch special campaigns against the social evils of corruption, nepotism, communalism, casteism, regionalism, linguism, price rise, hoarding, black marketing, smuggling, sex inequality, dowry, untouchability, illiteracy, dirt and disease
- To enable unorganized sector to organize itself
- To create public opinion favourable to government policies plans, and to mobilize people's participation for their effective implementation
- To create public opinion favourable to trade unions and thereby to raise their status
- To exert pressure, after realistically ascertaining its practical implications, on the government to enact legislation conducive to the development of

trade union and their members

## **REGISTRATION OF TRADE UNION**

The activities of a trade union are regulated by the labour department of the state government particularly by the registrar of trade unions.

Any 7 or more members of a trade union can, by subscribing their names to the rules of the trade union and otherwise complying the provisions of this act, apply for registration under the act. This application must be accompanied by a copy of the rules of the trade union and a statement of the following particulars;

- The names, occupations and addresses of the members
- The name of the trade union and the address of the head office
- The titles, names, ages, address and occupations of the officers of the trade union

According to the provisions of the act, and the rules of the union provide for the following matters;

- a. Its name, scope of operations and objectives
- b. Purpose for which general funds could be applied
- c. Procedure for admission of members
- d. List of members
- e. Subscription for appointment of office bearers
- f. Rules regarding political fund
- g. Benefits to members given to members

The name under which the trade union seeks registration must not be similar to that of any existing union. The registrar on being satisfied that the trade union has complied with the necessary provisions of the act, will enter its name in a register kept for this purpose and issue a certificate of registration. This is conclusive evidence that the said trade union has been duly registered.

### **Cancellation of Registration**

The registrar can cancel the registration, if any of the above conditions are violated.

### **Privileges of a registered trade union**

- a. A registered trade union can function as a body corporate, independent of its members
- b. Hold property in its own name
- c. Immunity for punishment from criminal conspiracy
- d. Immunity for punishment from civil suits
- e. A registered trade union can sue others and can be sued by others, but an

unregistered trade union sue others, but can be sued by others

- f. A registered trade union can enter into contracts on its own name and enforce them also
- g. It can set up a separate political fund
- h. Admit members from 15 to 18 age also
- i. Can enter into check off arrangement with the employer
- j. The officer bearer get the right to inspect the register, name list, etc

### **Recognized Trade Union**

As per 16 session of ILO

1. Only a registered union is eligible to apply for recognized by the employer. There may be many registered unions in a company, but only one could be recognized.
2. If there is more than one union in a company, the union claiming recognition should have been functioning for at least one year.
3. The membership of a union should cover at least 15% of the workers in the company concerned. Membership should be only for those who had paid their membership fees for at least 3 months during the period of six months immediately preceding the reckoning.
4. A union may claim recognized for an industry in a local areas, if it has a membership of at least 25% of the workers of that industry in that area.
5. Once a union is recognized, there should be no membership change for a period of two years.
6. If there are several unions in an establishments, the one with the largest membership should be recognized.

### **Rights of the Recognized Union as Per National Commission on Labour**

1. The right of check off.
2. Use of the notice board in the premises of the undertaking
3. To appoint its nominees on the workers committee and such Bi-partite and Tri-partite forums.
4. To represent an employee in any proceedings under the Industrial disputes Act.
5. Collection of subscription within the premises.
6. To enter into collective bargaining agreements
7. To act as majority representative on all matter connected with terms and conditions of service
8. To sign agreements with the employer.

## **General Fund**

A trade union may build general funds to form a subscription and use them for

- a. Payment of salaries and expenses of office bearers
- b. Administration expenses of trade union including audit
- c. Legal assistance to any office bearers or member
- d. Conduct of trade dispute
- e. Compensation to members involved in trade dispute
- f. Allowances to members for sickness, etc
- g. Taking insurance policies on lives of members

- h. General causes of support of workmen as which such expenses should not exceed 1/4<sup>th</sup> of their credit balances.

### **Political Fund**

A registered trade union can start and maintain a political for apart from general funds provided;

- a. It's not mixed up with general fund make up of exclusive contribution
- b. It is made up to voluntary contributions from workmen – no workers shall be forced to contribute
- c. No worker shall be discriminated for not contributing to it.

### **Purpose of which a political fund may be used;**

- a. For holding political meetings
- b. To support expenses of a candidate or prospective candidate in nay democratic election
- c. For holding political meetings
- d. Maintenance of way elected persons
- e. For making and distribution of campaign literature

### **AMENDMENTS**

#### **Trade Unions Act – 1926 & Trade Unions (Amendment) Act, 2001**

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Trade union is a voluntary organization of workers pertaining to a particular trade, industry or a company and formed to promote and protect their interests and welfare by collective action. They are the most suitable organizations for balancing and improving the relations between the employer and the employees. They are formed not only to cater to the workers' demand, but also for inculcating in them the sense of discipline and responsibility. They aim to:-

- Secure fair wages for workers and improve their opportunities for promotion and training.
- Safeguard security of tenure and improve their conditions of service.
- Improve working and living conditions of workers.

- Provide them educational, cultural and recreational facilities.

- Facilitate technological advancement by broadening the understanding of the workers.
- Help them in improving levels of production, productivity, discipline and high standard of living.
- Promote individual and collective welfare and thus correlate the workers' interests with that of their industry.

In India, the first organized trade union was formed in 1918 and since then they have spread in almost all the industrial centres of the country. The legislation regulating these trade unions is the Indian Trade Unions Act, 1926. The Act deals with the registration of trade unions, their rights, their liabilities and responsibilities as well as ensures that their funds are utilized properly. It gives legal and corporate status to the registered trade unions. It also seeks to protect them from civil or criminal prosecution so that they could carry on their legitimate activities for the benefit of the working class. The Act is applicable not only to the union of workers but also to the association of employers. It extends to whole of India. Also, certain Acts, namely, the Societies Registration Act, 1860; the Co-operative Societies Act, 1912; and the Companies Act, 1956 shall not apply to any registered trade union, and that the registration of any such trade union under any such Act shall be void.

The Act is administered by the Ministry of Labour through its Industrial Relations Division. The Division is concerned with improving the institutional framework for dispute settlement and amending labour laws relating to industrial relations. It works in close co-ordination with the Central Industrial Relations Machinery (CIRM) in an effort to ensure that the country gets a stable, dignified and efficient workforce, free from exploitation and capable of generating higher levels of output. The CIRM, which is an attached office of the Ministry of Labour, is also known as the Chief Labour Commissioner (Central) [CLC(C)] Organisation. The CIRM is headed by the Chief Labour Commissioner (Central). It has been entrusted with the task of maintaining industrial relations, enforcement of labour laws and verification of trade union membership in central sphere. It ensures harmonious industrial relations through:-

- Monitoring of industrial relations in Central Sphere;

- Intervention, mediation and conciliation in industrial disputes in order to bring about settlement of disputes;

- Intervention in situations of threatened strikes and lockouts with a view to avert the strikes and lockouts;
- Implementation of settlements and awards.

According to the Trade Unions Act, 1926, 'trade union' means "any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more trade unions". The basic provisions of the Act are:-

The Act provides for the registration of the trade unions with the 'Registrars of Trade Unions' set up in different States, like the Office of Registrar (Trade Union) set up by the Government of National Capital Territory of Delhi. For registration of a trade union, seven or more members of the union can submit their application in the prescribed form to the Registrar of trade unions. The application shall be accompanied by a copy of the 'rules of the trade union' and a statement giving the following particulars:- (i) Names, occupations and addresses of the members making the application; (ii) The name of the trade union and the address of its head office; (iii) The titles, names, ages, addresses and occupations of the office bearers of the trade union as per the format given in the Trade Unions Act 1926. The Registrar, on being satisfied that the Union has complied with all the requirements of this Act, shall register the trade union. Thereafter, it shall issue a certificate of registration in the prescribed form as a conclusive evidence of registration of that trade Union.

The registered trade unions (workers & employers) are required to submit annual statutory returns to the Registrar regarding their membership, general funds, sources of income and items of expenditure and details of their assets and liabilities, which in turn submits a consolidated return of their state in the prescribed preformed to Labour Bureau, Ministry of Labour and Employment. The Labour Bureau on receiving the annual returns from different States/Union Territories, consolidates the all India statistics and disseminates them through its publication entitled the 'Trade Unions in India' and its other regular publications.

The general funds of a registered trade union shall not be spent on any other objects than those specified in the Act. Also, a registered trade union may constitute a separate fund, from contributions separately levied for or made to that fund, for the promotion of the civic an

political interest of its members. No member shall be compelled to contribute to such fund and a member who does not contribute to the said fund shall not be excluded from any benefits of the trade union, or placed in any respect either directly or indirectly under any disability or at any disadvantage as compared with other members of the union by reason of his contribution to the said fund.

No office-bearer or member of a registered trade union shall be liable to punishment under the Indian Penal Code in respect of any agreement made between the members for the purpose of furthering any such object of the trade union as specified in the Act, unless the agreement is an agreement to commit an offence.

No suit or other legal proceeding shall be maintainable in any civil court against any registered trade union or any office-bearer or member thereof in respect of any act done in contemplation or furtherance of a trade dispute to which a member of the trade union is a party on the ground only that such an act induces some other person to break a contract of employment, or that it is in interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or his labour as he wills.

The account books of a registered trade union and the list of members thereof shall be open to inspection by an office-bearer or member of the trade union at such times as may be provided for in the rules of trade union.

A person shall be disqualified for being chosen as, and for being a member of, the executive or any other office-bearer or registered trade union if- (i) he has not attained the age of eighteen years; (ii) he has been convicted by a court in India of any offence involving moral turpitude and sentenced to imprisonment, unless a period of five years has elapsed since his release.

Every office-bearer or other person bound by the rules of the trade union shall be punishable with the payment of fine, if:-

Default is made on the part of any registered trade union in giving any notice or sending any statement or other document as required by or under any provision of this Act; or

Any person wilfully makes, or causes to be made, any false entry in, or any omission from, the general statement or in or from any copy of rules or of alterations of rules sent to the Registrar; or

Any person who, with intent to deceive, gives to any member of a registered trade union or to any person intending or applying to become a member of such trade union any document purporting to be a copy of the rules of the trade union or of any alterations to the same which he/ she knows, or has reason to believe, is not a correct copy of such rules or alterations as are for the time being in force, or any person who, with the like intent, gives a copy of any rules of an unregistered trade union to any person on the pretence that such rules are the rules of a registered trade union.

Any registered trade union may, with the consent of not less than two-thirds of the total number of its members and subject to the provisions of the Act, change its name. The change in the name of a registered trade union shall not affect any of its rights or obligation or render defective any legal proceeding by or against the union, and any legal proceeding which might have been continued or commenced by or against it by its former name may be continued by its new name.

Any two or more registered trade unions may become amalgamated together as one trade union with or without the dissolution or division of the funds of such trade unions or any of them, provided that the votes of at least one-half of the members of each or every such trade union entitled to vote are recorded, and that at least sixty percent of the votes recorded are in favour of the proposal. Such an amalgamation shall not prejudice any right of any such unions or any right of a creditor or any of them.

When a registered trade union is dissolved, notice for the dissolution signed by seven members and by the Secretary of the trade union shall, within fourteen days of the dissolution, be sent to the Registrar and shall be registered by him if he is satisfied that the dissolution has

been effected in accordance with the rules of the trade union, and the dissolution shall have effect from the date of such registration.

However, the Trade Unions Act 1926 has been amended from time to time and the most important being the Trade Unions (Amendment) Act, 2001. This Act has been enacted in order to bring more transparency and to provide greater support to trade unionism in India. Some of the salient features of the Trade Unions (Amendment) Act, 2001 are:-

No trade union of workmen shall be registered unless at least 10% or 100, whichever is less, subject to a minimum of 7 workmen engaged or employed in the establishment or industry with which it is connected are the members of such trade union on the date of making of application for registration.

A registered trade union of workmen shall at all times continue to have not less than 10% or 100 of the workmen, whichever is less, subject to a minimum of 7 persons engaged or employed in the establishment or industry with which it is connected, as its members.

A provision for filing an appeal before the Industrial Tribunal / Labour Court in case of non-registration or for restoration of registration has been provided.

All office bearers of a registered trade union, except not more than one-third of the total number of office bearers or five, whichever is less, shall be persons actually engaged or employed in the establishment or industry with which the trade union is connected.

Minimum rate of subscription by members of the trade union is fixed at one rupee per annum for rural workers, three rupees per annum for workers in other unorganised sectors and 12 rupees per annum in all other cases.

The employees who have been retired or have been retrenched shall not be construed as outsiders for the purpose of holding an office in the trade union concerned.

For the promotion of civic and political interest of its members, unions are authorized to set up separate political funds.

Hence, trade union legislation ensures their orderly growth, reduce their multiplicity and promote internal democracy in the industrial organisation and the economy. The trade unions have thus acquired an important place in the economic, political and social set up of the country.

## **THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946**

### **Object of the Act**

The object of the Act is “to require employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them”.

**Conditions of employment and standing orders.** Conditions of employment include, inter alia, the conditions of recruitment, discharge, disciplinary action, holidays of the workmen employed in industrial establishments, etc. the object of defining the conditions of employment is to avoid disputes arising from uncertainty and vagueness in the terms of employment. The rules made in this regard are known as standing orders.

**Formal declaration of terms and conditions of employment.** The Act intends that the terms and conditions of industrial employment should be well-defined and should be known to the employees before they accept the employment. Another object of the Act is to introduce uniformity of terms and conditions of employment in respect of workmen belonging to the same category and discharging the same or similar work under an industrial establishment.

### **Scope and Application of the Act**

The Act extends to the whole of India. It applies to every industrial establishment wherein 100 or more workmen are employed, or were employed on any day of the preceding 12 months. The appropriate government after giving not less than 2 months’ notice in the official gazette, apply the provisions of the Act to an industrial establishment employed even less than 100 persons.

Act not to apply to certain industrial establishments

- i. The Fundamental and Supplementary Rules
- ii. The Civil Services (Classification, Control and Appeal) Rules,

- iii. The Civil Services (Temporary Services) Rules.
- iv. The Revised Leave Rules
- v. The Civil Service Regulations
- vi. The Civilians in Defense Service (Classification, Control and Appeal) Rules,  
or
- vii. The Indian Railway Establishment Code or
- viii. Any other rules or regulations that may be notified in this behalf by the  
appropriate government in the official gazette

**STANDING ORDERS (Sec.2(g))**

The term Standing Orders means rules relating to matters set out in the Schedule to the  
Act.

## **The Schedule [See Secs. 2 (g) & 3**

### **(2)] Matters to be provided in**

#### **Standing Orders**

- 1) Classification of workmen, e.g., whether permanent, temporary, apprentices, prob...
- 2) Manner of intimating to workmen periods and hours of work, holidays, pay days and wage rates
- 3) Shift working
- 4) Attendance and late-coming
- 5) Conditions of, procedure in applying for, and the authority which may grant leave and holidays.
- 6) Requirement to enter premises by certain gates, and liability to search
- 7) Closing and reopening of sections of the industrial establishment, temporary stoppage of work and the rights and liabilities of the employer and workmen arising therefrom.
- 8) Termination of employment, and the notice thereof to be given by employer and workmen.
- 9) Suspension or dismissal for misconduct and acts or omissions which constitute misconduct.
- 10) Means of redress for workmen against unfair treatment or wrongful exactions by the employer or his agents or servants.
- 11) Any other matter which may be prescribed.

### **PROCEDURE FOR SUBMISSION OF DRAFT STANDING ORDERS (SECTION.3)**

Within 6 months of the application of the Act to an industrial establishment, the employer shall submit to the Certifying Officer 5 copies of the draft standing orders proposed by him for adoption in his industrial establishment. Such draft standing orders shall cover every matter set out in the Schedule to the Act which may be applicable to the industrial establishment. Where model standing orders have been prescribed, the standing orders shall be, so far as in practicable, in conformity with such model.

**Standing orders to be accompanied by particulars of workmen.** The draft standing

orders submitted under sec.3 shall be accompanied by a statement giving prescribed particulars of the workmen employed in the industrial employment. They shall also give the name of the trade union, if any, to which the workmen belong.

Employers in similar establishments may submit a joint draft. For the convenience of a group of employers in similar industrial establishments, they may submit a joint draft of standing orders under sec.3. But this is subject to the conditions as may be prescribed.

### **Procedure for certification of standing orders**

#### **Certification of standing orders**

**Copy of draft standing orders to be sent to trade union or workmen.** On receipt of the draft standing orders under sec.3, the Certifying Officer shall forward a copy thereof to the trade union, if any, of the workmen. Where there is no trade union, the copy of the draft standing orders shall be sent to the workmen in such manner as may be prescribed. The Certifying Officer will also send along with a copy of the draft a notice in the prescribed form requiring objections, if any, which the workmen may desire to make to the draft standing orders. The objections shall be submitted to him within 15 days from the receipt of the notice.

**Opportunity of hearing to trade union/workmen to be provided.** The Certifying Officer shall give an opportunity to the employer and the trade union or such other representatives of the workmen as may be prescribed of being if any modification or addition to standing orders is to be made. After this formality is over he shall decide whether or not any modification or addition to the draft submitted by the employer is necessary to render the draft standing orders certifiable under this Act, and shall make an order in writing accordingly.

**Certification.** The Certifying Officer shall thereupon certify the draft standing orders with the modifications, if any. He shall then within 7 days send copies of the certified standing orders authenticated in the prescribed manner and of his order to the employer and to the trade union or other prescribed representatives of the workmen.

### **Appeal**

Any employer, workmen, trade union or other prescribed representatives of the workmen aggrieved by the order of the Certifying Officer may, within 30 days from the date on which copies are sent under sec.5 (3), appeal to the appellate authority. The appellate authority shall be order in writing confirm the standing orders either in the form certified by the Certifying Officer or after amending the said standing orders. It may amended the standing orders by making such modifications thereof or additions thereto as it thinks necessary to render the standing orders certifiable under the Act. The decision of the appellate authority shall be final.

The appellate authority shall, within 7 days of its order, send copies thereof to the Certifying Officer, to the employer and to the trade union or other prescribed representatives of the workmen. The order shall be accompanied by the copies of the standing orders as certified by it and authenticated in the prescribed manner.

### **Penalties**

An employer who fails to submit draft standing orders as required by sec.3 or who modifies the standing orders otherwise than in accordance with sec.10, shall be punishable with fine which may extend to Rs.5,000. In the case of a continuing offence, he shall be punishable

with a further fine which may extend to Rs.200 for every day after the first during which the offence continues.

An employer who does any act in contravention of the standing orders finally certified under the Act for his industrial establishment shall be punishable with fine which may extend to Rs.100. in the case of a continuing offence, he shall be punishable with a further fine which may extend to Rs.25 for every day after the first during which the offence continues.

## **EMPLOYMENT EXCHANGES (COMPULSORY NOTIFICATION OF VACANCIES) ACT, 1959**

The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 provides for compulsory notification of vacancies and submission of employment returns (ER-I and ER-II) by the employers to the employment exchanges.

According to the Act, the term 'employment exchange' means "any office or place established and maintained by the Government for the collection and furnishing of information, either by keeping of registers or otherwise, respecting (i) persons who seek to engage employees; (ii) persons who seek employment ;and (iii) vacancies to which persons seeking employment may be appointed".

Thus, the main activities of the employment exchanges are registration, placement of job seekers, career counselling, and vocational guidance and collection of employment market information

The Act applies to all establishments in the public sector and such establishments in the private sector as are engaged in non-agricultural activities and employing 25 or more workers. The employer in every establishment in public sector in any State or area shall furnish such information or return as may be prescribed in relation to vacancies that have occurred or are about to occur in that establishment, to such employment exchanges as may be prescribed.

But, it shall not apply in relation to the vacancies in any employment:-

- In agriculture (including horticulture) in any establishment in private sector other than employment as agricultural or farm machinery operatives
- In domestic service;
- The total duration of which is less than three months;
- To do unskilled office work

Unless the Central Government otherwise directs by notification in the Official Gazette in this behalf, this Act shall not also apply in relation to:- (i) vacancies which are proposed to be filled through promotion or by absorption of surplus staff of any branch or department

of the same establishment or on the result of any examination conducted or interview held by, or on the recommendation of, any independent agency, such as the Union or a State Public Service Commission and the like; and (ii) vacancies in an employment which carries a remuneration of less than sixty rupees in a month.

#### Definitions

- Sec. 2 (2) - Central Employment Exchange” means any Employment Exchange established by the Government of India, Ministry of Labour and Employment.
- 2 (5) (a) - Local Employment Exchange” means— in the whole of India except the Union territory of Chandigarh that Employment Exchange (other than the Central Employment Exchange) notified in the Official Gazette by the State Government or the Administration of the Union territory as having jurisdiction over the area in which the establishments concerned is situated or over specified classes or categories of establishments or vacancies

#### **Sec. 3- Employment Exchanges to which vacancies are to be notified**

- (1) The following vacancies, namely:—
- (a) vacancies in posts of a technical and scientific nature carrying a basic pay of Rs. 1,400 or more per month occurring in establishments in respect of which the Central Government is the appropriate Government under the Act, and
- (b) vacancies which an employer may desire to be circulated to the Employment Exchanges outside the State or Union Territory in which the establishment is situated, shall be notified to 3[such Central Employment Exchange as may be specified by the Central Government, by notification in the Official Gazette, in this behalf].
- (2) Vacancies other than those specified in sub-rule (1) shall be notified to the local Employment Exchange concerned.

#### **Sec. 5-Time limit for the notification of vacancies**

(1) Vacancies required to be notified to the local Employment Exchange, shall be notified at least fifteen days before the date on which applicants will be interviewed or tested where interviews or tests are held, or the date on which

vacancies are intended to be filled, if no interviews or tests are held.

(2) Vacancies required to be notified to the Central Employment Exchange shall be notified, giving at least 60 days, time to the Central Employment Exchange from the date of receipt of the notification to the date of despatch of particulars or applications of the prospective candidates for purpose of appointment or taking interview or test against the vacancies notified.

(3) An employer shall furnish to the concerned Employment Exchange, the results of selection within 15 days from the date of selection.

### **Submission of returns.**

An Employer shall furnish to the Local Employment Exchange [quarterly returns in Form ER1 and biennial returns in Form ER11]. Quarterly returns shall be furnished within thirty days of the due dates, namely, 31st March, 30th June, 30th September and 31st December. Biennial returns shall be furnished within thirty days of the due date as notified in the Official Gazette.

### **The Employment Exchanges (Compulsory Notification of Vacancies) Amendment Bill, 2013**

- The Employment Exchanges (Compulsory Notification of Vacancies) Amendment Bill, 2013 was introduced in the Rajya Sabha on April 22, 2013 by the Minister of Labour and Employment, Mr. Mallikarjun Kharge.
- The Bill amends the Employment Exchanges (Compulsory Notifications of Vacancies) Act, 1959 (EE Act). The EE Act provides for the compulsory notification of vacancies to employment exchanges.
- The Bill changes the title of the Act to Employment Guidance and Promotion Centres (Compulsory Notifications of Vacancies) Act, 1959. It changes the nomenclature of employment exchanges to Employment Guidance and Promotion Centres.

**Definitions:** The Bill changes the definition of an employee to include any person who is employed for a period two hundred and forty days or more in an establishment. It changes the definition of an employer to include any person who employs one or more other persons to do any work for two hundred and forty days or more in an establishment.

The Bill seeks to include individuals seeking vocational careers and self employment within the ambit of the Act, and adds plantations to the list of establishments that are covered under it. The Bill includes employment in unskilled office work within its ambit.

The EE Act excluded employment in the Parliament from its ambit. The current bill also seeks to exclude state legislatures. Additionally, the Bill seeks to exclude vacancies carrying a remuneration of less than sixty rupees per month.

**Notification of vacancies:** The Bill requires all employers in the public sector and those in the private sector employing twenty-five or more persons to notify any vacancies to the prescribed Employment Guidance and Promotion Centres (EGPCs).

**Furnishing information:** Employers are required inform the EGPC within 30 days of filling up notified vacancies. The amendment requires employers in the private sector employing less than twenty-five people to furnish information required by the EGPCs for the collection of employment data.

This information will be accessible to any authorized government official or a person authorized by him (or her) in writing.

**Penalties:** The amendment changes the penalty for non notification of vacancies, or failure to furnish information from five hundred rupees to up to five thousand rupees for the first offence. The fine for every second offence may extend to ten thousand rupees. Every subsequent offence may have a fine of ten thousand rupees or lead to imprisonment which may extend to one month or both. Employers in the private sector employing less than twenty-five people are liable to pay up to five thousand rupees after two defaults, if they fail to furnish information to the EGPC.

The Bill makes the person in charge of the conduct of business of the concerned company liable to be punished in case of an offence. Any other officer who is found responsible for the offence is also liable to be punished.

## **THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013**

### **Objectives of the Act**

The Act is enacted by the Indian Parliament to provide protection against sexual harassment of women at workplace and prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto. Sexual harassment is termed as a violation of the fundamental rights of a woman to equality under Articles 14 and 15 of the Constitution of India and right to life and to live with dignity under Article 21 of the Constitution of India. Sexual harassment is also considered a violation of a right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment.

### **What acts are referred to as sexual harassment?**

- a. Physical contact and advances;
- b. A demand or request for sexual favours;
- c. Making sexually coloured remarks;
- d. Showing pornography;
- e. Other unwelcomed physical, verbal or non-verbal conduct of sexual nature;
- f. Preferential/ detrimental treatment in her employment;
- g. Threat about her employment status;
- h. Creating hostile work environment;
- i. Humiliating treatment affecting her health/safety.

### **When to constitute Internal Complaints Committee (ICC)?**

ICC is mandatory for establishment employing 10 or more employees.

Every employer of workplace, by an order in writing, shall constitute ICC.

**Composition of ICC:**

- 1 Presiding officer – senior level woman employee of workplace
- 2 members – committed to cause of woman/ experience in social work or legal knowledge
- 1 member – from NGO/ other woman's organisation/ familiar with sexual harassment.

**Note: atleast half of the total members shall be women**

**Tenure of ICC:**

Presiding officer and other members shall hold office for a period not exceeding 3 years.

**Where to complain if there is no ICC?**

Where there is no Internal Complaints Committee, in such cases the victim (survivor) can complain directly to the LOCAL Complaints Committee constituted by the appropriate government.

Every District officer shall constitute in the district concerned, a committee to be known as the Local Complaints Committee.

**What is the process of Grievance Redressal?**

Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee or the Local Committee as the case may be, within a period of three months from the date of incident.

Two ways of redressing grievance are:

- a. Informal Process
- b. Formal Process

**What are the basis for determination of compensation?**

- (a) The mental trauma, pain, suffering and emotional distress caused to the aggrieved woman;
- (b) The loss in the career opportunity due to the incident of sexual harassment;
- (c) Medical expenses incurred by the victim for physical or psychiatric treatment;
- (d) The income and financial status of the respondent;
- (e) Feasibility of such payment in lump sum or in instalments.

### **What are the obligations of an employer?**

- a. Provide a safe working environment
- b. Display at the workplace, details of:
  1. the penal consequences of indulging in acts of sexual harassment
  2. composition of the ICC
  3. the grievance redressal mechanism available to aggrieved employees
- c. Organize workshops and awareness programs for sensitizing employees
- d. Organizing orientation programs for members of the ICC
- e. Cooperate and assist during the course of the inquiry
- f. Treat sexual harassment as misconduct under the service rules
- g. Provide assistance to the aggrieved employee, should she choose to file a police complaint;
- h. Initiate action under the IPC or such other applicable law
- i. Ensure timely submission of reports to the District Officer

### **What are the actions taken against respondent for sexual harassment?**

- a. Terminating the respondent from services
- b. Undergoing a counselling session
- c. Carrying out community services
- d. With holding pay rise or increments
- e. Written apology, warning, reprimand or censure
- f. With holding of promotion

### **Annual Report**

The Internal Committee or the Local Committee, as the case may be, shall in each calendar year prepare, an annual report and submit the same to the employer and the District Officer.

The employer shall include in its report the number of cases filed, if any, and their disposal under this Act in the annual report of his organisation or where no such report is required to be prepared, intimate such number of cases, if any, to the District Officer

### **WHAT ARE THE PENALTIES FOR NON – COMPLIANCE?**

- (1) Where the employer fails to
  - (a) constitute an Internal Committee under sub-section (1) of section 4;
  - (b) take action under sections 13, 14 and 22; and

(c) contravenes or attempts to contravene or abets contravention of other provisions of this Act or any rules made thereunder he shall be punishable with fine which may extend to fifty thousand rupees.

(2) If any employer, after having been previously convicted of an offence punishable under this Act subsequently commits and is convicted of the same offence, he shall be liable to

(i) twice the punishment, which might have been imposed on a first conviction, subject to the punishment being maximum provided for the same offence

Provided that in case a higher punishment is prescribed under any other law for the time being in force, for the offence for which the accused is being prosecuted, the court shall take due cognizance of the same while awarding the punishment;

(ii) cancellation of his license or withdrawal, or non-renewal, or approval, or cancellation of the registration as the case maybe by Government or local authority required for carrying on his business or activity.





**SATHYABAMA**

**INSTITUTE OF SCIENCE AND TECHNOLOGY  
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**SCHOOL OF MANAGEMENT STUDIES  
DEPARTMENT OF MANAGEMENT STUDIES**

**UNIT V - ADVANCED LABOUR LAWS**

**SBAA7017**

**UNIT-V**  
**LAW RELATING TO SOCIAL SECURITY**

**THE EMPLOYEE'S STATE INSURANCE ACT, 1948**

**Introduction**

The Act is a piece of social security legislation conceived as a means of extinction of the evils of the society, namely, want, disease, dirt, ignorance and indigence. The Act confers benefit on employees against sickness, maternity and other disabilities.

**Applicability of the Act**

The Act extends to the whole of India including the State of Jammu and Kashmir [Sec. 1(2)]. It was extended to Jammu and Kashmir by the Central Labour Laws (Extension to Jammu and Kashmir) Act, 1970.

**Act to apply to all Factories.**

The Act shall apply, in the first instance, to all factories (including factories belonging to the Government) other than seasonal factories [Sec. 1 (4)]. But Sec. 1 (4) shall not apply to a factory or establishment belonging to or under the control of the Government whose employees are otherwise in receipt of benefits substantially similar or superior benefits provided under this Act.

Wage ceiling for ESI coverage increased from Rs.15,000 to Rs. 21,000 from 29<sup>th</sup> December 2016. It can into force from 1<sup>st</sup> January 2017 onwards.

The cost impact not just be limited to employees, but also extend to contract workers/agency workers and also covers all factories, which employ 10 or more persons irrespective of the fact whether the manufacturing process is being carried out with the aid of the power or without aid of the power.

As per the ESI (Amendment) Act, 2016 covers VRS employees also. Medical benefits to the insured person and his spouse have been extended under circumstances where insured person retires under Voluntary Retirement Schemes or takes premature retirement. In the earlier Act the benefit was applicable only on attaining the age of superannuation.

## Definitions

Benefit period:

Contribution periods and the corresponding benefit periods shall be as under:

Contribution period	Corresponding benefit period
1st April to 30th September	1st January of the year following to 30th June
1st October to 31st March of the year following	1st July to 31st September

A person who becomes an employee within the meaning of the Act for the first time, the contribution period shall commence from the date of such employment in the contribution period current on that day and the corresponding benefit period for him shall commence on the expiry of the period of nine months from the date of such employment.

**Confinement** [Sec.2 (3)].

Confinement means labour resulting in the issue of a living child or labour after 26 weeks of pregnancy resulting in the issue of a child whether alive or dead;

**Contribution** [Sec. 2(4)]

Contribution means the sum of money payable to the Corporation by the principal employer in respect of an employee and includes any amount payable by or on behalf of the employee in accordance with the provisions of this Act;

**Dependant** [Sec. 2 (6-A)].

Means any of the following relatives of a deceased insured person, namely,-

(i) a widow, a legitimate or adopted son who has not attained the age of 25 years, an unmarried legitimate or adopted daughter. (2010 amendment) (ia) a widowed mother;

(ii) if wholly dependent on the earnings of the insured person at the time of his death, a legitimate or adopted son or daughter who has attained the age of 25 years (increased from 18 years to 25 years according to the Amendment Act, 2010) and is infirm;

(iii) if wholly or in part dependent on the earnings of the insured person at the time of his death,-

- (a) a parent other than a widowed mother,
- (b) a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or adopted or illegitimate if married and a minor or if widowed and a minor,
- (c) a minor brother or an unmarried sister or a widowed sister if a minor,
- (d) a widowed daughter-in-law,
- (e) a minor child of a pre-deceased son,
- (f) a minor child of a pre-deceased daughter where no parent of the child is alive, or
- (g) a paternal grand-parent if no parent of the insured person is alive,

**Employment Injury** [Sec. 2(8)]

Employment means a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment, being an insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India.

**Family** [Sec. 2(11)]

means all or any of the following relatives of an insured person, namely,-  
a spouse;

- (ii) a minor legitimate or adopted child dependent upon the insured person;
- (iii) a child who is wholly dependent on the earnings of the insured person and who is-
  - (a) receiving education, till he or she attains the age of twenty-one years,
  - (b) an unmarried daughter;
- (iv) a child who is infirm by reason of any physical or mental abnormality or injury and is wholly dependent on the earnings of the insured person, so long as the infirmity continues;
- (v) Dependant parents, whose income from all sources does not exceed such income as may be prescribed by the Central Government;
- (vi) in case the insured person is unmarried and his or her parents are not alive, a minor brother or sister wholly dependent upon the earnings of the insured person. (2010 amendment)

**Insurable employment** [Sec. 2(13 A)]

Means an employment in a factory or establishment to which this Act applies.

**Insured person** [Sec. 2(14)]

Means a person who is or was an employee in respect of whom contributions are or were payable under this Act and who is, by reason thereof, entitled to any of the benefits provided by this Act.

**Miscarriage** [Sec. 2(14B)]

Means expulsion of the contents of a pregnant uterus at any period prior to or during the 26 weeks of pregnancy but does not include any mis-carriage.

**Permanent partial disablement** [Sec. 2 (15A)]

Permanent partial disablement" means such disablement of a permanent nature, as reduces the earning capacity of an employee in every employment which he was capable of undertaking at the time of the accident resulting in the disablement:

**Inspector Re-designated as Social Security Officers**

As per the ESI Amendment 2010 the designation of Inspector has been re-designated as "Social Security Officer" to enroll them as facilitator of the Scheme rather than to act as mere inspector.

**Administration of the scheme** (Chapter II, Sec. 3 to 25)

The Employee's State Insurance Scheme is being administered by the Employee's State Insurance Corporations (E.S.I. Corpn.) which has been set up by the Central Government under the Act (Sec. 3). A Standing Committee has been constituted form among the members of the E.S.I Corporation to act as an executive body for the administration of the Scheme under the general superintendence and controls of the E.S.I. Corporation (Secs. 8 and 18). A Medical Benefits Council has been set up to advise the E.S.I. Corporation on medical questions (Secs. 10 and 22)

## **Employee's State Insurance Corporation**

ESI Corporation is statutory body with perpetual succession and a common seal [Sec. 3 (2)]

**Constitution of the E.S.I. Corporation (Sec. 4).** The E.S.I. Corporation shall consist of the following members, namely:

- a Chairman, a Vice-Chairman and not more than 5 person
- 1 person each representing each of the States & the Union Territories:
- 10 persons representing employers & employees each
- 2 persons representing the medical profession
- 3 members of Parliament of whom 2 shall be members of the Lok Sabha and 1 shall be a member of the Rajya Sabha
- The director-General of the E.S.I. Corporation, ex-officio.

## **Terms of office of members of the E.S.I. Corporation**

- The term of office of the members of the E.S.I. Corporation, other than the members referred to in clauses (a), (b) and (c) above, and the ex-officio member, shall be **4years** [Sec. 5(1)].

## **Power of the E.S.I. Corporation**

- It may be employ the necessary staff
- It can acquire, hold and sell or otherwise transfer a movable and immovable property [sec. 29(1)]
- Invest any moneys which are not immediately required [sec. 29(2)].
- It may, with the previous sanction of the central government, raise loans and take measures for discharging such loans [sec,29(3)].
- It may constitute for the benefit of its staff provident or other benefit fund [sec. 29(4)].
- It may appoint such persons as inspectors, as it thinks fit, for the purpose of the Act, within such local limits as it may assign to them [sec.45(1)].
- All order and decision of the E.S.I Corporation shall be **authenticated by the signature of the Director-General** of the E.S.I Corporation.

### **Duties of the E.S.I. Corporation**

- Frame a budget showing probable receipts and expenditure.
- It shall maintain correct accounts of its income and expenditure
- It shall submit to the Central Government an annual report
- It shall , at intervals of 5 years, have a valuation of its assets and liabilities
- The annual report, the audited account of the E.S.I. Corporation, together with the auditor's report thereon, and the budget as finally adopted by it, shall be placed before Parliament and published in the Official Gazette (sec. 36)

### **Standing Committee (Sec. 8)**

Subject to the general superintendence and control of the E.S.I. Corporation and to act as its executive body. The standing committee shall consist of;

- A chairman, appointed by the central government;
- 3 members of the E.S.I. Corporation, appointed by the Central Government;
- 3 members of the E.S.I. Corporation representing such 3 state Government thereon as the central government may, by notification in the official Gazette, specify from time to time;

8 members elected by the E.S.I. Corporation as follows;

- 3 members representing employees;
- 3 members representing employees;
- 1 member representing the medical profession; and
- 1 member elected by Parliament.
- The Director-General of the E.S.I. Corporation, ex-officio.

### **Term of office of members of the standing committee**

- The term of office of a member of the standing committee referred to in Clause (d) shall be **2 years** [sec. 9(1)].

### **Power and duties of the standing committee (sec. 18)**

Subject to the general superintendence and control of the E.S.I. Corporation, the standing committee shall administer the affairs of the E.S.I. Corporation.

### **Medical Benefit Council (Sec. 10)**

- To advise the E.S.I. Corporation on the medical side of its operations;
- The director-general, health services, ex-officio, as chairman;
- A deputy director-general, health services,
- The medical commissioner of the E.S.I. Corporation,
- 1 member each representing each of the states (other than Union Territories) in which the Act is in force to be appointed by the state Government concerned;
- 3 members representing employers
- 3 members representing employees
- 3 members, of whom not less than 1 shall be a woman, representing the medical profession, to be appointed by the central government in consultation with the recognized organizations of medical practitioners [sec. 10(1)].

### **Term of office:**

- The term of office of a member of the medical benefit council referred to in clause ©, (f) and (g) shall be **4 years** from the date on which his appointment is notified [sec. 10(2)].

### **powers and duties of the medical benefit council (sec. 22):**

- It shall advise the E.S.I. Corporation and the standing committee on matters relating to the administration of medical benefit and other connected matters [sec. 22(a)].
- It shall have such power and duties of investigation as may be prescribed in relation to complaints against medical practitioners in connection with medical treatment and attendance [sec.22 (b)].
- It shall perform such other duties in connection with medical treatment as may be specified in the regulations [sec. 22©].

### **General Provisions**

- Eligibility for re-appointment or re-election (sec. 6)
- Resignation of membership (sec. 11)
- Cessation of membership (sec. 12)
- Disqualifications (sec. 13)
- Filling of vacancies (sec. 14)

- Fees and allowances (sec. 15)
- Meetings (sec. 20)
- Supersession of the E.S.I. Corporation and standing committee (sec. 21)
- Act of E.S.I. Corporation, etc., not invalid by reason of defect in constitution, etc. (sec. 24)
- Regional board, local committees, regional and local medical benefit councils (sec. 25).

### **ESI Benefits**

The Act provides the following benefits;

- Sickness Benefit
- Maternity Benefit
- Disablement Benefit
- Dependants' Benefit
- Medical Benefit
- Funeral Benefit
- Confinement expenses
- Vocational rehabilitation
- Physical rehabilitation
- Unemployment allowances and skill-upgradation training

All the above benefits, except the medical benefit, are paid in cash. Medical benefit is payable in the form of medical treatment for and attendance on insured persons.

An important point to be noted here is that, whereas one of the qualifying conditions for the sickness, maternity and medical benefits is that necessary contributions must have been paid during the prescribed preceding period. The disablement and dependants' benefits and funeral expenses are available without any such qualifying conditions.

#### **1. Sickness Benefit:**

Sickness benefit is paid to an insured person in the event of his sickness certified by a duly appointed medical practitioner or by any other person possessing such qualifications and experience as specified by the ESI corporation.

**Qualifying conditions**

An insured employee is entitled to sickness benefit in respect of his sickness during any benefit period, if he pays for not less than 78 days.

**Rate of sickness benefit**

Presently, the sickness benefit is payable at 70% of the 'standard benefit rate' corresponding to his daily average wage.

**Duration**

Sickness benefit is payable to an insured person during the period of sickness, but for not more than 91 days in any two consecutive benefit periods.

**Situations under which sickness benefit is not payable**

Sickness benefit is not payable for any day on which the employee works, remains on leave, holiday or strike, for which he receives wages. It is also not payable for the first 2 days of sickness following at an interval of less than 15 days after the sickness for which sickness benefit were last paid.

**Conditions to be observed by recipients of sickness benefit**

- Recipients of sickness benefit are required;
- i. to remain under treatment at a dispensary, clinic or other institution provided under the Act and carry out the instructions given by the medical officer or medical attendant in-charge
- ii. while under treatment not to do anything which might retard or prejudice his chances of recovery
- iii. not to leave, without the permission of the medical officer, medical attendant or other authority specified for the purpose, the area in which medical treatment provided under the Act is being given; and
- iv. to allow himself to be examined by a duly appointed medical officer or other person authorized by the corporation.

## **2. Maternity Benefit**

Maternity benefit is payable to an insured woman in the form of periodical payments in the case of confinement or miscarriage or sickness arising out of pregnancy, confinement, premature birth of child or miscarriage on the certification of an authority specified by the regulations.

### **Qualifying conditions**

A woman employee is entitled to maternity benefit in a benefit period if contributions in respect of her were payable for at least 70 days in the two immediately preceding contribution periods.

### **Rate and Duration of Maternity Benefit**

Period of 12 weeks which has been extended to 26 weeks for 2 surviving children and 12 weeks for more than 2 children has been approved by the Maternity Benefit (Amendment) Bill, 2016 in Parliament.

- 12 weeks Maternity Benefit to a ‘commission mother’ and adopting mother.
- Facilitate ‘work from home’. Mandatory provision of crèche in respect of establishment having 50 or more employees.
- In the event of sickness arising out of pregnancy, confinement, premature birth of a child, miscarriage or medical termination of pregnancy, an insured woman is entitled also to an additional maternity benefit for all the days of sickness on which she does not work for remuneration, subject to the maximum of 1 month. In this case also a proof of sickness is required.
- Confinement-payable for a period of 12 weeks (84 days)
- Miscarriage or Medical Termination of Pregnancy (MTP)-payable for 6 weeks (42 days) from the date following miscarriage.
- Sickness arising out of Pregnancy, Confinement, Premature birth-payable for a period not exceeding one month.
- In the event of the death of the Insured Woman during confinement leaving behind a child, Maternity Benefit is payable to her nominee
- Maternity benefit rate is double the Standard Benefit Rate, or roughly equal to the average daily wage..

### **3. Disablement Benefit:**

Disablement benefit is payable in the form of periodical payments to an insured person suffering from disablement as a result of employment injury sustained as an employee under the Act and for specified occupational diseases

#### **Qualifying conditions**

Insured employees are entitled to disablement benefits from the date of their coming into insurable employment, even if no contribution has been paid.

#### **Rate and duration of disablement benefit**

The rates, duration and conditions relating to payment of disablement benefit, whether for temporary or permanent disablement, are to be such as prescribed by the central government. The existing 'full rate' of disablement benefit is about 75 percent of the wages.

- Disablement benefit for temporary disablement is payable at full rate after a waiting period of 3 days till the disablement continues.
- Disablement benefit for total permanent disablement is payable at about 75 percent of the wages, for life
- Disablement benefit for partial permanent disablement is such percentage of the full rate as is proportionate to the percentage loss of earning capacity.
- Occupational diseases:
- Contracting of occupational diseases as specified in the Third Schedule of the Act is also deemed to be employment injury arising out of and in the course of employment and disablement benefit at the 'full rate' is payable accordingly
- Conditions under which disablement benefit is not payable:
- Disablement benefit is not payable for any day on which the employee works, remains on leave, holiday or strike, for which he receives wages.
- Rehabilitation Allowances
- The ESI Corporation also provides for vocational and physical rehabilitation allowances. Both allowances are payable in the case of physical disablement resulting from employment injury. Vocational rehabilitation allowance is the amount of the fee actually paid or Rs.123 per day, whichever is higher, and is payable till the

completion of training. The physical disablement allowances is payable at the rate of wages of the employee till he is in the artificial limb centre.

- Presumptions as to accidents arising in the course of employment
- Accidents while acting in breach of regulations
- Accidents while travelling in employer's transport
- Accidents while meeting emergency
- Commuting accidents as employment injuries

#### **4. Dependants' Benefits**

- Dependants' benefits is payable in the form of periodical payments of an insured person who dies as a result of employment injury sustained as an employee under the Act.
- The dependants' benefit is payable to
  - i. a widow, a minor legitimate or adopted son, an unmarried legitimate or adopted daughter;
  - ii. a widowed mother, and
  - iii. if wholly dependent on the earnings of the insured person at the time of his death, a legitimate son or daughter who has not attained the age of 25 years.

#### **Qualifying conditions**

Dependants' benefit is payable to the dependants of the deceased employee even when he has paid no contribution during his insurable employment.

#### **Rate and duration of dependants' benefit**

Dependants' benefit is payable at such rates and for such period and subject to such conditions as may be prescribed by the central government. It is paid for life to the widow or till her remarriage, to the dependent children till the age of 25 years and to the dependent parents for life. The benefit is shareable in fixed proportion. The full rate of the benefit is about **75 percent of the wages**.

#### **5. Medical Benefit**

- Medical benefit is payable in the form of medical treatment for and attendance on insured person and extend the medical benefit to the family of an insured person also.

- A person is entitled to the benefit during any period for which contributions are payable in respect of him or in which he is qualified to claim sickness benefit or maternity benefit, or is in receipt of such disablement benefit which does not disentitle him to medical benefit under the regulations.
- Presently, a superannuated person who has been in insurable employment continuously for 5 years before reaching the age of superannuation and a disabled person are entitled to medical care for himself and spouse on payment of Rs.10 as monthly contribution.
- Form of medical benefit
- Medical benefit may be given 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.
- Provision of medical treatment by State Government
- Establishment and maintenance of hospitals and dispensaries by the corporation
- Provision of medical benefit by the corporation in lieu of the State Government
- Establishment of medical college and institutes

### **Funeral Benefit**

- Funeral expenses comprise payment towards the expenditure on the funeral of an insured person who has died. It is payable to the eldest surviving member of the deceased person's family. Where the insured person did not have a family, the benefit is payable to the person who actually incurs the expenditure of the funeral.
- The amount of funeral benefit is not to exceed the amount prescribed by the central government. The maximum amount of funeral expenses is Rs. 5,000 which has been extended to Rs.10,000 as per the ESI (Amendment) Act, 2016. A claim for payment of funeral expenses must be made within 3 months of death of the insured person or within such an extended period as allowed by the Corporation or an officer or authority of the Corporation authorized to do so.

### **Unemployment Allowances (Rajiv Gandhi Shramik Kalyan Yojna)**

- The scheme, which was adopted in 2005, provides for payment of unemployment allowance to those insured employees who cease to continue in the insurable employment on account of closure of establishments, retrenchment or permanent

invalidity due to non-employment injury. The qualifying conditions for eligibility to the benefit are;

- Having remained insured prior to the loss of insurable employment
- Having paid contribution for 3 years preceding the date of loss of employment
- Having been entitled to sickness benefit for the period corresponding to the immediately preceding four contributions periods.
- The daily rate of unemployment allowance is the 'standard benefit rate' corresponding to the average daily wage of the insured employee during 4 contribution periods preceding the date of unemployment. It is payable to a maximum period of 12 months during lifetime. Unemployment allowance can't combine with sickness benefit, medical benefit or disablement benefit for temporary disablement. The scheme also provides for skill-upgradation training for a maximum period of 6 months.

**Purposes for which the E.S.I. Fund may be expended (sec. 28)**

- Payment of benefits and provision of medical treatment and attendance
- Payment of fees and allowances to members of the E.S.I. Corporation, the standing committee and medical benefit council, the regional boards, local committees and regional and local medical benefit councils;
- Payment of salaries, allowances or other benefit fund of offices and other servants of the E.S.I. Corporation.
- Establishment and maintenance of hospitals, dispensaries and other institutions
- Payment of contribution to any state government, local authority or any private body or individual, towards the cost of medical treatment and attendance provided to insured persons and their families ;
- Defraying the cost of auditing the accounts of the E.S.I. Corporation, and of the valuation of its assets and liabilities.
- Defraying the cost (including all expenses) of the employees insurance court set up under the Act
- Payment of any sum under any contract entered into for the purposes of the Act by the E.S.I. Corporation, or the standing committee;
- Payment of sum under any decree, order or award of any court or tribunal against the E.S.I. Corporation or any of its officers or servants.

- Defraying the cost and other charges of instituting or defending any civil or criminal proceedings arising out of any action taken under the Act ;
- Defraying expenditure, within the limits prescribed, on measures for the improvement of the health and welfare of insured persons and for the rehabilitation of insured persons who have been disabled or injured; and
- Such other purposes as may be authorized by the E.S.I. Corporation with the previous approval of the Central Government.

**Administrative expenses (sec. 28-A as inserted by the Amendment Act, 1989)**

- The types of expenses which may be termed as administrative expenses and the percentage of the income of the E.S.I. Corporation which may be spend for such expenses shall be such as may be prescribed by the central Government. The E.S.I. Corporation shall keep its administrative expenses within the limits so prescribed by the central Government.

**Holding of property (sec. 29)**

- The E.S.I. Corporation may, subject to such condition as may be prescribed by the central government, acquire and hold property both movable and immovable, sell or otherwise transfer any movable or immovable property which may have become vested in or have been acquired by it.

**THE EMPLOYEE'S PROVIDENT FUNDS AND MISCELLANEOUS  
PROVISIONS ACT, 1952**

**Introduction**

The schemes of provident funds, as a social security measure, are meant to induce employees to save a portion from their present earning for a rainy day.

**Objects**

To provide for the institution of provident funds and family pension and deposit-linked insurance schemes for employees in factories and other establishments.

**Definitions**

**Contribution**

Means a contribution payable in respect of a member under a Scheme or the contribution payable in respect of an employee to whom the Insurance Scheme applies.

**Superannuation**

Superannuation, in relation to an employee, who is the member of the Pension Scheme means the attainment, by the said employee, of the age of fifty-eight years;

**EMPLOYEES' PROVIDENT FUND SCHEME (1952)**

**Establishment of fund**

As soon as may be after the framing of the employees' provident fund scheme, there shall be established employees' provident fund in accordance with the provisions of the act and the employees' provident fund scheme [sec. 5 (1)]. The fund shall vest in, and be administered by, the central board constituted under sec. 5-A [sec. 5 (1-A)].

**Contributions (sec .6):**

To make contributions of both their and employees' share to the funds and to deduct from the wages of the employees their share.

**Statutory rate of contribution:**

- By an amendment of the act the statutory rate was raised to 8-1/3 per cent January 1, 1963

- It has been increased from 8.33 per cent to 10 per cent with effect from 1<sup>st</sup> march 1997, for both employers and employees.
- In scheduled industries, the rate of contribution will be raised to 12 per cent.

**Calculation:**

- The contribution shall be calculated on the basis of wages and dearness allowance (including the cash value of any food concession) and retaining allowance (if any), actually drawn during the whole month whether paid on daily, weekly, fortnightly or monthly basis.

**EMPLOYEES' PENSION SCHEME AND FUND (1995)**

By the labour provident fund laws (amendment) act, 1972, provision was made for the creation of an employees' family pension fund and family pension scheme. By the employees' provident funds and miscellaneous provisions (amendment) ordinance, 1995, the family pension scheme has been replaced by pension scheme.

**Establishment of employees' pension fund:**

- Superannuation pension, retiring pension or permanent total disablement pension to the employees of any establishment or class of establishments to which this act applies, and
- Widow or widower's pension, children pension or orphan pension payable to the beneficiaries of such employees [sec. 6-A (1)].

**Special grand by central government [sec. 6-b]:**

The central government shall, after due appropriation made by parliament by law in the behalf, pay such further sums as may be determined by it into the pension fund to meet all the expenses towards the cost of any benefits provided by or under the said scheme.

**EMPLOYEES' DEPOSIT-LINKED INSURANCE SCHEME AND FUND (1976)**

**Framing of employees' deposit-linked insurance scheme:**

The employees' deposit-linked insurance scheme for the purpose of providing life insurance benefits to the employees of any establishment or class of establishments to which this act applies [sec. 6-C(1)].

**Establish of employees' deposit-linked insurance fund:**

The employer shall pay into the insurance fund from time to time in respect of his employees an amount not exceeding **1 per cent of the aggregate of the basic wages**, dearness allowance and retaining allowance (if any) as the central government may, by notification in the official gazette, specify [sec. 6-C (2)]. He shall also pay into the insurance fund such further sum of money, not exceeding 1/4<sup>th</sup> of the contribution which he is required to make as the central government may, from time to time, determine.

**ADMINISTRATION OF THE SCHEMES****Central board** (sec 5-a):

The central board shall come into force such date as may as specified in the notification and shall consist of the following persons as members, namely:

- A chairman and a vice-chairman to be appointed by the central government;
- The central provident fund commissioner, ex officio;
- Not more than 15 persons appointed by the central government from amongst its officials;
- Not more than 15 persons representing government of such states as the central government may specify in this behalf, appointed by the government;
- 10 persons representing employers of the establishments to which the employees' provident fund scheme applies, appointed by the central government after consultation with such organizations of employers; and
- 10 persons representing employees in the establishments to which the employees' provident fund scheme applies, appointed by the central government after consultation with such organizations of employees.

**Functions of the central board:**

- The central board shall administer employees' provident fund, pension fund and deposit-linked insurance fund vested in it in such manner as may be specified in the schemes [sec. 5-A (3)].
- It shall perform such other functions as it may be required to perform by or under any provident of the employees' provident fund scheme, the pension scheme and the employees' deposit-linked insurance scheme [sec. 5-A (4)].

- The central board shall maintain proper accounts of its income and expenditure. The accounts shall be maintained in such form and in such manner as the central government may after consultation with the comptroller and auditor-general of India, specify in the employees' provident fund scheme [sec. 5-A (5)].

**Audit of the accounts of the central board:**

The accounts of the central board shall be audited annually by the comptroller and auditor-general of India.

**Board of trustees to be a body corporate [sec. 5-c]:**

Every board of trustees shall be a body corporate under the name specified in the notification constituting it, having perpetual succession and a common seal and shall by the said name sue and be sued.

**STATE BOARD (sec 5-B):**

- The central government is empowered to constitute for any state a board of trustees called the state board in consultation with that state government, by notification in the office gazette [sec 5-B (1)]. The state board shall exercise such powers and perform such duties as the central government may assign to it from time to time [sec. 5-B (2)].
- When a board is constituted for any state, the central board shall transfer to it, as soon as possible, the amount standing to the credit of the provident fund of all the employees in the state, thereafter such amounts shall constitute a separate provident fund for that state which shall be administered by the state board. Until a state board is constituted for any state to function under the control of the central board, the regional committee for the state (constituted by the central government by notification in the official gazette) shall advise the central board on such matters as may be referred to it by the central board. It shall stand dissolved as soon as the state board is constituted (employees' provident funds scheme, 1952).

**State board to be a body corporate:**

Every state board shall be a body corporate under the name specified in the notification constituting it, having perpetual succession and a common seal and shall by the said name sue and be sued (sec 5-C).

**DETERMINATION OF MONEYS DUE FROM EMPLOYERS, THEIR RECOVERY AND EMPLOYEES' PROVIDENT FUNDS APPELLATE TRIBUNAL:**

- Determination of moneys due from employers (sec. 7-A).
- In a case where a dispute arises
- Determine the amount due from any employer
- Powers of the inquiry officer
- Enforcing the attendance of any person for examining him on oath;
- Requiring the discovery and production of documents;
- Receiving evidence on affidavit; and
- Issuing commissions for the examinations of witnesses.
- Employers to be given opportunity of representing his case.
- Review of orders passed under sec. 7-A (sec 7-B)
- Determination of escaped amount (sec 7-C).
- Opportunity to be given to employer to represent his case.

**Employees' provident funds appellate tribunal**

- Constitution of appellate tribunal (sec 7-D)
- Membership
- Qualifications
- Term of office (sec. 7-E)
- Appeals to tribunal (sec 7-l)
- Order of tribunal (sec 7-L)
- Rectification of mistake [sec. 7-L(2)]
- Opportunity of hearing to employer.
- A copy of the order to be sent to parties [sec 7-L (3)].
- Order of tribunal not to be sent to parties [sec 7-L (4)].
- Filling up of vacancies (sec 7-M).
- Finality of orders constituting a tribunal (sec. 7-N)

- Deposit of amount due, on filling appeal (sec 7-O).
- Transfer of certain applications to tribunals (sec 7-O).
- Interest payable by the employer (sec .7-p).

### **Recovery of moneys due from employers**

- Modes of recovery(secs. 8-B to 8-G)
- Issue of certificate to the recovery officer (sec. 8-B).
- Recovery officer to whom certificate is to be forwarded (sec 8-C).
- Validity of certificate and amendment thereof (sec 8-D)
- Stay of proceeding under certificate and amendment or withdrawal thereof (sec 8-E).
- Other modes of recovery (sec. 8-F).
- Recovery from any person of amount due from his to employer who is in arrears [(sec 8 F-(2)].
- Notice [sec 8-F (3)].
- Application to the court for release of money [(sec 8-F(4)].
- Recovery by distraint and sale of movable property. [sec 8-F (5)].

### **Penalties (Sec .14)**

- If any person knowingly makes or causes to be made any false representation with the object of-
- Avoiding any payment to be made by himself under the act, the employees' provident fund scheme, the pension scheme or the employees' deposit-linked insurance scheme ; or
- Enabling any other person to avoid such payment;
- Enhanced punishment in certain cases after previous conviction [sec.14-aa]
- Offences by companies [sec 14-a]
- Cognizance of offences [secs 14-ab and 14-ac]

## **THE WORKMEN'S COMPENSATION ACT, 1923**

### **The Objective:**

- To provide for the payment of compensation to the workmen for injury or accident.

### **Employer's Liability for Compensation:**

- A workman is entitled to get compensation from his employer if he is injured while on duty and during the course of his employment with his employer.
- If a workman dies due to the accident while of duty and during the course of his employment with his employer, his dependents are entitled to receive the amount of compensation from his employer.

**Occupational diseases:** If a workman contracts occupational diseases enlisted in Schedule III of this Act, while on duty and during the course of his employment with his employer, the said disease shall be deemed to be an injury by accident. The workman or if dead, his dependents are entitled to receive the amount of compensation from his employer.

### **Amount of Compensation:**

#### **The new Amendments in the Workmen Compensation Act - 1923.**

- The Lok Sabha on Tuesday passed The Employees Compensation (Amendment) Bill, 2016, as Union Labour Minister Bandaru Dattatreya said a large number of workforce in the organised sector will benefit.  
(1) THE WORKMEN'S COMPENSATION (AMENDMENT) ACT, 2009 is now renamed as THE EMPLOYEE'S COMPENSATION (AMENDMENT) ACT, 2009 and wherever "workman" or "workmen" is mentioned in the entire Act the same needs to be read as "Employee"
- The compensation payable on death from the injury, is (i) minimum of Rs.80000 is increased to Rs.120000 or (ii) 50% of the monthly wages of deceased multiplied by the relevant factor.
- The compensation payable on Permanent Total Disablement from the injury, is (i) minimum of Rs.90000 is increased to Rs.140000 or (ii) 60% of the monthly wages of deceased multiplied by the relevant factor.
- Definition of wages remains unaltered.

- For the purpose of claims settlement actual monthly wages have to be calculated without ceiling of Rs.4000/- which will lead to multifold increase in claim outgo. The maximum amount of claim compensation payable was Rs. 4.56 lakh in the case of death and Rs. 5.48 lakh in the case of permanent total disablement. \*(Refer to table and calculation below).
- With the ceiling of Rs.4000/- being removed, the claims outgo will increase.  
Compensation in case of Permanent Partial Disability (PPD)
- A percentage of the compensation payable under PTD. This percentage needs to be estimated based on the “extent of the reduction in earning capacity” of the worker.  
Compensation in case of Temporary Disability (Total or Partial)
- 25% of the Monthly Wage of the Worker payable every half month
- The compensation is payable if the worker is disabled for more than three consecutive days
- The maximum tenure for the compensation is five years

#### **Schedule I**

- List of injuries deemed to result in Permanent Total disablement.

#### **Schedule II**

- List of persons who subject to the provisions of section 2(1) (h), are included in the definition of 'workman '.

#### **Schedule III**

- List of occupational diseases.

#### **Schedule IV**

- Amount of compensation payable in certain cases.

#### **Offence and penalties**

The **Employees’ Compensation (Amendment) Act, 2017**, introduced in the Lok Sabha in August, 2016 received the President’s approval last week. The amendment is to the Employees’ Compensation Act, 1923.

The details of the amended bill are as follows:

1. It is the employer's responsibility and duty to inform an employee of his rights. According to the Act, "Every employer shall immediately at the time of employment of an employee, inform the employee of his rights to compensation under this Act, in writing as well as through electronic means, in English or Hindi or in the official language of the area of employment, as may be understood by the employee.
2. Failure to do so will make the employer liable to penalty. The Bill penalises an employer if he fails to inform his employee of his right to compensation. As per the amendment, the penalty amount has been increased from a maximum of Rs. 5000 to a definite penalty of Rs. 50,000 which may be further extended to Rs. 1 lakh.
3. As per the amended act, appeals can be made against orders related to compensation, distribution of compensation, award of penalty or interest, only if the amount in dispute is at least Rs 10,000. The same has been revised from the earlier minimum amount of Rs 300.
4. Any dispute related to an employee's compensation will be heard by a commissioner who will have the powers of a civil court. Appeals from the commissioner's order, related to a substantial question of law, will lie before the High Court.
- 5. In a further amendment, the Act has scrapped the rule as per which the employer could temporarily withhold any payments towards the employee in case the former had appealed against a commissioner's order.

## **THE MATERNITY BENEFIT ACT, 1961**

### **Objectives:**

The act was passed to regulate the employment of women in certain establishments for certain periods before and after child-birth and to provide for maternity benefit and certain other benefits (preamble to the act).

### **Scope and coverage of the act:**

The act applies, in the first instance, -

- To every establishment being a factory, mine or plantation including any such establishment belonging to government and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances;
- To every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a state, in which 10 or more persons are employed or were employed, on any day of the preceding 12 month [sec. 2 (11)].

### **Definitions**

#### **Miscarriage [sec. 3(j)]:**

“it means expulsion of the contents of a pregnant uterus at any period prior to or during the 26<sup>th</sup> week of pregnancy but does not include any miscarriage, the causing of which is punishable under the Indian penal code, 1860.

### **Prohibition of Employment**

#### **CONDITIONS FOR PAYMENT OF MATERNITY BENEFITS:**

- **Work for not less than 80 days to have been put in:** the woman must have actually worked in an establishment of the employer from whom she claims maternity benefits for a period of not less than 80 days in the 12 months immediately preceding the dates of her expected delivery [sec .5(2)]. The qualifying period of 80 days referred to in sec .5 (2) shall not apply to a women who has immigrated into the state of Assam and was pregnant at the time of immigration.

- **Maternity benefits for a maximum period of 12 weeks extended to 26 weeks as per ESI (Amendment) Act, 2016:** the maximum period for which bit more than 6 weeks shall precede the date for expected delivery [sec 5.(3)].
- **Death:** if the woman dies during this period of 12 weeks the maternity benefit shall be payable only for the days up to and including the day death [proviso 1 to sec. 5(3)].

**MODE OF PAYMENT:**

Amount of maternity benefits for the period preceding the date of the expected delivery of the woman shall be paid in advance by the employer to her on production of such proof as may be prescribed that the woman is pregnant. The amount due for the subsequent period shall be paid by the employer to the woman **within 48 hours of production of proof** that the woman has delivered a child [sec. 6 (5)].

**Payment of maternity benefit in case of death of a woman (sec 7):**

If a woman entitled to maternity benefit or any other amount dies before receiving the maternity benefits or the amount, or where the employer is liable for maternity under second proviso to sec 5(3), the given under sec. 6. In case there is no such nominee, the maternity benefit will be paid to her legal representative.

**Forfeiture of maternity benefits (sec 18):**

If a woman works in any establishment after she has been permitted by her employer to absent herself under the provisions of sec. 6 for any period during such authorized absence, she shall forfeit her claim to the maternity benefits for such period.

**Dismissal during absence of pregnancy (sec 12):**

When a women absents herself from work in accordance with the provisions of the act, it shall be unlawful for her employer to discharge or dismiss her during or an accounts of such absence.

**Leave and Nursing Breaks**

- Leaves for miscarriage (sec 9) in case of miscarriage, a woman shall, on production of the prescribed proof, be entitled to leave with the wages at the rate of maternity benefit, for a period of 6 weeks immediately following the day of her miscarriage.

**Other leave [sec. 10]:**

A woman suffering from illness arising out of pregnancy, delivery, premature birth of a child or miscarriage shall, on production of the production of the prescribed proof, be entitled to leave with wages at the rate of maternity benefits for a maximum period of 1 month. The leave is in addition to the period of absence allowed to her under sec. 6 or under sec.9.

**Nursing breaks [sec. 11]:**

Where a woman, after having delivery a child, returns of the duty after such delivery, she shall be allowed in the course of her daily work 2 breaks of the prescribed duration for nursing the child until the child attains the age of 15 months. These nursing breaks shall be in addition to the interval for rest allowed to her.

**PATERNITY LEAVE AND ITS APPLICABILITY**

Though it's the mother who actually delivers the child, father plays an equally important role. A father is expected to be emotionally and physically available for both, mother and child, before and after the delivery. In fact, legally accepting and providing two months of paternal leave has resulted in a reduced divorce rate in Sweden.

In India, the Central Government in 1999 by notification under Central Civil Services (Leave) Rule 551 (A) made provisions for paternity leave for a male Central Government employee (including an apprentice and probationer) with less than two surviving children for a period of 15 days to take care of his wife and new born child. He can avail this leave 15 days before or within 6 months from the date of delivery of child. If such leave is not availed within the period, it shall be treated as lapsed. For paternity leave he shall be paid leave salary equal to the pay last drawn immediately before proceeding on leave. Also, the same rule applies when a child is adopted.

**CRECHE FACILITY**

Crèche facility is basically day care services for the children. In the 2017 amendment of the government, under section 11A of the act it was inserted that there should be crèche facility in any establishment having more than fifty employees and the employee shall be allowed to visit the crèche four times a day.

Crèche service is to be within 500 meters from the entry of establishment and shall provide with common facilities’

### **Work from Home option**

- The Amendment Act has also introduced an enabling provision relating to “work from home” for women, which may be exercised after the expiry of the 26 weeks’ leave period.
- Depending upon the nature of work, women employees may be able to avail this benefit on terms that are mutually agreed with the employer.

### **PENALTIES AND OFFENCES**

**Penalty for contravention of the act by employer (sec .21)** If any employer fails to pay an amount of maternity benefits to a women entitled under act or discharge or dismisses such woman during or on account of her absence from work in accordance with the provisions of the act, he shall be punishable with imprisonment which shall not be less than 3 months but which may extend to 1 year and with fine which shall not be less than Rs. 2,000 but which may extend to Rs. 5,000. However, the court may, for sufficient reasons to be recorded in writing, impose a sentence in imprisonment for a lesser term or fine only in lieu of imprisonment [sec 21 (1)].