KARNATAKA STATE OPEN UNIVERSITY

Mukthagangotri Mysuru-570006

MBA

(Fourth Semester)

Elective C: People Management

LABOUR LEGISLATION

Department of Studies and Research in Management

Course 24C

Module 1 to 5

KARNATAKA STATE OPEN UNIVERSITY

MUKTHAGANGOTHRI, MYSURU- 570 006.

DEPARTMENT OF STUDIESAND RESEARCH IN MANAGEMENT

M.B.A IV Semester

ELECTIVE - C : PEOPLE MANAGEMENT

COURSE - 24C

LABOUR LEGISLATION

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Dear Learner,

It gives me immense pleasure to welcome you to the Department of management to study MBA Second Year (Fourth Semester) in our esteemed university.

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This study material explains even the most complicated topics in a very simple and user-friendly manner, it starts with the Objectives, explanation of concepts followed by Case study, Notes, Summary, Key Words, Self Assessment Questions and References. It provides more value added information on contemporary issues.

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In addition to the study material provided to you, I advise you to go through the books which are suggested in the references of every unit. Further, I also suggest you to make yourself acquainted by reading newspapers and journals.

Apparently, the curriculum designed by the board of studies helps you to prepare for UGC NET, various state commission examinations and UPSC examinations. With these words I welcome you for the wonderful learning experience of business education.

I wish all the best and good luck in your education and successful management career.

Dr. C. Mahadevamurthy
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INTRODUCTION

Labour legislation has been instrumental in shaping the course with various relations in India. Establishment of social justice has been the principle which has guided the origin and development of labour legislation in India. The maintenance of industrial peace designed to advance economic growth ought to be the objective of labour legislation

Labour legislation in India is naturally interwoven with the history of British colonialism. Labour legislation is widely used both to regulate individual employment relationships and to establish the framework within which workers and employers can determine their own relations on a collective basis, for example through collective bargaining between trade unions and employers or employers' organizations or through mechanisms of worker participation in the enterprise.

Labour legislation that is adapted to the economic and social challenges of the modern world of work fulfils three crucial roles: It establishes a legal system that facilitates productive individual and collective employment relationships, and therefore a productive economy; By providing a framework within which employers, workers and their representatives can interact with regard to work-related issues, it serves as an important vehicle for achieving harmonious industrial relations based on workplace democracy; It provides a clear and constant reminder and guarantee of fundamental principles and rights at work which have received broad social acceptance and establishes the processes through which these principles and rights can be implemented and enforced

LABOUR LEGISLATION

Module 1:- First module Comprises of four units (1 to 4). First unit deals with meaning and definition, sources of Labour Law, History of Labour Legislation in India and objectives of Labour Legislation. Second unit deals with classification of Labour Laws. Third unit consists of principal of Labor Legislation and Provision of Indian Constitution and implementation of Fundamental rights and fourth units deals with overview of Labour Legislation in India.

Module 2: - This module consists of four units (5 to 8). Fifth unit deals with Labour Policy and Administration. Sixth unit consists of Labour Law Administration Machinery- Central and State. Seventh unit speaks ILO, Role of ILO, ILO Standards and eight unit deals International Labour Organization and Indian Labour Legislation

Module 3: - This module comprises of 4 units (9 to 12). Ninth unit deals Factories Act 1948, its Approval, Licensing and Registration. Tenth unit consists of Welfare measures and other measures. Eleventh unit speaks about Minimum Wages Act 1948, Payment of Wages Act, 1936, its Applications and coverage. Last unit deals Payment of Bonus Act 1965.

Module 4: - This module consists of four units (13 to 16). Thirteenth unit deals with Industrial Disputes Act 1947, various methods of Industrial disputes. Fourteenth unit speaks about Various Authorities under the Act. Fifteenth units speak about functions of trade union. Sixteenth unit deals Trade Union Act 1926, its Recognition, Cancellation, Amalgamation and duties and liabilities imposed on Trade union.

Module 5: - This module comprises of 4 units (17 to 20). Seventeenth unit deals industrial employment Act, Mines Act and workmen compensation Act. Eighteenth units deal with Employees state Insurance Act, Child Labor Act and Maternity benefits Act. Nineteenth unit Equal Remuneration Act and Contract of Labour Act. Last unit deals with critical evaluation of working of labour legislation in India

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MODULE - 1
INTRODUCTION TO LABOUR LEGISLATION

UNIT - 1 : AN OVERVIEW

Structure:

1.0 OBJECTIVES

After Studing this unit,you should be able to;

- Describe the genesis of labour legislation in India.
- Define the Labour Law
- Explain the objectives and classification of labour laws
- Analyse the guiding principles of Labour Laws
- Discuss the Provisions of Constitution of India in relation to protection of labour.
- Trace the history of labour legislation.

1.1 INTRODUCTION

The term 'labour' means productive work more particularly physical work that is done for wages. **'**Labour law' which is also known as 'employment law' consists of the set of laws, rulings of the administration and precedents that deals with the legal rights of working people and their organizations, and restrictions on them,. In particular, it deals with the relationship between employers and employees & trade unions. It sets out the rights and obligations of the employees, Trade unions and employers in the workplace.

In General, Labour law covers all the following aspects:

- Employment standards, which includes minimum wage, working hours, general holidays, annual leave, unfair dismissals, layoff procedures.
- Health and safety in Workplace
- Industrial relations dealing with Trade unions, labour-management
- Relations, collective bargaining and unfair labour practices;

We can divide labour law into two broad categories. The First one, collective labour **law** relates to the relationship between employer and employee & union, i.e. tripartite relationship. Secondly, individual labour law which relates to employees' rights at work and their right through the contract for work.

1.1.1 Importance of labour legislation

The Year 1931 has an important significance in the history of Labour legislation. In that year itself, the Royal Commission on labour felt the Importance of labour legislation and further a resolution was passed by the Indian national congress in its Karachi Session, on

fundamental rights and economic programme. We can easily visualize the importance of labour welfare practices in India on seeing the number of labour welfare legislations enacted to protect the working and living conditions of the labourers. The labour practices, both statutory and non statutory make the industrial employment more attractive. It is believed and accepted universally that good provisions on housing, wages, recreations, canteen, shelter, rest rooms etc. would create a great satisfaction within the labour force, thereby reducing the extent of labour turn over and absenteeism and increase the labour efficiency and productivity. We can strongly say that labour welfare legislations are essential management process which cannot be neglected. Under these circumstances, it is essential for everyone to know about the origin of labour legislation, principle, scope, its classifications, Provision of Indian Constitution in relation to protection of labour (Fundamental Rights and directive principles of state policy).

1.1.2 Need for the Labour Legislation

In India, labour legislation is treated as an arm of the State for the regulating the working and living conditions of workers. As an Organized industry in a well planned economy depends upon the co-operation and inter-dependence for attaining the common purpose of greater, better and cheaper production in order to bring out the same, which is not happening voluntarily, the need for State intervention arose.

Smriti Chand Law in *her "Necessity and Importance of Labour Law" lists*as follows:

(1) Improves industrial relation i.e. Employee-employer relations and minimizes industrial disputes.

(2) Prospects workers form exploitation by the employers or management

(3) Helps workers in getting fair wages

(4) Minimizes labour unrest

(5) Reduces conflicts and strikes etc.

(6) Ensures job security for workers

(7) Promotes welcome environment conditions in the industrial system

(8) Fixes rest pauses and work hours etc.

(9) Provides compensation to workers, who are victims of accidents.

Therefore, we can define that the object of Labour Legislation, is twofold. They are

- By providing the basic amenities of life to the industrial labour thereby improving their working conditions and by that process.

- Bringing industrial peace which could in its turn increase productivity resulting in prosperity the country, which in its turn, helps to improve the conditions of labour.

1.2 MEANING AND DEFINITIONS OF LABOUR LEGISLATION

We have discussed in the previous paragraphs, the need and the importance of labour legislation and their objects. Now let us see some of the interpretations of the concept of Labour Legislation,

'Labour law' mediates the relationship between workers (employees), employers, trade unions and the government. Collective labour law relates to the tripartite relationship between employee, employer and union. Individual labour law concerns employees' rights at work and through the contract for work. Employment standards are social norms for the minimum socially acceptable conditions under which employees or contractors are allowed to work. Government agencies enforce labour law (legislative, regulatory, or judicial).

According to Business Dictionary, the term 'labor laws' means body of rulings pertaining to working people and their organizations, including trade unions and employee unions, enforced by government agencies. There are two categories of labour laws; collective and individual. Collective labour law involves relationships between the union, the employer and the employee. Individual labour law involves concerns for employees' rights in the workplace.

According to *Rajkumar S. Adukia*, Labour Law′ is the body of law that governs the employer-employee relationship including individual employment contracts, the application of tort and contract doctrines, and a large group of statutory regulation on issues such as the right to organize and negotiate collective bargaining agreements, protection from discrimination, wages and hours, and health and safety.

According to *Mr. V.V. Giri* industrial legislation is "a provision for equitable distribution of profits and benefits emerging from industry, between industrialists and workers and affording protection to the workers against harmful effects to their health safety and morality."

The term "labour legislation" or "labour laws" is used to define that body of laws dealing with wages, working conditions, industrial relations and labour welfare. To provide social, economic security to the workers. Any state which has assessed the importance of labour legislation would intervene in the conduct of industry and impose statutory obligations mostly on the employers and also to the workers to a small extent, so as to maintain industrial peace and good relations between management and workers and to secure to the better working conditions a minimum wage, compensation in case of accidents, medical facilities provision

for future etc. These acts aimed at reduction of production losses due to industrial disputes and to ensure timely payment wages and other minimum amenities to workers.

These labour legislations have rich sources in Indian Industrial jurisprudence. They have been sketched out as below.

1.3 SOURCES OF LABOUR LAWS

Labour law arose due to the demands of workers in organised industry where a large number of workers including women and children for better working conditions and who are often unable to protect themselves and also for their right to organise. There were simultaneous demands of employers to curtail the powers of workers and to cut down the cost of labour low. Therefore the state of labour law is both the product of, and a component of, struggles between different interests in society. International Labour Organisation (ILO) was one of the first organizations to deal with labour issues.

Industrial jurisprudence in India is based on three sources the Constitution, the Labour legislations and judge-made law or judicial decisions. While the views of the important national leaders during the days of national freedom struggle have contributed partly for origin, inspiration and strength of labour laws of Independent India, the debates of Constituent Assembly and the provisions of the Constitution and International Conventions and Recommendations have also done their part. The relevance of the dignity of human labour and the need for protecting and safeguarding the interest of labour as human beings has been enshrined in Chapter-III (Articles 16, 19, 23 & 24) and Chapter IV (Articles 39, 41, 42, 43, 43A & 54) of the Constitution of India keeping in line with Fundamental Rights and Directive Principles of State Policy. Various judicial decisions are the richest source of industrial jurisprudence.

To sum up, the Factors responsible for shaping the Indian Labour legislation include:

a. The prevailing social and economic conditions

b. The views expressed by important nationalist leaders during the days of National freedom struggle

c. The provisions of the Constitution

d. The International Conventions and Recommendations.

e. Important human rights and the conventions and standards that have emerged from the United Nations.

f. The deliberations of the various Sessions of the Indian Labour Conference and the International Labour Conference.

g. Recommendations of the various National Committees and Commissions such as First National Commission on Labour (1969) under the Chairmanship of Justice Gajendragadkar, National Commission on Rural Labour (1991), Second National Commission on Labour (2002) under the Chairmanship of Shri Ravindra Varma etc.

h. Judicial pronouncements on labour related matters specifically pertaining to minimum wages bonded labour, child labour, contract labour etc.

Labour legislation, which is necessary for maintaining peaceful environment, has developed in India with the growth of the industry. Its history is explained in detailed as below.

1.4 HISTORY OF LABOUR LEGISLATIONS IN INDIA

In the eighteenth century, India was not only a great agricultural country but also a great manufacturing country too. At that time Indian textile goods offered stiff competition to British textiles in the export market. As a policy to make India subservient to the industries of Great Britain and to make Indian people grow only raw materials so as to encourage the rising manufacturers of England, the British Government in India discouraged the Indian manufacturers.

In the beginning, British Industrialists found it difficult to get enough regular Indian workers for their establishments and hence laws for indenturing workers became necessary. Further in order to safeguard their economic interests against the growing competition of India's industries, at their instance the British Government of India intervened in the field of factory legislation. Hence to make India labour costlier it appointed the Bombay Factory Commission in 1875 to examine the need for factory legislation in India.

In India, the plantation industry in Assam was the first to come under legislative control. The workers were employed through professional recruiters. They were not allowed by the planters to leave the tea gardens. The Plantation workers faced many hardships. Though a number of Acts were passed from 1863 onwards stating to regulate their recruitments and their working conditions, they protected the interests of the employers more than safeguarding the interests of the workers. Even the regulations under the factories and mines legislation were eyewash. The Workmen's Breach of Contract Act, 1859, and the Employers' and Workmen's (Disputes) Act, 1860, provided for penalties for workmen for interference with employers' right to carry on trade and business and for breach of contract. Hence, at that time, the British Government in India was having the policy influenced by the capitalist theory

of laissez faire– free economy and non-intervention by the government in labour and industrial matters.

The British oppression in India continued for a considerable time leading to the growth of Indian nationalism and to a vigorous renaissance. Nationalism has an obvious economic aspect within our country which was reflected in the urge for economic reforms and for industrialization. Before the World War I (1914-1918), there was no labour welfare legislation and later The Factories Act, 1934 and the Mines Act, 1923, The Workmen's Compensation Act 1923 were enacted to protect the interest of the workers. By these Acts, we got the first stipulation of eight hours of work and employment of women in night restrictions, child labour abolition, and the overtime wages for work beyond eight hours.

In the twentieth century the national movement took a new turn and a non –co-operation movement was started, which urged the people to use goods made in India and to boycott foreign goods. The non-cooperation movement synchronized with periods of economic crisis gave importance to industrialization after thirties, by the national movement accepted the planning suited to conditions of our country as the economic ideology. Thus, planned industrialization became our main goal. With the advent of popular ministries which were sympathetic to labour and considerable progress, in the provinces (states) and at centre since 1937 under the Government of India Act, 1935; various laws were enacted for the labour welfare and for maintenance of industrial peace.In 1942, the Indian Labour Conference, a tripartite consultative body, was established to co-ordinate labour policy, to consider proposals for labour legislation and to ensure uniformity in labour legislation. The years between 1942 and 1947 saw a remarkable extension in the scope and content of protective labour legislation.

The earliest Indian legislation to regulate the relationship between the employer and his workmen was the Trade Disputes Act, 1929. Though Provisions were made in this Act for restraining the rights of strike and lock out, no machinery was provided to take care of disputes. in a tripartite conference held in December 1947 it was unanimously agreed that labour would be given a fair wage and fair working conditions and in return capital would receive the fullest co-operation of labour for uninterrupted production and higher productivity as part of the strategy for national economic development and that all concerned would observe a truce period of three years free from strikes and lockouts. Ultimately the Industrial Disputes Act (the Act) brought into force on 01.04.1947 repealing the Trade Disputes Act 1929 has since remained on statute book.

After Independence in August 1947 there was complete change in the very approach to labour legislation, and particularly after the Constitution of India came into effect on January 26, 1950. The basic philosophy of labour legislation itself underwent a change and

the concepts of social justice and welfare state influenced it in Independent India. Based on the recommendations of Rege Committee a comprehensive Factories Act 1948 was enacted by the Government of India.

In accordance with declaration in the Constitution of India in its preamble to secure for its citizens justice – social, economical and political – the Parliament as well as the different state legislatures passed a number of acts relating to labor welfare and the settlement of industrial disputes. In the central sphere, various acts were enacted for different categories of workers – including motor transport, mines and plantations.

The following Acts including Various social security laws were enacted to improve the conditions of labour and to regulate the relation between employer and employee keeping in view the development of industry and national economy:-

- The Apprentices Act, 1961
- The Bonded Labour System (Abolition) Act, 1976
- The Child Labour (Prohibition & Regulation) Act, 1986
- The Children (Pledging of Labour) Act, 1933
- The Contract Labour (Regulation & Abolition) Act, 1970
- The Employees Provident Funds and Misc. Provisions Act, 1952
- The Employees State Insurance Act, 1948
- The Employers Liability Act, 1938
- The Employment Exchange (Compulsory Notification of Vacancies) Act, 1959
- The Equal Remuneration Act, 1976
- The Factories Act, 1948
- The Industrial Disputes Act,1947
- The Industrial Employment (Standing Orders) Act, 1946
- The Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
- The Labour Laws (Exemption from Furnishing Returns & Maintaining Registers by Certain Establishments) Act, 1988
- The Maternity Benefit Act, 1961
- The Minimum Wages Act, 1948

- The Payment of Bonus Act, 1965
- The Mines Act, 1952
- The Payment of Gratuity Act, 1972
- The Payment of Wages Act, 1936
- The Sales Promotion Employees (Conditions of Service) Act, 1976
- The Shops and Establishments Act, 1953
- The Trade Union Act, 1926
- The Workmen's Compensation Act, 1923
- The Weekly Holidays Act, 1942

India has been a member of the ILO since 1919; ILSs (International Labour Standards) have an enormous impact on Indian labour law since then. Till date, India has ratified 39 International Labour Organisation (ILO) conventions of which 37 are in force. Of the ILO's eight fundamental conventions, India has ratified four - Forced Labour 1930, Abolition of Forced Labour 1957, Equal Remuneration 1951, and Discrimination (employment and occupation) 1958. The growth of industrial jurisprudence can significantly be noticed not only from increase in labour and industrial legislation but also from a large number of industrial law matters decided by Supreme Court and High Courts. It affects directly a considerable population of our country consisting of industrialists, workmen and their families.

All these legislative and government intervention was designed essentially to provide for minimum protective legislation against abuses of the industrial environment and exploitation, and to ensure that labour management frictions did not disturb the peace and security of the state.

Labour legislation in India covers all aspects of labour - industrial employment, non-employment, wages, working conditions, industrial relations, social security and welfare of industrial employees, through a body of legal enactments and judicially acknowledged principles. It is more than labour legislation in any other country. To outline, labour legislation is a result of the concept of social justice which aims at protecting those who cannot protect themselves.

1.5 OBJECTIVES OF LABOUR LEGISLATION

The Objectives of labour legislation in India is listed below.

1. To prevent against arbitrary and unilateral actions of employers. And safeguard the interest and well being of the working class.
2. To regulate and improve their working conditions by stipulating measures to protect and promote their health, safety and welfare.
3. To provide for fixation, payment and periodic revision of need-based minimum wages to employees in the 'sweated' industries and unorganized sector.iv)To ensure that the employees are paid their wages on fixed dates, at least once a month and that no arbitrary and unauthorized deductions are made from their wages.
4. To ensure that service conditions made available to the workers by employers and also to specify the mutual rights and obligations of employers and workmen.
5. To grant freedom of forming association and trade unions to the working class and to have the right to organize and to promote their welfare through collective bargaining.
6. To promote industrial peace by providing for an elaborate machinery for the prevention and settlement of industrial disputes.
7. To provide social security benefits to employees in the event of the loss of the earnings of the worker due to sickness, maternity, disablement and death.
8. To make statutory provision for the regular training of a certain number of apprentices in different trades.
9. To make it compulsory for the employers to notify vacancies to the employment exchange so as to facilitate recruitment market.
10. To provide for welfare facilities and social amenities to workers and their families outside their workplace by rising separate welfare funds.
11. To regulate the employment and service conditions of contract labour and provide for the abolition of contract labour.
12. To regulate and control the working of those industrial units which are likely to become sick and to provide for the takeover of the management of sick or closed units with a view to making them economically viable.
13. To make it obligatory for industries to make effective measures and install and maintain appropriate equipment for the prevention and control of pollution of air and water and protection of the environment.

Modern labour legislation, which aims at protecting workers against exploitation by employers has rendered the old doctrine of *laissez faire* obsolete The theory of 'hire and fire' as well as the theory of 'supply and demand' which found free scope under the old doctrine of *laissez faire* no longer holds good. Indian labour laws provides basic rights and facilities for human existence and human dignity – the right to combine, the right to expression, the right to a minimum standard of living, health and safety, and so on.

1.6 PURPOSE OF LABOUR LEGISLATION

Labour legislation that is adapted to the economic and social challenges of the modern world of work fulfils three crucial roles:

- It establishes a legal system that facilitates productive individual and collective employment relationships, and therefore a productive economy;
- By providing a framework within which employers, workers and their representatives can interact with regard to work-related issues, it serves as an important vehicle for achieving harmonious industrial relations based on workplace democracy;
- It provides a clear and constant reminder and guarantee of fundamental principles and rights at work which have received broad social acceptance and establishes the processes through which these principles and rights can be implemented and enforced. But experience shows that labour legislation can only fulfills these functions effectively if it is responsive to the conditions on the labour market and the needs of the parties involved[7].

1.7 CASE STUDY

Some of the notable interpretations given by the Hon'ble High Courts and Supreme Court for the labour legislations, thereby safeguarding the interest of labour class are as follows:

(a) In *Glaxo Laboraties Ltd. vs. Pr esiding officer, Labour Court, Meerut 1983 (Lab I.C. 1909 S.C.)* It was held that Industrial Employment (standing orders) Act, 1946 compel the employers to prescribe the minimum conditions of service, which is a great more from status to contract, the contract not being not left to be negotiated but status imposed.

(b) The observations of Supreme Court in the case of workmen of *Dinakuchi Tea Estate vs. Dimakuchi Yea Estate Management (AIR 1958 SC35)* are as follows:

The main objective of the Industrial Disputes Act, 1947 is:

(1) The promotion of measures for securing amity and good relations between the employer and the workmen

(2) Investigation and settlement of industrial disputes

(3) The prevention of illegal strikes and lockouts.

(4) Relief to workmen in the matter of lay off, retrenchment and closure.

(5) Collective bargaining.

From the above discussions it is clear the object of the act is to promote industrial welfare and industrial peace.'

c) The constitutional validity of Sec.3 of the Minimum Wages Act was challenged in *Bijoy Cotton mills v. State of Ajmer*[8] The Supreme Court held that the restrictions imposed upon the freedom of contract by the fixation of minimum rates of wages, though they interfere to some extent with freedom of trade or business guarantee under Article 19(1)(g) of the Constitution, are not unreasonable and being imposed and in the interest of general public with a view to carrying out one of the Directive Principles of State Policy as embodied in Article 43 of the Constitution, are protected by the terms of Clause (6) of Article 9.

d) In *Delhi Cloth and General Mills v R.P.F. Commissioner*[9] the constitutional validity of the Employees Provident Funds Act, 1952 was challenged on the ground of discrimination and excessive delegation. It was held that the law lays down a rule which is applicable to all factories or establishments similarly placed. It makes a reasonable classification, without making any discrimination between factories, placed in the same class or group.

e) In *Jalan Trading Co.(Pt.) Ltd v Mill Mazdhor Sabha*[10] Shah.J observed that 'object of the Payment of Bonus Act,1965 being to maintain peace, and harmony between labour and capital by allowing the employees to share the prosperity of the establishment and prescribing the maximum and minimum rates of bonus together with the scheme of 'set-off' and 'set on ' not only secures the right of labour to share in the profits but also ensures a reasonable degree of uniformity"

f) In *Barauni refinery Pragati Sheel Parishad v. Indian Oil Corporation Ltd.*[11] it was held that the object of the Industrial Employment (standing orders) Act, 1946 is to have uniform standing orders in respect of matters enumerated in the Schedule to the Act applicable to all workers irrespective of their time of appointment.

1.8 NOTES

1.9 SUMMARY

Labour Legislation is very important for the following reasons:

- The individual workers, who are economically weak, cannot bargain with the employers for the protection of their rights and even for subsistence wages. They have to be protected against exploitation of long hours of work, unhygienic conditions of work and low wages.
- In order to make provision for health, safety and welfare of the workers who are exposed to certain risks in factories, mines and other establishments.
- To encourage the formation of trade unions so as to increase the bargaining power of labour.
- To avoid industrial disputes leading to strikes and lock-outs.
- To protect women and children workers from hazardous conditions and at odd hours.
- To provide compensation to workmen who die or are injured during and in the course of employment
- Labour Legislation advances the interests of the working people and thus helps set up the development of the national economy on a sound and self-reliant basis.

The term 'labour legislation' is used to cover all the laws dealing with "employment and non-employment" wages, welfare, working conditions, industrial relations, social security of persons employed in industries.

1.10 KEY WORDS

Labour legislation	Welfare
Worker	National Commission on Labour
Organisation	International Labour organisation
Social security	Industrial Dispute
Collective bargaining	Delegation
Factory	Trade Union
Convention	Compensation

1.11 SELF ASSESSMENT QUESTIONS

1. Define the term 'labour legislation' and explain its importance.
2. State the need for Labour legislation in Indian context.

3. Discuss the evolution of labour legislation in India

4. Analyse the objectives of labour legislation and its applicability in protection of interest of labour.

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UNIT - 2 CLASSIFICATION OF LABOUR LAWS

Structure:

2.0 OBJECTIVES

After studiying this unit ,you should be able to;

- Describe the role of Constitution in the protection of labour rights.
- Distinguish between labour laws in union list and concurrent list.
- Explain the Labour Laws relating to industrial relations
- List the Laws related to Wages
- Discuss the legislations on special categories

2.1 INTRODUCTION

The Constitution of India has conferred innumerable rights on the protection of labour by providing for the promotion and welfare of labour, for humane conditions of work and securing full employment to all workers, of leisure and social and cultural opportunities. The parliament and the state legislatures have discharged their constitutional duty by enacting a large number of labour laws whose main purpose was to carry out the constitutional directives as in the Directive Principles of State Policy in Chapter III. Laws have been made to ensure minimum wages, to guarantee just and humane conditions of work, to encourage formation of trade unions and collective bargaining.

At the same time, The Constitution of India demarcates the separation of powers between central government and state administrations of legislative items such as labour welfare, policing, inter-state transport etc. which may be legislated on either by central or regional government, or both. The "Union List" contains those items which may be legislated upon by the central government alone, the "State List" contains those items which each state may legislate upon, and the "Concurrent List" contains those items which may be legislated upon by central and state government. Labour is a subject in the "Concurrent List" where both the Central & State Governments are competent to enact legislation subject to certain matters being reserved for the Centre.

Union List	Concurrent List
Entry No. 55 : Regulation of labour and safety in mines and oil fields	Entry No. 22: Trade Unions; industrial and labour disputes.
Entry No. 61: Industrial disputes concerning Union employees	Entry No.23: Social Security and insurance, employment and unemployment.
Entry No.65: Union agencies and institutions for "Vocational training..."	Entry No.65: Union agencies and institutions for "Vocational ...training..."

Hence States cannot legislate on any issue relating to the subjects in Union List and that only Central Government may make any decisions pertaining to such issues. This is problematic as sometimes it is the State Government who is best placed to understand and regulate labour when conditions are endemic to the specific state. Therefore different patterns in India – while some are enacted and enforced by the Central Government, others are enacted by the Central Government but enforced either by the State Government alone, or are enforced by both.

2.2 CONSTITUTIONAL STATUS OF LABOUR JURISDICTION

The legislations 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.

2.2.1. Labour Laws enacted by the Central Government, where the Central Government has the sole responsibility for enforcement;

1. Employees State Insurance Act, 1948
2. Employees Provident Fund & Miscellaneous Provisions Act, 1952.
3. Dock Workers (Safety, Health & Welfare) Act, 1986.

4. Mines Act, 1952.
5. Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Cess Act, 1976
6. Iron Ore Mines, Manganese Ore Mines and Chrome Ore
7. Limestone and Dolomite Mines Labour Welfare Fund Act, 1972
8. Mica Mines Labour Welfare Fund Act, 1946
9. Beedi Workers Welfare Cess Act, 1976
10. Beedi Workers Welfare Fund Act, 1976
11. Cine workers Welfare Cess Act, 1981
12. Cine Workers Welfare Fund Act, 1981

2.2.2 Labour Laws enacted by Central Government and enforced both by Central and State Governments:

13. The Child Labour (Prohibition and Regulation Act, 1986
14. Building & Other Construction Workers (Regulation of Employment & Conditions of Service) Act, 1996.
15. Contract Labour (Regulation & Abolition) Act, 1970.
16. The Equal Remuneration Act, 1976
17. The Industrial Disputes Act 1947
18. The Industrial Employment (Standing Orders) Act, 1946
19. The Inter-State Migrant Workmen Regulation of employment and Conditions of Service)Act, 1979
20. The Labour Laws(Exemption from Furnishing Returns and maintaining Registers by Certain Establishments) Act, 1988
21. The Maternity Benefit Act, 1961
22. The Minimum Wages Act, 1948
23. The Payment of Bonus Act, 1965
24. The Payment of Gratuity Act, 1972
25. The Payment of Wages Act, 1936

26. The Cine Workers and Cinema theatre Workers (Regulation of Employment) Act, 1981

27. The Building and Other Construction Workers Cess Act, 1996

28. The Apprentices Act, 1961

29. Unorganised workers Social Security Act, 2008

30. Working Journalists (Fixation of rates of Wages) Act, 1958

31. Merchant shipping Act, 1958

32. Sales Promotion Employees Act, 1976

33. Dangerous Machines(Regulation) Act, 1983

34. Dock Workers(Regulations of Employment) Act, 1948

35. Dock Workers (Regulations of Employment) (Inapplicability of Major Ports) Act, 1957

36. Private Security Agencies (Regulation) Act, 2005.

2.2.3 Labour laws enacted by Central Government and enforced by State Governments:

37. The Employees Liability Act, 1938

38. The Factories Act, 1948

39. The Motor Transport Workers Act, 1961

40. The Personal injuries (Compensation Insurance) Act, 1963.

41. The Personal injuries (Emergency Provisions) Act, 1962.

42. The Plantation Labour Act, 1951.

43. The Sales Promotion Employees (Conditions of Service Act, 1976)

44. The Trade unions Act, 1926

45. The Weekly holidays Act, 1942.

46. The Working Journalists and Other newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955

47. The Workmen Compensation Act, 1923

48. The Employment Exchange (Compulsory Notification of

Vacancies) Act, 1959

49. The Children (Pledging of labour) Act, 1938

50. The Bonded Labour System (Abolition) Act, 1976

51. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966.

Meanwhile the State Government may also enact legislation or pass notifications to enforce policy guidelines of the Central Government legislation. Hence to outline, there is a variety of implementation procedures of acts. Also there is difference in their applicability from state to state. In total there are 44 or 47 central labour laws, depending on which authority is consulted and 200 state labour laws as some scholars have commented, "The Indian system of labour laws is very extensive and dauntingly complex."

As far as Industrial Jurisprudence is concerned, Labour Laws may be classified under the following heads:

2.2.4 Laws related to Industrial Relations such as:

1. Trade Unions Act, 1926
2. Industrial Employment Standing Order Act, 1946.
3. Industrial Disputes Act, 1947.

2.2.5 Laws related to Wages such as:

1. Payment of Wages Act, 1936
2. Minimum Wages Act, 1948
3. Payment of Bonus Act, 1965.
4. Working Journalists (Fixation of Rates of Wages Act, 1958

2.2.6 Laws related to Working Hours, Conditions of Service and Employment such as:

1. Factories Act, 1948.
2. Plantation Labour Act, 1951.
3. Mines Act, 1952.
4. Working Journalists and other Newspaper Employees' Conditions of Service and Misc. Provisions) Act, 1955.

5. Merchant Shipping Act, 1958.

6. Motor Transport Workers Act, 1961.

7. Beedi & Cigar Workers (Conditions of Employment) Act,1966.

8. Contract Labour (Regulation & Abolition) Act, 1970.

9. Sales Promotion Employees Act, 1976.

10. Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.

11. Dock Workers (Safety, Health & Welfare) Act, 1986.

12. Building & Other Construction Workers (Regulation of Employment & Conditions of Service) Act, 1996.

13. Building and Other Construction Workers Welfare Cess Act, 1996

14. Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981

15. Dangerous Machines (Regulation) Act, 1983

16. Dock Workers (Regulation of Employment) Act, 1948

17. Dock Workers (Regulation of Employment) (Inapplicability to Major Ports) Act, 1997

18. Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993

19. Industrial Employment (Standing Orders) Act, 1946

20. Mines and Mineral (Development and Regulation Act, 1957

21. Plantation Labour Act, 1951

22. Private Security Agencies (Regulation) Act, 2005

2.2.7 Laws related to Equality and Empowerment of Women such as:

1. Maternity Benefit Act, 1961

2. Equal Remuneration Act, 1976.

2.2.8 Laws related to deprived and Disadvantaged Sections of the Society such as:

1. Bonded Labour System (Abolition) Act, 1976

2. Child Labour (Prohibition & Regulation) Act, 1986

3. Children (Pledging of Labour) Act, 1933

2.2.9. Laws related to Social Security such as:

1. Workmen Compensation Act, 1923.
2. Employees State Insurance Act, 1948.
3. Employees Provident Fund & Miscellaneous Provisions Act, 1952.
4. Payment of Gratuity Act, 1972. .
5. Employers' Liability Act, 1938
6. Beedi Workers Welfare Cess Act, 1976
7. Beedi Workers Welfare Fund Act, 1976
8. Cine workers Welfare Cess Act, 1981
9. Cine Workers Welfare Fund Act, 1981
10. Fatal Accidents Act, 1855
11. Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Cess Act, 1976
12. Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund Act, 1976
13. Limestone and Dolomite Mines Labour Welfare Fund Act, 1972
14. Mica Mines Labour Welfare Fund Act, 1946
15. Personal Injuries (Compensation Insurance) Act, 1963
16. Personal Injuries (Emergency Provisions) Act, 1962
17. Unorganised Workers' Social Security Act, 200

Out of these, Legislations on special categories are:

1. The Contract Labour legislation and Abolition Act, 1970
2. The child Labour (Prohibition & Regulation) Act, 1986
3. The Tamil Nadu (Child Labour (Prohibition and Regulation) Rules, 1993

The labour force is broadly divided into 'organized sector' and unorganized sector'.

2.3 ORGANIZED SECTOR

In the organized sector of larger workplaces, the main social security programmes include the Workmen's Compensation Act, 1923, for accidents in the place of work,

Employees' State Insurance Act, 1948, for health benefits, Maternity Benefit Act, 1961, for expectant female workers and the Payment of Gratuity Act, 1972, and Employees' Provident Fund Act, 1952 for retirement benefits. These schemes only cover approximately 6% of the total labour force in India as 94% of workers are in the "unorganised sector". At this point, we can note that the legislation for "organised sector" varies in its application depending on wage ceilings, number of employees in an establishment, type of establishment, etc. For example, the Employees State Insurance Act, 1948 (ESI) which provides insurance to certain categories of employees, does not apply to mines.

2.4 UNORGANISED SECTOR

An 'Unorganized Sector Worker" is one who works for wages or income directly or through any agency or contractor, or who works on his own or her own account, or is self-employed and works in any place of work including his or her home, field or any public place. Though many of the labour and employment laws apply to the unorganised sector also, the worker is not eligible for benefits under the Employees State Insurance Act, Workmen's Compensation Act etc.

The unorganized sector can be defined as that part of the work force that are not able to organize itself in pursuit of a common objective because of certain constraints such as casual nature of employment, ignorance or illiteracy, superior strength of the employer singly or in combination etc. The construction workers, cottage industry labourers, handloom/ powerloom workers, sweepers and scavengers, beedi and cigar workers etc comes under this category and laws like the Building and Construction Workers Act 1996, the Bonded Labour System (Abolition) Act 1976, The Interstate Migrant Workers Act 1979, The Dock Workers Act 1986, The Plantation Labour Act 1951, The Transport Workers Act, The Beedi and Cigar Workers Act 1966, The Child Labour (Prohibition and Regulation) Act 1986, and The Mine Act 1952 were enacted for their welfare.

Unorganized Workers' Social Security Act, 2008

The Act provides some form of protection to those workers defined as unorganised which includes home-based and self-employed workers, but also include workers whose employers are too small to otherwise fall within the scope of the law.

2.5 CATEGORISATION OF INDIAN LABOUR LAWS

Indian labour laws divide industry into two broad categories:

1. **Factory**

Factories are regulated by the provisions of the Factories Act, 1948 (the said Act). All industrial establishments employing 10 or more persons and carrying manufacturing

activities with the aid of power comes within the definition of 'Factory/. The Act makes provisions for the health, safety, welfare, working hours and leave of workers in factories and is enforced by the State Government through their 'Factory' inspectorates. The Act empowers the State Governments to frame rules, so that the local conditions prevailing in the State are appropriately reflected in the enforcement. It puts special emphasis on welfare, health and safety of workers, providing for statutory health surveys, appointment of safety officers, establishment of canteen, crèches, and welfare committees etc. in large factories. The said Act also provides specific safe guards against use and handling of hazardous substance by occupiers of factories and lies down of emergency standards and measures.

2. **Shops and Commercial Establishments**

'Shops and Commercial Establishments' are regulated by Shops and Commercial Establishments Act which are state statutes and respective states have their respective Shops and Commercial Acts which generally provide for opening and closing hour, leave, weekly off, time and mode of payment of wages, issuance of appointment letter etc.

2.6 NOTES

2.7 SUMMARY

In this unit you have studied about how the Constitution of India has conferred innumerable rights on the protection of labour by providing for the promotion. Thus the Constitution of India also highlighted the welfare of labour, humane conditions of work and securing full employment to all workers, and social and cultural opportunities. In thus you have learnt various classifications of labour laws according to its purpose. The labour laws thus we have learnt about the different kinds of classification of labour laws, their applicability to different sections of labour work force.

2.8 KEY WORDS

- Constitution
- Central Government
- State Government
- Industrial relation
- Condition Service
- Wages
- Unorganised sector
- Organised sector
- Factory
- Shops and Commercial establishment

2.9 SELF ASSESSMENT QUESTIONS

1. Discuss the Classification of Labour legislation
2. How do you categorise Indian Labour Law?
3. Distinguish between law pertaining to organised and unorganised sector.

2.10 REFERENCES

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UNIT- 3 : INDIAN CONSTITUTION AND PROTECTION OF LABOUR

Structure:

3.0 LEARNING OBJECTIVES

After studying this unit,you should be able to;

- Describe the principles of labour legislation and its various parts
- List the provision under the Indian constitution in relation to protection of the interest of the labour
- Discuss the various rights of labour provided under Indian constitution
- Analyse the various legal provisions of labour welfare

3.1 PRINCIPLES OF LABOUR LEGISLATION

According to Dr. Minal H. Upadhyay Labour legislation in any country should be based on the principles of social justice, social equality, international uniformity and national economy. In the beginning, the worker was paid only for the days he actually worked. Until the passing of Workmen's Compensation Act, 1923 no compensation was paid in case of an accident taking place in the course of employment. Minimum Wages Act, The Factories Act, and the Payment of Wages Act are a few other legislations based on the principles of the social justice. This legislation fix the hours of work, make provision for payment of over-time, and leave rules, safety, health and welfare of labour in industry.

Let us now discuss the said Principles of legislation in detail.

Industrial legislations are based upon the following principles:

(1) Social Justice

(2) Social Equality/ Welfare

(3) National Economy

(4) International Uniformity

1. Social Justice

The first step in establishing social justice is to protect those who can't protect themselves. In modern industrial set-up, workers who are economically weak are unable to protect their interest, in order to protect them against exploitation; the State has to intervene to help them by granting them freedom of association, the power of collective bargaining and by providing for mediation or arbitration in the case of industrial conflict. Industrial laws provide social justice to the workers by ensuring equitable distribution of profits and benefits among the employer and employees and affording protection to the workers against

harmful effect to their health, safety and morality. The Workmen's Compensation Act, 1923 and the Minimum Wages Act, 1948, for example, are attempts at securing social justice to the workers. The provisions of the Factories Act, 1948, fixing hours of work, overtime, leave privileges, welfare facilities and safe working conditions are also directed towards the same end. *Krishna Iyer.J* has observed that "Social justice is the signature tune of the Constitution of India and this note is nowhere more vibrant than in industrial jurisprudence" The Preamble to our Constitution also lays down the objective of establishing 'Justice—Social, Economic and Political'

2. Social Equality/Welfare

Another objective of labour law is to ensure welfare of workers. These laws help the employees to improve their social status by providing adequate wages and safety measures, ensuring appropriate working hours and health facilities. Legislation based on social justice fixes a definite standard for adoption for the future, taking into consideration the events and circumstances of the past and the present. But with the change of circumstances arise ideas there may be a need for change in the law. This power of changing the law is taken by the Government by making provisions for True-making powers in the Acts in regard to certain specified matters. The rules may be modified or amended by the Government to suit the changed situation. Such legislation is based on the principle of social equity.

3. National Economy

The National economy is another important factor in influencing labour legislation in the country. The general economic situation of the country has to be born in mind in enacting labour legislation; otherwise the very objective of the legislation will be defeated. It increases the efficiency of workers and satisfies their needs, thereby ensuring normal growth of industry for the development of nation which ultimately contributes a lot to improve national economy.

4. International Uniformity

In a tripartite Organisation consisting of representative of Government, employers and workers of the member countries, has played an important part. It aims at securing attaining international uniformity International Labour Organization (I.L.O.) minimum standard on uniform basis in respect of all labour matters. Uniformity of standards can be maintained only by enforcing various industrial laws.

The outline of the Principles of Labour legislation can be classified as follows:

i. Proper coordination of all the labour welfare activities is very much essential.

ii. The workers should have right to living wages in addition to welfare measures.

iii. Management should be welfare oriented

iv.Labour legislation should reach all categories

v.Active participation of trade unions

vi.Periodical assessment

vii.Labour welfare research

viii.Cooperation and coordination of all the work force the labour welfare measures.

3.2:PROVISIONS OF THE INDIAN CONSTITUTION IN RELATION TO PROTECTION OF LABOUR (FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES OF STATE POLICY)

The Fundamental Rights and Directive Principles had their origins in the Indian independence movement, which strove to achieve the values of liberty and social welfare as the goals of an independent Indian state. The Fundamental Rights is defined in Part III of the Constitution, is the basic human rights of all citizens. These rights apply irrespective of race, place of birth, religion, caste, creed or gender. They are enforceable by the courts, subject to specific restrictions. The purpose of the Fundamental Rights is to preserve individual liberty and democratic principles based on equality of all members of society. The main Articles Art 14, 16, 19(1) (c), 21, 23. 24, 35, 38 deals with Fundamental Rights

The Directive Principles of State Policy set out in Part IV of the Constitution, are guidelines for the framing of laws by the government though they are not enforceable by the courts, but the principles on which they are based are fundamental guidelines for the governance that the State is expected to apply in framing and passing laws.

The aim of the drafters of the Indian Constitution was that the directive principles of state policy should serve

a. For securing the health and strength of employees both men and women;

b. That the tender age of children are not abused;

c. Just and humane conditions of work and maternity relief are provided;

d. That citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

e. To secure the participation of employee in the management of establishments.

Articles 38, 39, 39-A, 41, 42, 43, 43-A and 47 of the Constitution embody the Directive principles call for the provision of social justice and economic welfare and ensure peace and harmony by trying to remove the prevalent social evils. The directive principles are therefore subordinate to the fundamental rights guaranteed under Part III of the Constitution. They act as a check on the State; theorised as a yardstick in the hands of the electorate and the opposition to measure the performance of a government at the time of an election.

Fundamental rights and the directive principles constitute "conscience of the Constitution". The Constitution aims at bringing about a synthesis between 'Fundamental Rights and Directive Principles of State Policy' by giving to the former a place of pride and to the latter a place of permanence, together they form core of the Constitution. They constitute its true conscience and without faithfully implementing the Directive Principles it is not possible to achieve the welfare State contemplated by the Constitution. The view that the principles contained in Articles 39(a) and 41 must be regarded as equally fundamental in understanding and interpreting the meaning and content of fundamental rights. With the onward march of civilization, our notions as to the scope of the general interest of the community are fast changing and widening with result that our old and narrower notions as to the sanctity of the private interest of the individual can no longer stem the forward flowing tide of time and must necessarily give way to the broader notions of general interest of the community. The emphasis is unmistakably shifting from the individual to the community. This modern trend in the social and political philosophy is well reflected and given expression in our Constitution

Now let us see how the provisions of constitution comprising Fundamental Rights and Directive Principles of State Policy safeguard the labour interests by analyzing the main Articles of our Indian Constitution which protects, supports, and act as a guideline to various labour laws for their effective implementation and functioning. The Articles 21, 23, 24, 38, 39, 39-A, 41, 42, 43, 43-A and 47 of the Constitution, are calculated to give an idea of the conditions under which labour can be had for work and also of the responsibility of the Government, both Central and State, towards the labour to secure for them social order and living wages, keeping with the economic and political conditions of the country and dignity of the nation.

1. Right against Inequality:

Art 14 of the Indian Constitution explains the concept of Equality before law. The said concept does not mean absolute equality among human beings which is physically not possible to achieve. It is a concept implying absence of any special privilege by reason of

birth, creed or the like in favour of any individual, and also the equal subject of all individuals and classes to the ordinary law of the land. As Dr. Jennings puts it: "Equality before the law means that among equals the law should be equal and should be equally administered, that like should be treated alike. The right to sue and be sued, to prosecute and be prosecuted for the same kind of action should be same for all citizens of full age and understanding without distinctions of race, religion, wealth, social status or political influence" It only means that all persons placed under similar circumstance shall be treated alike both in the privileges conferred and liabilities imposed by the laws. Equal law should be applied to all in the same situation, and there should be no discrimination between one person and another. Thus, the rule is that the like should be treated alike and not that unlike should be treated alike. Apart from Article 14, several clauses of the Constitution, i.e. Art.15 dealing with discrimination of religion, race, caste, sex, place of birth and Art.17 dealing with Untouchability are relevant. Further Article 39 lays down certain principles of policy to be followed by the State, including providing an adequate means of livelihood for all citizens, equal pay for equal work for men and women, proper working conditions, reduction of the concentration of wealth and means of production from the hands of a few, and distribution of community resources to "subserve the common good".

Pursuant to Article 39 (d), Parliament has enacted the *Equal Remuneration Act, 1976*. The directive contained in Article 39 (d) and the Act passed thereto can be judicially enforceable by the court. The doctrine of equal pay for equal work is equally applicable to persons employed on a daily wage basis. They are also entitled to the same wages as other permanent employees in the department employed to do the identical work. However, the doctrine of 'equal pay for equal work' cannot be put in a strait jacket. This right, although finds place in Article 39, is an accompaniment of equality clause enshrined in Articles 14 and 16 of the Constitution. Reasonable classification, based on intelligible criteria having - nexus with the object sought to be achieved is permissible. Accordingly, it has been held that different scales of pay in the same cadre of persons doing similar work can be fixed if there is difference in the nature of work done and as regards reliability and responsibility. The *Equal Remuneration Act* of 1976 provides for equal pay for equal work for both men and women. The *Minimum Wages Act* of 1948 empowers government to fix minimum wages for people working across the economic spectrum.

In *Randhir Singh v. Union of India*, the Supreme Court has held that although the principle of 'equal pay for equal work' is not expressly declared by our Constitution to be a fundamental right, but it is certainly a constitutional goal under Articles 14, 16 and 39 (c) of the Constitution. This right can, therefore, be enforced in cases of unequal scales of pay

based on irrational classification. The decision in Randhir Singh's case has been followed in a number of cases by the Supreme Court.

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

In *Dhirendra Chamoli v. State of U.P.*it has been held that the principle of equal pay for equal work is also applicable to casual workers employed on daily wage basis. Accordingly, it was held that persons employed in Nehru Yuwak Kendra in the country as casual workers on daily wage basis were doing the same work as done by Class IV employees appointed on regular basis and, therefore, entitled to the same salary and conditions of service. It makes no difference whether they are appointed in sanctioned posts or not. It is not open to the Government to deny such benefit to them on the ground that they accepted the employment with full knowledge that they would be paid daily wages. Such denial would amount to violation of Article 14. A welfare State committed to a socialist pattern of society cannot be permitted to take such an argument.

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

In F.A.I.C. and C.E.S. v. Union of India[16] the Supreme Court has held that different pay scales can be fixed for government servants holding same post and performing similar work on the basis of difference in degree of responsibility, reliability and confidentiality, and as such it will not be violation of the principle of equal pay for equal work, implicit in Article 14. The Court said, "Equal pay must depend upon the nature of the work done. It cannot be judged by the mere volume of work. There may be qualitative difference as regards eligibility and responsibility. Functions may be the same but the responsibilities make a difference.

Equal pay for equal work is a concomitant of Article 14 of the Constitution. But it follows naturally that equal pay for unequal work will be a negation of the right ". Accordingly, the court held that different pay scales fixed for Stenographers Grade I working in Central Secretariat and those attached to the heads of subordinate offices on the basis of recommendation of the Third Pay Commission was not violation of Article 14. Although the duties of the petitioners and respondents are identical, their functions are not identical. The Stenographers Grade I formed a distinguishable class as their duties and responsibilities are of much higher nature than that of the stenographers attached to the subordinate offices.

In *Gopika Ranjan Chawdhary v. Union of India* the Armed Forces controlled by NEFA were re-organized as a result of which a separate unit known as Central Record and Pay Accounts Office was created at the head quarters. The Third Pay Commission had recommended two different scales of pay for the ministerial staff, one attached to the headquarters and the other to the Battalions/units. The pay scales of the staff at the headquarters were higher than those of the staff attached to the Battalions/units. It was held that this was discriminatory and violation of Article 14 as there was no difference in the nature of the work, the duties and responsibilities of the staff working in the Battalions/units and those working at the headquarters. There was also no difference in the qualifications required for appointment in the two establishments. The services of the staff from Battalions/units are transferable to the Headquarters.

In *Mewa Ram v A.I.I. Medical Science*, the Supreme Court has held that the doctrine of 'equal pay for equal work' is not an abstract doctrine. Equality must be among equals, un equals cannot claim equality. Even if the duties and functions are of similar nature but if the educational qualifications prescribed for the two posts are different and there is difference in measure of responsibilities, the principle of equal pay for equal work would not apply. Different treatment to persons belonging to the same class is permissible classification on the basis of educational qualifications.

In *State of Orissa v Balaram Sahu* the respondents, who were daily wagers or casual workers in Rengali Power Project of State of Orissa in appeal claimed that they were entitled to equal pay on the same basis as paid to regular employees as they were discharging the same duties and functions. The Supreme Court held that they were not entitled for equal pay with regularly employed permanent staff because their, duties and responsibilities were not similar to permanent employees. The duties and responsibilities of the regular and permanent employees were more onerous than that of the duties of. N.M.R. workers whose employment depends on the availability of the work. The Court held that although equal pay for equal work is a fundamental right under Article 14 of the Constitution but does not depend only on the

nature or the volume of work but also on the qualitative difference as regards reliability and responsibility. Though the functions may be the same but the responsibilities do make a real and substantial difference. They have failed to prove the basis of their claim and in such situation to claim parity with pay amounts to negation of right of equality in Article 14 of the Constitution. However, the Court said that State has to ensure that minimum wages are prescribed and the same is paid to them.

Articles 41–43 mandate the State to Endeavour to secure to all citizens the right to work, a living wage, social security, maternity relief, and a decent standard of living. The concept of living wage includes in addition to the bare necessities of life, such as food, shelter and clothing, provisions for education of children and insurance etc Article 43A mandates the State to work towards securing the participation of workers in the management of industries. These provisions aim at establishing a socialist state as envisaged in the Preamble. The State, under Article 46, is also mandated to promote the interests of and work for the economic uplift of the scheduled castes and scheduled tribes and protect them from discrimination and exploitation. *Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989*t deals with "any offence under the Indian Penal Code (IPC) committed against people from Scheduled Castes and Tribes (SC/ST) by non-SC/ST persons.

2. Right to form Associations

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

In *Damayanti v. Union of India*, The Supreme Court held that "The right to form an association", the Court said, *"necessarily 'implies that the person forming the association have also the right to continue to be associated with only those whom they voluntarily admit in the association. Any law by which members ar e introduced in the voluntary association without any option being given to the members to keep them out, or any law*

which takes away the membership of those who have voluntarily joined it, will be a law violating the right to form an association".

In *Balakotiah v. Union of India*, the services of the appellant were terminated under Railway Service Rules for his being a member of Communist Party and a trade unionist. The appellant contended that the termination from service amounted in substance to a denial to him the right to form association. The appellant had no doubt a fundamental right to from association but he had no fundamental right to be continued in the Government service. It was, therefore, held that the order terminating his services was not in contravention of Article 19(1) (c) because the order did not prevent the appellant from continuing to be in Communist Party or trade unionist... The right to form union does not carry with it the right to achieve every object. Thus the trade unions have no guaranteed right to an effective bargaining or right to strike or right to declare a lock- out.

3. Right to life

Right to life, includes right to the means of livelihood which make it possible for a person to live—the sweep of the right to life, and conferred by Article 21 is wide and far reaching. 'Life' means something more than mere animal existence. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because; no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. There is thus a close nexus between life and the means of livelihood and as such that, which alone makes it possible to live, leaves aside what makes life livable, must be deemed to be an integral component of the right of life. *I*n Maneka Gandhi's case the Court gave a new dimension to Article 21. It held that the right to 'live' is not merely confined to physical existence but it includes within its ambit the right to live with human dignity. Elaborating the same view the Court in Francis Coralie v. Union Territory of Delhi said that the right to live is not restricted to mere animal existence. It means something more than just physical survival. The right to 'live' is not confined to the protection of any faculty or limb through which life is enjoyed or the soul communicates with the outside world but it also includes "the right to live with human dignity", and all that goes along with it, namely, the bare necessities of life such as, adequate nutrition,

clothing and shelter and facilities for reading, writing and expressing ourselves in diverse forms, freely moving about and mixing and commingling with fellow human being.

In *State of Maharashtra v . Chandrabhan* the Court struck down a provision of Bombay Civil Service Rules, 1959, which provided for payment of only a nominal subsistence allowance of Re. 1 per month to a suspended Government Servant upon his conviction during the pendency of his appeal as unconstitutional on the ground that it was violation of Article 21 of the Constitution. In Olga Tellis v. Bombay Municipal Corporation, [28]popularly known as the 'pavement dwellers case' a five judge bench of the Court has finally ruled that the word 'life' in Article 21 includes the 'right to livelihood' also. The court said:"*It does not mean* merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because no person can live without the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest ways of depriving a person of his right to life would be to deprive him of his means of livelihood. In view of the fact that Articles 39((a).and 41 require the State to secure to the citizen an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life."

In *Delhi Development Horticulture Employee's Union v. Delhi Administration*,[29]the Supreme Court has held that daily wages workmen employed under the Jawahar Rozgar Yojna has no right of automatic regularization even though they have put in work for 240 or more days. The petitioners who were employed on daily wages in the Jawhar Rozgar Yojna filed a petition for their regular absorption as regular employees in the Development Department of the Delhi Administration. They contended that right to life, include the right to livelihood and therefore, right to work. The Court held that although broadly interpreted and as a necessary logical corollary, the right to life would include the right to livelihood and therefore right to work but this country has so far not found feasible to incorporate the right to livelihood as a fundamental right in the Constitution. This is because the country has so far not attained the capacity to guarantee it, and not because it considers it any the less fundamental to life. Advisedly therefore it has been placed in the chapter on Directive Principles, Article 41 of which enjoins upon the State to make effective provision for securing the same, "within the limits of its economic capacity and development".

In *D.K. Yadav v.J.M.A. Industries*,The Supreme Court has held that the right to life enshrined under Article 21 includes the right to livelihood and therefore termination of the service of a worker without giving him reasonable opportunity of hearing in unjust, arbitrary

and illegal. The procedure prescribed for depriving a person of livelihood must meet the challenge of Article 14 and so it must be right, just and fair and not arbitrary, fanciful or oppressive. In the instant case, the appellant was removed from service. By the management of the M/s. J.M.A. Industries Ltd. On the ground that he had wilfully absented from duty continuously for more than 8 days without leave or prior permission from the management arid, therefore, "deemed to have left the service of the company under clause 12(2) (IV) of the Certified Standing Order. But the appellant contended that despite his reporting to duty every day he was not allowed to join duty without assigning any reason. The Labour Court upheld the termination of the appellant from service as legal. The Supreme Court held that the right to life enshrined under Article 21 includes right to livelihood and 'therefore' before terminating the service of an employee or workman fair play requires that a reasonable opportunity should be given to him to explain his case. The procedure prescribed for depriving a person of livelihood must meet the requirement of Article 14, that is, it must be right, just and fair and not arbitrary, fanciful or oppressive. In short, it must be in conformity of the rules of natural justice, Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. The Court set aside the Labour Court award and ordered his reinstatement with 50 percent back wages. The principles contained in Articles 39(a) and 41 must be regarded as equally fundamental in the understanding and interpretation of the meaning and content of fundamental rights. If there is an obligation upon the State to secure to the citizens an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life. The State may not, by affirmative action, be compellable to provide adequate means of livelihood or work to the citizens. But, any person, who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred by Article 21.

In *State of Maharashtra v. Manubhai Pragaji Vashi*, the Court has considerably widened the scope of the right to free legal aid. The right to free legal aid and speedy trial are guaranteed fundamental rights under Art. 21. Art 39A provides "equal justice" and "free legal aid". It means justice according to law. In a democratic policy, governed by rule of law, it should be the main concern of the State to have a proper legal system. The crucial words are to "provide free legal aid" by suitable legislation or by schemes" or "in any other way" so that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. These words in Art. 39A are of very wide import. In order to enable the State to afford free legal aid and guarantee speedy trial vast number of persons trained in law

are needed." Legal aid is regarded in many forms and at various stages, for obtaining guidance, for resolving disputes in courts, tribunals or other authorities. It has manifold facets. The need for a continuing and well organized legal education is absolutely necessary in view of the new trends in the world order, to meet the ever-growing challenges. The Legal education should be able to meet the ever-growing demands of the society. This demand is of such a great dimension that sizeable number of dedicated persons should be properly trained in different branches of law every year. This is not possible unless adequate numbers of well equipped law colleges are established. Since a sole Government law college cannot cater to the needs of legal education in a city like Bombay it should permit private colleges with necessary facilities to be established. For this, it should afford grants-in-aid to them so that they should function effectively and in a meaningful manner. For this huge funds are needed. They should not be left free to hike the fees to any extent to meet their expenses. In absence of this the standard of legal education and the free legal scheme would become a farce. This should not be allowed to happen. The Court therefore directed the State to afford grant-in-aid to them in order to ensure that they should function effectively and turn out sufficient number of law graduates in al branches every year which will in turn enable the State to provide free legal aid and ensure that opportunities for securing justice are not denied to any citizen on account of any disability. Article 21 read with Art. 39A casts a duty on the State to afford grants-in-aid to recognized private law colleges in the State of Maharashtra, similar to the faculties, viz. Art, Science, Commerce, etc. The words used in Art. 39A are of very wide importance. The need for a continuing and well organized legal education is absolutely essential for the purpose. The State of Maharashtra had denied grants-in-aid of the private recognized Law Colleges on the ground of paucity of funds. The Court held that this could not the reasonable ground for denial of grant-in-aid to such colleges.

4. Right against Exploitation

Article 23 of the Constitution prohibits traffic in human being and beggar and other similar forms of forced labour. The second part of this Article declares that any contravention of this provision shall be an offence punishable in accordance with law. Clause (2) however permits the State to impose compulsory services for public purposes provided that in making so it shall not make any discrimination on grounds only of religion, race, caste or class or any of them. 'Traffic in human beings' means selling and buying men and women like goods and includes immoral traffic in women and children for immoral" or other purposes.Though slavery is not expressly mentioned in Article 23, it is included in the expression 'traffic in human being'. Under Article 35 of the Constitution Parliament is authorized to make laws for punishing acts prohibited by this Article. In pursuance of this Article Parliament has

passed the Suppression of Immoral Traffic in Women and Girls Act, 1956, for punishing acts which result in traffic in human beings. Article 23 protects the individual not only against the State but also private citizens. It imposes a positive obligation on the State to take steps to abolish evils of "traffic in human beings" and beggar and other similar forms of forced labour wherever they are found. Article 23 prohibits the system of 'bonded labour' because it is a form of force labour within the meaning of this Article. "Beggar" means involuntary work without payment. What is prohibited by this clause is the making of a person to render service where he was lawfully entitled not to work or to receive remuneration of the services rendered by him. This clause, therefore, does not prohibit forced labour as a punishment for a criminal offence. The protection is not confined to beggar only but also to "other forms of forced labour". It means to compel a person to work against his will.

In *Peoples Union for Democratic Rights v. Union of India*, the Supreme Court considered the scope and ambit of Article 23 in detail. The Court held that the scope of Article 23 is wide and unlimited and strikes at "traffic in human beings" and "beggar and other forms of forced labour" wherever they are found. It is not merely "beggar" which is prohibited by Article 23 but also all other forms of forced labour, "Beggar is a form of forced labour under which a person is compelled to work without receiving any remuneration. This Article strikes at forced labour in whatever form it may manifest itself, because it is violative of human dignity and contrary to basic human values. The practice of forced labour is condemned in almost every international instrument dealing with human rights. Every form of forced labour "beggar" or other forms, is prohibited by Article 23 and it makes no difference whether the. Person who is forced to give his labour or service to another is paid remuneration or not. Even if remuneration is paid, labour or services supplied by a person would be hit By this Article, if it is forced labour, e.g., labour supplied not willingly but as a result of force or compulsion, this Article strikes at every form of forced labour even if it has its origin in a contract voluntarily entered into by the person obligated to provide labour or service. If a person has contracted with another to perform service and there is a consideration for such service. In the shape of liquidation of debt or even remuneration he cannot be forced by compulsion of law, or otherwise to continue to perform such service as it would be forced labour within the meaning of Article 23. No one shall be forced to provide labour or service against his will even though it is under a contract of service. The word "force" was interpreted by the court vary widely.

Another beneficial legislation relating to this subject is *Inter State Migrant Workers Act (Regulation of Employment and Conditions of Service) Act, 1979* which applies to "every establishment in which five or more Inter-State migrant workmen (whether or not in addition to other workmen) are employed or who were employed on any day of the preceding

twelve months; and to every contractor who employs or who employed five or more Inter-State migrant workmen (whether or not in addition to other workmen) on any day of the preceding twelve months.". "Inter-State migrant workman" means any person who is recruited by or through a contractor in one State under an agreement or other arrangement for employment in an establishment in another State. The concept of principal employer is also fundamental to this act. No principal employer can engage interstate migrant workers without having first registered. Contractors must register as well. The wage rates, holiday hours of work and other conditions of service of an inter-state migrant workman shall be the same or similar kind as those applicable to other workman. The Principal employer should nominate a representative to be present at the time of disbursement of wages by the contractor. The *Sampoorna Grameen Rozgar Yojana* (Universal Rural Employment Program) was launched in 2001 to attain the objective of providing gainful employment for the rural poor.

Bhagwati, J. once said, *'The word 'force' must therefore be construed to include not only physical or legal for ce but also for ce arising fr om the compulsion of economic circumstances which leaves no choice of alternatives to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wage.*

In *Sanjit Roy v. State of Rajasthan,* it has been held that the payment of wages lower than the minimum wages to the person employed on Famine Relief Work is violation of Art. 23. Whenever any labour or service is taken by the State from any person who is affected by drought and scarcity condition the State cannot pay him less wage than the minimum wage on the ground that it is given them to help to meet famine situation. The State cannot take advantage of their helplessness.

In *Deena v. Union of India* it was held that labour taken from prisoners without paying proper remuneration was "forced labour" and violation of Art. 23 of the Constitution. The prisoners are entitled to payment of reasonable wages for the work taken from them and the Court is under duty to enforce their claim. Article 24 of the Constitution prohibits employment of children below 14 years of age in factories and hazardous employment. This provision is certainly in the interest of public health and safety of life of children. Children are assets of the nation. That is why Article 39 of the Constitution imposes upon the State an obligation to ensure that the health and strength of workers, men and women, and the tender age of the children are not abused and that citizens are not forced by economic necessary to enter avocations unsuited to their age or strength.

In *People's Union for Democratic Rights v Union of India*, it was contended that the Employment of Children Act, 1938 was not applicable in case of employment of children in

the construction work of Asiad Projects in Delhi since construction industry was not a process specified in the schedule to the Children Act. The Court rejected this contention and held that the construction work is hazardous employment and therefore under Art. 24 no child below the age of 14 years can be employed in the construction work even if construction industry is not specified in the schedule to the Employment of Children Act, 1938. Expressing concern about the 'sad and deplorable omission', Bhagwati, J., advised the State Government to take immediate steps for inclusion of construction work in the schedule to the Act, and to ensure that the constitutional mandate of Article 24 is not violated in any part of the country. In yet another case the Court has reiterated the principle that the construction work is a hazardous employment and children below 14 cannot be employed in this work.

In *M. C. Mehta v. State of Tamil Nadu*, the Supreme Court has held that children below the age of 14 years cannot be employed in any hazardous industry. Exhaustive guidelines was laid down as to how State Authorities should protect economic, social and humanitarian rights of millions of children , working illegally in public and private sections. Children can, however, be employed in the process of packing but it should be done in area away from the place of manufacturing to avoid exposure to accident. The court issued certain directions for implementation.

5.Right o health and safety

The Articles 39 & 42 of Directive Principles of State Policy stress that the Working conditions are safe and hygienic and for providing maternity benefits to the women workers. The Factories Act, 1923 provides for the safety and health measures for the workers and the Maternity Benefit Act, stipulates the maternity benefits to expectant mother workers.

In respect of occupational hazards concerning the safety of women at workplaces, in 1997 the Supreme Court of India in the case of Vishakha vs. State of Rajasthan held that sexual harassment of working women amounts to violation of rights of gender equality. As a logical consequence it also amounts to violation of the right to practice any profession, occupation, and trade. The judgment also laid down the definition of sexual harassment, the preventive steps, the complaint mechanism, and the need for creating awareness of the rights of women workers. Implementation of these guidelines has already begun by employers by amending the rules under the Industrial Employment (Standing Orders) Act, 1946.

Another important legislation enacted to secure the safety of women workers is Sexual *Harassment at Workplace (Prevention, Prohibition and Redressal) Act 2013.* As per this Act, Every employer is required to constitute an Internal Complaints Committee This has to include a senior woman manager, and "one member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the

issues relating to sexual harassment." At least half the members have to be female. An "aggrieved woman" in the words of the Act, can make a complaint to the committee which must investigate the case. If proved, the committee can recommend disciplinary action against the respondent, which the employer MUST implement within 60 days. Employers must also "organise workshops and awareness programmes at regular intervals for sensitising the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee in the manner as may be prescribed;" Employers also must "treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct The law also provides for the establishment of a district level committee, which can act in those cases where there is not a committee of enterprise level.

3.3 IMPLEMENTING THE FUNDAMENTAL RIGHTS

It is true that a declaration of fundamental rights is meaningless unless there is effective machinery for the enforcement of the rights. It is remedy which makes the right real. If there is no remedy there is no right at all. It was, therefore, in the fitness of the things that our Constitution-makers having incorporated a long list of fundamental rights have also provided for an effective remedy for the enforcement of these rights under Article 226 and 32 of the constitution. It is clear from Article 32 (1) that whenever there is a violation of a fundamental right any person can move the Supreme Court for an appropriate remedy. The Court now permits public interest litigations or social interest litigations at the instance of 'public spirited citizens' for the enforcement of Constitutional and other legal rights of any person or group of persons who because of their poverty or socially or economically disadvantaged position are unable to approach the Court for relief. Once the fundamental rights of the labourers are infringed, they could approach the Supreme Court by issuing writ under Art 32 and 226.

3.4 NOTES

3.5 SUMMARY

In this unit you have learned about the principles of labour legislation and its various important components holding the features of the principles. Further this unit highlighted various provisions in fundamental rights and directive principles of state policy of the Indian constitution in relation to protection of labour. The importance of implementation of fundamental trough legislation is also emphasised in this unit.

3.6 KEY WORDS

- Constitution of India
- Bill of rights
- Constituent Assembly of India
- Industrial labour
- Fundamental Rights
- Directive Principles of State Policy
- Conscription
- Forced labour
- Human trafficking
- Human rights
- Community service
- Equal pay
- Equal work
- Nationalization
- Agrarian reform
- Land tenure
- Right to work
- Living wage
- Social security
- Maternity relief
- Standard of living
- Cottage industries

3.7 SELF ASSESSMENT QUESTIONS

1. Describe the principles of labour legislation.
2. Discuss the need for labour legislation.
3. Explain the provisions of Constitution to safeguard the labour legislation.

3.8 REFERENCES

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UNIT - 4 : OVERVIEW OF LABOUR LEGISLATION IN INDIA

Structure:

4.0 OBJECTIVES

After studying this unit, you should be able to;

- Explain the Factories Act, 1948 with suitable case laws
- Analyse the various provisions under laws pertaining to wages of workers,1948
- Discuss the salient features of Social Security legislations enacted in our country
- Explain the various legislations relating to Industrial relations and
- List out the various special Acts enacted to protect the interest of labour in different status.

Mahatma Gandhi h ad once said, 'A nation may do without its millionaires and without its capitalists, but a nation can never do without its labour . In India, a number of labour legislation has been enacted to promote the condition of the labour keeping in view the development of industry and national economy.

Let's see in brief what are all the rights conferred by enactment of labour legislation with the support of case laws.

4.1 FACTORIES ACT, 1948

The Act was enacted to regulate the working conditions in factories. The Act was enacted with the primary object of protecting workers employed in factories against industrial and occupational hazards. For that purpose it seeks to impose upon the owner or the occupier certain obligation to protect the workers and to secure for them employment in conditions conductive to their health and safety. In the case of Ravi *Sharma v. State of Rajasthan* Court held that the Act is a Social Legislation and it provides for the health, safety, welfare and other aspects of the workers in the factory. In short, The Act is meant to provide protection to the workers from being exploited by the greedy business establishments and it also provides for the improvement of the working conditions within the factory premises.

(1) What is a factory?

Giving interpretation to the term 'factory' in the Act, the Supreme Court has held that all the length of railway line would be phase wise 'factories' (LAB IC 1999 SC 407). The Apex Court in A*rdeshir v. Bhiwandhiwala v. State of Bombay*[2] observed that the legislature has no intention to discriminate between workers engaged in manufacturing process in a building and those engaged in such a process on a open land and held that the salt works, in

which the work done is of conversion of sea water into crystals of salt, come within the meaning of the word 'Premises' in the Act.

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

(3) In R *Ananthan v. Avery India*[3] it was held that "An employee working outside the factory premises like field workers etc. on tour outside headquarters are not entitled to overtime"

(4) No fault by employer is immaterial;

The compensation is payable even when there was no fault of employer. In *New India Assurance Co. Ltd.* v. *Pennamna Kuriern*[4], claim of workmen for compensation under Motor Vehicle Act was rejected due to negligence of employee, but compensation was awarded under Workmen's Compensation Act on the principle of 'no fault'.

(5) Compensation is payable even if it is found that the employee did not take proper precautions. An employee is not entitled to get compensation only if

(*a*) He was drunk or had taken drugs

(*b*) He willfully disobeyed orders in respect of safety

(*c*) He willfully removed safety guards of machines. However, compensation cannot be denied on the ground that workman was negligent or careless. – *Mar Themotheous* v. *Santosh Raj*

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

(7) Who is a worker?

In *Sunil Industries* v. *Ram Chander* it was held that in definition of 'workman' in schedule II, in most of the cases, number of workmen employed is not the criteria. Employer will be liable even if just one workman is employed. The Act applies to a workshop even if it employs less than 20 workmen and is not a 'factory' under Factories Act.

(8) In *Chintamain Rao v. State of M.P.* it was held that the employment is the contract of service between employer and employee where under the employee agrees to serve the employer subject to his control and supervision. The prima facie test for determination of the relationship between the employer and the employee is the existence of the right of the employer to supervise and control the work done by the employee not only in the matter of directing what work the employee is to do but also the manner in which he shall do the work

(9) In *Shankar Balaji Waje v. State of Maharashtra* the question arose whether bidi roller is a worker or not. The Supreme Court held that bidi roller is not a worker. The whole conception of service does not fit in well with a servant who has full liberty to attend to his work according to his pleasure and not according to the orders of his master. It was also held that Piece rate workers can be workers within the definition of the term 'worker' of the Act, but they must be regular workers and not workers who come and work according to their sweet will.

(10) Employees Employed in or in connection with a factory whether or not employed as workers are entitled to the benefits of the Act (*Union of India v. G.M.Kokil)*. Once it is established prima facie that premises in question is a factory within the meaning of the Act, the provisions of Section 103 as to the presumptions of employment are immediately attracted and onus to prove the contrary shifts to the accused (*Prafulbhai Patadia v.The State*)

4.2 THE MINIMUM WAGES ACT, 1948

The constitution provides for a living wage in India. The Minimum Wages Act, 1948 provides a framework within which each state government is responsible for fixing and enforcing minimum wages for different industries. The National Commission on Labour has described the passing of the Act as the landmark in the history of labour legislation in the country. The philosophy of minimum Wages Act and its importance in the context of Indian conditions has been explained by the Supreme Court in *Unichoyi v. State of kerala* as follows:

"What the Minimum Wages Act purports to achieve is to pr event exploitation of labour and for the purpose empowers the appr opriate Government to take steps to prescribe minimum rates of wages in the scheduled industries. In an under developed Country which faces the problem of unemployment on a very scale, it is not unlikely that

labour may offer to work even on starvation wages. The policy of the Act is to prevent the employment of such sweated labour in the interest of general public and so in prescribing the minimum rates the capacity of the employer need not be considered. What is prescribed is the Minimum wage rates which a Welfare state assumes every employer must pay before he employs labour"

(1) The definitions of 'employees' and 'employer' are quite wide. Person who engages workers through contractor would also be an employer (1998 LLJ I Bom. 629) it was held in *Nathan Ram Shukla v. state of Madhya Pradesh AIR 1960 MP. 174* that if minimum wages have not fixed for any branch of work of any scheduled employment, the person employing workers in such branch is not an employer with the meaning of the Act. Similarly in case of *Loknath Nathu lal v. Sae of Madhya Pradesh* AIR 1960 MP 181 an out worker who prepared goods at his residence and then supplied to his employer was held as employee for the purpose of this Act.

(2) The rates of wages to be fixed by 'appropriate government' need not be uniform. Different rates can be fixed for the different zones or localities (Basti *Ram v. State of A.P),*

(3) There is a correlation between minimum rates of wages and hours of work. Minimum wages are to be fixed on the basis of standard normal working hours, namely 48 hours in a week *(Benode Bihari v. Shah v. State of W.B.)*

(4) Payment of overtime work can be claimed only by the employees who are getting minimum rates of wages under the Act and not by those getting better wages (1998 LLJ I SC 815)

(5) It was held in *Edward Mills co. v State of Ajmer* that Committee appointed under Sec.5 of the Act is only an advisory body and the Government is not bound to accept its recommendations while fixing the minimum wages.

(6) Minimum wages can be revised with retrospective effect 1996 II LLJ 267 Kar.)

4.3 PAYMENT OF WAGES ACT, 1936

The Act is a central legislation. It has been enacted to regulate the payment of wages to workers employed in certain specified industries and to ensure a speedy and effective remedy to them against unauthorized deductions and/or unjustified delay caused in paying the wages to them. It applies to the persons employed in a factory, industrial and other establishment or in a railway, whether directly or indirectly, through a sub contractor.

In order to bring the law in uniformity with other labour laws and to make it more effective and practicable, the payment of wages Act is last amended in 2005. A wages period must be

set - such as a week or month. While the employer may decide the wage period, this may not exceed one month.

It also specifies that the wages of every person employed in a factory or industrial or other establishment upon or in which less than 1000 persons are employed, shall be paid before the expiry of the 7th day after the last day of the wage-period in respect of which the wages are payable. When there are more than 1000 people employed, it shall be paid before the expiry of the 10th day. Wages must be paid in cash or, by agreement of the worker it can be paid by cheque or directly into his or her bank account. Where the employment of any person is terminated by or on behalf of the employer, the wages, earned by him shall be paid before the expiry of the 2nd working day from the day on which his employment is terminated. Wages may be deducted only in certain situations, including fines, for absence from duty; deductions for damage to or loss of goods expressly entrusted to the employed person for custody, or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default; deductions for house-accommodation supplied by the employer or by government or any housing board set up under any law for the time being in force; or for deductions for amenities and services supplied by the employer. This act enforces penalties on employers who fail to maintain records, or obstructs an inspector discharging his duty under the Act.

4. 4 EQUAL REMUNERATION ACT, 1976

The Equal Remuneration Act was passed in 1976, providing for the payment of equal remuneration to men and women workers for same or similar nature of work. Under this law, no discrimination is permissible in recruitment and service conditions except where employment of women is prohibited or restricted by the law. Remuneration, whether payable in cash or in kind, has to be the same for female and male workers for the same work or work of a similar nature. Regarding recruitment, the act makes it clear that 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.

4.5 EMPLOYEE STATE INSURANCE ACT, 1948

This Act provides for certain benefits to employees in case of sickness, maternity and employment injury, disablement as a result of an employment, injury sustained as an employee under this Act, to dependants of a person who dies as a result of an employment injury sustained as an employee under this Act, etc. An "employee" covered by this Act means any person employed in a factory who is directly employed by the principal employer, or

who is employed through an intermediate employer or whose services are temporarily lent or lent on hire to the principal employer, on any work of the factory or establishment.

An employer cannot dismiss, discharge, or reduce or otherwise punish an employee during the period the employee is in receipt of sickness benefit or maternity benefit. He may not punish an employee during the period he is in receipt of disablement benefit for temporary disablement or is under medical treatment for sickness or is absent from work as a result of illness.

The provisions of the Act are administered by the Employees State Insurance Corporation. The Corporation promotes measures for the improvement of the health and welfare of insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured. It comprises of members representing employees, employers, the central and state government, besides, representatives of parliament and medical profession. The Act also establishes a Medical Benefit Council to advice on matters relating to medical benefit and its administration. Disputes are resolved through the Employees Insurance Court. This act does not apply to quarries and mines covered under the Mines Act, 1952. Employees who are entitled to compensation under this Act are not covered by the Worker's Compensation Act, 1923. Some of the important case laws in this subject are:

(1) In *Regional Director ESIC v. M/s Arudyog* it was held that "The apprentices under any scheme as the name suggests come to learn the tricks of the trade and may not count much so far as the output of the factory is concerned, with that end in view, the apprentices are exempted from the operation of laws relating to labour unless the State Government thought otherwise".

(2) In *Cricket Club of India v. ESI Corporation* it was held that "*Where by some club not only sporting facilities but a kitchen is also maintained, wherein a big number of members come, it is not necessary that they are participating only in sports activities, they are also entertaining themselves and their guests by partaking beverages and tea served by the club. Activity in the kitchen has a dir ect connection with the activities carried on in the rest of the club pr emises. It is necessar y that the club be r egistered under ESI Act as regards all the employees engaged by the club irrespective of the fact in which department they are working. Cricket Club of India satisfies the definition of the term `factory' under s. 2(12) of the Act hence covered by it.*

(3) Where a laid-off employee after signing the lay-off register was coming out of the factory premises and when crossing the road was hit by a scooter, injuries sustained by him were taken as covered during the course of employment on the basis of theory of notional extension. — *Satya Sharma v. ESI Corporation*

(4) If the work by the employee is conducted under the immediate gaze or overseeing of the principal employer or his agent, subject to other conditions as envisaged being fulfilled he would be an employee for the purpose of s. 2(9).— *CES Corporation Ltd. v Subash Chandra Bose*

(5) A work that is conducive to the work of the factory or establishment or that is necessary for the augmentation of the work of the factory or establishment will be incidental or preliminary to or connected with the work of the factory or establishment. The casual employees shall also be brought within it and are entitled to the benefits which the Act grants. The casual labour employed to construct additional buildings for expansion of the factory are the employees under the Act. — *Regional Director, ESIC v. South India Flour Mills Ltd*

(6) Employees engaged for repairs, site clearing, construction of buildings, etc. of the principal employer are employees within the meaning of s. 2(9) of the Act. —*Kirloskar Pneumatic Co. Ltd. v. ESI Corporation*

(7) While giving interpretation to the expression "employed for wages or in connection with the work of a factory or establishment" in the Act, it was held that the term is of very wide amplitude and its generality is not in any way prejudiced by the expression and includes any person employed for wages or any work connected with the administration of the factory or establishment or in connection with sale or distribution of the products of the factory or establishments. The word "includes" in the statutory definition of a term, and is generally used to enlarge the meaning of the preceding words and it is by way of extension and not with restriction. In order to determine whether the employees of the company working at its branch sales offices and carrying on acts of sale and distribution of goods manufactured by the company as well as the goods produced by the foreign company are "employees" what is pertinent is not whether they are "principally" and primarily engaged in sale and distribution of the products of the company but whether the business of sale and distribution either "principally" or "marginally" of the products of the foreign company is being done on behalf of the company. If the main business of the company itself at the branch sales offices, is to sell and distribute products of foreign company and the employees working have been employed by the company basically in connection with this work, it would be difficult to hold that the employees at branch sales offices are not "employees" within the meaning of the term defined in s. 2(9) of the Act notwithstanding the fact that the sale and distribution of the products of the company at such offices are only marginal.— *Director General, ESI Corporation v. Scientific Instrument Co. Ltd.*

(8) Where the work of fixing the marble is extended to a contractor by a marble manufacturing company, duty of the contractor is only to complete the work while marble, cement etc., is supplied by the manufacturing company, workers employed by the contractor would be the employees of the factory as under s. 2(9) of the Act. — *1992 (2) CLR 881.*

(9) Section 53 of the ESI Act (Bar against receiving or recovery of compensation or damages under any other law) does not bar the remedy under s. 110A of the Motor Vehicles Act, 1939. — *Deputy General Manager KSRTC v. Gopal Mudaliar*

(10) There is no such difference as that of casual or temporary or permanent employee for the expression "employee" as defined under section. 2(9) of the Act. It is so wide as to include even a casual employee who is employed just for a day for wages. The test being whether the person is employed for wages on any work which is connected with the work of a factory or establishment which bears the application of the Act except those exempted by the definition. — *ESI Corporation v. Suvarna Saw Mills*

(11) Where a department of publication and press run by the university concerned is engaged in the printing of text books, journals, registers, forms, etc., that would amount to manufacturing process.— *Osmania University v. ESI Corporation*

(12). Where there was no manufacturing of articles nor the hotel was manufacturing any article with the aid of power except maintaining one refrigerator to preserve milk and curd, and as there was no using of power in the kitchen for making the eatables and the refrigerator had been kept only for preservation of milk and curd, there was no manufacturing process.— *Ritz Hotel v. ESI Corpn.*

(13) Wages paid for the holidays are wages as defined. — *R.D., ESI Corporation v. Raj Keshaw Co.*

(14) Overtime wages could not be treated as "wages" for the purpose of contribution under the Act. — *Hind Art Press v. ESI Corporation*

(15) The ESI Corporation is conferred with the power to recover arrears of contributions from the employer along with damages/interest on the contribution that remained due. Correspondingly it is under an obligation to pay with interest the arrears of benefits to the insured employees or his dependents. — *ESI Corporation v. Bhag Singh.*

4.6 EMPLOYEES PROVIDENT FUNDS ACT, 1952

This Act aims to provide for the institution of provident funds, pension funds and a deposit linked insurance fund and applies to factories and other establishments in which 20 or more

are employed. The employee has to pay contributions towards the fund. The employer also pays an equal contribution. The employee gets a lump sum amount when he retires.

(1) In *RPFC* vs. *T S Hariharan* it was held that temporary workers should not be counted to decide whether the Act would apply.

(2) In *RPFC* vs. *Shiv Kumar Joshi*, it was held that the Regional Provident Fund Commissioner is providing service under the Act and hence he is liable under Consumer Protection Act. The said view was confirmed in *RPFC* v. *Shiv Kumar Joshi* 1999

(3) The definition of "employee" includes a part time employee, who is engaged for any work in the establishment, a sweeper working twice, or thrice a week, a night watchman keeping a watch on the shop in the locality, a gardener working for ten days a month etc (*Railway Employees Co-operative banking Society Ltd v. The Union of India*) it was held that workers engaged by beedi manufacturers directly or indirectly through contractors for rolling beedi at home subject to rejection of defective beedi by manufacturers were employees. (1986 I SCC 32)

4.7 PAYMENT OF BONUS ACT, 1965

The object of the Act is to maintain peace and harmony between labour and capital by allowing the employees to share the prosperity of the establishment reflected by the profits earned by the contributions made by capital, management and labour. The Act is applicable to (a) every factory; and (b) every other establishment employing 20 or more persons. Every employee who is drawing a salary or wage up to INR 10,000 per month and who has worked for minimum period of 30 days in a year is entitled to be paid a bonus. For the purpose of calculation of bonus a salary or wage includes a basic salary or wage and dearness allowance but does not include other allowances, or overtime payments. The employer is bound to pay to his employees every year a minimum bonus of 8.33% of the salary or wage and the maximum bonus payable by the employer to his employees is 20% of the salary or wage. Thus many workers in the processing part of the stone sector would qualify for bonus payments, effectively an extra month's salary.

On the question whether the Act deals only with profit bonus, it was observed by the Supreme Court in Mumbai Kamgar Sabha v. Abdulbhai Faizullabhai, that "bonus" is a word of many generous connotations and, in the Lord's Mansion, there are many houses. There is a profit based bonus which is one specific kind of claim and perhaps the most common. There is customary or traditional bonus which has its emergence from long, continued usage leading to a promissory and expectancy situation materializing in a right. There is an attendance

bonus and what not. The Bonus Act as it then stood does not bar claims to customary bonus or those based on conditions of service".

(1) The definition of 'salary' or 'wage' is wide enough to cover the payment of retaining allowance and also dearness allowance paid to the workman. It is nothing but remuneration. (*Chalthan Vibhag sahakari Khand Udyog v. Government Labour Officer)*

(2) An employee suspended but subsequently reinstated with back wages cannot be treated to be ineligible for the bonus for the period of suspension (*Project Manager, Ahmedabad Project, and ONGC v. sham Kumar Sahegal).*

(3) Section 10 of the Act is not violative of Article 19 and 301 of Constitution of India. Even if the employer suffers losses during the accounting year, he is bound to pay the minimum bonus as stipulated under Section 10 of the Act *(State v. Sardar Singh Majithia)*

4.8 PAYMENT OF GRATUITY ACT, 1972

The Act provides for a scheme for the payment of gratuity to employees engaged in factories, mines, oilfields or other establishments. Gratuity is a lump sum payment made by an employer as a mark of recognition of the service rendered by the employee at the end of service or retirement. Every employee irrespective of his wages is entitled to receive gratuity if he has rendered continuous service of 5 years or more than 5 years.

(1) "Gratuity" as observed by the Supreme Court in its etymological sense, means a gift, especially for services rendered or return for favours received …*Delhi Cloth & General Mills Co. Ltd. v. It's Workmen.*

(2) In Indian *Hume Pipe Co. Ltd. v. its Workmen*[38], it was held that Gratuity has to be considered to be an amount paid unconnected with any consideration and not resting upon it and has to be considered something given freely or without recompense. It does not have foundation on any legal liability, but upon a bounty steaming from appreciation and graciousness. Long service carries with it expectation of an appreciation from the employer and a gracious financial assistance to tide over post retrial difficulties.

(3) In the case of *B. Mohan Reddy vs. A.P.S. Co-op. Marketing Federation Ltd* it was held that payment of Gratuity Act does not authorize employer to with-hold Gratuity of employee for any reasons such as negligence and unauthorized leave except where services of employee are terminated for any act of willful omission or negligence which caused any damage, loss or destruction to employers property or for riotous or disorderly behaviour or for any act which constitutes an offence involving moral turpitude committed in the course of employment.

(4) In Bombay *Gas Public Ltd.Co. V/s. Papa Akbar and Anr the Hon'ble* Bombay High Court has held that the provisions of Sec. 4 (6) (a) of the payment of Gratuity Act do not come into force unless there is a termination of service. Merely stating that the employee went on strike and thereby caused a heavy loss to the company could not be a ground to deny gratuity to the employees.

(5) Re-employment under same employer under fresh contract will not militate against concept of gratuity - When an employee retires and earns gratuity and the same employer offers such employee a job under a fresh agreement and the new agreement provides for the payment of gratuity, that would, in no way, militate against the concept of gratuity if such gratuity is paid on the first retirement - *CIT v.Smt. Savitaben N. Amin*

(6) The right of forfeiture of gratuity is limited to the extent of damage. In absence of proof of extent of damage, the right of forfeiture is not available. *(LLJ II 1996 515 M.P.)*

4.9 WORKMEN'S COMPENSATION ACT, 1923

The Act aims to provide workmen and/or their dependents with relief in case of accidents arising out of and in the course of employment and causing either death or disablement of workers. Every employee including those employed through a contractor but excluding casual employees, who is engaged for the purposes of the employers business and who suffers an injury in any accident arising out of and in the course of his employment, shall be entitled for compensation under the Act. The Act does not apply when a worker is entitled to get compensation from the Employees State Insurance Act. To come within the purview of this Act, The employee must suffer an accident arising out of and in the course of his employment, resulting in

(I) Death,

(ii) Permanent total disablement,

(iii) Permanent partial disablement, or

(iv) Temporary disablement whether total or partial, or who has contracted an occupational disease. A worker cannot contractually agree to give up or reduce compensation from the employer to pay compensation. The employee's fault is immaterial to the employer's duty to pay compensation. This compensation may be payable even if worker was careless.

(1) A contractor falls within the definition of an employer. Similarly a General Manager of a Railway is an employer *(Baijnath Singh v. O.T. Railway)*

(2) Wages include dearness allowance, free accommodation, overtime pay etc. *(Godawari Sugar Mills ltd. V. Shakuntala : Chitru Tanti v.TISCO and Badri Prasad v. Trijugi Sitaram)*

(3) The claim of bonus being right of the workman is a benefit forming part of wages and the same can be included in wages. (LLJ II 536 Ker.)

(4) If after the accident if the worker has become disabled and cannot do a particular job but the employer offers him another kind of job, the worker in entitled for compensation for partial disablement(*General Manager, G.I.P Rly v. Shankar*)

(5) The expression 'incapacitates a workman for all work' does not mean capacity to work or physical incapacity. If due to any physical defect, a workman is unable to get any work which a workman of his class ordinarily performs, and has thus lost the power to earn hi is entitled for compensation for total disablement *(Ball v. William Hunt & Sons Ltd*[44] it is immaterial whether the workmen is fit to perform the some work. Thus where a workman, though physically capable of doing the work cannot get employment in spite of his best efforts, he becomes incapacitated for all work and hence entitled to compensation for total disablement.

(6) The Supreme Court in *Mackinnon Mackenzee and Co.(Pvt.) Ltd v Ibrahim Mohammed Issak*[45] approving the observation of Lord Summer made in *Lancanshire and Yorkshire Railway Co. v. Highley 1917 A.C. 352* observed that the test is : was it part of the injured persons employment to hazard, to suffer or to do that which caused his injury? If yes, the accident arose out of his employment. If not it did not.

4.10 CONTRACT LABOUR (REGULATION AND ABOLITION) ACT, 1970

Contract Labour is a significant and growing form of employment. It is prevalent is almost all industries and allied operations and also in service sector. It generally refers to workers engaged by a contractor. Contract labour has very little bargaining power. Have little or no social security and are often engaged in hazardous occupations endangering their health and safety. The exploitation of contract labour has been a matter of deep concern for the Government. The Contract Labour (Regulation and Abolition) Act has two purposes. Firstly contract labour is prohibited for work of "a perennial nature". Secondly, where contract work does take place, it is regulated and controlled. The principal employer must be registered and licensed to use a labour contractor. The contractor also needs to be licensed. The law requires the principal employer to ensure that the contractor pays the minimum wage, provides the necessary PPE, registers workers with the appropriate authorities for Provident Fund

and ESI, and deducts contributions. The Principal employer should nominate a representative to be present at the time of disbursement of wages by the contractor.

(1) In *Steel Authority of India* v. *National Union Water Front* it was held that Central / State Government can issue notification u/s 10 abolishing contract labours only after following prescribed procedure regarding consultation etc. It was also held that even if such a notification is issued, the employees with contractor will not be automatically absorbed in the employment of the company, if the contact was genuine. However, company will give preference to them. However, if the contract was not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of principal employer.

(2) In *Food Corporation of India W orkers Union Vs Food Corporation of India and others,* it has been held that workmen can be employed as contract labour only through licensed contractors, who shall obtain license under section 12. As per section 7, the principal employer is required to obtain Certificate of Registration. Unless both these conditions are complied with the provisions of Contract Labour Act will not be attracted. Even if one of these conditions is not complied with, the provisions of the Contract Labour Act will not apply. In a situation where in either of these two conditions is not satisfied, the position would be that a workman employed by an intermediary is deemed to have been employed by the principal employer.

4.11 MATERNITY BENEFIT ACT, 1961

The Act is applicable to mines, factories and other establishments employing ten or more persons, except employees covered under the Employees' State Insurance Act, 1948. The maximum period for which any woman shall be entitled to maternity benefit shall be twelve weeks, that is to say, six weeks up to and including the day of her delivery and six weeks immediately following that day. Under this Act, she is also entitled to receive from her employer maternity bonus.

4.12 CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986

Elimination of child labour continued to be one of the major focus areas of the Labour Ministry. Parliament has enacted the Child Labour (Prohibition and Regulation) Act, 1986, providing regulations for the abolition of, and penalties for employing, child labour, under the age of fourteen years in factories, mines, and hazardous employments and to regulate their conditions of work in certain other establishments, as well as provisions for rehabilitation of former child labourers

In a landmark judgment in *M. C. Mehta v. State of T. N.* known as (Child Labour Abolition case) a three Judges Bench of the Supreme Court held that children below the age of 14 years cannot be employed in any hazardous industry, or mines or other work. The matter was brought in the notice of the Court by public spirited lawyer Sri M. C. Mehta through public interest litigation under Art. 32. He told the Court about the plight of children engaged in Sivakasi Cracker Factories and how the constitutional right of these children guaranteed by Art. 24 was being grossly violated and requested the Court to issue appropriate directions to the Governments to take steps to abolish child labour. The Court directed for setting up of Child Labour Rehabilitation Welfare Fund and asked the offending employers to pay for each child a compensation of Rs. 20,000 to be deposited in the fund and suggested a number of measures to rehabilitate them in a phased manner. It further directs that the liability of the employer would not cease even if after the child is discharged from work, asked the Government to ensure that an adult member of the child's family gets a job in a factory or anywhere in lieu of the child. In those cases where it would not be possible to provide jobs the appropriate Government would, as its compensation, deposit, Rs. 5000 in the fund for each child employed in a factory or mine or in any other hazardous employment. The authority concerned has two options: either it should ensure alternative employment for the adult whose name would be suggested by the parent or the guardian of the child concerned or it should deposit a sum of Rs. 25,000 in the fund. In case of getting employment for an adult the parent or guardian shall have to withdraw his child from the job. Even if no employment would be provided, the parent shall have to see that his child is spared from the requirement of the job as an alternative source of income interest—income from deposit of Rs. 25000 would become available to the child's family till he continues his study up to the age of 14 years. The employment so given could be in the industry where the child is employed a public sector undertaking, and would be manual is nature inasmuch as the child in question must be engaged in doing manual work the undertaking chosen for employment shall be one which is nearest to the place of residence of the family.

In 2006, the Central Government has amended the Child Labour (Prohibition and Regulation) Act, 1986 prohibiting employment of children below 14 years of age even in non-hazardous industry like restaurants, motels and also as domestic servants.

4.13 INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946.

The Industrial Employment (standing orders) Act, 1946 requires the employers in Industrial establishments to clearly define the conditions of employment by issuing standing orders duly certified. It applies to every industrial establishment wherein 100 or more workers are employed or were employed on any day during the preceding twelve months. Model

Standing orders issued under this Act deal with classification of workmen, holidays, shifts, payment of wages, leaves, termination, etc., the text of the Standing orders as finally certified under this Act shall be prominently be posted by the employer in English and in the language understood by the majority of his workmen on the special boards to be maintained for the purpose at or near the entrance through which the majority of the workmen enter the industrial establishment and in all departments thereof where the workmen are employed.

(1) Certified standing orders become part of the statutory and not contractual terms and conditions of service and are binding on both employer and workmen *(Derby Textiles Ltd. V. Karamchari and Shramik Union)*

(2) The consent of the employees to such standing orders does not make any difference. (*Air Gases mazdoor Sangh, Varanasi v. Indian Air Gases ltd*

(3) The appellate authority has no power to set aside the order of Certifying Officer. It can confirm or amend the Standing Orders (*Khadi Gram Udhyog Sangh v Jit Ram*) the appellate authority cannot remand the matter for fresh consideration *(Kerala Agro machinery Corporation*

(4) Where there are two categories of workers, daily rated and monthly rated but the certified Standing orders are in respect of daily rated workmen only, then Model Standing Orders can be applied to monthly rated workers *(Indian iron and Steel co. Ltd. v. Ninth Industrial Tribunal*)

(5) In case where there was no certified Standing orders applicable for an industrial establishment, the prescribed Model Standing orders shall be deemed to be adopted and applicable (1981 II Labour Law Journal 25)

4.14 INDUSTRIAL DISPUTES ACT, 1947

The Industrial Disputes Act, 1947, sets out the framework for industrial relations. There is a highly legalised framework that governs disputes and failure to follow the stages can result in a strike or lockout been declared illegal. Section 3 of the Industrial Disputes Act provides for the establishment of a Works Committee. Where a trade union exists, provision is made for the trade union to have membership on the Works Committee. Otherwise it would provide a forum for social dialogue. The provision in the act applies to establishments where more than 100 workers are employed.

(1) In the case of *Bharat Sugar mills ltd. V. Jai Singh* the Supreme Court explained the legality of 'Go-slow' in the following words:

"*Go-slow which is a picturesque description of deliberate delaying of production by workmen pretending to be engaged in the factory is one of the most pernicious practices*

that discontented and disgr untled workmen sometimes r esort to. Thus, while delaying production and ther eby r educing the output, the workmen claim to have r emained employed and entitled to full wages. Apart from this, 'go-slow is likely to be much mor e harmful than total cessation of work by strike. During a go-slow much of the machinery is kept going on at a r educed speed which is often extr emely damaging to the machinery parts. For all these r easons, 'g0'slow has always been consider ed a serious type of misconduct"

(2) In *Parry & Co. Ltd. V.P.C.Pal*, the Supreme Court observed, that the management has a right to determine the volume of its work force consistent with its business or anticipated business and its organization. If for instance, a scheme of reorganization of the business of the employer results in surplus age of the employees, no employer is expected to carry the burden of such economic dead weight and retrenchment has to be accepted as inevitable, however unfortunate it may be.

(3) In *Indian Iron and Steel Co. Ltd. V.their workmen*, the Supreme Court while considering the Tribunal's power to interfere with the management's decision to dismiss, discharge, or terminate the services of a workman, has observed that in cases of dismissal for misconduct the Tribunal does not act as a Court of Appeal and substitute its own judgment for that of the management and that the Tribunal will interfere only when there is want of good faith, victimization, unfair trade practices etc. on the part of its management.

(4) In the Case *of Crompton Greaves Ltd. Vs. The W orkmen*, it was observed that for entitlement of wages for the strike period, the strike should be legal and justified. Reiterating this position, The Court held in *Syndicate bank v. Umesh Nayak* where the strike is illegal, but at the same time unjustified, the workers are not entitled for wages for the strike period. It cannot be unjustified unless reasons for it are entirely perverse or unreasonable. The use of force, violence or acts of sabotage by workmen during this strike will not entitle them wages for this period.

(5) In *T.K.Rangarajan v. Government of Tamilnadu and others*, held that the government employees have no fundamental right, statutory, equitable or moral to resort to strike and they cannot take the society at ransom by going on strike, even if there is injustice to some extent.

4.15 TRADE UNION ACT, 1926

The Trade Union Act, 1926, provides a reasonable procedure for union registration. The Act, amended by Trade Unions (Amendment) Act, 2001 provides for the registration of a trade union by the state. A trade union has to represent at least 100 workers or 10 per cent

of the workforce, whichever is less, compared to a minimum of seven workers previously. In practice, the government seems to maintain that in order to be registered; a trade union needs to have a minimum of 100 members[60]. Registration does not lead to recognition, rights to represent workers or to collective bargaining.

4.16 THE BONDED LABOUR SYSTEM (ABOLITION) ACT, 1976

The Indian Slavery Act, 1843, in theory abolished slavery in the possessions of the East India Company. The Indian Penal Code, 1860, Chapter XVI, contained provisions against forced labour, although the practice continued, most famously in the indigo growing regions.

The Bonded Labour System (Abolition) Act 1976, prohibits forced labour and also provides for the identification, rescue, and rehabilitation of bonded labour. The Right against Exploitation, contained in Articles 23–24, lays down certain provisions to prevent exploitation of the weaker sections of the society by individuals or the State. It prohibits human trafficking, making it an offence punishable by law, and also prohibits forced labour or any act of compelling a person to work without wages where he was legally entitled not to work or to receive remuneration for it. It clearly outlawed forced and bonded labour. India has ratified the two ILO Fundamental Conventions dealing with forced labour. However, it permits the State to impose compulsory service for public purposes, including conscription and community service. The Bonded Labour system (Abolition) Act, 1976, has been enacted by Parliament to give effect to this Article.

The Bonded Labour Abolition Act, 1976 defines bonded labour as occurring when a worker is in a position where he must:

(1) render, by himself or through any member of his family, or any person dependent on him, labour or service to the creditor, or for the benefit of the creditor, for a specified period or for an unspecified period, either without wages or for nominal wages, or

(2) forfeit the freedom of employment or other means of livelihood for a specified period or for an unspecified period, or (3) forfeit the right to move freely throughout the territory of India, or (4) forfeit the right to appropriate or sell at market value any of his property or product of his labour or the labour of a member of his family or any person dependent on him, and includes the system of forced, or partly forced, labour under which a surety for a debtor enters, or has, or is presumed to have, entered, into an agreement with the creditor to the effect that in the event of the failure of the debtor to repay the debt, he would render the bonded labour on behalf of the debtor; The crucial markers for bonded labour are the giving of a loan with the intention of bringing about bonded labour; deceit in the loan; and payment of less than the minimum wage.

The Supreme Court has noted that "it is a settled law that an employee cannot be termed as a slave, he has a right to abandon the service any time voluntarily by submitting his resignation and alternatively, not joining the duty and remaining absent for long."

Forced Labour is more than just low wages, or unpleasant working conditions. As the ILO points out; the mere fact of being in a vulnerable position, for example, lacking alternative livelihood options, does not necessarily lead a person into forced labour. It is when an employer takes advantage of a worker's vulnerable position, for example, to impose excessive working hours or to withhold wages that a forced labour situation may arise. Forced labour is also more likely in cases of multiple dependencies on the employer, such as when the worker depends on the employer not only for his or her job but also for housing, food and for work for his or her relatives.

4.17 APPRENTICES ACT, 1961

According to Apprenticeship Act 1961, "**apprentice"** means a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship.

(1) As per Section 22(1) of this Act, An employer is under no obligation to employ the apprentice after completion of apprenticeship. However, in *UP State Road Transport Corpn* v. *UP Parivahan Nigam Shishukh Berozgar Sangh*[65] , it was held that other things being equal, a trained apprentice should be given preference over direct recruits. It was also held that he need not be sponsored by the employment exchange. Age bar may also be relaxed, to the extent of training period. The concerned institute should maintain a list of persons already trained and in between trained apprentices, preference should be given to those who are senior. Same view was adopted in *UP Rajya Vidyut Parishad* vs. *State of UP.*[66]

4.18 SHOPS AND COMMERCIAL ESTABLISHMENTS ACT

Where in an establishment activities like that of clearing and forwarding is going on, it would fall within the expression "shop" even though clearing of documents is done in customs house meant for export and import of goods. Person involved in such business is catering to the needs of exporters and importers and others wanting to carry the goods further.[67]

In *ESI Corporation vs. R.K. Swamy*[68] giving interpretation to the term; shop' it was held that "Anyone having product may approach advertising agency. The advertising agency will prepare an advertising campaign for him utilising the services of the experts it employs in this behalf. It sells the campaign to the client and receives the price thereof. Indubitably, the price will depend upon the nature of the campaign but that does not make any great difference. Essentially, the advertising agency sells its expert services to a client to enable the client to launch an effective campaign of his products without staining the language, the

premises of an advertising agency can be said to be a “shop”.

4.19 NOTES

4.20 SUMMARY

In this unit you have studied various labour legislations enacted in India to protect the interest of the labour. You have gone through variety of case laws pertaining to each legislation discussed in this unit. In this unit you have exposed to laws related to industrial relations, labour welfare, social security, contract labour and shop & commercial establishment.

4.21 KEYWORDS

- Factory
- Industry
- Dispute
- Maternity
- Trade union
- Apprenticeship
- Workmen
- Compensation
- Wages
- Child labour
- Contract labour
- Commercial establishment

4.22 SELF ASSESEMENT QUESTIONS

1 Explain the factories Act 1948

2 Discuss the Provisions of Apprentices Act 1961

3 Esplain the Shops and Commercial Establishment Act

4.22 REFERENCES

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MODULE - II
LABOUR POLICY AND ADMINISTRATION

UNIT - 5 : AN OVERVIEW LABOUR POLICY AND ADMINISTRATION

Structure :

5.0 OBJECTIVES

After studing this unit, you will be able to;

- Explain the significance of Labour policy in India.
- Discuss the various postulates which is essential for industrial growth.
- Highlight relationship between State and Industry.
- DiscussVarious Labour policy of Government of India.
- Explain Industrial relations during Plan Period.

5.1 INTRODUCTION

Industrialization may be defined as a process which accelerates economic growth, affects structural changes in the economy particularly in respect of resource utilization. production functions, income generation, occupational pattern, population distribution and foreign trade; and includes social change.

The above definition makes it clear that Industrialisation is a process which increases income, brings about structural changes in the economy and induces changes. Industrialisation accelerates economic growth and increases national income, that is why Industrialisation assumes much importance in the context of economic development of particularly the underdeveloped and as well as developing countries.

Industrial development is accompanied by rising national and disposable incomes a high standards of living. This is clear from the high disposable incomes and high standards of living in the industrially advanced countries. This is made possible by Industrialisation by more extensive and intensive utilisation of the productive resources, increasing gainful employment opportunities and making available on a massive scale various consumer goods and services.

According to Gunnar mydral, manufacturing industry represent in a sense, a higher stage of production. In advanced countries, the development of manufacturing industry has been concomitant with these countries spectacular economic progress and rise in the level of living, many of the products are indeed almost symbolic of a high living standard. Industrialisation and the growth of that of work part of the working population that is engaged in industry, is therefore a means of national income per capita.

Industrial development can greatly increase gainful employment opportunities, no wonder, Industrialisation has been viewed as an important means to solve unemployment problem. It

is generally believed that the agricultural sector of under developed countries is characterised by the existence of surplus labour. Industrial development will open up avenues of employing this surplus force. Rapid Industrialisation, therefore is a must especially those countries suffering from heavy population pressure.

5.2 INDUSTRIAL JURISPRUDENCE

During the 20th century a new branch of jurisprudence known as industrial jurisprudence has developed in our country. Industrial jurisprudence is a development of mainly post independence period although its birth may be traced back to the industrial revolution. Before independence it existed in a rudimentary form in our country. The growth of industrial jurisprudence can significantly be noticed not only from increase in labour and industrial legislations but also from a large number industrial law matter decided by the Supreme Court and High Courts. It affects directly a considerable population of our country consisting of industrialists, workmen and their families. Those who are affected indirectly constitute a still larger bulk of the country's population. This branch of law modified the traditional law relating to master and servant and had cut down the old theory of laissez- faire based upon the 'freedom of contract' in the larger interest of the society, because that theory was found wanting for the development of harmonious and amicable relations between the employers and employees.

Individual contracts have been in many respects substituted by a standard form of statutory contract through legislation and judicial interpretation. The traditional right of an employer to hire and fire his workmen at his will have been subjected to many restraints. Industrial tribunals can by their award make a contract, which is binding on both the parties creating new right, and imposing new obligations is not by the parties themselves. Either or both of them may be opposed to it, nevertheless it binds them. Thus, the idea of some authority making a contract for the workmen and employer is a strange and novel idea and is foreign to the basic principle of the law of contract. Even though it is applicable to all the Industrial Establishments. Out of the struggle between workers and Management, demanding for better share in the production and profit of the industry, have grown the recognition of certain principles which are considered as fundamental principles in all developed countries of the world.

The fundamental principles are,

1. The right of workmen to combine and form associations or unions.
2. The right of workmen to bargain collectively for the betterment of their conditions of service and any other welfare facilities.

3. The realization that economic struggle is inevitable because it is but natural that labour would agitate for better conditions.

4. A shift from the doctrine of "Laissez faire" to a "welfare state".

5. Tripartite consultations i.e., solution of the industrial or labour disputes through the participation of workers, employers and government. This is to minimize the so many labour disputes.

6. The State no more be a neutral onlooker but must interfere as the protector and as a custodian for the purpose of social good.

7. Minimum standards must be guaranteed through State legislation.

Obviously if the above mentioned principles were followed in any country, that leads to a welfare state.

5.3 LABOUR POLICY IN INDIA

After Independence it was largely felt that the labour policy must emphasised upon self reliance on the part of the workers. Since Independence till, 1954, the period when V.V Giri was the labour minister, all official pronouncements emphasised that labour should become self reliant. An equally forceful view had been to prefer reliance upon the government. This cross current of approach to the labour policy gave place to a new approach known as "Tripartism". Thus it became the central theme in the so called "Nanda-Period" that began in 1957, During this period the government paid reliance on three party approach, namely the trade union representing the workers, the employers, and the government. In this kind of approach the representatives do not decide anything but their role is mainly advisory. They meet together, discuss the points in dispute and strive to reach a consensus and if they agree they make recommendation.

Tripartism is an approach which lays stress on the identity of interests between labour and capital; they are the partners in the maintenance of production and the building up of the national economy. The labour policy had proceeded on a realization that a community as a whole as well as individual employers are under an obligation to protect a welfare of workers and to secure to them their due share in the gains of economic development. This led to enacting on the payment of bonus act, 1965, which aimed at providing for the payment of bonus on the basis of profits or on the basis of production or productivity.

5.4 IMPORTANT POSTULATES

The main postulates of labour policy may be summed up as follows,

1. Recognition of the state as the custodian of the interest of the community, as the catalyst of change and welfare programmes.
2. Recognition of the right of the workers to peaceful direct action if justice is denied to them.
3. Encouragement to mutual settlement, collective bargaining, and voluntary arbitration.
4. Intervention by the state in favour of the weaker party to ensure fair treatment to all concerned.
5. Privacy to maintenance of industrial peace.
6. Evolving partnership between the employer and employees in a constructive endeavour to promote the satisfaction of the economic needs of a community in the best possible manner.
7. Ensuring fair wage standards and provisions of social security.
8. Co-operation for augmenting production and increasing productivity.
9. Adequate enforcement of legislation.
10. Enhancing the status of the worker in industry.
11. Tripartite consultation

5.5 INDUSTRIAL REVOLUTION IN INDIA

Industrialisation in India as in any other country implies the growth of a factory system with employers and wage earners in varying circumstances and with varying characteristics, yet having some common features and it the common features that are of interest. As a consequence of the introduction of factory system production became concentrated in a few selected places, resulting in the increase of labour population at all such places. The village workers migrated to the industrial towns because of the difficulty of finding adequate livelihood in their native places. This resulted in disappearance of the popular village handicraft system because they could not compete with machine made goods. The goods purchased on a mass scale with the help of machines in the industries were cheaper than the goods produced by handicraft method. But the development of industries in India brought with it a great evil inasmuch as it changed the status of a craftsman into wage- earner. Therefore, the craftsmen had to migrate from village to industrial cities in search of employment in factories.

Evils of Industrialisation :

The factory system had some inherent evils to which the factory workers were exposed in the beginning. These may be divided into two heads, namely, economic and social evils. This certainly makes on the growth of labour legislation.

Economic evils :

1. The artisan who in the handicraft system had the psychological satisfaction of producing the goods himself became in the factory system only a tender to machine. He had to produce the goods with the help to tools and raw materials supplied by his employer and in the workshop of the employer. In the factory system of production only a part of goods were produced by a certain category of workers. The workman in this system, did not get full psychological satisfaction of manufacturing a product by himself and this indirectly arrested his mental development and creative talents.

2. The wages paid to factory workers were quite inadequate to meet their barest needs in the new environment which was different from their rural life.

3. The employment of factory workers was not secure in the beginning. They had to suffer occasionally from periodic unemployment and under employment as a consequence of over production or trade cycles. A worker could be discharged by his employer at any time without assigning any reasons therefore. It is because of hire and fire policy.

Social Evils :

1. The factories were sick not only of economic evils but also social evils. Overcrowded cities with insanitary slums, and acute housing shortage because of large scale migration of village population to industrial towns had its natural effect on health, morality and social life of workers.

2. Work in factories was very hazardous and strenous with long hours duty, and no facility for recreation. Machines were taken care of by the factory owner who had little regard for the safety and welfare of the workers.

3. Workers were exposed to serious accidents because machines were not properly screened. Accidents were considered as normal risks incidental to employment in a factory and the worker who was unfortunate victim of an accident lost his employment and had no right to compensation.

5.6 RELATIONSHIP BETWEEN GOVERNMENT AND INDUSTRY :

The relationship between state and industries is summed up as follows,

1. **Promoter:** The objective of the government has been to accelerate the rate of economic growth and to speed up industrialisation. to achieve this, the government gave special emphasis to develop heavy industries, to expand the public sector, to build up a large and growing co-operative sector, to reduce disparities in income and to prevent private monopolies and the

concentration of economic power in the hands of a small number of individuals. The government had been acting as a promoter of all industries of basic and strategic importance or in the nature of public utility service

2. **Regulation:** The declared policy of the government has been to provide and equal opportunity for development and expansion of the public sector as an agency for planned natural development. But to steer the wheel of the economy in the direction of maximum social good, it is necessary to regulate and control the public and private industries.

3. **Arbitrator:** The life of a nation depends upon the progress of an industry. Industry cannot grow unless there in industrial peace in the country. The government through industrial dispute act, has ensured social justice to both employers and employees and advance the progress of industry by bringing about cordial relations between the parties. The government officers, boards of conciliators and industrial tribunals, etc

4. **Sharer:** Private sector depends more upon the government financial institutions for financial their expansion, growth and diversification. on the other hand, there is a lack of managerial skill any professional manages in government sector. To overcome various difficulties faced by both the sectors and combine resources and managerial skills of both, a new industrial concept has be announced by a government. The outstanding feature of this concept is the joint sector. The main idea behind joint sector was to use private capital and managerial abilities and supplement the government efforts for the industrial development of the country. The government thus, participates as a sharer or partner in an industry with private sector will enable the realization of overall goals set for the welfare of the nation and widen the scope of industrial growth.

5. **Guidance and Assistance:**

Besides taking the direct part in industries government provides guidance and assistance to entrepreneurs through its various agencies, such as industrial development corporations, trade commissioners, these various agencies help in selecting a suitable project, providing infrastructure, finance, subsides, and marketing facilities, etc.

6. **Administration:**

In India, both central and state government enact and administer labour laws, the division of jurisdiction between centre and states in laid down by the constitution. The ministry of labour and employment of the central government is the main agency for policy information and administration in all labour matters. Together with the state governments, the local bodies and the statutory corporations / boards (such as employees state insurance corporation and

central board or workers education) co- ordinates and monitors the implementation of policies and decisions of the tripartite Committees.

5.7 LABOUR POLICY OF GOVERNMENT OF INDIA

Pre- independence policy;

During the British rule, there was no definite and declared industrial policy of the government. Immediately after the World War I, an Industrial Commission was appointed to devise some industrial policy, but without any effect, After Independence, the national government rightly adopted a policy of mixed economy of the economic development of the country in the quickest way and without much socio economic disturbance. The independence dawned on the 15th of Aug, 1947 and the government announced its first industrial policy on the 6th April of 1948. This policy was followed by various other policies like fiscal policy, the foreign policy and the industrial licensing policy in 1949, 1950 and 1951 respectively.

Industrial policy refers to those actions of the state which influence the growth of the industrial economy of a country. The term industrial policy is made up of two components, one is the philosophy to determine the shape of the industrial growth. Second, component consists of rules and regulations designed to implement the policy is of vital importance as the place and pattern of industrialization greatly depends upon the type of industrial policy formulated.

The British government in India took no steps to put India on the path of Industrial development. It was keen on making India purely and agricultural colony and an economic satellite of the British Empire. It was in the interest of British Government to keep out country as a source of food and raw materials and a market for the British Industrial products. Thus, the government followed the policy of lassiez faire in respect of industrial development which could not possibly promote, protect, assist and encourage Indian Industries. How ever it was only after the outbreak of first World War we could witness some changes in the government economic policy.

In pre- independence India, owing to the policy of laissez faire, the dominant of rule of the government in industrial was to maintain law and order. This in effect meant that the trade disputes generally resulted in victory for the employer, and surrender by the workman to the dictates of employer. According to ILO the early statutes like Assam Labour Act, The Workman's Breach of Contract Act 1959, and the Employee's and Workman's Dispute Act 1860 aimed at protecting the social system against labour, rather than protecting the social system against the social system.

The Reeds Committee of the Bombay government 1921 advocated for an active role of state in resolving industrial disputes by employing force to protect life and property. As for back as in 1942, in the India labour conference, Dr. B.R. Ambedkar propounded the policy of bringing together, the three parties namely, the government, management and labour on a common platform as consultative tripartite forum for all matters of labour policy and industrial relation.

Post Independence policy;

After Independence it was largely felt that the labour policy must emphasis upon self reliance on the part of workers, since Independence till 1954, the period when V.V. Giri was the labour minister, all officials pronouncements emphasized that the labour should become self- reliant. An equally forceful view had been to prefer reliance upon the government. This cross current approach to the labour policy gave place to new approach known as " Tripartism" became the central theme in then so called "Nanda period" that begun in 1957. During this period the government paid reliance to three party approach namely the Trade Union representing the workers, the employers and the government out of the three. The role of the government is more important. Annual labour conferences and the permanent standing labour committees served as chief instrument of tripartism. These conferences advocated, among many things; worker's participation in management, worker's education, works Committees and minimum wages legislation. Tripartism is an approach which lays stress on the identity of interests between labour and capital i.e., they are partners in the maintenance of production and the building up of the national economy.

5.8 INDUSTRIAL RELATIONS DURING PLAN PERIOD

The Industrial Relation Policy during the plan period is, in fact, the continuation of the some of the earlier efforts made in the direction of maintaining industrial peace.

The First Plan Period:

The First 5 year plan emphazied the need for industrial peace in industry, the ultimate oneness of interests and the virtue of harmonious relations between capital and labour. The Plan encouraged mutual settlement, collective bargaining and voluntary arbitration. It observed: "it is incumbent on the state to arm itself with legal powers to refer disputes for settlements by arbitration or adjudication, on failure of efforts to reach an agreement by other means".

The plan emphasized the other principles as follows,

(i) Workers' right of association, organisation and collective bargaining should be accepted without reservation as the fundamental basis of mutual relationship; and

(ii) Employer - employee relationship should be accepted as "A partnership in constructive endeavor to promote the satisfaction of the economic needs of the community in the best possible manner".

The plan stressed that the machinery to settle disputes should be managed in accordance with these principles:

(a) Legal technicolities and formalities of procedure should be used to the minimum possible extent;

(b) Each dispute should be finally and directly settled at a level suited to the nature and importance of the case;

(c) Tribunals and courts should be manned by specially trained expert personnel;

(d) Appeals to these courts should be reduced; and

(e) Provision should be made for prompt compliance with the terms of any award,

For the sake of uniformity, the plan recommended the setting up of " Norms" and standards to govern the relations and dealings between employers and employees and for the settlement of Industrial disputes through Tripartite bodies, viz., the Indian Labour Conference, The Standing Labour Committee, and the Industrial Committees for particular industries.

The second 5 year Plan:

The Second 5- year Plan continued to policy formulated in the previous plan, it observed that inadequate implementation and enforcement of awards and agreements had been a source of friction between labour and management, it reiterated that emphasiz should be placed on "Avoidance of disputes at all levels, including the last stage of mutual negotiations, namely, conciliation". It emphasized the importance of preventive measures for achieving industrial peace, it also suggested deterrent penalties for non- compliance in the implementation and enforcement of awards and agreements, in case of violation, the responsibility of enforcing compliance should rest on an appropriate tribunal to which the parties should have direct approach, Faith in the effectiveness of Standing Joint- Consultative machinery was reiterated.

The plan suggested a proper demarcation of the functions of Works Committees and trade unions to remove the suspicion of the latter of the former.

Third Five- Year Plan:

The Third Five Year Plan laid stress on moral rather than on legal sanctions for the settlements of disputes, " It laid stress on the prevention of unrest by timely action at the appropriate stages and giving adequate attention to root causes. This involves a basic change

in the attitudes and outlooks of parties and the new set of readjustments in their mutual relations.

The plan pinned its faith on the greater popularity of 'voluntary arbitration' which should gradually replace adjudication. it said: " Ways will be found for increasing the application of the principle of voluntary arbitration. The same protection should be extended to proceedings in this case as is how applicable to compulsory adjudication.. employers should show much greater readiness to submit disputes to arbitration than they have done hitherto. This has to be the normal practice as an important application accepted by parties under the Code of Discipline.

Fourth Five Year Plan :

No fresh direction or any shift in the government's industrial relations policy was indicated in the Fourth Plan. It made a very brief reference to industrial relations. It said;

(i) In the field of industrial relations, priority will be accorded to the growth of a healthy trade union movement so that it could secure better labour- management relations;

(ii) More emphasis should be laid on collective bargaining, and productivity should be increased through labour- management co-operation; and

(iii) Industrial disputes should be settled by voluntary arbitration.

The Fifth Five Year Plan:

The Fifth Plan stressed the need for greater involvement of labour by ensuring its vertical mobility in industrial organisations. it observed:

"Stress will be laid on strengthening industrial relations and conciliation machinery, better enforcement of labour legislation, research in labour relations and labour laws, imparting training to labour officers, improvement of labour statistics and undertaking studies in the field of wages and productivity. Special attention will be devoted to bring about improvement in productivity in all sphere of the economy".

The Sixth Five- Year Plan :

The Sixth Plan declared:

" Industrial harmony is indispensable for a country if it is to make economic progress.... healthy industrial relations, on which industrial harmony is founded, cannot be regarded as a matter of interest only to employers and workers, but are of vital concern to the community as a whole. In the ultimate analysis, the problem of industrial relations is essentially one of attitudes and approaches of the parties concerned. A spirit of co-operation postulates that

employers and workers recognized that while they are fully justified in safeguarding their respective rights and interests, they must also bear in mind the larger interest of the community. This is the true significance of the doctrine of industrial harmony.

The Seventh Five Year Plan:

Commenting on industrial relations, the Seventh Five Year Plan remarked, "There is considerable scope for improvement in industrial relations which could obviate the need for strikes and the justification for lockouts. in the proper management of industrial relations, the responsibilities of unions and employees has to be identified and inter union rivalry and intra union division should be avoided".

The Industrial Policy Resolution, 1956 made following observations on industrial workers and industrial relations." It is necessary that proper amenities and incentives should be provided for all those engaged in industry. the living and working conditions of workers should be improved and their standard of efficiency raised. the maintenance of industrial peace is one of the prime requisites of industrial progress. some laws governing industrial relations have been enacted and a broad common approach has developed with the going recognition of the obligations of both management and labour. There should be Joint - consultation and workers and technician should, wherever possible, be associated progressively in management".

The Industrial Policy Resolution, 1991:

With a view to inducting an element of dynamism in Indian economy, a new industrial policy was announced by the Government in 1991. The said policy has brought about a drastic change in the organization and working of industrial system of the country, that in turn considerably influenced its labour policy. With a view to safeguarding the interest of labour ,the industrial policy has stated that the Government wilfully protect the interest of the labour , enhances their welfare and equip them in all respects to deal with the inevitability of technical change. Labour will be made an equal partner in progress and prosperity. Workers participation in the management will be promoted. Workers co operations will be encouraged to participate in packages designed to turn around sick companies. Intensive training skill development and up gradation programme will be launched.

5.9 SIGNIFICANCE OF INDUSTRIAL POLICY

The Industrial Relation Policy derives its philosophy and content from the Directive Principles State Policies laid down in the constitution, plan documents and the industrial policy resolution, and has been evolving in response to the specific needs of the situation

and the requirements of planned economic development, social justice and industrial peace in the country. It is the product of tripartite consultations. The aim is to promote harmonious relations between labour and management in order to improve production and working conditions, and to promote the interests of the community at large. The Industrial Relations Policy of the government as enunciated in the various Five- Year Plans incorporates principles and guidelines for the prevention and resolution of disputes. As a means of preventing disputes a large number of voluntary measures have been evolved by the state. These consists of :

(a) Codes of behavior for employers and workers in their day-to-day dealings with each other,; and

(b) The holding of meetings at the national level between employers and workers organisation under the auspices of the Indian National Labour Conference to discuss problems of mutual interest and to evolve criteria or principles for the resolution of disputes or issues of controversy.

5.10 NOTES :

5.11 SUMMARY

On the whole it can be seen that labour policy in India has broadly followed the constitutional trust of labour welfare and ILO convention about human rights and social justice norms. The first five years plan policy laid the foundation stone for the development on these lines owing to peripheral changes in policies. The over trend from industrial adjudication to voluntary settlements of disputes and workers participation in management is visible.

5.12 KEY WORDS

- Labour Policy
- Industrial Jurisprudence
- Industrial Revolution
- Plan Period
- Postulates
- State and Industry

5.13 SELF ASSESSMENT QUESTIONS

1. Critically examine the labour policy of Government of India as emerged through five year plan policies.
2. Explain the important postulates, which influences the growth of labour legislation in India.
3. Elucidate the significance of industrial Policy in India.
4. Discuss the relationship between State and Industry.
5. Write a note on Industrial revolution in India.
6. Explain the impacts of Industrialisation in India.

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UNIT - 6 :LABOUR LAW ADMINISTRATIVE MACHINERY [CENTRAL AND STATE]

Structure:

6.0 OBJECTIVES :

After studying this unit, you are able to;

- Explain the Central and state administrative machinery in India.
- Discuss the provisions relating to Autonomous bodies.
- Explain the authorities under Industrial Dispute Act.
- Highlight the role of Inspectors under Factories Act.
- Explain the powers of Registrars.

6.1 INTRODUCTION

Since many of the labour statutes are made to be applied by both the levels of government [central and state] in their district areas, a different in co-ordination of jurisdiction may arise.

To over come this, the concept of appropriate government is ready to provide for application of the law either by the central or state governments within their jurisdiction. For example,under Industrial Disputes Act central government is the appropriate government in relation to industries established by it or by a railway company, docks, mines, oilfields, insurance, banks, airways etc., As a result in referring the disputes to adjudication or arbitration or in appointing the administrative or quasi judicial authority the central government is exclusively vested with this power.

6.2 LABOUR ADMINISTRATION

In India both central and state governments enact and administer labour laws the division of jurisdiction between central and states is laid down by the constitution the ministry of labour and employment of the central government is the main agency of policy formation and administration in all labour matters. Together with the state governments, the local bodies and the statutory corporations, Boards [such as employees state Insurance corporation and central Board of workers Education co-ordinates and monitors the implementation of policies and decision of the tripartite committees.

While the labour secretary is over all in charge of both policy and administration, the commissioner of labour in the states is the operative arm for the implementation of labour laws. He is also the register of trade union. In some states, he has the functions of the state Director of the national employment service or of the chief Inspector of factories. In states

where there is no separate authority for labour welfare, the commissioner [state] look after this functions.

A number of directorates have been set up to look after specific aspects like employment training, advisory service and research help to the factory inspectors of different states etc.

Under the Industrial Dispute Act several authorities have been created to investigate and settle disputes. They include works committee, conciliation officers, board of conciliation, arbitration, labour courts, Industrial Tribunals and National tribunals. Besides, there are Wage Boards, Commissions, Committees of enquiry, tripartite forums like the standing committee on Labour and Indian Labour conference to provide direction and advice on matters that comes under their jurisdiction.

On the whole, there are several institutions/agencies administering a remedy of legislative and other provisions. As in the case of legislation, in labour administration also there is significant scope for integrating the numerous authorities and having a unified cadre of labour judiciary service. This makes for a speedier co-ordinates and effective administration in the absence of which employees and employers have to run around a host of institutions/agencies in regard to labour matters.

6.3 CENTRAL ADMINISTRATIVE MACHINERY

The Ministry of Labour and Employment, Government of India is the major agency in the country which is looking after the administration of labour matters. It is responsible for the implementation of welfare funds for mine workers. It is also a channel of communication between central government and ILO and plays important role in the country. The department has several attached offices, subordinated officers and autonomous organizations.

Attached Offices ;

1. The chief labour commission of India looks after the welfare of employers of central government and conciliates industrial disputes. It is also called as industrial relations machinery.[IRM] The function of IRM is prevention and settlement of industrial disputes in mines ,oilfields ,major ports, banks, insurance companies and industries carried on by or under the authority of central government.

2. The directorate general of factory advisory service and labour institutes deals with safety, health and welfare of workers in factories and docks. It co- ordinates the operation of factories Act. It provided training in productivity, safety and management.

3. The directorate general of employment and training formulates the policies procedures, standards and co-ordination of employment services and vocational training.

4. The directorate of labour bureau collects, complies and publishes statistical and other informations about employment, wages, industrial disputes etc.,

Sub-ordinate offices ;

The directorate general of mines safety enforces the mines Act 1952 and rules made there under. It deals with maternity benefit to non-coal miners. It also manages funds for workman in coal, iron, mica, and manganese mines and for beedi workers.

6.4 AUTONOMOUS BODIES

1. The ESI Act 1978 - responsible for implementation for medical card and cash benefit in cases of sickness, maternity and employment injury.
2. The EPF organisation, deals with provided fund, family pension and deposit linked insurance scheme.
3. The central coal Mines Rescue stations committee deals with the responsibility of establishment, maintenance and proper functioning of the rescue stations.
4. The National council for safety in mines- to educate the workers working in mines.
5. The National safety council - promotes safety in factories.
6. The central Board of workers education - Trains the workers and tells their rights and duties.
7. The National Labour Institute conducts research on industrial relations personnel Management, labour welfare etc.

6.5 ADMINISTRATIVE MACHINERY AT STATE LEVEL

Realizing the need for decentralized administration of labour laws, the responsibility of implementing the labour law in respective state with suitable mechanical is entrusted upon states in many of the labour legislation. They are as follows.

All states in India established labour commissioners for the administration of Labour legislations. These commission are assisted by deputy labour commissioner and other labour officers.

6.6 TRADE UNION ACT

The main object of the Act is to confer a legal and corporate status on registered, Trade unions the Act provides immunity from civil and criminal liability to trade union executive and members for benefit trade union activities. The Act administered by the state

governments which are required to appoint registrars of trade unions to look after the proper compliance of the provisions of the Act the registrar has the power of receiving application asking for details, hearing and registering the trade unions, the state government also defines the local limits within which they shall exercise and discharge the powers and functions so specified.

Power of Registrar : [Section 28 A]

[a] The Registrar shall have the power to verify the membership of a registered trade union and matters connected therewith in such manner as may be prescribed and shall send a report about such membership to the State Government and the Central Government.

[b] For exercising such powers, the Registrars shall follow such procedure as may be prescribed and shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, for compelling the production of documents or other connected materials.

[c] Voluntary Reference of Trade Union Dispute to Arbitration [Section 28]

[d] Where any trade union dispute exists or is apprehended and the parties to the dispute agree to refer the dispute to arbitration, they may, by a written agreement [i.e. arbitration agreement], refer the dispute to arbitration and the reference shall be to such person or persons as an arbitrator or arbitrators, as may be specified in the arbitration agreement.

[e] Where an arbitration agreement provides for reference of the dispute to an even number of arbitrators, the agreement shall provide for the appointment of another person as umpire who will enter upon the reference; if the arbitrators are equally divided in their opinion, and the award of the umpire shall prevail and shall be deemed to be the award of the arbitrators for the purposes of this section.

[f] An arbitration agreement shall be in such form and shall be signed by the parties thereto in such manner as may be prescribed.

[g] A copy of arbitration agreement shall be forwarded to the appropriate government and the government shall, within one month from the date of the receipt of such copy, publish the same in the Official Gazette.

[h] The arbitrator or arbitrators shall investigate the dispute and submit to the appropriate governments the award signed by the arbitrator or all the arbitrators, as the case may be.

[i] Every award made under this section shall, within a period of thirty days from the date of its receipt by the appropriate government, be published in such manner as that government thinks fit.

[j] An award published shall be final and shall not be called in question by any court in any manner whatsoever.

[k] Nothing in the Arbitration Act, 1940, shall apply to arbitration under this Section.

Reference of Trade Union Disputes to Registrar [Section 28 C]

[a] Where the appropriate government is of the opinion that any trade union dispute exists or is apprehended, it may, at any time, by order in writing, refer the dispute to the Registrar for adjudication.

[b] Subject to any regulations that may be made in behalf, the Registrar shall, in adjudging the dispute referred to him, follow such procedure as he thinks fit.

[c] Where in an order referring a trade union dispute to the Registrar, the appropriate government has specified the points of dispute for adjudication, the Registrar shall confine his jurisdiction to those points and matters incidental thereto.

[d] Where a trade union dispute has been referred to the Registrar for adjudication, he shall hold the proceedings expeditiously and shall, as soon as it is possible on the conclusion thereof, submit his award to the appropriate government.

[e] The award of the Registrar shall be in writing shall be signed by him.

[f] Every award of the Registrar shall, within a period of thirty days from the date of its receipt by the government, be published in such manner as that government thinks fit.

[g] The award published shall be final and shall not be called in question by any court in any manner whatsoever.

[h] Any person aggrieved by the award of the Registrar may within such period as may be prescribed prefer an appeal to the court [under Section 11]

[i] Without prejudice to the provisions, where the parties to a trade dispute apply in the prescribed manner, whether jointly or separately, for reference of the dispute to the Registrar, the appropriate government shall make the reference accordingly.

[j] Any award made by a Registrar in a reference made to him, shall be final and shall not be called in question by any court in any manner whatsoever.

6.7 INDUSTRIAL DISPUTE ACT

The Act provides a machinery for peaceful establishment of works committees to promote hormonious relations between the employers and workers. It introduces the principle of compulsory adjudication and prohibited strikes without notice in public utilities.

Works committee ; Appropriate governments have been empowered to prescribe that works committees shall be established in which 100 or more are employed.

The following are the objectives of the works committee;

[1] To promote measures for securing and preserving good relations between employer and employees.

[2] To strive for minimising the difference of opinion in regard to matters of mutual interest between the employees and the employer. It is meant to create a sense of partnership or comradeship between the employers and workmen.

The decision of works committee is neither agreement nor compromise. Further it is neither binding on the parties nor enforceable under the Act. It may however by noted that the works committee is entitled to;

[a] Discuss grievances arising out of the disciplinary action, or

[b] Take up such matters which fall under the purview of Standing Orders, or

[c] Enter into agreement with the employer on changes in conditions of service, or

[d] Supplant supersede the unions for the purpose of collective bargaining.

[e] To compose differences by making recommendations, the final decision rests with the union and the employer.

Conciliation Officer: [Section 4 (SS) :

Under the act, the appropriate government is empowered to appoint desired number of conciliation officers, by notification in the official Gazette, for the settlements of industrial disputes.

The number of conciliation Officer to be appointed, is determined by the appropriate government, taking into account the volume of work and the quality of industrial disputes that actually exist or may arise. A Conciliation Officer may be appointed for a specified area or for specified industries or for one or more specified industries and either permanently or for a limited time.

His duty to induce the parties to come to a fair and amicable decision on matters in dispute. He is an independent person who investigates the disputes and all matters affecting thereto. He is not an adjudicating body but is merely a suggesting body. He goes from camp to camp and finds out the greatest common measures of agreement. He is charged with the duty of mediating in and promoting settlement of industrial disputes.

Duties of the Conciliation Officer:

The Act provides (under sec.12) that (i) if an industrial dispute exists or is apprehended in a public utility industry, the Conciliation officer shall hold its proceedings, and (ii) in case of other industry, his power is discretionary, i.e., he may or may not hold such proceedings.

The Conciliation officer has wide power of making investigation without delay. into an industrial dispute and all matters affecting the merits and rights of settlement thereof and may do all such things as he thinks fit, to induce the parties to come to a fair and amicable settlement of the dispute. The Conciliation Officer can send only report but has no authority to pass a final order. Any order passed by him requiring the parties to act in a particular manner is without jurisdiction and therefore illegal and imperative.

If a settlement is arrived at in the course of conciliation proceedings, the conciliation officer must submit its report within 14 days or within such short period as may be fixed by the appropriate government duly signed by the parties to dispute. it is deemed to have commenced on the date on which a notice of strike or lock-out is received by the conciliation Officer. In the other cases, it is deemed to have commenced from the date when conciliation officer holds proceedings. A settlement brought about through the conciliation officer in an administrative act and not a quasi judicial one.

If no settlement is reached at, then the conciliation office is required to immediately send to the appropriate government, a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof and the probable reasons for failure.

Board of Conciliation(Section 5) :

A board of conciliation is constituted as an ad hoc body by the appropriate government. Its purpose is to mediate and to induce the parties to come to a fair and amicable settlement, so the appropriate government is not empowered to constitute a Board for the purpose of referring criminal proceedings. The board cannot enforce an award. It also cannot thrust upon the contending parties its own terms and conditions of settlement. It can take action only when a dispute has been reffered to it by the government.

Duties of the board:

1. A conciliation Board cannot admit a dispute in conciliation on its own, the board ha no jurisdiction until a reference is made to it by the government. The members of the board enjoy more powers than those enjoyed by conciliation officer.

2. The board shall endeavour to bring about settlement between the parties and for this purpose it shall, without delay, investigate the dispute and all matters affecting the merits and rights

of settlement and shall do all such things as it thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

3. If a settlement is arrived at the course of the conciliation proceedings, the board shall send a report thereof to the appropriate government with a memorandom of settlement signed by the parties.

4. If no settlement is arrived at the board shall, as soon as practicable after the close of the investigation, send a report to the appropriate government stating the facts and circumstances, the steps taken, the reasons why no settlement was arrived at, and its recommendations for the determination of the dispute.

5. A board of conciliation can only try to bring about a settlement it has 20 powers to impose a settlement upon the parties.

6.8 PAYMENT OF WAGES ACT

Authorities under the Act :

Inspectors (Section 14)

An inspector of factories appointed under section 8 (1) of factories Act, 1948, is an inspector for the purpose of this Act in respect of all factories within the local limits assigned to him.

Under section 14 (4) : the inspector is empowered to;

(a) Make such examination and enquiry as he thinks fit, in order to ascertain whether the provisions of the Act or rules made thereunder are being observed;

(b) Enter, inspect and search any premises of any railway, factory or industrial establishment or any other establishment at any reasonable time for the purpose of carrying out the objects of the Act,

(c) Supervise the payment of wages to persons employed upon any railway, or any factory or industrial establishment.

(d) Require by a written order, the production of any register or record maintained in pursuance of the act and take statement of any person which he may consider necessary for carrying out the purpose of the Act,

(e) Seize or take copies of such registers or documents or their portions as he may consider relevant in respect of an offence under the act which he has reason to believe has been committed by an employer, and

(f) Exercise such powers as may be prescribed.

The inspector cannot compel any person to answer any question or make any statement tending to incriminate himself.

6.9 PAYMENT OF BONUS ACT

Where any disputes crops up between the employer and employee, with respect to bonus to payable under this act or with respect to the application of this act to an establishment of an public sector then such disputes shall be deemed to be the industrial dispute with the purview of the industrial dispute act. In case of a reference of dispute under section 22 of this act the machinery under the payment of wages act cannot intervene. However, in case if there is no dispute the authority can proceed under section 15 of the payment of wages act.

In this context one leading case of Sanghvi Jivraj Ghewar Chand and other V. Secretary, Madras Chilled Grain and Kirana Merchant Workers Union has laid down the two test which are required to be considered while dealing with the case under section 22. The two types of disputes covered under section 22 are as under;

(i) Dispute with respect to the bonus payable under this act and

(ii) with respect to application of the bonus act.

A dispute raised by an individual workman with regard to payment of bonus cannot be considered as industrial dispute within purview of Bonus Act. However the aggrieved employee can get the dispute redressed by referring it to the labour court under section 33C (2) of the I.D. Act.

The object of the payment of bonus Act, 1965 is to maintain peace between labour and capital by allowing the employees, in recognition of their right, to share in the prosperity of the establishment reflected by the contributions made by the capital, management and labour. The purpose of the Act is to make payment of bonus to workmen in certain categoreis a statutory obligation.

The appropriate Government may appoint such persons as it thinks fit to be inspectors for the purposes of the Act and may define the limits within which they shall exercise such powers as may be prescribed by the Act.

6.10 FACTORIES ACT

Under section 8(1), the state government is required to appoint an inspector for the enforcement of the act by a notification in the State Gazette. The person who possess the required qualification can be appointed for the purpose and his powers can be prescribed by the State Government. Further, under section 8(2), the state government can also appoint any person as Chief Inspector.

Under sub- section (2A), the state government may, by notification in the Gazette, appoint any number of Chief Inspectors, Joint Inspectors, Inspectors, and Deputy Chief Inspectors and as many other officers as it thinks fit for the purpose of the act.

Powers of Inspectors (Section 9)

Under the Act, the Chief Inspector enjoys the following powers:

(1) He may enter any place which is used or which he has reason to believe, is used, as a factory. He may be accomplished by such assistants who are Government servants or any local or public authority as he thinks fits.

(2) He may examine the premises, plants and machinery, acquire the production of any prescribed register, or any other document relating to the factory.

(3) He may inquire into any accidents or dangerous occupations, whether resulting in bodily injury, disability or not and take on-the-spot or otherwise, statement of any person or persons which he may consider necessary for the purpose of the act.

(4) Confiscate any register, record, or other document or any portion thereof which he may consider necessary in respect of any offence under this Act, which he believes or has reason to believe that offence has been committed.

(5) Exercise any other such power as may be prescribed.

6.11 THE EMPLOYEE'S COMPENSATION ACT

For the purposes of deciding the question of the liability of any person to pay compensation under the Act, the state government has been authorised to appoint any person who is or has been a member of a state judicial service for a period of not less than five years or is or has been for not less than five years an advocate or a pleader or is or has been a Gazetted Officer for not less than five years having educational qualification and experience in personnel management, human resource development and industrial relations as the commissioner for employees compensation. The appointment must be notified by the State Government in the Official Gazette. The area of jurisdiction of a commissioner must be specified by the government by such notification. If more than one commissioners have been appointed for the same area, the State Government may be general or special order regulate the distribution of business between them. The commissioner may take the assistance or the services of any person who is an expert in the matter referred to him for decision. Any such person shall assist the Commissioner in holding the enquiry. Every commissioner shall be deemed to be a public servant within the meaning of this word under the Indian Penal Code .Now the question is how far the Commissioner shall take cognizance of any opinion

expressed by the expert, whom he himself called for assistance. Where the Commissioner asked a mental expert to assist him in the adjudication, the examination by such expert took place in the presence of the Commissioner, the opposite party and the applicant's pleader, but applicant's pleader not only did not raise any objection as to the procedure, but actually acquiesced to it, it was held that the applicant could not raise any objection in appeal. One is the award by the Commissioner and the other by an agreement between the parties.

6.12 NOTES

6.13 SUMMARY

Realizing the need to decentralize administration of labour laws, the responsibility of implementing the labour law in respective state with suitable mechanism is entrusted upon the state in many of the labour legislations. For an effective implementation of labour legislation tripartite co-operation participation by government official, employer and employee are very essential. The trade unions can be watch dogs for implementation of labour laws and develop co-ordination with governmental machinery for the purpose. Workers participation in management will attain better compliance with labour law. further the employee should realize that industrial harmony, safety and welfare of workers by compliance with the law will bring more profit in the long run.

6.14 KEYWORDS

- Authorities
- Inspectors
- Commissioners
- Conciliation Officer
- Registrars
- Administrative Machinery
- Labpor Administration
- Works Committee
- Concialition Board
- Autonomous Bodies

6.15 SELF ASSESSMENT QUESTIONS

1. Briefly explain the administrative machinery at central level.

2. Elucidate the mechanism of central and state cooperation in the implementation of labour Law.

3. Enumerate the various state administrative machineries.

4. Write a note on autonomous bodies.

5. Who is Conciliation officer? Identify his powers.

6. Explain the powers of Registrars under trade Union Act.

7. Enumerate the powers of Inspectors under factories Act.

8. State the provisions relating to the functions of Commissioner.

9. Identify the authorities under Industrial Dispute Act.

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UNIT - 7 : INTERNATIONAL LABOUR ORGANISATION

Structure:

7.0 OBJECTIVES

After studying this unit, you are able to;

- Explain the efforts in establishing League of Nations
- Discuss the significance of United Nation Organisation
- Highlight the Objectives and principles of International Labour Organisation
- Explain the provisions regarding the ILO standards
- Discuss the role of ILO relating to welfare measures taken in favour of workers.

7.1 INTRODUCTION

During the nineteenth century, states moved from bilateral treaties to other forms of cooperation. The Congress of Vienna 1815 is said to be a milestone in ushering the era of international conferences and multilateral treaties. Later there appeared administrative unions such as European Danube Commission established under the Peace Treaty of Paris, 1856, the International Telegraph Union, 1865 and the Universal Postal Union, 1874. After the first world war, there has been enormous growth of international organizations starting with the International Labour Organization and the League of Nations. With the establishment of the United Nations, there has been all round expansion of such organizations with varied functions, sizes and scope of their activities. The United Nations and its specialized agencies have universal membership. Besides these, there are regional organizations such as the European Union. Multiplicity of their functions has greatly influenced the whole range of international relations. Their activities have produced legal consequences and thereby they have become subjects of international law.

7.2 THE LEAGUE OF NATIONS

The League of Nations was the first major initiative for establishing a permanent international organization for maintaining global peace and security. The idea of an international organisation having its principal mission of control and resolution of international conflict put forward by Jeremy Bentham, composed of representatives of each country would serve as a ‘’ common court of judicature” to settle ‘’any difference of opinion” between two nations. Bentham proposed a system of gradual sanctions culminating in armed action. This was given a concrete form in the League of Nations by the United States’ President Woodrow Wilson in his Fourteen-point programme. United States, however, could not become a member of the League of Nations because of the Senate’ s refusal to ratify the covenant of the League of Nations. The covenant was adopted on 21 st April, 1919 and kept as a part of the Treaty of Versailles, 1919. The League of Nations was established on 10th January, 1920.

Principal Organs of League of Nations;

For implementing the action of the League under the covenant, there were two principal organs, the Assembly and a council with a permanent secretariat.

[1] The Assembly :

It consisted of the representatives of the members of the states. Each member was entitled to send not more than three representatives but had one vote. The Assembly was to meet as stated intervals and from time to time, as occasion may require, at the seat of the League, Geneva or at such other place as may be decided upon. There was no demarcation of functions of the Assembly and the council. Both the Assembly and the Council were to '' deal with any matter with in the sphere of action of the League or affecting the peace of world.''

The other functions of the Assembly were to admit new members by a two-thirds majority, to select four members of the council and by majority vote to approve additional members of the council, to make rules by a two -thirds majority for election of non- permanent members of the council, to approve the appointment of the secretary General and to apportion the expenses of the League among its members.

[2] The Council :

The Council consisted of the United States of America [but US never became a member of the League and in its place another state was elected by Assembly] Britain, France, Italy and Japan with four other members elected by the Assembly. The Council, with the approval of the Assembly, could name additional members. The meetings of the Council were to held from time to time as may be necessary. But one meeting in a year was a must.

The function of the Council included the nomination of additional members to the Council with the approval of the majority of the Assembly, to formulates plans for reducing armaments, and to make endeavor to settle disputes between states and wide-ranging powers with regard to guarantee against aggression.

3.The Secretariat :

The Secretariat consisted of a Secretary-General and such secretaries and staff as may be necessary. The Secretary-General, except the first, was to be appointed by the Council with the approval of majority of the Assembly.

The League of Nations had two autonomous bodies, namely, the Permanent Court of International Justice [PCIJ] and the International Labour Organisation [ILO].

7.3 THE UNITED NATIONS OF ORGANISATION

The failure of the League of Nations promoted the nations to create a better forum of collective security for the second post war world. In the drafting of the charter of the United Nations, the experience of the League of Nations was taken in to account. Like the League of Nations, The United Nations is also a ''Child of War''. Its primary purpose is to maintain international peace and security and to that end to take effective collective measures for the prevention and removal of threats to the peace. Its principles have been derived from the conceptions and plans of the war time allies.

In 1944 draft proposals for such an international organization were prepared at Dumbarton oaks by the representatives of USA, Britain, China and Soviet Union, The proposed organization was given the name of ''The United Nations''.

Thereafter at the Yalta Conference on 11th February, 1945, between the Big Three Powers [USA, Britain and the Soviet Union], the decision was taken to call a general conference of about 50 nations to consider the constitution of the proposed world body based on the Dumbarton oaks' proposals, to be held on 25th April, 1945. The conference attended by 51 nations held its discussions at San Francisco from 25th April to 26th June,1945 and adopted the present Chapter of the United Nations containing 111 Articles and the Statute to the International Court of Justice. The debates were not free from disagreements on the powers of the General Assembly and the ''Veto'' power in the secretary Council. The Dumbarton Oaks proposals were adopted after making certain important changes. The United Nations Charter was signed on 26th June, 1945. The organizaton came into existence on 24th October,1945 [United Nations Day] after ratification by the five permanent members of the Security Council and by a majority of other signatory members. The first session of the General Assembly was held on 10th January, 1946 in London.

The Preamble :

The Charter of the United Nations contains the Preamble and 111 Articles divided in XIX chapters. The Preamble uses the words ''We the people of the United Nations'' instead of ''the High contracting parties'' used in the covenant of the League of Nations. The Preamble also echoes the ''determination'' of these people of the United Nations to save succeeding generations from the scourge of war which had brought untold sorrow to mankind, to affirm faith in fundamental human rights, to establish conditions for justice and respect for international law and to promote social progress and better standard of life. For achieving these objectives they under take to practice tolerance and unite their strength to maintain world peace and security, to follow the principles of non-use of armed forces except in

common interest and to employ international machinery for promotion of economic and social advancement of all people of the world. The realisation of these goals is further elaborated in other provisions of the Charter including the purposes and the principles.

Purposes and Principles :

The four purposes of the United Nations are listed in Article 1 of the Charter. The first and primary purpose of the United Nations is to maintain international peace and security. For achieving this purpose, the organization is to take effective collective measures for prevention and removal of threats to peace and suppression of acts of aggression and provide for methods of peaceful settlement of disputes consistent with the principles of justice and international law. Other purposes are; development of friendly relations among nations on the basis of equality, achieving international cooperation in solving problems without any discrimination, and providing a platform for harmonizing the actions of the nations.

As per Article 2 the seven principles which the members and the organisation are required to adhere to for the realisation of the purpose enshrined in the charter. These Principles are : the organisation is based on sovereign equality of all members, all members are required to fulfill their obligations under the charter in good faith, they are similarly under an obligation to settle their international disputes by pacific methods avoiding danger to international peace and security, all members are bound to respect territorial sovereignty and political independence of other states, members of the organisation are obliged not to give assistance to any state and give assistance to the organisation where the latter is taking any preventive or enforcement action against that state. The sixth principle puts an obligation on the nonmembers to confirm their actions for the maintenance of international peace and security. The seventh principle is of non intervention by the U.N. in the " essentially domestic affairs " of any state save where enforcement measures are taken under chapter VII of the charter.

7.4 THE SPECIALISED AGENCIES

The specialised Agencies are based on inter- governmental agreements and perform vast international functions in the economic, social, cultural , educational and health fields. Article 57 of the United Nations charter provides that the various specialised agencies established by the inter-governmental agreement and having vide international responsibility as defined in the basic instruments. Such Agencies thus brought into relationship with the United Nations are called specialised agencies of the United Nations.

The U.N thought it proper not to take full responsibility in the various fields and to allow the specialised agencies to perform functions in the economic, social, cultural, health and related fields. Following are the three reasons for this decision :

a. If the U.N. to take full responsibility in these fields, the organisation would have become a very complex, complicated and unwieldy.

b. Since most of the functions of the economic and social fields are technical, it was thought to be wise decision that small specialised agencies comprising of the skilled and trained technical experts, should be allowed to perform these functions,

c. Much of the work of the specialised agencies is administrative which some such agencies had very successively performed in past several years.

The examples of ILO and Universal Postal Union deserve a special mention in this regard. The experience has shown that the above decisions were correct for the specialised agencies are now successfully performing manifold functions in the various fields.

7. 5. GENERAL NATURE OF THE SPECIALISED AGENCIES

All the specialised agencies have the following common features :

a. Their legal existence is the result of inter-governmental agreements and most of the states are the members of these specialised agencies.

b. All the specialised agencies have been brought in relationship with the U.N. through special agreements.

c. Each specialised agency has a constitution or charter of its own which describes the duties, functions, constitution, etc., of the organisation.

d, Each specialised agencies has almost the same general constitution, for example, each specialised agency consists of an assembly, executive council and secretariat.

The U.N. is not concerned exclusively with the maintenance of international peace and security. Its functions include economic, social, cultural and humanitarian development. The ECOSOC is concerned with a variety of function as given in Article 55 of the charter. There are many intergovernmental organisations established for special purposes such as labour, health, aviation, communition etc., Article 57 contemplates to bring such agencies in to relationship with the U.N. and designates them as specialised agencies of the U.N. Such relationship is effected by agreements between the agency and the ECOSOC with the approval of the general Assembly. Here a brief discussion is on the International Labour Organisation, which is one of the specialised agencies of the U.N., with a unique constitution.

7.6 INTERNATIONAL LABOUR ORGANISATION

The International labor Organisation is an organisation is an outgrowth of the social thought of the 19th century. Conditions of workers in the wake of the industrial revolution

were increasingly seen to be intolerable by economists and sociologists, social reformers from Robert Owen onwards believed that any country or industry introducing measures to improve working conditions would raise the cost of labour puting it an economic disadvantage compared to other countries or industries. That is why they laboured with such persistence to persuade the powers of Europe to make better working conditions and shorter hours, the subject of international agreements before the advent of ILO in 1919 labour matters had been given secondary importance in international affairs. International conferences on labour legislation held in Berlin in 1880 and in Berne in 1905 ,1906 and 1913 on the initiative of the German and Swiss Governments. An International association for labour was formed in 1900 at Basle to collect and disseminate information. But all these lacked the strength for uniting the international labour as they lacked the support of several nations in the world.

The adhoc international conferences on labour conferencess on labour legislation in 1890, 1905 and 1913, taught desirability of a permanent body in the field of international co-operation regarding labour matters. After first world war, then the League of Nations was established (1917), ILO was constituted as a component of the League through the treaty of Versailles. At the demise of the League in 1946, its reconstitution took place under the declaration of Philadelphia in 1944. Its treaty with the U.N brought it a status of specialised agency.

It would be extremely difficult to establish durable international peace without providing social justice to the millions of working people all over the world. With this objective the ILO was established on 11 April 1919. The first conference of the ILO was held at Washington in October 1919, but U.S.A. did not take part in its deliberations. as it was not a member and later joined the organisation in 1934.

The ILO symbolises social justice, universal peace and human dignity, India's policies and programmes which it pursues in the fulfilment of its obligations towards people, are also based on similar concepts, namely social justice, universal peace and human dignity. Its main objective is the improvement of labour conditions. The unique feature of this organisations that, the representative of management, labour conditions The unique feature of this organisations is that, the representatives of management, labour and government participation in its deliberations. In 1946, when the U.N. came in to existence, the ILO became the first specialised agency of the United Nation Organisation.

The ILO was born as a result of the peace conference convened at the end of World War I at Versailes. As an original member to the treaty of peace, India became a member in1919. The ILO is an international organisation and a new social experimental institution trying to make the world conscious that the world peace may be affected by the unjust

conditions of its working population. It is like other international agencies such as FAO and WHO working for the universal cause but differing from them in one aspect, namely, in its tripartite structure, representation all the procceedings of the ILO is given to workwrs and emplouers beside governmental agencies.This unique characteristic feature enables all three agencies to share in its control, supervision and execution of its polcies and programmes. There are three groups namely, the Governments which finances it, the workers for whose benefit it is created and the employers who share the responsibility for the welfare of the working class.

7.7 THE OBJECTIVES, PURPOSE AND FUNDAMENTAL PRINCIPLES

Article 1 of the ILO constitution provides that a permanent organization is established for the promotion of the objects set forth in the Preamble of the Organization to the constitution and in the declaration adopted at Philadelphia on 10th May, 1944, the text of which is annexed to the constitution. The General Conference of the ILO meeting in 26th session in Philadelphia adopted on 10th day of May, 1944, the declaration concerning the aims purposes of the ILO and the principles which should inspire the policy of its members.

The conference reaffirmed the fundamental principles on which the Organization is based and, in particular, that ;

[a] labour is not a commodity;

[b] freedom expression and association are essential to prosperity everywhere;

[c] poverty anywhere constitutes a danger to prosperity everywhere;

[d] the war against want requires to be carried on with unrelenting vigour within each nation, and by continuous and concerted international effort in which the representatives of workers and employer enjoying equal status with these of the governments, join with them in free discussion and democratic decision with a view to the promotion of the common welfare.

Part III of Annexure containing the declaration recognized the obligation of ILO to further among the nation of the world programme which would achieve the following ;

[a] full employment and raising of standard of living;

[b] the employment of workers in the occupation of which they can have full satisfaction of giving the fullest measure of their skill and attainments and make their greatest contribution to the common well-being;

[c] The provision, as a means of attainment of this end and under adequate guarantees for all concerned, of facilities for training and the transfer of labour, including migration of employment and settlement;

[d] policies in regard to wages and earnings, hours and other conditions of works calculated to ensure a just share of the fruits of progress to all, and a minimum living wage to all employed and in need of such protection;

[e] the effective recognition of the right of collective bargainig, the cooperation of management and labour in the continuous improvement of productions, efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures;

[f] the extension of social security measures to provide a basic income to all in need of such protection and comprehencive medical care;

[g] adequate protection for life and health of workers in all occupation;

[h] provision for child welfare and maternity protection;

[i] the provision for adequate nutrition, housing facilities for recreation and culture;

[j] the assurance of equality of educational and vocational opportunity.

7.8 THE ROLE OF ILO

The International Labour Organisation was founded in 1919 at the par is peace conference to abolish the ''injustice, hard ship and privation'' suffered by workers and guarantee ''fair and humane conditions of labour''. The immediate call for a post-war labour charter had come from the American Federation of Labour [AFL] in 1914 and Samuel Gompers, president of the AFL, presided at the commission of the peace conference where part XIII of the Treaty of Versailles establishing the ILO was drafted. One of the fundamental principles of the ILO, incorporated in its basic documents, that ''labour should not be regarded merely as a commodity or article of commerce'' originated from an AFL proposal. Concern regarding international competitiveness and labour standards was evidenced by another principle proposed for international adoption by American labour organisation, ''No article or commodity shall be shipped or delivered in international commerce in the production of which children under the age of sixteen years have been employed or permitted to work.

An additional impetus for founding the ILO in 1919 stemmed from the fear of western European countries that the 1917 Russian Bolshevik Revolution might lead to worker revolt in their countries, the victors of world war I at the Paris peace conference foresaw labour

unrest as an obstacle to a future peace, and included in the Treaty of Versailles a plan for the establishment of the ILO, an organisation to set uniform labour standards, Despite the important participation of Gompers and the AFL in the founding of the ILO, the united states did not become a member of the organisation until 1934.

An unusual aspect of the ILO is its provision full participation of non governmental employer and worker organizations in all its activities, including standard-setting and monitoring. The role of worker representatives in ILO activities has been particularly notable. They have frequently provided the impetus for improved labour standards and for better monitoring of standards, Regretfully, in view of the positive ILO experience, no other UN-related organisation includes NGO representatives as full participating members.

7.9 ILO STANDARDS

The ILO Standards are conventions and recommendations designed to improve working and living conditions, to safeguard human rights such as freedom of association and to encourage job creation. International Labour Organisation is a very successful inter-governmental institution and specialized agency. It has done commendable work to achieve social justice for the workers. In the field of international legislation, International Labour Code is a significant achievement. In the words of C.W. Jenks, ''The International Labour Code has become for labour lawyers throughout the world what corpus juris civiles is for the civilians or works of authority of the Common Law for the common lawyers.''

The most significant thing in the constitution of the International Labour Organization is that this Organization has the representation of not only the states, but also of the workers and employers. This tripartite partnership has made this Organization the most representative and democratic in the real sense of the term. Besides this, as pointed out by Jenks, ''No less radical and unprecedented an innovation was the obligation to submit Conventions adopted by International Labour Conference by two-thirds majority for parliamentary consideration, irrespective of the attitude towards the convention of the representatives of the Government concerned.

It may be noted that there are a number of mechanism by which the ILO functions to regulate and practice compliance with its standards. These are following:

(i) Regular Reporting Procedure :

Each member has to send a regular report to the extent with which its national law is consistent with ILO conventions and recommendations. The reports that sent are first evaluated by the committee of Experts and the Application of Conventions and Recommendations consisting of internationally renowned scholars. Then the annual report of the Committee is reviewed

at the annual session of the conference by the conferences committee on the application of standard. Thereafter this committee makes recommendations to the conference, which may act to censure particular governments.

(ii) Special Mechanism to protect Freedom of Association :

The governing body's committee of ILO has a committee of Freedom of Association which has the competence to review complaints which are brought against member States who allege a violation of the fundamental rights of freedom of association. Such a complaint can be brought against a member State which has not ratified the organisation's constitution on freedom of association.

If the state to be investigated consents, the governing body may refer the complaints to fact finding and conciliation commission on freedom of association for further investigation. After investigation the matter concerning States which have satisfied ILO constitution are then referred to Committee of Experts.

(iii) Commission of Enquiry :

Article 26 of the ILO Constitution provides that an ad hoc Commission of Enquiry may be set up to investigate complaints against a member state which has ratified an ILO convention.

(iv) Representations :

Under article 24 of the ILO constitution, a representation can also be filed against a state alleging violation of an ILO Constitution which has been ratified. A committee appointed by the Governing Body then reviews the report of the committee.

7.10 NOTES

7.11 SUMMARY

The ILO has been working for the improvement of labour standards and conditions through out the world since last seventy years. It has drafted scores of conventions and recommendations, collectively designed as International Labour Code, covering a variety of subjects such as relating to employment, unemployment, conditions of employment, employment of women and children, vocational training, industrial safety and health, physical security, industrial relations, maritime labour, immigration, freedom of association and trade union rights. ILO conventions are judicial instruments similar to treaties. member states are required to submit them to the competent legislative authorities to decide whether or not the convention should be put in to effect. Although ILO cannot enforce states to accept its standards, it does keep watch over the way conventions are applied in the countries which have ratified them. Member states are required to make regular reports to ILO regarding the adoption of standards and the ways in which the ratified conventions are put in to effect. ILO was awarded the Noble Prize for peace in 1969 in recognition of its activities.

7.12 KEY WORDS

- League of nations
- United Nations
- Specialised Agencies
- ILO Standards
- Conventions
- Treaties
- Objectives if ILO
- Recommendations
- International Conferences

7.13 SELF ASSESSMENT QUESTIONS

1. Explain causes for the genesis of International Labour Organisation.
2. Elucidate the situations which leads to the establishment of League of Nations.
3. Examine the factors which become the causes for the genesis of United Nations.
4. Explain the main objectives of and principles of ILO
5. Draft a note on Specialised Agencies.

6. Describe the general nature of Specialised Agencies.

7. State the role of ILO in the current Scenario.

8. Explain how far ILO is successful in achieving its objectives.

9. Prepare a note on ILO Standards.

10. Examine the influence of ILO standards on its member States in formulating new rules and regulations relating to workers.

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UNIT - 8 : INTERNATIONAL LABOUR ORGANISATION AND INDIAN LABOUR LEGISLATION

Structure:

8.0 OBJECTIVES

After studying this unit, you are able to;

- Explain the main Organs of the ILO.
- Discuss the constitution and functions of International Labour Conference
- Bring out the functions of Governing Body
- Explain the influence of ILO on Indian Labour Scene
- Highlight the Various ILO Conventions and their Impact.

8. 1 INTRODUCTION

The International Labour Organisation was initially created as a part of treaty of Versailles, 1919. Subsequently, it was separated from the League of Nations and further amendments were made in 1945 and 1946in the constitution of ILO. Later on, it became a specialised agency of the United Nations by a special relationship agreement. Its constitution was again amended in 1964. The preamble of the ILO conventions rightly relates universal and lasting peace to social justice and aims at removing injustice particularly from amongst the labour conditions. The Philadelphia Declaration adopted in the 26th session by the General Conference on 10th May 1944 reaffirms the fundamentals principles of ILO.

8.2 ORGANS OF ILO

The outstanding features of ILO is its tripartite character. The ILO became the first specialised agency associated with the U.N. when the agreements was approved by the General Assembly on December 14, 1946. The ILO has three principal Organs , they are, 1. The International Labour Conference 2. The Governing Body, and 3. The International Labour Office(Secretariat). International Labour Conference is the supreme authority which meets annually at ILO headquarters in Geneva. Each national delegation is composed of two government delegates, one employer's delegate and one worker's delegate. The Governing Body (Executive council) normally meets three or four times in a year at Geneva. It elects the Director-General of the International Labour Office in Geneva is composed of the permanent Secretariat and professional staff. The Conference, the Governing Body and the office make up ILO.

8.3 THE INTERNATIONAL LABOUR CONFERENCE (ILC)

It has been designated as General Conference of the representative of the members. It is legislative and policy making body. It is also known as ' World Industrial Parliament '. It

consists of four representatives in respect of each member state out of which two representatives represent the Government and one each represents the labour and management respectively. The meeting of the General Conference is held from time to time as the occasion may require, but it must meet once in a year. Each member may be accompanied by advisors not exceeding two on each item of agenda and issues touching women must have one female member. Advisors may speak either on the request of the accompanying delegate or on the authorisation by the President of the Conference. All delegates are entitled to vote individually.

The conference elects its President and the Vice Presidents. One Vice President is elected from government delegates and one each from the labour and industrial delegates. The conference promotes labour legislation in each state by adopting conventions and recommendations. Both must be adopted by a two third majority of the votes cast by the delegates present in the conference. The copies of the conventions and recommendations are authorised by the signatures of the President and the Director General of the ILO. One copy is deposited with the Secretary General of the United Nations. The conventions are communicated to all the members for ratification and each member undertakes to bring it before the competent national autority for legislation. Such conventions must be put up latest 18 months from the closing session of the conference. A convention is like a treaty. Recommendations lay down principles which the recommendations are in the nature of standard defining instruments. States are not bound to give effect to the recommendations . But they must bring them to the notice of the competent law-making authority.

8.4 FUNCTIONS OF ILC

The following are the various functions of ILC,

1. Formulates International Labour Standards.
2. Fixes the amount of contributions by the member states.
3. Decides the expenditures budget estimates prepared by the Director General and submitted to the Governing Body.
4. Makes amendments to the constitution subject to subsequent ratification of the amendments by the two thirds of the member states.
5. Consider the report of the Director General giving labour problems and assists in their solution.
6. It appoints various committees to deal with different matters during each session
7. It is empowered to regulate its own procedure.

8. Selects the members of the Governing Body

9. Elects its Presidents.

10. Seeks advisory opinion from the International Court of Justice.

8.5 THE GOVERNING BODY

The Governing body of the ILO is more or less the executive of the organisation. The Governing Body is also of tripartite character and consists of representatives of the various Governments and representatives from employers and workers respectively. It elects the chairman and two vice- chairmen our of which one must represent the governments, the employers and the workers. The Governing body meets often and a special meeting can be convened by a minimum 16 membes of the governing body. The governing body appoints the Director general of International Labour Office, proposes budget and settles the agenda for all meetings of the conference.

8.6 THE FUNCTIONS OF GOVERNING BODY

The following are the functions of the Governing Body,

1. Draws up the agenda for each session and subject to the decision of the International Labour Conference decides what subject should be include in the agenda of the International Labour Conference.

2. It scrutinises the budget and other financial matters.

3. Appoints the Director General of the Labour Office.

4. Co-ordinates the work of the organisation.

5. It fixes the dates, duration and agenda of the regional conference.

6. It follows up the implementation by member states of the conventions and recommendations adopted by the conference.

7. It has the power to seek the advisory opinions from the International Court of Justice.

8.7 THE INTERNATIONAL LABOUR OFFICE

This office headed by the Director General. He appoints the staff of the Office. The Functions of the International Labour Office include collection and distribution of information on industrial and labour relations. It makes the proposals on subjects to be included in conventions and doing special investigations as directed by the conference or the Governing Body. The other functions were similar to the United Nations Secretariat.

The ILO has greatly contributed in the fields of expert advice and technical assistance, human resource development, education, health, safety and security of workers. Its unique contribution has also been in human rights. Its agenda has included freedom of association, equal pay, forced labour, social security and right to work. As per Article 37 of the ILO constitution, any question or any dispute relating to the interpretation of the or any subsequent convention concluded by members shall be referred for the decision to the International Court of Justice, the advisory opinion of the court shall be binding upon any tribunals.

Functions of International Labour Office (Secretariat) :

The following are the various functions of the Secretariat,

a. To assist Governments in framing the legislation on the basis of the recommendations of the ILO.

b. To bring out publications dealing with industrial labour problems of international interest.

c. To prepare documents on the items of the agenda of the conference.

d. To collect and distribute information of international labour and social problems.

e. To carry out its functions in connection with the observations of the Conventions.

8.8 THE ILO CONVENTIONS

The conventions that come into being are, the result of international agreement on a given subject. To illustrate this point, equal pay for men and women will serve as a good example. Equal pay was recognised as an objective of the ILO constitution. Following a request of the Economic and social council of the UN, in 1948, the governing body of the ILO decided to place the question on the agenda of the ILC. In choosing a question the governing body guided by the wishes of the governments, employers and workers organisations of the member states. It is helped in its decision by surveys of the law in different countries, compiled by the office the views of the governments by means of detour led questionnaire. In the case of the issue of equal pay, there were two successive annual sessions of the ILC, the first reading covering the general principles and the second adopting the final text. In the deliberations of ILC, workers and employers representatives participate on a basis of full equality with representatives of governments. The proposed standards are considered, firstly by a technical committee, which are adopted later, after acquiring a 2/3 majority, the combined labour and management votes equaling the government votes.

One of the salient features of these standards is their flexibility. The ILO has as its members countries with varying degrees of industrialization and a divergent social structure,

the ILO constitution contains provisions designed to meet this difficulty. While farming the standards, the conference is required to keep factors like climatic conditions, industrial organisations, etc. in mind (article 19,3 of the ILO constitution). For example, the convention concerning minimum standards of social security permits ratification in respect of as few as 3 out of a list a types of benefits (sickness, unemployment, old age, etc) and also enables less developed countries to avail themselves of certain temporary exemptions in regard to the industrialized countries too.

The ILO passes conventions and recommendations of various labour problems and a variety of matters concerning labour laws, practices and social justice. A convention is adopted by the conference by the majority of 2/3 of government representatives. The convention shall be submitted to the national legislature for ratification. Ratification implies formal commitment to apply the convention and willingness to accept international supervision of the legal measure.

The constitution of ILO required that the member nations shall make general report to the director general about the measures taken to bring the convention before the competent authority. The governing body may request the member nations who have not ratified to report on the national law on the matter. The ILO supervision is done at two levels. Firstly, a committee on the application of conventions and recommendations make a general review at the conference. Further a committee on freedom of association is constituted to examine the complaints in this field, since 1951 it has examined more than 1000 cases.

A member nation can complain about non compliance of ILO conventions by another to the governing body. The governing body will appoint a commission of inquiry and report on the matter. Then inquiry report will be sent to the concerned member nation for compliance. If the report is not accepted by the member nation within 3 months it will be submitted to ILO who decision on the matter will be final. Trade union of employers or workers may also file petition to the governing body of ILO securing the effective observance of a convention within its jurisdiction. The government body will ask for explanations from the concerned member nation about the matter within three months. In case of non reply the matter may be published by the ILO to expose the labour policy of the member state.

An ILO convention is not a treaty but an instrument concerning rights and duties on signatories. It is in effect in the nature of the legislative bill or project or proposal for legislation which each number nation undertakes to lay before it own legislature for enactment and incorporation. The recommendations passed by ILO are next only to conventions. They set up standards of labour practices and specific guidelines to be followed by the member states. The member nations shall report the position in labour law and practice of their

countries and of progress mode in the implementation of report or changes if needed. Thus, it is the binding character of conventions which distinguishes it from recommendations.

Scope and contents of ILO Standards :

ILO standards established through the adoptions of codes, guidelines, and declarations as well as conventions and recommendations, cover an extra ordinarily wide scope and are referred to collectively as the International Labour Code. Indication of the scope of the code is evidenced by the following categories used by the ILO to classify conventions and recommendations.

(i) Basic human rights (freedom of association, forced labour, discrimination in employment, equal pay)Employment and Conditions of work and social policy

(ii) Social security

(iii) Industrial relations

(iii) Employment of women

(iv) Employment of children and young persons

(v) Special categories of workers (sea fares, dock workers, plantation workers, tenants and share croppers, indigenous and tribal populations, workers in non metropolitan territories, migrant workers , nursing personnel)

(vi) Labour administration

(vii) Tripartite consultation

No reservations are permitted to ILO conventions, but since they are intended to be applied in the countries with varying degrees of economic and social development., "flexibility devices" have been included in some. General terms such as "reasonable", "appropriate" , "practicable" and "suitable" are used in number of conventions to provide flexibility in application. In others, expectations from the rules or prescriptions are permitted in particular circumstances. Some conventions permit a ratifying state to exclude certain parts of a convention when accepting it.

ILO Standards and Mechanism:

It may be noted that there are a number of mechanisms by which the ILO functions to regulate and practice compliance with its standards. These are following :

a. Regular reporting Procedure :

Each member has to send a regular report to the extent with which its national law is inconsistent with ILO conventions and recommendations. The reports thus sent are first

evaluated by the committee of experts and the conventions and recommendations consisting of international renowned scholars. Then the annual report of the committee is reviewed at the annual session of the conference by the conference committee on the application of standard. Thereafter this committee makes recommendations to the conference, which may act to censure particular governments.

b.Special Mechanisms to protect freedom of association :

The Governing body's committee of ILO has a committee of freedom of association which has the competence to review complaints which are brought against member states who allege a violation of the fundamental rights of freedom of association. Such a complaint can be brought against a member state which has not ratified the organization's constitution on freedom of association. If the state to be investigated consents, the Governing Body may refer the complaints to Fact Finding and Conciliation Commission on freedom of Association for further investigation. After investigation the matter concerning states which have satisfied the ILO conventions are then referred to Committee of Experts.

c.Commission of Enquiry :

The ILO Constitution provides that an adhoc commission of enquiry may be set up to investigate complaint a member state which has ratified an ILO convention.

d..Representations :

As per the constitution of ILO, a representation can also be filed against a state alleging violation of an ILO constitution which has been ratified. A committee appointed by the Governing Body then reviews the report of the committee.

Ratification Procedure of ILO Standards :

The ILO standards are analogous to treaties requiring ratification competent national authority within a period of one year or 18 months at the latest from the closing session of the ILC. In India, the treaty making power is within the competence of government of India. The power to enact and implement legislation lies in the hands of the parliament the Director General of ILO sends a certified copy of the convention once it is born, to all member states, since in India labour is in the concurrent list of the constitution, the government of India .dispatches the convention to the state governments., to the Ministers of Labour Union, as well as to the All- India organisation of workers and employers inviting their views regarding the desirability and practicability of giving effect to these standards. A statement of action is drawn up taking into account the comments received is considered by the union cabinet and is placed before parliament, where the proposals are discussed from all aspects. Copies of the statements are forwarded to the International Labour Office, the state governments, and

the workers, and the employers , organisation. Follow up action by way of ratification of conventions is taken up subsequently.

8.9 INFLUENCE OF ILO RECOMMENDATION ON INDIAN LABOUR LEGISLATION

Being a founder member of ILO, the approach of India with regard to International Labour standards has always been positive. The ILO instruments have provided guidelines and useful frame work for the evolution of legislative and administrative measures for the protection and advancement of the interest of labour. To that extent the influence of ILO coventions as a standard reference for labour legislation in India, rather than as a legally binding norm, has been significant, Ratification of a convention imposes legally binding obligations on the country concerned and therefore India has been careful in ratifying conventions.

It has always been the practice in India that we ratify a convention when we are fully satisfied that our laws practices are in conformity with the relevant ILO convention. It is now considered that a better course of action is to proceed with progressive implementation of the standards, leave the formal ratification for consideration at a later stage when it becomes practicable. India so far ratified 39 conventions of the ILO, which is much better than the position obtaining in many other countries. Even where for special reasons. India may not be in a position to ratify a convention, India has generally voted in favor of the conventions reserving its position as for its future ratification is concerned.

The Tripartite committee of India was set up to draw up a programme of implementation of the ILO conventions. This committee makes a detailed scrutiny of the ILO instruments. It is on the recommendations of this committee that India ratifies conventions and recommendations. In case where the committee has not ratified a particular instrument it focuses on the reasons for non-ratification .Core conventions of the ILO ; the eight core conventions of the ILO [also called fundamental/human rights conventions] are;

a) Forced Labour convention [no.29]

b) Abolition of forced Labour convention [No 125]

c) Equal Remuneration convention [No. 100]

d) Discrimination [employment occupation] convention [no. 111]

e) Freedom of Association and protection of right to organised convention [No. 98]

f) Right to organize and collective bargaining convention [No. 98]

g) Minimum Age convention [No. 138]

h) Child labour convention [No. 182]

Consequent to the world summit for social development in 1995, the above mentioned conventions [SI.No. 1 to 7] were categorized as the Fundamental Human rights conventions or core conventions by the ILO, Later on, convention No. 182 was added to the list. As per Declaration on Fundamental principles and Rights at work and its Follow up, each member state of the ILO is expected to give effect to the principles contained in the core conventions of the ILO irrespective of whether or not the core conventions have been ratified by them.

ILO Conventions - Its Impact :

The ILO conventions and recommendation have had an influence on Indian Labour legislation on the following ;

1.The ILO convention seeks to achieve early abolition of forced labour except in public services. The Indian response can be found in Art. 14,15[i] 16 [i] and 23 of the constitution and Bonded Labour [prohibition] Act 1976.

2.The ILO convention aims at full employment and raising of living standard, fullest use of labour resources and skill and training of workers, Art 39 [a] and 41 of the constitution, Apprenticeship Act, Employment Exchange [notification of vocations] Act reflects the ILO efforts in India.

3.The convention aims at creation of machinery where by minimum wage rates are fixed so that the wage earners are protected from undue exploitation. For agriculture workers also minimum wage shall be paid, Art, 43 of the constitution, minimum wages Act 1948 and payment wages Act reflect these policies.

4. Factory and mines legislation with regard to the aspects like hours of work, right work for women and young persons, weekly rest etc, accordingly the relevant Act like factories Act 1948 enforces the ILO conventions in this regard.

5.Practically, in every country child employment was in practice. They were paid every low wages and were subjected to long hours of work, concerning employment of young persons [between 15 to 18] in factories, insistence on medical fitness, avoidance of hazardous work and night work were insisted by conventions. Factories Act 1948 and Mines Act have relevant provisions to support these objectives.

6. The conventions envisaged that women should be give benefits of 12 weeks of maternity leave with pay and medical expenses. Art 42 of the employees state Insurance Act 1948 implemented these measures.

7. ILO has envisage the need for international labour standards for prevention of Industrial accidents by complying with safety requirement. Art 42, Art 39 [i], Factories Act, Mines Act and Dock workers Act were tries to reflect this approach.

8. The ILO accepted equal remuneration convention to provide equal pay for equal work for both men and women. Art 38 [d] and Equal Remuneration Act 1976 aims at implementation of these norms of ILO.

9. To prevent in security in the event of sickness, old age, invalidity, unemployment and death during work, the ILO has prescribed for employers duty to provide for social security measure. Art 42 and 42 of the constitution, work men compensation Act and ESI act are made good attempt to implement these norms.

10. ILO conventions envisages about freedom of association, right to organize, make collective bargaining and protection of workers representations from pre judicial acts. The constitutional protection, protection under Industrial Dispute Act tries to implement these measures in India.

ILO and Child Labour :

ILO's interest in child labour, young persons and their problems is well known. It has adopted a number of conventions and recommendations in this regard. In India, within a frame work the ILO has funded the preparations of certain local and industry specific projects. In two major projects, like, child labour action and support programmes and international programme on elimination of child labour, the ILO is playing a vital role. The implementation of welfare programmes in India has certainly created a very positive impact towards understanding the problem of child labour and highlighting the need to elimination child labour as expeditiously as possibly.

8.10 NOTES

8.11 SUMMARY

The ILO' s main contribution has been the development of agreed international standards comprising of conventions and recommendations for national application. It is well established concept, that ILO is the only organisation which has set the international standards. which have the capacity to influence the Indian Labour Legislation. The ILO conventions have form the sheet anchor of Indian labour legislation especially after 1947 when the Indian National Government assumed the office at the centre and drew up a blue print on labour policy based on ILO standards. The activities of the ILO have influenced and strenghted labour and employers have also take note of its convention to introduce progressive measures for the working polulation. So, taken into considerations of all these factors we can say ILO directly or indirectly had a great influence on the Indian Labour scene and labour legislation. This was really proved by passing of various Labour laws after Independance.

8.12 KEY WORDS

- ILO Standards
- Conventions and recommendations
- International Labour Office
- Governing Body
- International Labour Conference
- Social security
- Industrial Relations
- Ratification
- Tripartite consultation
- Forced Labour

8.13 SELF ASSESSMENT QUESTIONS

1. Examine the scope and content of ILO standards.

2. Describe the procedure of making and implementing the conventions and recommendatios.

3. Write a note on International Labour Code.

4. Enumerate the functions of International Labour Conference.

5. Discuss how far ILO conventions and recommendations influences the Indian labour Legislation.

6. Draft a note on the features of Governing Body of ILO.

7. Explain briefly relating to the important organs of ILO.

8. Examine the constitution and functions of International Lavour Office.

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MODULE – III

FACTORIES ACT 1948 AND RELATED LEGISLATION

UNIT - 9 : THE FACTORIES ACT, 1948

Structure :

9. 0 OBJECTIVES

After studying this unit, you should be able to;

- Difine health measures taken under the Factories Act
- Expalin provisions relating the safety measures taken on behalf of employees
- Discuss significance licensing and registration of Factories
- Highlights law relating powers of Inspectors
- Expalin provisions regarding the registration of Factories.

9.1 INTRODUCTION

The Factories Act, 1948 was enacted in 1948 and came into force with effect from 1st April 1949. Prior to the present Act first time Indian Factories Act 1881 was enacted. The then existing law relating to the regulation of labor employed in Factories were embodied in the Factories Act,1934. It was amended several times but its general framework remained unchanged. Application of this Act revealed a number of defects and weaknesses which hampered effective administration. The provisions for safety, health and welfare of workers were generally found to be inadequate and unsatisfactory and even such protection as was provided did not extend to a large number of workers employed in work places not covered by the Act. Accordingly, the need for a fresh legislation was felt.

The present Factories Act, 1948 is applicable to factories wherein ten or more workers are or were working on any day of the preceding twelve months an in which manufacturing process is being carried on with the aid of power or twenty or more workers without the aid of power.

9.2 DEFINITIONS

It is necessary to understand the meaning of the important definitions given under the Factories Act, 1948

Basic concepts [Section 2]

In this Act, unless there is anything repugnant in the subject or context,

a. "Adult" means a person who has completed 18 years of age.

b. "Adolescent" means a person who has completed 15 years of age but under 18 years of age.

c. "Calendar day" means the period of twelve months beginning with the first day of January in any year;

d. "Child" means a person who has not completed his/her fifteen year of age.

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

i. Cause material impairment to the health of the persons engaged in or connected therewith, or Result in the pollution of the general environment : Provided that the State Government may, by notification in the Official Gazette, amend the First Schedule by way of addition, omission or variation of any industry specified in the said Schedule.

f. "Young person" means a person who is either a child or an adolescent

g. "Day" means a period of twenty-four hours beginning at midnight.

h. "Week" means a period of seven days beginning at midnight on Saturday night or such other night as may be approved in writing for a particular area by the Chief Inspector of factories.

i. "Power" means electrical energy, or any other form of energy which is mechanically transmitted and is not generated by human or animal agency.

j. "Prime mover" means any engine, motor or other appliance which generates or otherwise provides power.

k. "Transmission machinery" means any shaft, wheel drum, pulley, system of pulleys, coupling, clutch, driving belt or other appliance or device by which the motion of a prime mover is transmitted to or received by any machinery or appliance.

l. "Machinery" includes prime movers, transmission machinery and all other appliances whereby power is generated, transformed, transmitted or applied;

m. "Manufacturing Process" means any process for -

I. Making, altering, repairing, ornamenting, finishing, packing, oiling, washing,cleaning,breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal or

II. Pumping oil, water, sewage or any other substance; or

III. Generating, transforming or transmitting power; or

IV. Composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding

V. Constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels

VI. Preserving or storing any article in cold storage.

VII. "Worker" means a person employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process but does not include any member of the armed forces of the union.

n. "Factory" means any premises including the precincts thereof -

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

II. Wherein twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on, but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the union, a railway running shed or a hotel, restaurant or eating place.

III. Occupier- Occupier of a Factory means the person who has ultimate control over the affairs the factory, provided that –

i. In the case of affirm or other association of individuals, any one of the partners or members thereof shall be deemed to be the occupier.

ii. In the case of a company, any one of the Directors shall be deemed to be the occupier.

iii. In the case of a factory owned by the government , the person or persons appointed to manage the affairs of the factory by the central government or state government or the local authority, as the case may be shall be deemed to be the occupier.

9.3 APPROVAL, LICENCING AND REGISTRATION OF FACTORIES

The State Government may make rules - [a] requiring, for the purposes of this Act, the submission of plans of any class or description factories to the chief Inspector or the State Government.

[a] Requiring, the previous permission in writing of the State Government or the Chief Inspector to be obtained for the site on which the factory is to be situated and for the construction or extension of any factory or class or description of factories;

[b] Requiring for the purpose of considering applications for such permission the submission of plans and specifications;

[c] Prescribing the nature of such plans and specifications and by whom they shall be certified;

[d] Requiring the registration and licensing of factories or any class or description of factories, and prescribing the fees payable for such registration and licensing and for the renewal of licences;

[e] Requiring that no licence shall be granted or renewed unless the notice specified in Section 7 has been given.

[2] If on an application for permission referred to in clause [aa] of sub-section [1] accompanied by the plans and specifications required by the rules made under clause [b] of that sub-section, sent to the State Government or Chief 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 in the said application shall be deemed to have been granted.

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

9.4 INSPECTING STAFF

The Act sets a number of authorities who are made responsible to enforce the provisions of the Act and rules framed there under the State Governments are empowered to appoint Chief Inspectors, Additional Chief Inspectors, Joint Chief Inspectors and Deputy Chief Inspector. The State Governments are also empowered to appoint qualified medical practitioners as certifying surgeons for the examination of persons engaged in the factories.

They are deemed to be public servants ensured with the power to enter any place which is used as factory, to examine the premises, plant and machinery, to require the production of any register or document relating to the factory.

Appointment of Inspectors :

The State Government by notification in the official gazette may appoint Inspectors and Deputy Chief Inspectors. Section 8[i] says that the appointment of Inspector must be by notification in the official gazette and it does not mention that the assignment by local area must be by notification. The Inspectors appointed should have the prescribed qualifications.

The Chief Inspector, Additional Chief Inspector, joint Inspector, Deputy Chief Inspector appointed by the State Government are to exercise powers of the Inspector throughout the State in addition to the powers conferred on them under this Act.

Every District Magistrate shall act as Inspector of his District

Disqualification for appointment; Under Section 8[3] no person shall be appointed as Inspector, Chief Inspector or Additional Inspector or having been so appointed shall continue to hold office, who is or becomes directly or indirectly interested in a factory or any process or business carried there in or in any patent or machinery connected there with.

Powers of Inspectors:

As per section 9 of the Act the Inspector has the following powers within the local limits for which he is appointed and his powers are subject to any rules made in this behalf under the Act,

a. He may enter any place which is used or which has reason to believe is used, as a factory. he may be accompanied by such assistants, who are in the service of the government or any local or other public authority or with expert, as he thinks fit;

b. Make examination of the premises, plant, machinery, article, or substance,

c. Inquire into any accident or dangerous occurance, whether resulting in bodily injury, disability or not, and take on the spot otherwise statement of any person which he may consider necessary for such inquiry.

d. Require the production of any prescribed register or any other document relating to the factory;

e. Size or take copies of, any register, record or other document or any portion thereof, as he may consider necessary in respect of any offence under this act, which he has reason to believe, has been committed,

f. Direct the occupier that any premises or any part thereof, or anything lying therein, shall be left undisturbed for so long as is necessary for the purpose of any examination under clause.

g. Take measurements and photographs and make such recordings as he considers necessary for the purpose of any examination under clause.

h. Exercise any other powers may be prescribed.

i. In case 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 worker, direct it to dismantled it or subject it to any test or any process and detain it for so long as it necessary for such examination.

Certifying surgeons:

Duties of certifying surgeons:

I. The examination and certification of young persons under the act

II. The examinations of persons engaged in factories in such dangerous occupation or process as may be prescribed.

III. The exercising of such medical supervision of any factory or class or description of factories where:

a. Cases of illness have occurred which it is reasonable to believe are due to the nature of manufacturing process carried on or other conditions of work prevailing therein,

b. By reason of any change in the manufacturing process carried on or in the substance used there in or by the reasons of the adoption of any new manufacturing process, there is a likelihood of injury to the health of workers employed in that manufacturing process and

c. Young persons are about to be employed in any work which is likely to cause injury to their health.

9.5 HEALTH PROVISIONS

Health is very precious, only a healthy person can work to his optimum level. the health workman is the backbone of an industry and ensures good production. hence the act stresses on various health aspects of in a factory, workers may be exposed to health hazards in certain sphere, safe working conditions, cleanliness and suitable environment safe guards the health of workers and protects them occupational diseases.

1. Cleanliness (Section 11)

1. Every factory shall be kept clean and free from effluvia arising from any drain, privy or other nuisance, and in particular.

a. Accumulations of dirt and refuse shall be removed daily by sweeping or by any other effective method from the floors and benches of workrooms and from staircases and passages, and disposed of in a suitable manner.

b. The floor of every workroom shall be cleaned at least once in every week by washing, using disinfectant, where necessary, or by some other effective method.

If, in view of the nature of the operations carried on in a factory or class or description of factories or any part of a factory or class or description of factories, it is not possible for the occupier to comply with all or any of the provisions of sub section 1, the state government may be order exempt such factory or class or description of factories or part from any of the provisions of that sub section and specify alternative methods for keeping the factory in a clean state.

2. Disposal of waste and effluents (Section 12)

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

3. Ventilation and Temperature (Section 13)

a. Effective and suitable provision shall be made in every factory for securing and maintaining in every workroom-

1. Adequate ventilation by the circulation of fresh air, and

2. Such a temperature as will secure to workers there in reasonable conditions of comfort and prevent injury to health; and in particular,-

b. Walls and roofs shall be of such material and so designed that such temperature shall not be exceeded but kept as low as practicable;

c. Where the nature of the work carried on in the factory involves, or is likely to involve, the production of excessively high temperature such adequate measures as are practicable shall be taken to protect the workers therefrom, by separating the process which produces such temperatures from the workroom, by insulating the hot parts or by other effective means.

4. Dust and fume (Section 14)

In every factory in which, by reason of the manufacturing process carried on, there is given off any dust of fume or other impurity such a nature and to such an extent as is likely to be injurious or offensive to the workers employed therein, or any dust is substantial quantities, effective measures shall be taken to prevent its inhalation and accumulation in any workroom, and if any exhaust appliance is necessary for this purpose, it shall be applied as near as possible to the point of origin of the dust, fume or other impurity, and such point shall be enclosed so far as possible.

5. Artificial humidification (Section 15)

1. In respect of all factories in which the humidity of the air is artificially increased, the state government may make rules;

2. Prescribing standards of humidification

3. Prescribing methods to be adopted for securing adequate ventilation and cooling of the air in the workrooms.

6. Overcrowding (Section 16)

1. No room in any factory shall be overcrowded to an extent injurious to the health of the workers employed therein.

2. Without prejudice to the generality of sub section 1, there shall be in every workroom of a factory in existence on the date of commencement of this act at least 9.9 cubic meters and of a factory built after the commencement of this act at least 14.2 cubic meters or space for every worker employed therein, and for the purposes of the sub section no account shall be taken of any space which is more than 4.2 meters above the level of the floors of the room.

7. Lighting (Section 17)

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

2. In every factory all glazed windows and skylights used for the lighting of the workroom shall be kept clean on both the inner and outer surfaces and, so far as compliance with the provisions of any rules made, under sub section 3 of section 13 will allow, free from obstruction.

8. Drinking Water (Section 18)

Sec 18 deals with the provisions relating to arrangements for pure drinking water in factories it provide that, in every factory effective arrangements shall be made to provide and maintain at suitable points conveniently situated for all workers employed therein a sufficient supply of wholesome drinking water.

9. Latrines and Urinals (Section 19)

In every factory,

Sufficient latrine and urinal accommodations of prescribed types shall be provided conveniently situated and accessible to workers at all times while they are at the factory,

1. Separate enclosed accommodations shall be provided for male and female workers;

2. All such accommodations shall be maintained in a clean and sanitary condition at all times;

3. Sweepers shall be employed whose primary duty would be to keep clean latrines, urinals and washing places.

10. Spittoons (Section 20)

In every factory there shall be provided a sufficient number of spittoons in convenient places and they shall be maintained in a clean and hygienic condition. It is further provided that whosoever spits in contravention of this section shall be punishable with fine not exceeding five rupees.

9.6 SAFETY PROVISIONS

The act has provided elaborate provisions to safe guard the health and life of the workers who are working with machines. precautions regarding the installation of the machinery, operation there to, the quality of the machine and other mechanical device, etc. are deal with under the act in detail.

Fencing of Mechinery

In evert factory where pars of the machinery are in motion due to the work, proper fencing must be provide for every moving part of a prime mover, every flywheel connected to the prime mover, every head race and tail race of every water wheel and water turbine etc. further fencing is required to every part of electric generator, motor or rotary convertor, every part of transmission machinery and every dangerous part of any other machine. the occupier or the manager will be liable if proper fencing is not effected to such moving or dangerous machines.

9.7 LIFTS AND LIFTING MACHINES

In every factory the lifting machines every chain, rope and lifting tackle for the purpose of raising or lowering persons, goods or material shall be of good construction, sound material and adequate strength and free from defects. They must be properly maintained and thoroughly examined by a competent person once in every 12 months. They must not be loaded beyond the safe working load which shall be clearly marked thereon.In a factory room where revolving machines are installed or operated upon, certain safety measures shall be taken. The occupier must ensure by necessary steps the safe working peripheral speed of every revolving wheel, gauge, fly wheel, dish etc,. is not exceeded.

Maintenance of floors and staircases :

The occupier of the factory is obligated to take precaution in the construction of and maintenance of all floors, space, stairs, passages and gang ways so as to ensure safety to

life and limbs of the workers. The omission to securely fence the fermentation vats of distillery is an offence under the Act.

Other safety Provisions :

a. **Pits, sumps and opening in floors :** Section 33 stipulates that in every factory every fixed vessel, sump, tank, pit or opening in the ground or on a floor which may be so deep or stipulated so as to likely to cause danger, it must be covered or fenced.

b. **Protection to eyes :** The Act provides that effective screens or suitable goggle shall be provided for protection of eyes where there is risk of injury to thee eyes from particles or fragments thrown off during manufacturing process or where there risk to eyes due to exposure to excessive light.

c. **Dangerous fume :** Sec 36 provides that a person can enter any chamber, tank, vat, pit, pipe or other confined place where any gas fume, vapour or dust is present in such a extent so as to involve risk only where it is provided with a manhole of adequate size or other effective means of egress.

d. **Fire Accidents:** Sec 38 provides that all practible measures are to be taken to prevent the out break of fire and its spread both internally and externally, safe means of access to escape and equipments to put off fire must be provided. Fire extinguishers shall be placed in all prominent places with display.

9.8 SAFETY OFFICERS

In every factory, Wherein one thousand or more workers are ordinarily appointed or Wherein , in the opinion of the State Government any manufacturing process or operation is carried on, which process or operation involves any risk of bodily injury, poisoning, or disease or any other hazard to health, to the person employed in the factory the occupier shall if so required by the state government by notification in the official gazette, employ such number of safety officers as may be specified in that notification.

9.9 CASE STUDY

A Corporation was running a canteen for the benefit of the employees of their unit through a contractor. About 3000 employees were working the corporation and54 persons were working in the canteen in different capacities such as cooks, servers and cleaners etc., As per Factories Act it is mandatory on the corporation to run a canteen. The employees of the canteen claimedregularization of their services. The corporation contended that the canteen workers employed by the contractor and not by the corporation. It was held that the

corporation owed a mandatory obligation under Factories Act to run canteen. So that the claim of workers for regularization was maintainable.

9.10 NOTES

9.11 SUMMARY

Just and humane working conditions at work place is of great value of social importance to mitigate the ruthlessness of factory. The ILO conventions emphasizes this principles and provides for healthy and safe environment in a factory. So that, this Act provides a wide legal network to ensure safety, health and welfare to workers. the machineries, power and materials used in the factory, pose danger to the workers, especially women and children. The statutes says that such dangerous machines ought to be fenced and well maintained. all these prescriptions suggested that, the employer shall take adequate measure to ensure safety to workers.

9.12 KEYWORDS

- Licensing Authority
- Registration of Factory
- Safety officers
- certifying Surgeons
- Dust and fumes
- Fencing of Machinery
- Overcrowding

9.13 SELF ASSESSMENT QUESTIONS

1. Explain the scope and objectives of Factories Act.
2. Elucidate the provisions relating to appointment, powers and functions of Inspectors.
3. Define Manufacturing process.
4. Examine the health provisions under Factories Act.
5. Describe the provisions regarding safety under Factories Act.

9.14 REFERENCES

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UNIT - 10 : WELFARE MEASURES AND OTHER MEASURE

Structure :

10. 0 OBJECTIVES

After stuyding this unit, you should be able to;

- Define welfare measures taken under Factories Act
- Explain the provisions relating the working hours of employees
- Discuss the significance of annual leave with wages
- Explain the law relating to employment of young persons
- Highlights the provisions relating penalty.

10.1 INTRODUCTION

Factories Act, 1948 is one of the major Central Act aimed to regulate the working conditions in the factories. It lays down all essential provisions relating to proper working conditions, working hours, holidays, overtime, employment of children, women and young person, safety, health and welfare of the workers employed in a factory etc. The main objective of the Act is not only to ensure adequate safety measure but also to promote health and welfare of the workers employed in a factory as well to prevent haphazard growth of factories through the provisions relating to approval of plans before creation of a factory. The Act has been enacted primarily with the object of protecting workers employed in factories against industrial and occupational hazards. Towards that objective, it imposes upon the owner or occupier certain obligations to protect the workers and secure for them employment in conditions conductive for their health and safety.

This Act was enacted in 1948 and came into force with effect from-1st April 1949. Prior to the present Act first time Indian Factories Act 1881 was enacted. The then existing law relating to the regulation of labor employed in Factories were embodied in the Factories Act, 1934. It was amended several times but its general framework remained unchanged. The provisions for safety, health and welfare of workers were generally found to be inadequate and unsatisfactory and even such protection as was provided did not extend to a large number of workers employed in work places not covered by the Act. Accordingly, the need for a fresh legislation was felt. The present Factories Act, 1948 is applicable to factories wherein ten or more workers are or were working on any day of the preceding twelve months and in which manufacturing process is being carried on with the aid of power or twenty or more workers without aid of power.

10.2 WELFARE MEASURES

Welfare is the broad concept, it connotes a condition of well-being, happiness, satisfaction, conservation and development of human resources. the term welfare applied to labor, therefore refers to adoption of measures which aims to promoting the physical, psychological and general well-being of the working population. The basic aim of welfare services in an industry is to improve the living and working conditions of workers and their families because the workers well-being cannot be achieved in isolation of his family. The concept of welfare is necessarily dynamic, bearing a different interpretation from country to country and from time to time and even in the same country, according to its value system, social institution, degree of industrialization and general level of social and economic development. According to ILO classification welfare amenities are

i) Latrines and urinals

ii) Washing and bathing facilities

iii) Creches

iv) Rest shelters and Canteens

v) Arrangements for drinking water

vi) Arrangements for prevention of fatigue

vii) Health services including occupational safety

viii) Administrative arrangement within a plant or establishment to look after welfare

ix) Uniforms and protective cooling and

x) Shift allowance.

The welfare 206 measures are contained in chapter V of the factories act. The whole of the chapter, containing nine sections, relates to the long desired provision of uniform standard of welfare order for industrial labor. Section 42 and 48 deal with washing facilities, facilities for storing and drying clothing. facilities for sitting, first- aid appliances, canteens, shelter, rest rooms, lunch rooms and creches, section 50 empowers the state government to make rules to supplement chapter V of the Act.

1. **Washing facilities**: The royal commission in its report recommended : " the provision of suitable washing facilities for all employees is even desirable, and here many factories and deficient. The workers who live in crowded areas have inadequate facilities for washing at their homes and bathing facilities would add to their comfort, health and efficiency. we

recommend that for workers engaged in dirty processes, the provision for washing place and water should be made obligatory". It would be correct to say that the present provision of the law relating to welfare is more or less a recognition of the various recommendations of the royal commission on labor.

Section 42 (1) of the factories act provide that in every factory;

a. Adequate and suitable facilities for washing shall be provided and maintained for use of the workers therein

b. Separate and adequate screened facilities shall be provided for the use of male and female workers.

c. Such facilities shall be conveniently accessible and shall be kept clean.

2. Facilities for storing and drying clothing:

The state government has been empowered to make rules requiring the provision there in of suitable places for keeping clothing not worn during working hours and for the drying of wet clothing in respect of any factory or class or description of factories.

3. Facilities for sitting:

Comfortable sitting arrangements are always necessary in the factories for workers so that they may sit and take rest and regain energy for further work. the factories act under its section 45 provides that in every factory suitable arrangements for sitting shall be provided and maintained for all workers obliged to work in a standing position, in order that they may take advantage of any opportunities for rest which occur in the course of their work.

4. First- aid appliances:

Section 45 of the factories act contains the following measures in respect of first aid appliances;

A. There shall in every factory be provided and maintained so as to be readily accessible during all working hours first aid boxes or cupboards equipped with the prescribed contents, and the number of such boxes or cupboards to be provided and maintained shall not be less than one for every hundred and fifty workers ordinarily employed at any one time in the factory.

B. Nothing except the prescribed contents shall be kept in a first aid box or cupboard.

C. Each first aid box or cupboard shall be kept in the charge of separate responsible person, who holds a certificate in first aid treatment recognized by the state government and who shall always be readily available during the working hours of the factory.

4. In every factory where in more than five hundred workers are ordinarily employed there shall be provided and maintained an ambulance room of the prescribed size, containing the prescribed equipment and in the charge of such medical and nursing staff as may be prescribed and those facilities shall always be made readily available during the working hours of the factory.

5. Canteens:

The factories act, 1948 under its section 46 gives power to make rules requiring that in any specified factory where in more than 250 workers are ordinarily, employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers.

a. The date by which such canteen shall be provided.

b. The standards in respect of construction, accommodation, furniture and other equipment for the canteen.

c. The foodstuffs to be served therein and the charges which may be made therefore.

d. The construction of the managing committee for the canteen and representation of the workers in the management of the canteen.

e. The items of expenditure in the running of the canteen which are not to be taken into account in fixing the cost of foodstuffs and which shall be borne by the employer.

6. Shelter, rest rooms and lunch rooms:

The provision of some shelter where rest and refreshment can be taken in many cases necessary and moreover would be generally appreciated by the workers. the factories act makes provision in this regard also.

In every factory wherein more than 150 workers are ordinarily 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, are required to be provided and maintained for the use of the workers. however, any canteen maintained in accordance of the section 47, it has been further provided that no worker shall eat any food in the workroom where a lunch room exists.

7. Creches:

The report of the royal commission on labor remarked that creches are not uncommon in factories employing women, and some we saw were admirably staffed and equipped others if better than nothing still left must be desired yet others were both dirty and inadequately furnished.

Section 48 of the factories act as amended in 1976 contains following provisions regarding creches:

1. In every factory wherein more than 30 women workers are ordinarily employed suitable room or rooms are required to be provided and maintained for the use of children under the age of six years of such women workers.

2. Such rooms shall provide adequate accommodation. these rooms shall be adequately lighted and ventilated and shall be maintained in clean and sanitary, condition. these rooms are required to be under the charge of women trained in the care of children and infants.

8. Welfare officers:

The occupier of every factory wherein five hundred or more workers and ordinarily employed in under statutory duty to employ in factory such number of welfare officers as may be prescribed. the state government may prescribe the duties, qualifications and conditions of service of such officers.

10.3 WORKING HOURS OF ADULTS

1. Weekly hours:

Wo adult workers shall be required or allowed to work in a factory for more than 48 hours in any work.

holidays:

2. Weekly holidays (sec52):

1. No adult worker shall be required or allowed to work in a factory on the first day of the week, unless,

a. He has or will have a holiday for a whole day on one of the three days immediately before or after the said day and

b. The manager of the factory has, before the said day or substituted day under clause.

c. Whichever is earlier.

i) Delivered a notice at an office of the inspector of his intention to require a worker to work on the said day and of the day which is to be substituted, and

ii) Displayed a notice to that effect in the factory, provided that no substitution shall be made which will result in any worker working for more than ten days consecutively without a holiday for a whole day.

2. Notices given under sub section may be cancelled by a notice delivered at the office of the inspector and a notice displayed in the factory not later than the day before the said day or the holiday to be cancelled, whichever is earlier.

3. Where, in accordance with the provisions of sub section any worker works on the said day and has had a holiday on one of the three days immediately before it. that said day shall for the purpose of calculating his weekly hours of work, be included in the preceding week.

3. Compensatory holidays (Sec 53) :

1. Where, a result of the passing of an order or the making of a rule under the provisions of this act exempting a factory or the workers therein from the provisions of section 52, a worker is deprived of any of the weekly holidays were due to him or within the two months immediately following that month, compensatory holidays of equal number to the holidays so lost.

2. The state government may prescribe the manner in which the holidays for which provision is, made in sub section shall be allowed.

3. Daily hours (Sec 54) :

Subject to the provisions of section 51, no adult worker shall be required or allowed to work in a factory for more than nine hours in any day:provided that, subject to the previous approval of the chief inspector, the daily maximum hours specified in this section may be exceeded in order to facilitate the change of shifts.

4. Intervals for rest (Sec 55) :

1. The periods of work of adult workers in a factory each day shall be so fixed that no period shall exceed five hours and that no worker shall work for more than five hours before he has had an interval for rest of at least half an hour.

2. The state government or subject to the control of the state government, the chief inspector, may, be written order and for the reasons specified therein, exempt any factory from the provisions of sub section so however that the total number of hours worked by a worker without an interval does not exceed six.

6. Spread over (Sec 56) :

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

7. Night shifts (Sec 57) :

where a worker in a factory works on a shift which extends beyond midnight:

1. For the purposes of sections 52 and 53, a holiday for a whole day shall mean in his case a period of twenty-four consecutive hours beginning when his shifts ends.
2. The following day for him shall be deemed to be the period of 24 hours beginning when his shift ends, all the hours he has worked after midnight shall be in the previous day.

8. Prohibition of overlapping shifts (Sec 58):

1. Work shall be carried on in any factory by means of a system of shifts so arranged that more than one relay of workers is engaged, in work of the same kind at the same time.
2. The state government ot subject to the control of the state government, the chief inspector, may , by written order and for the reasons specified therein, exempt on such conditions as may be deemed expedient, any factory or class or description of factories or any department or section of a factory or any category or description of workers therein from the provisions of sub section.

9. Extra wages for overtime (Sec 59) :

1. Where a worker works in a factory for more than nine hours in any day or for more than 48 hours in any week, he shall, in respect of overtime work, be entitled to wages at the rate of twice his ordinary rate of wages.
2. For the purpose of sub section, ordinary rate of wages, means the basic wages plus such allowances, including the cash equivalent of the advantage occurring through the concessional sale to workers of food grains and other articles, as the worker is for the time being entitled to, but does not include a bonus wages for overtime work.
3. Where any workers in a factory are paid on a piece rate basis, the time rate shall be deemed to be equivalent to the daily average of their full time earnings for the days on which they actually which the overtime work was done, and such time rates shall be deemed to be the ordinary rates of wages of those workers:

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

10. Register of adult workers (Sec 62) :

The manager of every factory shall maintain a register of adult workers, to be available to the inspector at all times during working hours, or when any work is being carried on in the factory, showing-

A The name of each adult worker in the factory

B The nature of his work

C The group, if any, in which he is included

D There his group works on shifts, the relay to which he is allotted, and

E Such other particulars as may be prescribed.

10.4 EMPLOYMENT OF YOUNG PERSONS

The provision of this chapter are intended to discourage the exploitation of children by employing them in factories. These provisions are intended to give more effect to the employment of children act 1938, and there by put an effective check on the employment of children in the factories with a view to protect their health.

Prohibition of employment of children in factories: Sec 67 prohibits the employment of children below the age of 14 in factories. however, this total prohibition is not applicable to adolescents who are above 15 below 18years age.

1. Certificate of fitness:

The certifying surgeons are empowered to certify the age and physical fitness of young persons on the application of young person or his guardian, parent or the manager of the factory. The application must be accompanied by a document signed by the manager of a factory conveying that such young person will be employed in the factory if he is certified to be fit for the work in the factory. The certifying surgeon, after examination may grant the certificate of fitness or renew the same if he is satisfied that the young person has completed 14 years age, that he is fit for such work in the factory.

Working hours for Children;

No child shall be employed nor permitted to work in any factory for more than 4 1/2 hours in a day. Further, such a child shall not be required or allowed to work in any factory except between 8am and 7pm. The period of work of all children in the factory shall be limited to two shifts, the shifts shall not overlap nor spread over more than five hours each, each child can be employed only in one relay which shall not be changed except once in 30

days. Further no child can be required or allowed to work in factory on any day of which he has already been working in another factory.

Notices of periods of work of Children;

Sec 72 makes it obligatory on the factory owners and managers to display notices relating to the period of work of children.

2. Register of Child workers:

The manager of every factory where children are employed shall maintain a register of child workers. the register shall give details of the name of each child worker, nature of the work group in which he is included, the shift, the relay, etc. allotted to him, the number of his certificate of fitness, etc. the register shall be made available to the factory inspector during working hours.

10.5 ANNUAL LEAVE WITH WAGES

1. Application of chapter (Sec 78) :

1. The provision of this chapter shall not operate to the prejudice of any right to which a worker may be entitled under any other law or under the terms of any award, agreement or contact of service. Provided that if such award, agreement or contract of service provides for a longer annual leave with wages than provide in this chapter. the quantum of leave, which the worker shall be entitled to , shall be in accordance with such award, agreement or contract of service but in relation to matters not provided for in such award, agreement or contact of service or matters which are provided for less favorably therein, the provisions of sections 79 and 82, so far as may be, shall apply.

The provisions of this chapter shall not apply to workers in any factory of any railway administrated by the government, who are governed by leave rules approved by the central government.

2. Annual leave with Wages (Sec 79) :

Every worker who as 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 any 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 day of work by him during the previous calendar year.

3. Wages during leave period (Sec 80) :

1. For the leave allowed to him under Section 78 or 79, as the case may be a worker shall be entitled to wages at a rate equal to the daily average of his total full time earnings for the days on which he actually worked during a month immediately preceding his leave, exclusive of any overtime and bonus but inclusive of dearness allowance and the cash equivalent of the advantage accruing through the concessional sale to the worker of food grains and other articles. Provided that in case of a worker who has not worked on any day during the calendar month immediately preceding his leave, he shall be paid at a rate of equal to the daily average of his total full time earnings for the days on which he actually worked during the last calendar month preceding his leave, in which he actually worked, exclusive of any overtime and bonus but inclusive of dearness allowance and the cash equivalent of the advantage accuring through the concessional sale to the workers of food grains and other articles.

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

4. Payment in advance in certain cases (Sec 81) :

A worker who has been allowed leave for not less than 4 days, in the case of a child, before his leave begins, be paid the wages due for the period of the leave allowed.

10.6 PENALTY AND PROCEDURE

Chapter 10 of the factories act provides detailed imposing various kinds of penalties against occupiers. Managers and even workers who contravene provisions of the act, these provisions operate as penal sanctions so as to compel the occupiers, managers and workers to comply with the various provisions of the act.

General penalty for Offences:

Under Sec 92 any contravention by the occupier or manager of any provision of the act or rules orders would entail in the imposition of penalty up to two years imprisonment or fine up to one lakh rupees or with both. the section imposes minimum penalty also as follows. where there is contravention of any of the provisions relating to safety as laid down in chapter IV or any rule made there under or dangerous manufacturing process or operation as laid down in sec 87 has resulted in any accident causing death or serious injury then fine shall not be less than rs.1000/- if the accident causes death and rs.500/- if the accident causes serious injury. of the contravention is continued after conviction, a further fine which may extend to rs.75/-for each day on which the contravention so continues can be imposed.

Penalty for offences by Workers:

Workers employed in a factory are also penalized for violating any provisions of the act made there number. the punishment may be only fine up to rs.20/- if the worker is committed under the above provision then the occupier or the manager of the factory will not be deemed to be guilty of the offence unless it is proved that he failed to tale all responsible measures for the prevention on the branch of law.

Penalty for using false certificate of fitness:

Whoever knowingly uses or attempts to use a false certificate of fitness is guilty and shall be punishable with imprisonment up to one month or fine up to Rs. 50/- or with both.

2. Penalty for promoting double employment of child:

If a child work on any factory on any day on which he has already been working in another factory, then the parent or guardian of the child or the person having custody over him shall be punishable with fine up to Rs.50.

10.7 CASE STUDY

A federation was running a canteen for the workers employed in the factory and office establishment under the supervision of the welfare officer. The employees of the canteen wanted to be treated as regular employees of the federation in regular scales as they were being paid a meagre salaries without attendant benefits. It was contended on behalf of the federation that the canteen was managed by an advisory committee known as the Managing Committee. It was held that once the canteen is established under sec 46 of the Factories Act, the employees of the canteen would become the employees of the Occupier.

10.8. NOTES

10.9 SUMMARY

The Act was amended several times but its general framework remained unchanged. Application of this Act revealed a number of defects and weaknesses which hampered effective administration. Even though the Act consists of various provisions relating to welfare measure, annual leave with wages and employment of young persons' etc,. The Act has been amended several times but major changes were in 1976 and 1987 relating to safety measures.

10.10 KEY WORDS

- Welfare measures
- Working Hours
- Creches
- Welfare Officer
- First Aid Appliances
- Employment of Young Persons
- Washing Facility
- Annual leave with wages

10.11 SELF ASSESSMENT QUESTIONS

1. Examine the welfare measures which was provided under Factories Act.
2. Elucidate the significance of working hours of Adult persons.
3. Highlight the powers of welfare officer.
4. Examine the law relating to annual leave with wages.
5. Briefly explain the procedure and penalties under Factories Act
6. State the provisions regarding the employment of young persons.

10.12 REFERENCES

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UNIT -11 : LAW RELATING TO WAGES :MINIMUM WAGES ACT AND PAYMENT OF WAGES ACT

Structure:

11.0 OBJECTIVES

After studying this unit , you should be able to;

1. Expalin the salient features of Minimum wages Act
2. Highliglts the application and coverage of Payment of Wages Act
3. Discuss the permissible deduction under the Act
4. Explain the powers of Inspector
5. Explain the modes of fixation of wages.

11.1 INTRODUCTION

The minimum wages Act was passed for the welfare of laborers. This Act has been enacted to secure the welfare of the workers in a competitive market by providing for a minimum limit of wages in certain employments. The statement of object of Bill points out"

The justification for statutory fixation of minimum wages is obvious. such provisions which exist in more advanced countries are even necessary in India, where worker's organization are yet poorly developed and the workers' bargain power is consequently poor".

The Act provides for the fixation by the Central Government, by a railway administrative or in relation to a mine, oilfield major port, or any corporation established by a Central Act, and by the State Government for other employments covered by the Schedule of the Act.

In a developing country like ours which faces the problem of unemployment on a very large scale it is not unlikely that labor may offer to work even on starvation wages. The policy of the Act, therefore, is to prevent employment of sweated labor in the general interest and, so, in prescribing the minimum wages rates, the capacity of the employer need not be considered as the State assumes that every employer must pay the minimum wages for the employee's labor.

The Act contemplates that minimum wages rates must ensure not only the mere physical need of the worker which would keep him just above starvation but must ensure for him not only his subsistence and that of his family but also preserve his efficiency as a workman. It should, therefore, provide not merely for the bare subsistence of his life but the preservation of the workers and so must provide for some measure of educational, medical requirements and amenities.

11.2 MINIMUM WAGES ACT 1948

The concept of minimum wages first evolved with reference to remuneration of workers in those industries where the level of wages was substantially low as compared to the wages for similar types of labor in other industries.

First of all, at the International Labor Conference in 1928, a Draft Convention was adopted on the subject of minimum wages. In India, in 1929 Royal Commission on Labor was appointed which considered the subject of minimum wages.

The question of establishing statutory wage- fixing machinery in India was again discussed at the third and fourth meetings of the Standing Labor Committee held in May 1943 and January 1944 respectively, and at successive sessions of the Tripartite Labor Conference in September 1943, October 1944 and November 1945. The last of these approved in principle the enactment of minimum wages legislation. On 11 April 1946, a Minimum Wages Bill was introduced but the passage of the Bill was considerably delayed by the constitutional changes in India. It reached the statute book only in March 1948.

11.3 SALIENT FEATURES OF THE ACT

The Act provides for fixation of minimum time rate of wages, minimum price rate, guarantee time rate overtime rate for different occupations, localities or classes of work and for adults, adolescents, children and apprentices.

1. The minimum rate of wages under the Act may consists of;

a. The basic rate of wages and the cost of living allowance, or

b. A basic rate of wages with or without the cost of living allowance commodities supplied at concessional rate; or

c. An all inclusive rate.

2. The Act requires that wages shall be paid in cash although it empowers the appropriate Government to authorize the payment of minimum wages either wholly or partly in kind in particular cases.

3. The Act empowers the appropriate Government to fix the number of hours of work per day, to provide for the weekly holiday and the payment of overtime wages in accordance with any scheduled employment in respect of which minimum rates of wages have been fixed under the Act.

4. The establishments covered by the Act are required to maintain registers and records in the prescribed manner.

5. The Act also provides for appointment of inspectors and other authorities to hear to decide claims arising out of payment of wages less than the minimum rate of wages or remunerations, for days of rest or of work done on such days of overtime wages.

Definations

Section 2 of the Act deals with the interpretation of the meaning of certain terms under the Act.

1. Appreciate Government - Under Section 2[b] the Central Government will be appropriate Government in relation to;

1. Any scheduled employment carried on by or under authority ofCentral Government; or

I. A railway administration; or

II. In relation to mine, oilfield, major part or any corporation establishment by a Central Act.

2. Competent Authority- Under Section 2[c] competent authority means the authority appointed by the Government by notification in the Gazette to ascertain from time to time the cost of living index number applicable to employees employed in the scheduled employments specified in such notification.

3. Employer - Employer means any person who employs, whether directly or through another person, or whether on behalf of himself or any other person one or more employees in any scheduled employment in respect of which minimum rate of wages have been fixed under this Act.

4. Wages - Wages means all remuneration, capable of expressed in terms of money, which would if the contract of employment or of work done in such employment wages do not include;

The value of :

I. Any other amenity or any service excluded by general or special order of the appropriate Government.

II. Any contribution paid by the employer to pay pension fund or Provident Fund or under any schedule of social insurance.

III. Any travelling allowance or the value of any travelling concession. Where a trip allowance was prescribed by a notification, the notification was held to be invalid because trip allowance is meant to compensate the extra cost which an employee is

likely to incur when he moves out of his headquarter in connection with his employment; it clearly partakes of the character of travelling allowance and travelling allowance according to the definition of the expression ‘’wages’’ cannot form a component of the wages.

IV. Any sum paid to the person employed to defray special expenses entailed on him by the nature of this employment.

V. Any gratuity payable on discharge

5. Employee - Employee is defined in Section 2[1] to mean any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical in a scheduled employment in respect of which minimum rate so wages have been fixed.

It includes ;-

I. An out worker to whom any articles or material are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adopted or otherwise processed for sale for the purposes of the trade or business that other person where the process is to be carried out either in the home of the out worker or in same other premises under the control and management of that other person.

II. An employee declared to be an employee by the appropriate Government.

6. Statutory minimum wages ;- The Act not define minimum wages, may be due to the reason that will not be possible to lay down a uniform wage for all industries through out the country. However Section 4[1] provides that the statutory minimum wage fixed under Section 3 may consists of ;-

I. Basic rate of wages and special rate to be adjusted in at such intervals in such manner as the appropriate Government may direct to accord with the variation of cost of living index number applicable to such workers; or

II. A basic rate of wages with or without the cost of living allowance in respect of essential commodities at concessional rates; or

III. An all inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concession if any.

11.4 FIXATION OF MINIMUM WAGES [SECTION 3]

Section 3 of the minimum wages Act, 1948, provides for the fixing of minimum rates of wages. The appropriate Government shall fix the minimum rates of wages payable to

employees employed in an employment specified in part I or part II of the schedule and in an employment added to either part by notification under section 27[a]. [Sub -section [1]]

It is also provided that the appropriate Government may in respect of employees employed in an employment specified in part II of the schedule, instead of fixing minimum rates of wages under the clause 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 any part thereof.

The appropriate Government may review the minimum rates of wages and revise the minimum rates if necessary at such intervals as it may think fit but such intervals should not exceed five years. [Sub-section 1[b]]

According to sub-section [2], there are four ways in which the appropriate Government may fix the wages. They are;

a. A minimum rate of wages for time work, i.e., a minimum time rate.

b. A minimum rate of wages for piece work, i.e., a minimum piece rate.

c. A minimum rate of remuneration to apply in the case of employees employed on piece work for the purpose of securing to such employees a minimum rate of wages on a time work basis, i.e., a guaranteed time rate.

d. A minimum rate [whether a time rate or piece rate] to apply in substitution for the minimum rate which would otherwise be applicable, in respect of overtime work done by employees, i.e., overtime rate.

e. Sub-section [3] provides that in fixing or revising minimum rates of wages under the section-

1. Different minimum rates of wages may be fixed for;

I. Different scheduled employments;

II. Different classes of work in the same scheduled employment;

III. Adults, adolescents, children and apprentices;

IV. Different localities;

2. Minimum rates of wages may be fixed by any one or more of the following wage-periods, namely;

I. By the hour,

II. By the day,

III. By the month, or

IV. By such other larger wage-period as may be prescribed.

where such rates are fixed by the day or by the month, the manner of calculating wages for a month or for a day, as the case may be indicated. Where any Wage-periods have been fixed under Section 4 of the payment of Wages Act, 1936, minimum wages shall be fixed in accordance with such fixation.

MINIMUM RATES OF WAGES [SECTION 4]

Section 4 of the minimum wages Act, 1948, deals with minimum rates of wages and it gives a clear and definite indication that basic wage is also an integral part of the minimum wages. Sub-Section[1] provides that any minimum rate of wages fixed or revised by the appropriate Government in respect of scheduled Employment under section 3 may consists of

I. A basic rate of wages and a special allowance at a rate to be adjusted, at such intervals and in such manner as the appropriate Government may direct, to accord as nearly as practible with the variation in cost of living index number applicable to such workers. This is known as the 'cost of living allowance' ; or

II. A basic rate of wages with or without the cost of living allowance, and the cash value of the concessions in respect of supplies of essential commodities at concessional rates, where so authorized; or

III. An all- inclusive rate allowing for basic rate, the cost of living allowance and the cash value of the concessions, if any.

11.5 ENFORCEMENT AUTHORITY

1. Inspectors;-

Appointment ;- Section 19 of the Act authorizes the appropriate Government to appoint by notification in the official gazette such persons as it thinks fit to be Inspectors for the purposes of this Act. The appropriate Government shall also define the local limits within which the Inspectors shall exercise their functions.

Powers ;- Inspectors are given the following powers ;

a. He may enter, at all reasonable hours, any premises or place where employees are employed or work is given out to/ workers in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act for the purpose of examining any register, record of wages or notices required to be kept or exhibited by

or under this Act Rules made there under and require the production there for inspection.

b. He may examine any person whom be finds in any such premises or place.

c. He may require any person given out work and any out-workers to give any information, which is in his power to give, with respect to the names and addresses of the person to, for and

d. From whom the work is given out or received, and with respect to the payments to be made for the work.

e. He may seize or take copies of such register, record of wages or notice or portions there of as he may consider relevant in respect of an offence under this Act.

f. He may exercise such other powers as may be prescribed.

2. Authority to decide claims - the appropriate Government is empowered to appoint an authorities to decide the claims stated in section 20[1] of the Act.

who can be appointed as Authority - the following may be appointed as an authority to decide any claims as aforesaid;

a. Any commissioner for workmen's compensation ; or

b. Any officer of the Central Government exercising functions as a labor commissioner for any region, or

c. Any officer of the State Government not below the rank of a Labor Commissioner; or

d. Any other officer with experience as a Judge of a Civil Court or as a stipendiary Magistrate.

11.6 THE PAYMENT OF WAGES ACT, 1936

The Payment of Wages Act, 1936 is '' an Act to regulate the payment of wages of certain classes of employed persons.'' The permeable says; '' whereas it is expedient to regulate the payment of wages to certain classes of persons employed.''

The Act is intended to regulate the payment of wages to certain classes of persons employed in industries and the object is to provide for a speedy and effective remedy to the employees in respect of their claims arising out of illegal deductions or unjustified delay made in paying the wages to them. The Act furnishes a summary remedy for wages earned in an office and not paid, but it does not provide a remedy for investigation of quarrels which concern the office.

The general purposes of the Act is to provide that the employed persons shall be paid their wages in a particular form and at regular intervals and without any unauthorized deductions.

In this way the objects of this Act are three-fold ;

1. It provides that the employed persons shall be paid their wages in a particular form ;

2. The payments will be made at regular intervals ;

3. It prohibits unlawful and unauthorised deductions from the wages.

11.7 APPLICATION AND COVERAGE OF THE ACT

Under Section 1[2], the Act extends to the whole of India. It applies to the payment of wages to persons employed in any factory or/and to persons employed upon by a person fulfilling a contract with a Railway Administrations. Section 1 [5] empowers the State Government to the provisions of the Act to the payment of wages to any class of persons employed in any industrial establishment or any class or group of industrial establishments. Such application can be after giving three months notice in the official gazette of its intention to extend the application of the Act, other conditions being confirmed

[a] Three months official notification is given; and

[b] it relates to an industrial establishment.

In State of West Bengal V/s. Babu Mondal, it was held that an application for payment of wages by Durwan of clinic is maintainable under this Act, on the ground that the polio clinic in question where medicinal mixtures are prepared and X-Ray photographs are taken for their uses comes within the ambit of industrial establishment as defined in section 2[ii][f] of the Act.

The Act does not apply to wages payable in respect of wage period if the average wage far such periods is more than Rs. 6500/- a month to a person employed.

An employee whose monthly wages are more than what is prescribed under Section 1 [6] is barred from invoking the provisions of the Act.

DEFINITION ;-

1. Employed person - Employed person includes the legal representative of a deceased employed person.

2. Employer - The term employer includes the legal representative of a deceased employer.

3. Factory - Factory is defined in Section 2 [i] [b] of the Act to mean a factory as defined in Section 2 [m] of the factories Act, 1948, But it includes further any place to which the provisions of Section 85[1] of the Factories Act apply. BY virtue of this any premises where any thing is done towards making are finishing of an article up to the saleable state will be a factory. Thus, the coverage of the term factory under this Act is wider than of the factories Act.

i. Industrial establishment - Industrial establishment is defined in Section 2 [ii] which includes -

ii. Tramway service are motor transport service engaged in carrying passengers, goods or both.

iii. Air transport service other than military, naval, air force of the union are the Civil Aviation Department of India.

iv. Dock, wharf or Jetty.

v. Mine, quarry oilfield.

vi. Plantation like rubber, coffee, tea etc.

vii. Workshop are other establishment in which articles are produced for use, transport or sale.

viii. Establishment in which any relating to construction, development, maintenance of building, roads, bridges, canals, etc are carried on.

11.8 PERMISSIBLE DEDUCTIONS

Notwithstanding the provisions of Railway Act 1989 [24 of 1989] the wages of an employed person shall be paid to him without deductions of any kind except those authorized by or under this Act.

Deductions from the wages of an employed person shall be made only in accordance with the provisions of this Act and may of the following kinds only namely ;

a. Fines;

b. Deduction for absence from duty;

c. Deductions for damage to or loss of goods expressly entrusted to the employed person for custody or for loss of money for which he is required to account where such damage or loss is directly attributable to his neglect or default;

d. Deductions for house- accommodation supplied by the employer or by Government or any housing board set up under any law for the time being in force [whether the Government or the Board is the employer or not] or any other Authority engaged in the business of subsidizing house-accommodation which may be specified in this behalf by the Appropriate Government by notification in the official Gazette;

e. Deductions for such amenities, services supplied by the employer as the Appropriate Government or any officer specified by it in this behalf may by general or special order authorise.

f. Deductions for recovery of advances of whatever nature [including advances for travelling allowance or conveyance allowance] and the interest due in respect thereof or for adjustment of over-payments of wages;

i. Deductions for recovery of loans made from any fund constituted for the welfare of labour in accordance with the rules approved by the Appropriate Government and the interest due in respect thereof;

ii. Deductions for recovery of loans granted for house-building or other purposes approved by the Appropriate Government and the interest due in respect thereof;

g. Deduction of income-tax payable by the employed person; [sec 7 [2]g]

h. Deductions required to be made by order of a court or other authority competent to make such order;

i. Deductions for subscriptions to and for repayment of advances from any provident fund to which the Provident Funds Act 1952 [19 of 1952] applies or any recognized provident funds as defined in section 38 of section 2 of the Indian Tax Act, 1961 [43 of 1961] or any provident fund approved in this behalf by the Appropriate Government during the continuance of such approval;

j. Deductions for payments to co-operative societies approved by the Appropriate Government or any officer specified by it in this behalf or to a scheme of insurance maintained by the Indian Post Office and

k. Deductions made with the written authorisation of the person employed for payment of any premium on his life insurance policy to the Life Insurance Corporation Act of India established under the Life Insurance Corporation 1956 [31 of 1956] or for the purchase of securities of the Government of India or of any State Government or for being deposited in any Post Office Saving Bank in furtherance of any savings scheme of any such government.

i. Deductions made with the written authorisation of the employed person for the payment of his contribution to any fund constituted by the employer or a trade union registered under the Trade Union Act,1926 [16 of 1926] for the welfare of the employed persons or the members of their families or both and approved by the State Government or any officer specified by it in this behalf during the continuance of such approval;

ii. Deductions made with the written authorisation of the employed person for payment of the fees payable by him for the membership of any trade union registered under the Trade Union Act, 1926 [16 of 1926]

l. Deductions for payment of insurance premier on Fidelity Guarantee bonds;

m. Deductions for recovery of losses sustained by a railway administration on account of acceptance by the employed person of counter it or base coins or mutilated or forged currency notes;

n. 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 whether in respect of fares freight demurrage wharf age and carnage or in respect of sale of food in catering establishments or in respect of sale of commodities in grain shops or otherwise;

o. Deductions for recovery losses sustained by a railway administration on account of any rebates or refunds incorrectly granted by the employed person where such loss is directly attributable to his neglect or default;

p. Deductions made with the written authorization of the employed person for contribution to the Prime Minister's National Relief Fund or to such other Fund as the Central Government may by notification in the official Gazette specify;

q. Deductions for contributions to any insurance scheme framed by the Central Government for the benefit of its employees.

Limit on deductions [Sec 7 [3]]

[3] Under this Act, the total amount of deductions which may be made and shall not exceed,

i. In cases where such deductions are wholly or partly made to co-operative societies, if so seventy five percentage of such wages and

ii. In any other case fifty five percentage of such wages Fines (Sec 8) :

a. No fine shall be imposed on any employed person with previous approval of the appropriate government.

b. A notice specifying such acts and omissions shall be exhibited on the premises at the prescribed place.

c. No fine shall be imposed on the person until he has given an opportunity of showing cause against the fine.

d. The total amount of fine which may be imposed shall not exceed an amount equal to three percent of the wages.

e. No fine shall be imposed on any person whom is under the age of fifteen years.

f. No fine shall be imposed after the expiry of ninety days from the day on which it was imposed.

g. Every fine shall be imposed on the day of the act or omission in respect of which it was imposed.

h. All fines and all realizations thereof shall be recorded in a prescribed register as per Sec 3.

11.9 AUTHORITIES UNDER THE ACT

For the purposes of enforcing the compliance with the provisions of the Act, the appropriate government appoints the inspectors. And the powers of the inspectors were as follows,

An Inspector may,

a. Make such examination and enquiry to ascertain whether provisions of the Act or rules are being observed,

b. Enter, inspect and search any premises, factory or any industrial establishment at any reasonable time for the purpose of carrying out the objects of the Act,

c. Supervise the payment of wags to persons employed upon in any industry or factory,

d. Require the production of any register or record maintained in pursuance of the Act,

e. Seize or take copies of such register or documents or any portions of them

f. Exercise such other powers as may be prescribed.

Penalty and miscellaneous Provisions :

Sec 20 imposes fine up to Rs. 500/- for contravening the following provisions of the Act,

a. Delay in payment of wages within the prescribed period.

b. Deductions made in contraventions of sec 7,9,10,11 and 13 of the Act.

c. Impositions of fines in contraventions of the Act.

Sec 20 (2) stipulates punishment which may extend to Rs. 2000/- for contraventions of the following provisions of the Act.

a. Not fixing the wages period in accordance of the Act.

b. Not paying the wages in current currency.

c. Nor making the payment on working day,

d. Not recording in the register the fines and all realizations made from the employee,

e. Not displaying the abstract of the Act,

Sec 20(3) provides that any person who is required to maintain the register or any record will be punishable with a fine up to Rs.500/- if,-

a. He fails to maintain such registers and records.

b. He willfully refuses to furnish such information required,

c. He willfully furnishes the wrong information,

Sec 20 (4) further provides the following offences shall be punishable with fine up to Rs.500/-

a. Willfully obstructing the inspectors in the discharge of his duties.

b. Refuses to provide the inspector any reasonable facility for any entry, inspection, examination. supervision or enquiry under this Act.

c. Willfully refuses to produce on demand to any inspection any register or document kept in pursuance of the Act.

11.10 CASE STUDY

An Association is engaged in the activity of taking care for sick and lame cattle and to maintain them. The association has lands in different villages and it earns rental and other income and also agricultural income besides income earned by sale of wood, wool, manure etc,. It has branches also in other villages where cattle are put for treatment. It was held that

having regard to the activities of this association , it is a commercial establishment and attracting Minimum Wages Act and employees are to be paid wages as per the Act.

11.11 NOTES

11.12 SUMMARY

Under this unit, we are able to learnt the meaning of minimum wages along with some important definitions. The Government have been empowered to fix up minimum wages. And also the Act protects the employees against unlawful deductions, in their respective wages. In the course of employment, many lapses may occur. For any such lapse, fine or deductions cannot be imposed unless it has been authorized by the Act. By analyzing these Acts one can understand the significance of the Acts, whereby the livelihood in the form of wages shall be ensured by the courts in their decisions.

11.13 KEY WORDS

- Wages
- Permissible Deductions
- Penalties
- Inspectors
- Fines
- Wages Authority
- Revision of Wages
- Payment of Wages

11.14 SELF ASSESSMENT QUESTIONS

1. Examine the concept of Wages.
2. Explain the salient features of Minimum Wages Act, 1948
3. Elucidate the methods used for fixation of minimum Wages.
4. Write a note on Enforcement Authorities.
5. Examine the application and coverage of Payment of wages Act
6. Describe the important provisions relating to permissible deductions.
7. Enumerate the powers and functions of the Inspectors.
8. Draft a note on fine and penalties.

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UNIT -12 :THE PAYMENT OF BONUS ACT, 1965 AND THE APPRENTICESHIP ACT, 1961

Structure:

12.0 OBJECTIVES

After studying this unit, you should be able to;

- Explain the significance of Bonus Act
- Discuss the provisions relating to payment of minimum bonus
- Highligts the salient features of the Apprentices Act
- Explain the authorities under this Act

12.1 INTRODUCTION

The payment of bonus act, 1965 is an act to provide for the payment of bonus to persons employed in certain establishments on the basis of profits or on the basis of production or productivity and for other connected matters.

The origin of payment of bonus in India can be traced to "war bonus" given in Bombay to the workers in textile industry in July, 1917. In the form of an increase of 10% in wages. in 1924 the government of Bombay appointed a bonus disputes committee presided over by Sir Noman McLeod, the then chief justice of Bombay high court. the committee held that the workers had no enforceable claim, customary, legal or equitable to the payment of bonus. thus, the payment of bonus in the earlier years was an *ex gratia* payment. bonus used to be paid on *ad hoc* basis at that time by a few industrial undertakings.

12.2 THE PAYMENT OF BONUS ACT, 1965

This act extends to the whole of India. sub section 3 of section 1 provides that save as otherwise provided in this act, it shall apply a every factory and every other establishment in which twenty or more persons are employed on any day during an accounting year.

The payment of bonus act cannot have retrospective operation, in Remington rand of India v/ s workmen. payment of bonus for the year 1963-64 was demanded. it was held that bonus payable for the year will have to be calculated on the basis of full bench formula as approved by the supreme court and the act not apply to that year retrospectively.

12.3 DEFINITIONS

a.**Accounting year** - the term accounting year is defined in section 2 (i) to mean:-

i. In relation to a corporation the year ending on the day on which the bonus and accounts of the corporation are to be closed and balanced.

vii. appropriate government: sec 2 (5)

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 meetings is made up, whether that period is a year or not;

iii. In any other case;

iv. the year commencing on the first day of April;

v. at the option of the employer to choose his own accounting year.

vi. allocable surplus sec2 (4) - allocable surplus is the share of the workers out to the available surplus. it will be 67% in the case of companies other than banking companies and 60% in other cases.

viii. In relation to an establishment in respect of which the appropriate government under the industrial disputes act, 1947 is the central government.

ix. In relation to any other establishment, the government of the state in which that other establishment is suitable.

b.Available surplus :

Section 2 (6) defines available surplus. it means the available surplus in respect of an accounting year is the gross profit of that year after deducting there from the sums referred to in section 6. the sum liable to be deducted from the gross profit under section 6 are:

I. any account by way of depreciation admissible under the income tax on agricultural income tax laws;

II. any amount by way of development rebate on development allowance which is the employer is entitled to deduct from his income under the income tax act.

III. any direct tax which the employer is liable to pay for the accounting years in respect of his income or profit during the year; and

IV. such other sums as are specified in respect of the employer in schedule 2 of the act.

V. answer sec 2 (7) :-

c. Award: means an interim or a final determination of any industrial dispute or of any question relating there to any labor court, industrial tribunal or national tribunal constituted under the industrial disputes act, 1947 or by any other authority constituted under any corresponding law relating to investigation and settlement of industrial disputes in force in a state and includes an arbitration award made under sec 10-A of that act or under that law.

i) Available surplus section 2 (6) defines available surplus. it means the available surplus in respect of an accounting year is the gross profit for that year after deducting there

from the sums referred to in sec 6. the sums liable to be deducted from the gross profit under sec 6 are:

a. Any amount by way of depreciation admissible under the income tax or agricultural income that laws,

b. Any amount by way of development rebate or development allowance which the employer is entitled to deduct from his income under the income tax act.

c. Any direct tax which the employer is liable to pay for the accounting years in respect of his income or profit during that year and

d. Such other sums as are specified in respect of the employer in schedule 2 of the act.

ii) Employee 2 (13):

d. Employee means any person employed on a salary or wage not exceeding three thousand and five hundred rupees per

e. mensem in any industry to be any skilled or unskilled manual, supervisory, managerial administrative, technical or clerical work for hire on reward whether the terms of employment be expressed or implied. h.

f. Employer sec 2 (14):

Employer includes.

i. in relation to establishment which is a factory, the owner or occupier of a factory, including the agents of such owner or occupier, the legal representative of a deceased owner or occupier and where a person has been named as a manager of the factory under clause (if) of sub section 7 of the factories act, 1948, the person so named and,

ii. in relation to any other establishment, the person who are the authority which, has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to a manager, managing director, or managing agents such manager, managing director or managing agent.

iii. Factory sec 2 (17) : Factory shall have the same meaning as in clause (m) of section 2 of the factories act,1948.

g. Salary or wages 2 (21)

Salary or wage means all remuneration capable of being expressed in terms of money, which would, if the terms of employment express or implied were fulfilled, be payable to an employee in respect of his employment or of work done in such employment and includes dearness allowance, but does not include.

I. Any other allowance which the employee's id for the time being entitled to;

II. The value of any house accommodation or of supply of light, water , medical attendance or other amenity of any service or of any concessional supply of food grains or other articles.

III. Any travelling concession

IV. Any bonus (including incentive, production and attendance bonus)

V. Any contribution paid or payable by the employer to an pension fund or provident fund or for the benefit of the employee under any law for the time being in force.

VI. Any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex- gratia payment made to him.

VII. Any commission payable to the employee.

12.4 COMPUTATION OF AVAILABLE SURPLUS (SEC 4)

The available surplus in respect of any accounting year shall be the gross profits for that year after deducting there from the sums referred to in sec 6.

a. the gross profits for that accounting year after deducting therefrom the sums referred to in sec 6, and

b. an amount equal to the difference between:

i. The direct tax calculated in accordance with the provisions of sec 7, in respect of any amount equal to the gross profits of the employer for such preceding accounting year after deducting therefrom the amount of bonus which the employer has paid or is liable to pay to his employees in accordance with the provisions of this act of that year.

12.5 PAYMENT OF MINIMUM BONUS

Subject to other provisions of this act, every employer shall be bound to pay to every employee in respect of the accounting year commencing on any day in the year 1979 and in respect of every subsequent accounting year, a minimum bonus which shall be 8.33% of the salary or wage earned by the employee during the accounting year or one hundred rupees, whichever is higher, whether or not the employer has any allocable surplus in the accounting year :

Provided that there an employee has not employed fifteen years of age at the beginning of the accounting year, the provision of this section shall have effect in relation to such employees as if for the words " one hundred rupees" the words " sixty rupees" were substituted.

1. Payment of maximum bonus (sec 11)

1. Where in respect of any accounting year referred to in sec10 the allowable surplus exceeds the amount of minimum bonus payable to the employees under that section, the employer shall, in lieu of such minimum bonus, be bound to pay to everyone in respect of that accounting year which shall be an amount in proportion to the salary or wage earned by the employee during the accounting year subject to a maximum of 20% of such salary or wage.

2. In computing the allocable surplus under the section the amount set on or the amount set off under the provisions of sec 15 shall be taken into account with the provisions of that section.

2. Computation of number of working days (Sec 14) :

For the purposes of sec13 an employee shall be deemed to have worked in an establishment in any accounting years also on the days of which,

a. He has been laid off under an agreement or as permitted by standing orders under the industrial employment act, 1946.

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 land in the course of his employment.; and

d. The employee has been on maternity leave with salary or wage, during the accounting year.

12.6 AUTHORITIES

1. Inspectors (sec 27)

1. The appropriate 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.

2. Require an employer to furnish such information as he may consider necessary,

a. At any reasonable time and with such assistance, if any, as he thinks fit, enter any establishment or any premises connected therewith and require any one found in charge thereof to produce before him for examination any accounts, books, registers, and other documents relating to the employment of persons or the payment of salary or wage or bonus in the establishment,

b. Make copies of, or take extracts from, any book, register or other document maintained in relation to the establishment,

c. Exercise such other powers as may be prescribed.

3. Every inspector shall be deemed to be a public servant within the meaning of the Indian penal code (45 0f 1860)

4. A person required to produce any accounts, book, register or other document or to give information by an inspector under subsection (1) shall be legally bound to do,

5. Nothing contained in this section shall enable an inspector to require a banking company to furnish or disclose any statement or information or to produce or give inspection of, any of its books of account or other documents, which a banking company cannot be compelled to furnish, disclose, produce or give inspection of, under the provisions of sec 34-A of the banking regulation act, 1949.

2. Penalties (Sec 28)

If any person contravenes of the provisions of the act or any rule made thereunder, he shall be punishable with imprisonment for a term which may extend up to 6 months or a fine which may extend up to 10,000/- or both.

12.7 THE APPRENTICES ACT, 1961

The primary object with which the apprentices act, 1961 was passed to meet the increasing demand for skilled craftsmen in the development of the country. It was intended by the government to utilize facilities available for training apprentices and to ensure their training in accordance with planned program

The apprentices act amongst others has two important objectives. promotion of new manpower skills and improvement and refinement of old skills through theoretical and practical training in number of trades and occupations. It is a new statutory obligation on the part of every employer covered under the act to train a prescribed number of persons. The act envisages to regulate and control the training of apprentices in trade and to supplement the availability of the technical persons for the industry.

The act as amended in 1973 and 1986 defines the technician as apprentice who holds or in undergoing training in order that he may hold a ceritficate in vocational course involving two years of study after completion of all secondary stage of school education recognised by all India council and undergoes apprenticeship training in any such subject filed in any vocation course as may be prescribed. the act provides an important instrument for sharpening

the capability, ingenuity, resourcefulness, and skill of the workers and through this eventually helps to enrich their life style.

12.8 APPRENTICES AND THEIR TRAINING

1. Qualifications for being engaged as an apprentice;

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

A Is not less than 14 years of age and

B Satisfies such standards of education and physical fitness as may be prescribed

provided that different standards may be prescribed in relation to apprenticeship training in different designated trade and for different categories.

2. Contact of apprenticeship:

A No person shall be engaged as an apprentice to undergo apprenticeship training in a designated trade unless such person or if he is minor, his guardian has entered into contract of apprenticeship with the employer.

B The apprenticeship training shall be deemed to have commenced on the date on which the contract of apprenticeship has been entered into under sub section (1)

C Every contract of apprenticeship may contain such terms and conditions as may be agreed to by the parties to the contract;

D Every contract of apprenticeship entered into under sub section shall be sent by the employer within such period as may be prescribed to the apprenticeship advisor for registration

E The apprenticeship advisor shall not register a contract of it unless he is satisfied that the person described as an apprentice in the contract is qualified under this act for being engaged as an apprentice to undergo apprenticeship training in the designated trade specified in the contract.

3. Period of Apprenticeship Training -

The period of apprenticeship training shall be in the contract of apprenticeship shall be follows,

a. In the case of trade apprentices who, having undergone institutional training in a school or other institution recognized by the National Council have passed the trade test or examinations conducted by that council, the period shall be such as may be determined by that council or by an institution recognized by that council.

b. In the case of other trade apprenticeship, graduate or technician apprentices the period of shall be such as may be prescribed.

4. Termination of apprenticeship contract;

The contract of apprenticeship shall terminate on the expiry of the period apprenticeship training.

Either party to contract of apprenticeship may make an application to the Apprenticeship Advisor for the termination of the contract . The apprenticeship adviser may order for terminating of the contract, if he is satisfied that the parties to the contract or any of them have or failed to carry the terms and conditions of the contract.

12.9 AUTHORITIES UNDER THE ACT

In addition to the government, there shall be the following authorities under this act namely,

1. The national council
2. The central apprenticeship council
3. The state council
4. The state apprenticeship council
5. The all India council
6. The regional boards
7. The board of state councils of technical education
8. The central apprenticeship advisor
9. The state apprenticeship advisor.

a. Every state council shall be affiliated to the national council and every state ` apprenticeship council shall be affiliated to the central apprenticeship council.

b. Every board or state council of technical education and every regional board shall be affiliated to the central apprentice council.

c. Each of the authorities specified in sub section 1 shall in relation to apprenticeship training under this act, perform such functions as are assigned apprenticeship training under this act or by the government.

Offences and Penalties :

Section [30] . Offences and Penalties

1. If any employer –

a. Engages as an apprentice, a person who is not qualified for being so engaged,or

b. Fails to carry out that terms and conditions of a contract of apprenticeship,or

c. Contravenes the provisions of the Act relating to the number of apprentices which he is required to engage under those provisions, he shall be punishable with imprisonment for a term which may extend to 6 months or with fine or with both.

2. If any employer or any other persons –

a. Required to furnish any information or return-

- Refuses or neglects to furnish such information or return, or
- Furnishes or causes to be furnished any information or return, or which is false which he either knows or believes to be false or doesn't believe to be true, or
- Refuses to answer, or gives a false answer to any question necessary obtaining any information required to be furnished by him, or

b. Refuses or willfully neglects to afford the Central or the State Apprenticeship Advisor or such other person, not below the rank of an Assistant Apprenticeship Advisor, as may be authorized by the Central or the State Apprenticeship Advisor in writing in this behalf any reasonable facility for making any entry, inspection, examination or enquiry authorized by or under this Act, or

c. Requires any apprentice to work over time without the approval of the Apprenticeship Advisor, or

d. Employs an apprentice on any work which is not connected with his training, or

e. Makes payment to an apprentice on the basis of piece work, or

f. Requires an apprentice to take part in any output, bonus on incentive scheme,

He shall be punishable and imprisonment for a term which maybe extend to 6 months or with fine or with both.

12.10 CASE STUDY

1. The XYZ water supply and drainage board has been established to serve the public interest by exposing better amenities of life. the function of the board is to provide protected drinking water supply and drainage facilities. it has its own assets and liabilities, method of recovery of the cost of the schemes. making investments and constituting its funds. the board has got a scheme of profit and loss. It shall earn profits in some year and loss in another year.

It has got a capital structure, profit and liabilities and a labour force to care for. therefore the employees of the board qualifying for bonus under the Payment of Bonus Act are entitled to minimum amount of bonus.

2. Mr X engaged as an apprentice by in an establishment. he claimed that there was no valid legal contract of apprenticeship for the reason that a contract made in the first instance was cancelled and a second contract was antedated. He contended that his services could be terminated only after notice and payment of retrenchment compensation under the Industrial Dispute Act. It was held that the petitioner had himself applied for engagement as an apprentice under the Apprenticeship Act, 1961 and had signed both the contracts under the provisions of the Act. Therefor the petitioner was rightly held not to be a workman.

12.11 NOTES

12.12 SUMMARY

The practice of paying bonus originated during first world war when certain textile mills granted 10% wages as bonus to their workers in 1917. later on some industrial disputes arose demanding payment of bonus. After that the Bonus Act was passed and it's like a means of incentive and social security. One has to observe that the payment of bonus is not an absolute obligation. There are limitations and restrictions were prescribed under the Act. Minimum and maximum amounts are prescribed. Deductions can also be made in bonus. The Act is well supported by the judiciary through their judgements. The Act has been amended several times. Likewise the Apprentices Act was enacted to meet the increasing demand for skilled drafts men in the development of the country. It was intended by the Government to utilize facilities available for training apprentices and to ensure their training in accordance with planned program.

12.13 KEY WORDS

- Available Bonus
- Apprenticeship training
- Contract of apprenticeship
- Obligation of apprentices
- Minimum bonus
- Maximum bonus
- Available surplus
- Award

12.14 SELF ASSESSMENT QUESTIONS

1. Explain provisions regarding the computation of available surplus.
2. Elucidate the principles and objectives of bonus enshrined under the Bonus Act.
3. Discuss how far adjustments are made against bonus and deductions from bonus.
4. Draft a note on eligibility for bonus
5. Briefly explain regarding minimum and maximum bonus.
6. Examine the provisions relating to apprentices and their training.
7. Enumerate the powers of the authorities.
8. What do mean by allocable surplus?

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MODULE - IV
INDUSTRIAL DISPUTES ACT 1947

UNIT - 13 : VARIOUS METHODS OF INDUSTRIAL DISPUTES

Structure:

13.0 OBJECTIVES

After studying this unit, you should be able to;

- Explain the significance of the Industrial Disputes Act
- Define various provisions of the Act
- Discuss the nature of Industry and Industrial Dispute
- Highlight the mechanism of obtaining the justice under the Act

13.1 INTRODUCTION

The main object of the Act is to promote industrial peace and economic justice. Industrial Dispute Act is a legislation calculated to ensure justice to both employers and employees by establishing harmony and advance progress in the Industry. The Industrial Dispute Act is a progressive measure of social legislation aiming at the amelioration of conditions of workmen in Industry. The Supreme Court in *Dimakuchi Tea Estate Co.* case lays down the principle objects as follows:

- The Promotion of measures for securing amity and good relations between employer and workmen;
- An investigation and settlement of industrial disputes between employers and employees, employers and workmen, workmen and workmen with a right of representation by a registered Trade Union or Federation of Trade Unions or a Federation of association of employers;
- The prevention of illegal strikes and lockouts;
- Relief to workmen in matters of lay-off and retrenchment and
- Collective bargaining.

The main cause of present day industrial dispute is because of the fact that the absence of worker‘s ownership over the means of production. The money power is centralized in the hands of a few entrepreneurs otherwise can be identified as capitalists who form 5% of the country‘s population. Whereas 95% of the human resources are mere wage earners. The conflict of interest between labour and management is inherent in capital system.

Wherever there is profit maximization, there will be strict control on modern technology, loss of skills, retrenchment, transfer etc.

On the other hand, the workers expect and demand security and stability, continuous income, protection of skills and improvement in their status. Industrial conflict is rather a general conception, it acquires a specific dimension, and it becomes an Industrial Dispute. There are various terms such as Labour Dispute, trade dispute but to become an industrial dispute there must be specific mention.

As per Sec. 2 (k) of Industrial Disputes Act 1947 "an industrial dispute means any dispute or difference between employers and workmen or between employees and employers, between workers and workers connected with the employment or non-employment or terms of employment or with conditions of labour of any persons". If a dispute has to be industrial dispute, as per the definition, it should satisfy the following factors:

a) There must be a dispute or difference.

b) It must be between employer v/s employees, workers v/s workers, employers v/s employers.

c) It must be connected with the industry.

d) It must be connected with terms and conditions of service or conditions of Labour or employment.

It means the relationship between employer and worker must be because of work related contracts.

The dispute must affect the large group of employees. Ex: Wages, conditions of employment. Trade Union should raise the dispute. If there is no trade union, group of workers should raise the dispute. There must be concerted demand. Denial of demand results in Industrial Dispute. Both the workers and employers must have interest in the organization.

13.2 DEFINITIONS

Various definitions were given under the Act, important definitions are discussed herewith:

13.2.1 Industry

Sec.2(j) defines an "Industry" as "any business, trade, undertaking, manufacture or calling of employers and include any calling, service, employment, handicraft or industrial occupation or avocation of workmen. This definition is on the basis of the actual activity of the organization, the determination is made as to whether the organization is an industry or not. Activities, which are carried on with the cooperation of capital and labour in the production of goods or in rendering material services can come within the ambit of the section even though making of profit, may not be the aim of such activities. Hence, non-profit organization

engaged in business, trade or profession could be treated as industry. An association of employers as well as non-profit making charitable institutions has been included in the definition of industry. In order to whether an organization is an industry, one should look into the Supreme Court decision in *Bangalore Water Supply v. A. Rajappa,* which characteristics three important aspects, which can generally be applied:

- It should be a partnership between capital and labour or between employer and employees;
- This relationship or co-operation should be direct and
- The organization exists for the production of goods or for the rendering of service.

The court suggested a *"Triple Test"* to identify an Industry:

a. Systematic activity;

b. Organized by operation by employer and employees and

c. For the production and or distribution of goods and services calculated to satisfy human wants and wishes.

If the triple test were satisfied, organizations like professions, clubs, education institutions, co-operatives, research institutions, charitable projects, other adventures etc., would come under the definition of industry. Hospitals, which are run by government and charitable organization solely for charitable purposes, are not covered under this definition. But, if a hospital is run as a business in a commercial way it may be termed as an industry.

Hospitals

In *Keraleeya Ayurveda Samajam Hospital and Nursing Home, Shoranpur v. Workmen,* the Auyervedic Institution was registered under the Societies Act. It was running a hospital, nursing home and an Ayurvedic School. It was held to be an Industry based on the following grounds:

a. It was engaging employees in its different departments;

b. The institution where Ayurvedic medicines were prepared was registered under the Factories Act;

c. For the services, rendered by way of treatment, fee was collected and

d. The establishment was organized in a manner in which trade or business was undertaken.

Government Department

In *Soundarajan and others v Secretary to Government of India, Ministry of Labour*, it was observed that, the Ministry of Defence has two wings, namely the Defence Service and Defence Production. Ordinance factories were being run under the latter. It was held that the Ordinance depot is an industry.

Educational Institutions

In *Sumer Chand v. Labour Court, Ambala and another*, the Punjab and Haryana High Court ruled that, an University is an Industry and carpenter employed in University is 'workman'. The Labour Court has jurisdiction to decide the dispute relating to the termination of such person.

Similarly, in *Suresh Chandra Mathe v. Jiwaji University, Gwalior and others,* it was decidedthat, a University is an industry, a clerk of the University is a workman.

An amendment has been made to give vital significance todefinethe term'industry';unfortunately still it is not enforced.

13.2.2 Industrial Dispute

According to (Sec.2. (k)of the Act, Industrial Dispute means any dispute or difference between:

a. Employers and Employers

b. Employers and Workmen and

c. Workmen and Workmen

The Dispute may relate to employment, non-employment, terms of employment, and conditions of labour of any person.

Disputes or difference arises when a demand is made by one party and is refused by the other party. The demand may be oral or in writing. A request contained in a letter from a workman may become an industrial dispute. If the request is not complied with, a dispute will arise.

In *ChandrakantTukaramNikam and another v . Municipal Corporation of Ahmedabad and another,* the workmen of the respondent Municipal Corporation had challenged orders of dismissal/removal from service in Civil Courts which was contested by the respondent. It was held by the Supreme Court that the jurisdiction of Civil Court was impliedly barred in these cases as the dismissal and removal from service and legality of

such order being industrial dispute, the appropriate forum was one constituted under the Industrial Disputes Act, 1947.

13.2.3 Grounds of Industrial Dispute

The following are the grounds:

- Employment and Non-employment, i.e., it may include retrenchment as well as refusal to reinstate;
- Compassionate appointment;
- Regularization of service;
- Dispute relating to workmen employed by the contractor;
- Dispute regarding medical aid to families and
- Privileges to an Office Bearer of Trade Union.

Who can raise a Dispute?

A demand may be made by a group of workmen or by the Trade Union on their behalf. A dispute with an individual workman may become an industrial dispute if other workmen or the union supports the workman. Collective disputes are those, which are supported by a large number of workmen. It may be due to any causes cited above. No rigid rules can be laid down regarding the number of workmen whose association will convert an individual into a collective dispute. The number depends on the facts of the case and nature of the dispute.

13.2.4 Workman

Sec.2.(s) of the Act defines "Workman" means any person (including an apprentice) employed in any industry to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied.

A workman, who has been dismissed, discharged or retrenched, comes within the definition of the term "workman", if there is a dispute relating to such dismissal, discharge or retrenchment. The following categories of persons are not treated as workman:

a. A person who is subject to the Air force Act 1950, Army Act 1950 or the Navy Act 1957 or

b. A person employed in the police service or as an officer or other employees of a prison, or

c. A person employed in a managerial or administrative capacity, or

d. A person, employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercises either by nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

Relationship

The Relationship of employee and employer arises between two persons by agreement between them, express or implied, when the employee is under the control of employer. An employee is said to be under control of employer if he is bound to follow the orders of the employer:

(a) Regarding the work, which he shall execute;

(b) The details of the work and

(c) The manner of its execution.

A Development Officer of LIC was held to be a workman (*Vedpraksh Gupta V. Messrs Delton Cables Pvt. Ltd).* For any person to be a workman it is necessary that he should be in the employment of the employer. Merely a contract to do some work is not enough, unless the relationship of master and servant which implies in the form 'employees' is admitted or established the person concerned is *no workman*.

In *Bihar State Road transport Corporation v State of Bihar*, a person was appointed as head clerk in the office of Divisional Manager and there was no evidence that he was doing managerial or supervisory work. His conditions of service were governed by the standing orders of the Rajya Transport. It was held that he *is workman* within the Act.

Manner of payment

It may be in the form of hire or reward to a workman may be in any manner. It may be: (a) time wages, (b) at piece rate or (c) a commission on production or sale.

Persons not regarded as workmen

a. Casual or temporary workers, after the job for which they are engaged is finished.

b. The non-permanent workers of seasonal factories, during the off season.

c. Persons holding Managerial and Supervisory post etc.,

13.2.5 Employer

According to Sec.2(g) of the act, "employer" means central government, state government or local authority in relation to industries carried on by or under their authority respectively. The Act is applicable to all employers.

13.2.6 Wages

Wages constitute the return obtained by workman of placing his labour, skill and energy at the disposal of his employer. The term is used in the Act to mean the total remuneration to which the workman is entitled under the terms of service and which can be calculated in terms of money. It includes (a) allowances like DA, (b) value of house accommodation, supply of light, water and other amenities, (c) any traveling concession. It does not include (a) bonus, (b) employer's contribution to pension, PF etc., and (c) gratuities payable on retirement.

13.2.7 Appropriate Government

According to Sec 2(a), the Central Government as well as the State Government are vested with various powers and the duties in relation to matters dealt with this Act. In relation to some disputes the Central Government and in some other State Government are the appropriate Government to deal with such disputes.

13.2.8 Bonus and Gratuity

The term bonus is used to denote any extra payment to workmen in addition to his wage, allowances and the usual fringe benefits.

The law regarding bonus was codified in 1965. Under that code, bonus was defined as an annual statutory payment by an employer to his employee according to the provisions of the Payment of Bonus Act 1965. Prior to the Payment of Bonus Act 1965, bonus was considered to be an *ex-gratia* payment to an employee by his employer. But under the Act, it has become a statutory obligation imposed on the employer.

Gratuity means a payment by employer to employee after the employee's retirement from office. It can also be paid when he/she resigns. It includes any money gratuitously granted or paid, whether in one sum or in installments. The liability to pay gratuity has been made statutory with the passing of Payment of Gratuity Act 1972.

13.3 VARIOUS METHODS OF INDUSTRIAL DISPUTES

13.3.1 Strikes and Lock-out

A strike is collective stoppage of work by workmen. It is the last weapon in an industrial controversy by workmen acting in concert with a view to bring pressure upon the employer to concede to their demands.A stoppage of work by a group of persons employed in an establishment or a concerted refusal (or a refusal under a common understanding) to do work or refusal to accept employment can be considered as a strike. (Sec.2(q)).

"Lockout" means the closing of a place of employment or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him. (Sec.2 (i))

Strike is a weapon in the hands of workmen and Lock-out is a weapon in the hands of the employer. Lock-outs are anti-thesis of strike.

The pre-requisites for a strike :

a. Group of workmen

b. Cessation of work or refusal to continue to work and

c. Acting in combination or concerted acting under a common understanding;

13.3.2 General prohibition of Strikes and Lock-outs (Sec.23)

- When conciliation is going on before a Board of Conciliation and 7 days after the conclusion of such proceedings.
- When adjudication is going on before a Labour Court / Tribunal and 2 months thereafter.
- When and if an appropriate government, in its reference prohibits the continuance of any strike.
- When arbitration is going on before an arbitrator and two months thereafter.
- When a settlement or award on the dispute matter is in operation (this is with regard to the matters only covered by a settlement or award).

13.3.3 Restrictions on strikes in public utility services (Sec.22)

- A strike notice must be served on employer and conciliation officer.
- The strike must not take place for 14 days after the notice has been given.
- The strike must not be called on or before the day, if any in the strike notice.
- The strike must not take place after 6 weeks from the notice and
- The strike must not take place during conciliation before a conciliation officer and 7 days after the conclusion of such proceedings.

The employers right to lock-out is also subject to the same restrictions as the workmen's right to strike. On the other hand, a strike is not illegal when it is declared due to an illegal lockout. Any strike or lock out called on in contravention of Sec.22 or 23 are illegal. If a strike is continued in contravention of the order of the appropriate government prohibiting the continuance of a strike or lockout after the dispute is being referred to a board or a tribunal u/s 10(a), it will be illegal.

Just because the workmen have refrained from attending to work, the employer cannot declare a lockout. If the strike is resorted to by the workers is illegal, the workmen will not be entitled to their wages during the period of the strike. A lockout becomes legal when the employer apprehends violence and loss to his properties. It means that on the basis of the prevailing conditions, and circumstances on that particular day, the lock-out can be declared. A lock-out cannot be justified just as the basis of an illegal strike, unless violence is apprehended.

Lock-out and Closure

Lock-out and closure cannot be one and the same, In respect of closure the employer does not merely close down the place of business, but the business itself is closed irrevocably and finally. A lockout in the other hand indicates the closure of the place of business only. Lockout is generally a weapon in the hands of the employer for collective bargaining and to counter a violent strike. On the other hand a closure is a matter of policy whether to run the business or not. Any strike must be justifiable and legal. An unjustified strike even it is legal, may not be approved according to Supreme Court.

13.3.4 Illegal Strikes and lock-outs

Sec. 24 of the Act declares the following acts as illegal:

a) Commenced or declared in contravention of Sec.22 in a public utility service.

b) Commenced in contravention of Sec.23 in any industrial establishment i.e., both in public and non-public utility service.

13.3.5 Kinds of Strike

Depending upon the nature of requirement and intensity of the issues the strikes will be held under the following heads:

a) General Strike b) Stay-in-Strike c) Go-slow Strike d) Sympathetic Strike

e) Hunger Strike and f) Work to rule.

a) ***General Strike:*** A General Strike is one, where the workmen join together for common cause and stay away from work, depriving the employer to their labour needed to run the factory, it is generally resorted to when employees fail to achieve their object by other means including a token strike, which generally precedes a general strike.

Stay-in-Strike: This is also known as 'tools-down-strike' or 'pens-down-strike'. Here the workmen report to their duties, occupy the premises, but do not work. The intention is to restrict the employer not to employ other labour.

Go-slow Strike: In this type of strike generally the workmen do not stay away from the work, but they come to work and do the same with a slow speed, which results in lower production than the expected.

Sympathetic Strike: This type of strike is normally resorted to support or extend courage to the indirectly the striking workmen. Normally the sympathizers will not have any demands of their own. Here the management is entitled to take disciplinary action against the workmen for breach of condition of service or work.

e) ***Hunger Strike:*** Under Hunger Strike, a group of workmen resort to fasting on or near the work place or the residence of the employer to coerce him to accept their demand.

f) ***Work to rule:*** Here the workmen adhere to the rules while performing their duties while performing their duties, which ordinarily they do not observe.

13.4 LAY-OFF

Lay-off means putting aside workmen temporarily. When a worker presenting himself during the normal working hours and is not given employment by the employer within two hours, it shall be deemed to have been laid-off for the day.

Lay-off is defined in Sec.2 {kkk) of the Industrial Disputes Act. A failure, refusal or inability of an employer to continue the work on account of any of the reason, viz., shortage of coal, power or raw materials, accumulation of stock, break down of machinery or for any other reason, can result non-employment to any workman whose name is borne on the muster roll of the industrial establishment though he has not been retrenched. Those who have been in the muster rolls of the undertaking, and who have completed at least a minimum period of one year of continuous service of the employer concerned would be eligible for compensation. Badli or casual workers are not eligible for any compensation. A workman who is in place of another workman is not eligible for lay off compensation even if he has completed one year's continuous service. One who has actually worked for a period not less than 240 days within the calendar period for 12 months is covered by the provision for lay-off compensation. *(SurendernagarPanchayat and another Vs. JethabhaiPitamberbhai)*

The following days would be reckoned for the continuity of service; the number of days on which a workman has been laid off, number of days of leave with full wages earned during the preceding year, maternity leave not exceeding 12 weeks in the case of women workers and any leave permitted under the Standing Orders or under any law or award. Similarly, any single interruption in the employment not exceeding 10 days of unauthorized absence will not result in a break or discontinuity of employment.

Lay-off compensation is equivalent to 50% of the total of the basic wages and D.A. that would have been paid if he had not been laid off according to Sec.25(c). Compensation should be paid for all the days of layoff, except weekly holidays that may intervene unless there is an agreement to the contrary between the workmen and employer to limit it to 45 days in a year. Where a workman has been paid lay-off compensation for more than 45 days and is retrenched, the employer may deduct the amount so paid out of retrenchment compensation payable to him.

13.4.1 Workmen not entitled to Compensation Sec. 25(E)

No compensation shall be paid to a workman if:

(1) He refuses to accept any alternative employment in the same establishment or in any other establishment belonging to the same employer situated in the same town or within a radius of 5 miles from the establishment to which he belongs. Provided that the wages in the alternative employment are the same as in the previous one,

(2) If he does not present himself for work at the establishment at the appointed time during working hours at least once in a day and

(3) If such lay-off is due to strike or slowing down of production as the part of the workmen in another part of establishment.

Industrial Disputes Amendment Act, 1976 has imposed further restrictions on the employers right to lay-off, retrenchment and closure. Under Sec. 25M (1), no workman (other than badly worker and casual workman) whose name appears on the muster rolls of an industrial establishment is to be laid off without the previous permission of the appropriate authority specified by the government, by notification in the official gazette, unless such lay off is due to shortage of power or natural calamity. If the authority refuses to grant permission, the reason should be recorded in writing. However, if the refusal is not granted within a period of 2 months, the permission will be deemed to have been granted, after the expiry of 2 months. Any lay-off without the prior permission of the competent authority shall be deemed to be illegal, and the workmen are entitled for all the benefits as if they not been laid-off.

13.5RETRENCHMENT (SEC.2(OO))

Retrenchment is the termination by the employer of the services of the workmen for any reason whatsoever otherwise than a punishment inflicted by way of disciplinary action. Voluntary retirement, superannuation, termination of employment on grounds of ill health

etc., do not amount to retrenchment. No workman who has been employed for one year can be retrenched until;

(1) He has been given three month's notice in writing, indicating the reason for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of notice;

(2) The workman has been paid compensation equivalent to 15 days average pay for every completed year of service or any part thereof in excess of 6 months and

(3) Notice in the prescribed manner excess on the appropriate government by notification in the official gazette, and the permission of such government or authority is obtained.

The appropriate government or authority after making the necessary enquiry, grant or refuse the permission for retrenchment. The government in writing should record reason if any.

13.6 CLOSURE (SEC 2 (CC))

Closure means permanent closing down of a place of employment or part thereof.

An employer who intends to close down an undertaking shall be required to give 60 days prior notice to the appropriate government according to the Sec. 25 FFA. But the 1976 amendment stipulates that at least 90 days before the date on which the intended closure is to be effect the notice should be served on the appropriate government (Sec. 25-O). Section 25 FFA has not been applicable to:

(1) An undertaking in which less than 50 workmen are employed or were employed on an average per working day in the preceding 12 months and

(2) An undertaking set up for the construction of buildings, roads, bridges, canals, dams or for other construction work or project.

Sec.25-O of 1976 amendment also provides that it shall not apply to an undertaking for construction. If an undertaking is closed down, every workman who has been in continuous service for not less than one year in that undertaking shall be entitled to notice and compensation as if the workman had been retrenched. However, according to Sec. 25 FFF, the compensation payable shall not be exceed the average pay for 3 months where the undertaking has been closed down on account of unavoidable circumstances beyond the control of employer.

According to the amendment of 1976, an employer who intends to close down an undertaking or an industrial establishment shall serve a notice of at least 90 days before the

date of the intended closure on the appropriate government, stating clearly the reasons for the intended closure of the undertaking. If he appropriate government is convinced that the reasons for the intended closure are not adequate and sufficient or is prejudicial to the public interests, the employer shall be directed not to close down the undertaking. If permission or refusal is not communicated within a period of 2 months from the date on which the application is made, the permission applied shall be deemed to have been granted on the expiry of the said 2 months. If the closure is refused, such closure will become illegal.

The Supreme Court lists the unavoidable circumstances beyond the control of the employer for closure mentioned in Sec.25FFF. They are:

- The nature and conditions of machinery, which can only produce sub-standard products for the Company.
- Prohibition by the State for the manufacture in future of such sub-standard products, which do not conform to the ISI standard.
- The difficulty in marketing those sub-standard products in a competitive market where products manufactured by some modern sophisticated plants are available and
- The closure of the business where an employer was faced with threat, intimidation, violent methods like stabbing and bomb throwing, even though it was not running at a loss.

Closure due to financial impossibility to carryout the business, non-availability of orders for supply of goods, non-co-operation from workmen in some cases is not avoidable circumstances beyond the control of the employer.

13.7 CASE STUDY

SWASTA an Ayurveda Institution was registered under the Societies Act, in Karnataka. Along with the institution it was running a Hospital also. Apart from rendering the services they use to manufacture the medicines for the patients. The patients were charged with a nominal fee. The employees of the ofSWASTA raised their demand for the appropriate wages and all the facilities of an Industry. The management refused to increase the salary or agreed to fulfill their demand. The management were of the view that, their Institutional activities would not give rise to an Industrial Dispute and the educational institution cannot be considered as an Industry. The matter is referred to you to settle the dispute. Decide whether SWASTA can be considered as an industry and dispute can be considered as an Industrial Dispute. Advice.

13.8 NOTES

13.9 SUMMARY

The Industrial Disputes Act is a progressive legislation enacted to ensure justice both to the employer and the workmen. The very purpose of the act is to promote amity and good relations between them. The burning issues in the nature of Strike, Lock-out, Lay-off, Retrenchment and Closure are dealt in detail to understand and settle the dispute between the concerned. Good number of provisions has been provided for the settlement of disputes.

13.10 KEY WORDS

Industry: Any business, Trade including manufacturing.

Industrial Dispute: Any disputes or difference between employer and employer, employer and workmen or workmen and workmen.

Strike: Cessation of work by a body of persons in any industry.

Lock-out: Closing of a place of employment or suspension of work.

Lay-off: Putting aside workmen temporarily.

Retrenchment: Termination by a employer of the service of workman

13.11 SELF ASSESSMENT QUESTIONS

1. Explain the objective of the Industrial Disputes Act 1947?
2. Define Industrial Disputes? When an individual dispute becomes an industrial dispute?
3. Examine the important provisions of Industrial Dispute Act 1947 as they stand today. Do you think there is a need to amend it?

13.12 REFERENCES

1. Kapoor N.D. - Hand Book on Industrial Laws
2. Mishra S.N. - Labour and Industrial Laws
3. Srivatsava S.C. - Industrial Relations and Labour Laws
4. Tripathi P.C. & Gupta B.C.- Industrial Relations and Labour Legislations

UNIT- 14 VARIOUS AUTHORITIES UNDER THE ACT

Structure:

14.0 OBJECTIVES

After studying this unit, you should be able to;

- Explain the significance of Various Authorities under the Industrial Disputes Act
- Define various provisions of the Act
- Discuss the powers of the Authorities

14.1 INTRODUCTION

As we are very much aware, the main object of the Industrial DisputesAct is to promote industrial peace and economic justice, the legislation is also calculated to ensure social justice to both employers and employees by establishing harmony and advance progress in the Industry. The Industrial Disputes Act hailed as a progressive legislation aiming at the amelioration of conditions of workmen in Industry. The Act provides various methods and machinery to provide remedies for an Industrial Dispute. The adjudication of industrial dispute has been kept out of municipal courts.A separate mechanism has been provided under the Act. The Act prescribes various methods of settlement of Industrial Disputes; it can be broadly classified under three heads i.e., Conciliation, Adjudication and Arbitration.

14.2 DEFINITIONS

The following are the definitions for settlement of Industrial Dispute under the Act:

14.2.1 Conciliation: Conciliation is the process of adjusting or settling disputes in a friendly manner through extra judicial means. Conciliation means bringing two opposing sides together to reach a compromise in an attempt to avoid taking a case to trial.

Conciliation is used in labour disputes before adjudication or arbitration and may also take place in several areas of the law. A court of conciliation is one that suggests the manner in which two opposing parties may avoid trial by proposing mutually acceptable terms. The following authorities are designated under the Act: Works Committee, Concilation Officer and Board of Conciliation.

14.2.2 Adjudication: Adjudication is the legal process of resolving a dispute. The formal giving or pronouncing of a judgment or decree in a court proceeding; also the judgment or decision given. The entry of a decree by a court in respect to the parties in a case. It implies a hearing by a court, after notice, of legal evidence on the factual issue(s) involved. It indicates that the claims of all the parties thereto have been considered and set at rest. The Act provides for the establishment of Labour Courts, Tribunals and National Tribunal.

14.2.3 Arbitration: In contrast to conciliation, an arbitration is a contractual remedy used to settle disputes out of court. In arbitration the two parties in controversy agree in advance to abide by the decision made by a third party called in as a mediator, whereas conciliation is less structured.

14.3 AUTHORITIES UNDER THE ACT

The main object of the Industrial Dispute Act is investigation and settlement of Industrial Disputes. Keeping this object in view various authorities have been created. The following are the authorities:

a. Works Committee (Sec.3)

b. Conciliation Officer (Sec.4)

c. Board of Conciliation (Sec.5)

d. Courts of Enquiry (Sec.6)

e. Labour Courts (Sec.7)

f. Tribunals (Sec.7A)

g. National Tribunals (Sec.7B)

The National Tribunals are constituted by the Central Government, whereas the appropriate government appoints the other authorities.

14.3.1 Works Committee

The main purpose of creating works committee is to develop a sense of partnership between employer and workmen. This committee consists representative of employer and workmen. In the case of any industrial establishment in which 100 or more workmen are employed on any day in the preceding 12 months, the government may direct the employer to constitute a works committee in the manner prescribed.

The number of representatives of workers in the works committee must not be less than the number of representatives of employer. The workers' representatives are to be selected from the men engaged in the establishment, in consultation with their Trade Union, if there is any registered union.

Duties

The Works Committee is an authority under the Act. It has entrusted with the following duties:

a) To promote measures for securing and preserving amity and good relations between the employers and workmen;

b) To achieve the above object, it is their duty to comment upon matters of common interest or concern of employers and workmen;

c) To endeavor to compose any material difference of opinion in respect of matters of common interest or concern between employers and workmen.

14.3.2 Conciliation Officer

The Appropriate government may be notification in the official gazette, appoint the conciliation officers. The officers are charged with the duty of maintaining in and promoting the settlement of Industrial disputes in the following manner:

i. To hold conciliation proceedings in the prescribed manner, when an industrial dispute exists or is apprehended or a notice u/s 22 has been given.

ii. To investigate the dispute and to do all such things as he thinks fit for inducing the parties to came to a fair and amicable settlement of the dispute.

iii. If a settlement is arrived, he must send a report to the appropriate government, with memoranda of settlement signed by the parities of the dispute.

iv. If no such settlement is arrived at, he must report to the appropriate government, the facts of the dispute, the steps taken by him in bringing a settlement and reasons on account of which, in his opinion, a settlement could not be arrived at.

v. A report shall be submitted within 14 days of the commencement of the conciliation proceedings or within such shorter period as fixed by the appropriate government.

vi. The Conciliation Officer cannot pass orders or make awards binding upon the parties.

14.3.3 Board of Conciliation

The Appropriate government may constitute a Board of Conciliation consisting of an independent Chairman and Two or Four other members. Such other members are appointed in equal numbers to represent the parties to the dispute. The board may act, having the prescribed quorum. When the appropriate government notifies that the services of the Chairman or any other member have ceased to be available, the Board shall not act until the chairman or the member, as the case may be, has been appointed. The Board of Conciliation discharges the following duties:

i. To investigate the disputes and do all such things as it thinks fit to induce the parties to come to a fair and amicable settlement of the dispute.

ii. If a settlement is arrived at, the Board shall send a report to the appropriate government together with a memorandum of settlement signed by the parties to the dispute.

iii. If no such settlement is arrived at, the Board shall send a report of the steps taken, the facts of the dispute, its finding and reasons on account of which, in its opinion, a settlement could not be arrived at and its recommendations for the determination of dispute.

iv. The Board shall send its report within 2 months of the date, on which the dispute was referred to it, or within such shorter period as fixed by the appropriate government.

v. It cannot pass order or make awards binding upon the parties.

14.3.4 Courts of Enquiry

The Appropriate government may constitute a court of enquiry consisting of one or more number of independent persons who are either Judges of High Court qualified to be appointed as such. When there are two or more members, one of them shall act as Chairman. The court may act having the prescribed quorum. The constituencies of the court of enquiry have to be notified in the official gazette.

Duties:

a) To enquire into the matters to it;

b) To report thereon to the Appropriate Government, ordinarily within a period of six months from the commencement of enquiry;

It cannot make award or pass orders binding the parties**.**

14.3.5 Labour Courts (Sec.7)

The Appropriate Government may constitute one or more Labour Courts for adjudication of industrial disputes relating to any matter specified in the second schedule of the Act. So, a matter, which affects the workmen of an establishment, employing not more than 100 workmen can be referred to a Labour Court though such matters are included in the third schedule and is to be adjudicated upon by an industrial tribunal.

A Labour Court shall consist of one person only. The person appointed to be the presiding officer of a Labour Court, he (1) must be or has been a Judge of a High Court, or (2) has been a District Judge or additional District Judge for not less than 3 years or (3) has held office of any judicial office for not less than 7 years or (4) has been the presiding officer or member of the Labour Appellate Tribunal (formerly existing) or any tribunal for

not less than 2 years, or (5) must have been the presiding officer of a Labour Court constituted by Provincial Act or a State Act for not less than 5 years. He must be an independent man and must not have attained the age of 65 years. Sec 7(c) prescribes disqualification of the presiding officer.

Jurisdiction

The court has jurisdiction over the following matters.

1. The propriety of legality of an order passed by employer under the Standing Orders.
2. The application and interpretation of Standing Orders.
3. Discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongly dismissed.
4. Withdrawal of any customary concession or privileges.
5. Illegality or otherwise of strike or lockout.
6. All matters other than those specified in third schedule (i.e., those matters which are within the jurisdiction of Industrial Tribunals).

The Labour Court shall hold its proceedings expeditiously and shall as soon as it is practicable on the conclusion there of, submit its award to the appropriate government.

14.3.6 Tribunals

The appropriate Government may appoint one or more Industrial Tribunals for the adjudication of industrial disputes, whether specified in the second or third schedule.

A Tribunal shall discharge judicial functions and consist of one person only appointed by the appropriate government. A person shall not be appointed as the presiding officer of a tribunal unless

a. He is, or has been, a Judge of High Court or
b. He has held the office of the chairman, or member of Labour Appellate Tribunal or of any other Tribunal, for a period of not less than two years.
c. He must not have attained the age of 65 years
d. He must be an independent person.

The appropriate government may appoint two assessors to advise the tribunal in the proceeding before it. It may proceed ex-parte if any of the parties to the dispute is absent.

The Tribunal has the same duties as Labour Court

14.3.7 National Tribunals

The Central Government may appoint one or more National Industrial Tribunals for the adjudication of the industrial disputes, which in the opinion of the Central Government, involve question of National importance or are of such a nature that the industrial establishment situated in more than one state are likely to interested in or affected by such disputes.

A National Tribunal shall consist of one person only, appointed by the Central Government and the person to be appointed shall have the same qualification as one appointed to Tribunal u/s 7A.

The Central Government may also appoint 2 assessors to advise the National Tribunal in the proceeding before it.

National Tribunals have the same duties as Labour Courts and Industrial Tribunals.

14.4 POWERS OF THE AUTHORITIES

1. A conciliation officer or a member of Court, Board or Tribunal may enter the premises occupied by any establishment to which the dispute relates.

2. Every Board, Court or Tribunal shall have the power of a civil court under the Code of Civil Procedure namely:

   a. Enforcing the attendance of any person and examining him by oath

   b. Compelling the production of documents and material objects

   c. Issuing commissions for the examining of witnesses

   d. In respect of such matters as may be prescribed

3. A conciliation officer may call for and inspect any document which he thinks is relevant the industrial dispute.

4. A Court or a tribunal may appoint one or more assessors to advise it in the proceedings before it.

5. All the officers of the above authorities, shall be deemed as public servants within the meaning of Sec.21 of the IPC

6. The Appropriate government must publish the report or awards within 30 days of its receipt.

14.5 REFERENCE OF DISPUTES TO BOARD, COURTS OR TRIBUNALS

Sec. 10(1) of the Act provides for reference to various authorities created by the Act :

1.Where the Appropriate government is of the opinion that any industrial dispute exists or is apprehended, it may:

a. Refer the dispute to a Board or

b. Refer any matter connected with or relevant to the dispute to a court of enquiry, or

c. Refer the dispute or any matter connected with or relevant to the dispute in relation to matters specified in the second schedule to a Labour Court for adjudication or

d. Refer the dispute or any matter connected with or relevant to the dispute in relation to matters either in the second or third schedule, to a tribunal for adjudication.

2. When the central government is of opinion that an industrial dispute exists or is apprehended and the dispute involves any question of national importance or if the industrial establishments situated in more than one state are likely to be or any matter connected with it or relevant to it, to a National Tribunal for adjudication.

3. The appropriate government shall refer the dispute when the parties to the dispute apply for a reference to a Board, Court or Tribunal.

4. When a dispute has been referred to a Board, Court or Tribunal, the appropriate government may prohibit continuance of any strike or lock-out existing at the time of reference and may also include such establishments and class of establishments which are interested in or affected by the dispute, though they are not a party to the dispute.

5. (a) No Labour Court or Tribunal can adjudicate upon any matter, which is under adjudication before the National Tribunal.

(b) When a matter is referred to National Tribunal, all the proceedings before the Labour Court or Tribunal shall be deemed to have been quashed.

(c) No dispute, which is under adjudication before the National Tribunal can be referred to a Labour Court or Tribunal by the government.

6. Where the employer and workmen agree to refer the dispute to arbitration, they may do so before the dispute is referred to a Labour Court or Tribunal u/s 10. The arbitration agreement shall be signed by the parties thereto and forwarded to the appropriate government and conciliation officer. A copy of it will be published in the Official Gazette within 14 days from the date of receipt of such copy.

REFERENCE OF INDIVIDUAL DISPUTES TO GRIEVANCES SETTLEMENT AUTHORITIES (SEC. 9C)

This section has been inserted by the Amendment Act of No.46 of 1982.i.e., to setting up of Grievance Settlement Authorities. The following issues has been incorporated:

1. Employers (having 50 or more workers in any year of 12 months) set up a Grievances Settlement Authority for the settlement of Industrial Disputes connected with an individual workman employed in the establishment.

2. When an industrial dispute connected with an individual workman arises in an establishment, such dispute may be referred to the Grievances Settlement Authority provided for by the employer.

3. The authority shall follow such procedure and complete its proceedings within such period as may be prescribed.

4. No reference shall be made under Chapter-III with respect to any dispute referred to in this section, unless such dispute has been referred to the authority and the decision of the authority is not acceptable to any of the parties to the dispute.

14.6 AWARD AND SETTLEMENT

'Award' means an interim or a final determination of any industrial dispute or of any question relating there to by any Labour Court, Industrial Tribunal, National Industrial Tribunal and includes an arbitration award made u/s 10 A.

The presiding officer of the Labour Court or Tribunal signs the award.

The report of Board or Court shall be in writing and signed by all members, a member may, however, record a minute of dissent.

The government shall publish every such award with 30 days from its receipt. The award published shall be final and shall not be called in question by any court in any manner what so ever.

An award becomes enforceable on such date or may be specified therein and if the Government specifies no date, after the expiry of 30 days from the date of publication.

However, the Government has been given power to reject or modify whole or any part of the award. The order rejecting or modifying the award must be placed before the State Legislature or Parliament as the case may be. The modified award becomes effective from the expiry of 15 days from the date on which it is laid before the legislature.

14.6.1 Settlement

"Settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at, otherwise

than in the course of conciliation proceeding where such agreement has been signed by the parties there to in such manner as may be prescribed and a copy thereof had been sent to an officer authorized in this behalf by the appropriate government and conciliation officer.

14.6.2 Persons on whom settlement and awards are binding

1. A settlement, arrived at between the employer and workmen, is bindingon the parties to the agreement.

1. An arbitration award on the parties who referred the dispute to arbitration.

2. A settlement arrived at in course of conciliation proceedings under the Act, and an award of Labour Court, Tribunal and National Tribunal on all parties to the disputes and all parties summoned to appear as parties. The term 'party' includes (in the case of an employer) -his heirs, successors or assigns and (in the case of workmen) -all persons employed in the establishment or part of which, to which the dispute relates and all persons who subsequently became employed in the establishment.

14.6.3 Period of operations and settlement of awards:

1. A settlement shall come into force on the date agreed upon or on the date on which the parties sign the settlement, when the date is not agreed upon.

2. Such settlement shall be in force for such period as agreed upon or else for 6 months from the date on which the parties sign the settlement. It shall continue to operate beyond 6 months until the expiry of 2 months after the notice by any of the parties of his intention to terminate is given.

3. Award shall be in force for one year from the date of which it becomes enforceable. This may be reduced or extended by the appropriate government. The total period of operations shall not exceed 3 years from the date of its operation.

4. If there is material change in the circumstances since the awards are made, the appropriate government may refer it or part of it to a Labour Court/Tribunal to decide whether it shall be continued or not. The decision of the Labour Court or Tribunal in this regard is final.

14.6.4 Penalty for breach of settlement of awards

A person who commits a breach of any settlement or award binding on him can be punished with imprisonment up to 6 months or with a fine or with both. Where the breach is a continuing one, there may be further fine up to Rs.200 forevery day during which the breach

continues after the conviction of the first. The whole or part of the fine can be paid as compensation to the injured party.

14.6.5 Confidential matters

Report and awards under the Act must include information of a confidential in nature obtained from evidence given but not available otherwise. The information must not be discussed in any manner. The person concerned (the employer, Trade Union) can make a request in writing to the authority dealing with the matter to keep any information secret.

A person who willfully discloses confidential information can be punished by fine up to Rs.1000 or imprisonment up to 6 months or both.

14.7 CASE STUDY

A workman was terminated after the expiry of leave, which was granted to him. A clause in the contract of employment provided that the employer could terminate employment any time in the event of an employee becoming from any cause incapacitated, by a longer period than two calendar months, from properly discharging his duties.

The terminated workman approaches you, with the reason that while calculating the term of two months the leave period should not be considered. Give your valuableadvice and also decide whether the termination islegal.

14.8 NOTES

14.9 SUMMARY

The Industrial Disputes Act is a progressive legislation enacted to ensure justice both to the employer and the workmen. Good number of provisions has been provided for the settlement of disputes. The Act incorporated various modes to settle an Industrial Dispute, like Conciliation, Arbitration and Adjudication. Various bodies are formed to get the speedy redressal.

14.10 KEY WORDS

Conciliation: Conciliation is the process of adjusting or settling disputes in a friendly manner through extra judicial means. Conciliation means bringing two opposing sides together to reach a compromise in an attempt to avoid taking a case to trial.

Adjudication: Adjudication is the legal process of resolving a dispute. The formal giving or pronouncing of a judgment or decree in a court proceeding; also the judgment or decision given.

Arbitration: An arbitration is a contractual remedy used to settle disputes out of court. In arbitration the two parties in controversy agree in advance to abide by the decision made by a third party called in as a mediator, whereas conciliation is less structured.

14.11 SELF ASSESSMENT QUESTIONS

1. Define and distinguish Arbitration and Adjudication under the Industrial Disputes Act.
2. Explain the powers of Industrial Tribunal in case of dismissal under the Industrial Disputes Act.
3. Distinguish the following:

a. Award and Settlement

b. Board of Conciliation and Tribunal

c. Labour Court and Industrial Tribunal

4. Discuss the various methods for the settlement of industrial disputes under the Industrial Disputes Act 1947.

14.12 REFERENCES

1. Kapoor N.D. - Hand Book on Industrial Laws
2. Mishra S.N. - Labour and Industrial Laws
3. Srivatsava S.C. - Industrial Relations and Labour Laws
4. Tripathi P.C. & Gupta B.C.- Industrial Relations and Labour Legislations

UNIT - 15 : FUNCTIONS OF TRADE UNION

Structure:

15.0 OBJECTIVES

After studying this unit, you should be able to;

- Explain the significance of the Trade Union Act
- Define various provisions of the Act
- Discuss the functions of a Trade Union

15.1 INTRODUCTION

A Trade Union is an organization of workers, who have come together to achieve common goals such as protecting the integrity of its trade, improving safety standards, achieving higher pay and benefits such as health care and retirement, increasing the number of employees an employer assigns to complete the work, and better working conditions. The trade union, through its leadership, bargains with the employer on behalf of union members (rank and file members) and negotiates labour contracts (collective bargaining) with employers. The most common purpose of these associations or unions is "maintaining or improving the conditions of their employment". This may include the negotiation of wages, work rules, complaint procedures, rules governing hiring, firing and promotion of workers, benefits, workplace safetyand policies.

These unions exist to deal with problems faced by labourers, the problems maybe of any nature such as those concerning the pay, unfair work rules, timings and so on. All the workers working under one particular employer is represented by the worker's union. All the communication that happens in between the employer and the workforce generally takes place through the union. All of the above trade unions are also liable and responsible for maintaining discipline and among the workers, core purpose is to see that proper relations or being maintained in between management and workers and trade union may take disciplinary action against the workers who ever misbehaves, disturbed peace and harmony in the workplace and maintenance indiscipline.

The contribution of the capital and labour in any industry is equally important. The prosperity of an industry depends upon the co-operation of its two components:- the capital and labour. As we are very well aware, the disputes between the two are inevitable, there comes the necessity of having a cussioning agency to act as conduct between the employer and employee.The object of any industrial legislation is to ensure smooth relationship between the two and to strive for settelement of any dispute by resorting to negotiation and concialtion. The importance of Trade Unions lies in the fact that they encourage such collective bargaing

which ensures better terms and conditions of employment to the labour, and at the same time endeavours for maintenance of good relations between employer and employees.

Prior to independence in India, for the first time mill workers formed "Bombay Millhands Association" in the year1890. The Act was originally enacted to protect the union leaders, which was amended in 1929 to provide procedure for the registration of Trade Unions. According to the Royal Commission on Labour, 'one of its objects is to give Trade Union, which accepts registration under the Act, the necessary protection from civil suits and criminal trial, relating to conspiracy in order to enable them to carry on their legitimate activities'. The Trade Unions Act was passed in 1926 and brought into effect from 1st June 1927. The word 'Indian' was deleted from the amendment Act of 1964, which came into force from 1-4-1965. A comprehensive Trade Union (Amendment) Act was passed in 1982. The Act provides for the formation, procedure, registration including conditions of registration, advantages of registration and immunities available. The Act also imposed obligations upon a registered Trade Union. This development was led to establishment of Trade Unions and paved the way for a smooth act of collective barraging to negotiate agreements and to protect the interest of the concerned.

The result of it made the working group to organize in a systematic way, form unions, register the same and get recognition from the employer and function as, link between the management and workforce.

15.2 DEFINITIONS

The Act provides the following definitions:

15.2.1. Trade Union

According to Sec.2(h) of the Act, a Trade Union means an association of workers. Under the Bombay Industrial Relations Act 1946, a union of employers is not a Trade Union. A Trade Union may be temporary or permanent. It may be formed for the purpose of regulating the relations between:

(a) Workmen and employers or

(a) Workmen and workmen or

(b) Employers and employers

It may also be formed for the purpose of imposing restrictive conditions on the conduct of any trade or business. A federation of Trade Unions also comes under the definition.

Thus it is an association of wage earners formed primarily for the purpose of collective action for the forwarding or defense of its professional interest, bound by the Trade Union Act.

The Indian Trade Union Act is very much identical to British Trade Union Act, with one difference. Viz. the former uses the term 'combination' as against the latter's 'association'. Combination stands for the union of any type of people, which need not necessarily be workmen, whereas association stands for a union of workmen. The Trade Union Act stipulates that Trade Union may consist of persons employed in trade or industry, while the Industrial Disputes Act distinguishes supervisory from non-supervisory employees. Personal staff (employees) of a Raj Bhavan or a palace is not workmen for the purpose of registering a Trade Union. Board, Hospitals, members club, domestic servants employed by private individuals etc., are not included in the term workmen. Workers engaged in water supply, electricity etc., of Davaswom came under the purview of the Act. While, non-gazetted officers of government are not entitled to be treated as workmen for this purpose. These persons are civil servants engaged in the task of sovereign and regal aspects of the Government, which were its inalienable functions *(Tamilnadu NGO Union v. Registrar of Trade Unions)*. Workers of a government printing press, however, can register their Trade Union.

15.2.2 Trade Dispute

According to Sec.2(g) of the Act, any dispute:

(1) (a) Between employers and workers; or

(b) Between workmen and workmen; or

(c) Between employers and employers.

(2) Any such dispute must be connected with:

(i)The employment;or

(ii) Non-employment; or

(iii)of the terms of employment; or

(iv) Conditions of labour, or any person.

This definition is almost identical with Industrial Dispute. For a trade dispute it is necessary that there must be some difference between the parties as afore said, that is, a demand from one party and refusal to accept those demands by the other. There can be no dispute by the unilateral action of one party; which means the demand must be communicated

to the other party. No trade dispute can be said to have arisen unless an opportunity to the other party is given to express any view or indicate any positive or negative relation thereto.

15.2.3 Workman

Sec.2 (g) of the act stipulates that, all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises are workmen i.e., all persons employed in Trade or Industry.

The term workman has been defined in a wide sense. The Act does not distinguish between officers, clerical persons or unskilled workers. The only requirement is that, the person is employed in trade or industry.

15.2.4 Appropriate Government

Sec.2 states that Central Government in the case of unions whose objects are not confined to one state and the State Government in other cases may be termed as Appropriate Government.

15.2.5 Registered Trade Union& Trade Union

Sec.2 (e) define " Registered Trade Union" as that of a Trade Union registered under this Act.

Sec.2 (h) define "Trade Union" which can be analyzedas follows:

(1) Any combination whether temporary or permanent;

(2) The combination should have been formed for the purposes of:

(a) Regulating relations between:

(i) Between employers and workers; or

(ii) Between workmen and workmen; or

(iii) Between employers and employers.

(b) Imposing restrictive conditions on the conduct of the trade or business. But this Act shall not affect:

(i) Any agreement between partners as to their business; or

(ii) Any agreement between an employer and those employed by him as to such employment;

(iii) Any agreement in consideration of the sale of the goodwill of a business or instruction in any profession, trade or handicraft.

A trade union is a continuous association of wage earners for the purpose of maintaing the conditions of their lives. *(Sydney and Beatrice Webb, History of Trade Unions).*

15.2.6 Office Bearers

According to Sec.2 (h) the office bearers of a Trade Union include any number of the executive thereof. But does not include auditors.

15.2.7 Registered Office

'Registered Office' means that office of a Trade Union which is registered as Head Officeunder Sec. 2(d) of the Act.

15.2.8 Registrar of Trade Unions

'Registrar of Trade Unions' means appointed by the appropriate government for each state. The Registrar also includes an Additional or Deputy Registrar of Trade Union.

15.3 LEGAL STATUS OF A REGISTERED TRADE UNION

A registered Trade Union is a statutory body. It has legal entity. It can own property and can act as an agent. It can acquire and hold both movable and immovable properties, it can enter into contract and sue and be sued by the name in which it is registered. Societies Registration Act 1860, The Co-operatives Societies Act 1912 and the Companies Act 1956 shall not apply to a Registered Trade Union and such registration is void according to Sec.14 of the Act.

15.4 REGISTRATION OF A TRADE UNION

A Trade Union may be registered, unregistered or a recognized Trade Union. There is a basic distinction between these different unions. The members of a recognized union will enjoy more benefits and privileges than an unregistered one.

Procedure:

Any 7 or more members of a Trade Union can apply for registration of the Trade Union. They must subscribe their names to the rules of the Trade Union and comply with the provisions of the Act relating to registration.

Every application shall be accompanied with a copy of the rules of the Trade Union and statement containing the following particulars according to Sec.5 of the Act :

a. The names, occupation and addresses of the members making the application

b. The name of the Trade Union and its Head Office and

c. The titles, names, age, addresses and occupation of the office bearers of the trade - union.

If the Trade Union is already in existence for more than one year before applying for registration, a statement of assets and liabilities should be enclosed along with the application.

15.4.1 Provisions to be contained in the rules of a Trade Union (Sec.6)

The rules generally govern the relationship between the Trade Union and its members. They provide guidance in internal administration of the union. Every Trade Union should submit the following details, to get it registered.

- The name of the Trade Union.
- The objects.
- The purpose for which general funds of the union will be applicable.
- The maintenance of a list of members and adequate facilities for the inspection thereof by the office bearers and members of the Trade Union.
- The admission of ordinary members who will be persons actually engaged or employed in any industry with which the Trade Union is connected and also admission of honorary or temporary members as office bearers received u/s 22 to form the executive of the Trade Union.
- The payment of subscription by members of the Trade Union which shall not be less than one rupee per annum for rural workers and three rupees for workers in an unorganized sector and rupees twelve per annum in any other case.
- The conditions under which any member shall be entitled to any benefit assured by the rules and under which any fine or forfeiture may be imposed on the members.
- The manner, in which the rules will be amended, varied and rescinded.
- The manner in which the members of the executive and other office bearers of union appointed and removed.
- The safe custody of funds of the Trade Union, an annual audit, in such manner as may be prescribed, of the accounts thereof and adequate facilities for the inspection of the accounts books by the office bearers and members of Trade Union and
- The manner of dissolution.

The Registrar may call for further information for satisfying himself that the Trade Union complies with the provisions of Sec. 5 and 6 of the Act. If the information is not sufficient, the registration may be refused. The Registrar is empowered to ask the Trade Union to alter its name, if it is identical with that of any registered union, he may refuse to register the Union until such alteration has been made.

According to Sec. 8, if the Registrar is satisfied that all requirements have been complied with, he shall register the Trade Union by entering its name and particulars in the register. Then he will issue a certificate of registration in a prescribed form. The certificate will be the conclusive evidence that union has been duly registered under the Act.

15.5 FUNCTIONS OF TRADE UNION

The most important functions of the trade union are as follows:

i. Increasing Co-operation and Well-being among Workers,

ii. Securing Facilities for Workers,

iii. Establishing Contacts between the Workers and the Employers,

iv. Trade Unions working for the Progress of the Employees,

v. Safeguarding the Interests of the Workers and vi. Provision of Labour Welfare.

(i) Increasing Co-operation and Well-being among Workers

The modern indus-try is complex and demands specialization in jobs. This results in extreme division of labour, which leads to the growth of individualism and development of imper-sonal and formal relationships. There is no common unifying bond among the workers. It is in this context that the trade unions come into the picture and they promote friendliness and unity among the working groups. Besides this, the trade unions also discuss the problems, which are common to all the workers. It is a platform where workers come together and know each other. The trade unions also provide some kind of entertainment and relaxation to the workers.

(ii) Securing Facilities for Workers

Majority of the employers are not very keen on providing the facilities and proper working conditions to the workers. They are more interested in getting their work done to the maximum extent. In such con-ditions, trade unions fight on behalf of the workers and see that the facilities have been provided by the management.

(iii) Establishing Contacts between the Workers and the Employers

At present, there are many industries, which have grown into giants. A single unit in a particular industry may employ hundreds of employees. Many times a worker or employee may not have an oppurtunity to meet his own managers. In this situation, the workers are not able to express their grievances before their employers, and even the management may not be aware of the geniune difficulties faced by the workers. The trade unions play an important

role in bringing to the notice of the employers the diffi-culties and grievances of the employees. They try to arrange face-to-face meetings and attempts to establish link between the employees and the employers.

(iv) Trade Unions working for the Progress of the Employees

The trade unions normally makes attempt to improve the economic conditions of the workers by representing their claims to the employers and try to get adequate wage/salary, bonus and similar reliefs to the workers.

(v) Safeguarding the Interests of the Workers

Most of the employers try to exploit the workers to the maximum. They do not provide any benefits such as increas-ing their wages, granting sick leaves, giving compensation in case of accidents, etc. The workers are not made permanent, even after many years of service and in some cases they are removed from service arbitrarily. The trade unions provide security to them in such situations.

(vi) Provision of Social Welfare

The economic conditions of the industrial workers in India are very poor. The standard of living is very low. A majority of industrial workers in India are illiterate or semi-literate. It is the responsibility of the trade unions to get them proper housing facilities and promote the socio-economic welfare requirements of the labourers.

15.6 RIGHTS AND PRIVILEGES OF REGISTERED TRADE UNIONS

Sections. 15 to 22 of the Act,prescribe various rights and obligations on the union as well as the office bearers of a union. Sec. 15 of the Act imposes certain limitations on the function of a trade union. The following are the important provisions:

15.6.1. Objects on Which General Funds may be spent

The general funds of a registered trade union shall not be spent on any other objects than the payment of salaries, allowances and expenses to the office bearers of the trade unions; expenses for the administration of the trade union; the presentation or defiance of any legal proceeding to which the trade union of any member thereof is a party; the conduct of trade disputes and compensation of members for loss arising out of trade disputes; provision of education, social or religious benefits for members; upkeep of a periodical published.

15.6.2. Constitution of a Separate Fund for Political Purposes

A registered trade union may constitute a separate fund, from contributions separately levied for or made to that fund, from which payments may be made for the promotion of the civic and political interests of its members, in furtherance of any of the objects such as the payment of any expenses incurred, either directly or indirectly; the holding of any meeting or the distribution of any literature/documents in support of any such candidate; the registration of electors of the selection of a candidate for any legislative body constituted under or for any local authority; the registration of electors or the selection of a candidate for any legislative body constituted under/or for any local authority; holding of political meetings of any kind.

15.6.3. Criminal Conspiracy in Trade Disputes

No office bearer or member of a registered trade union shall be liable to punishment under sub-section (2) of Section 120 B of the Indian Penal Code, 1860 in respect of any agreement made between the members for the purpose of furthering any such object of the trade union as is specified in section its unless the agreement is an agreement to commit an offence.

15.6.4. Immunity from Civil Suit in Certain Cases

No suit or other legal proceeding shall be maintainable in any civil court against any registered trade union or any 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 act induces some other person to break a contract of employment, or that 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 of his labour as he diseres.

A registered trade union shall not be liable in any suit or other legal proceeding in any civil court in respect of any fortuitous act done in contemplation or furtherance of a trade dispute by an agent of the trade union if it is proved that such person acted without the knowledge of, or contrary to express instructions given by the executive of the trade unions.

15.6.5. Enforceability of Agreements

Notwithstanding anything contained in any other law for the time being in force, an agreement between the members of a registered trade union shall not be void or voidable merely by reason of the fact that any to the subjects of the agreement are in restraint of the trade.

15.6.6. Right to Inspect Books of Trade Unions

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 the trade union.

15.6.7. Right of Minors to Membership of Trade Unions

Any person who has attained the age of 18 years may be a member of a registered trade union subject to any rules of the trade union to the contrary, and may subject as aforesaid, enjoy all the rights of a member and execute all instruments and give all acquittances necessary to be executed or given under the rules.

15.6.8. Effects of Change of Name and of Amalgamation

The change in the name of a registered trade union shall not affect any rights or obligations of the trade union or render defective any legal proceeding by or against the trade union. An amalgamation of 2 or more registered trade unions shall not prejudice any right of any of such trade unions or any right of a creditor of any of them.

15.6.9 Enforceability of Agreement

Sec. 19 of the Act stipulates that, agreement between the members of a registered Trade Union in restraint of trade shall not be void or violable. It means, agreements made between the members of the registered Trade Union, not to accept employment unless certain conditions as to pay, hours of work, etc. are fulfilled will not to be void or voidable. This shall prevent civil courts from entering any legal proceedings instituted for the purpose of enforcing or recovering damages, for the breach of any agreement concerning the conditions on which any member of a union shall or shall not sell his goods, transact business work, employ or employed.

15.7 CASE STUDY

The GTSS Officer's Association, Bangalore, an association of officers of a transport company makes an application to the appropriate authority to register their union. But the Labour Commissioner and the Deputy Registrar of Trade Union, Bangalore Division, refuse to register it, on the ground that, Sec.2(s) of the Industrial Dispute Act, 1947 clearly define the 'workman' and the applicants will not fall under the category as prescribed under the Act.

The aggrieved association approaches you to get the relief, advice them about the provision of law to register their association.

15.8 NOTES

15.9 SUMMARY

The Trade unions exist to deal with problems faced by labuorers, these problems maybe of any nature such as those concerning the pay, unfair work rules, timings and so on. The workers working under one particular employer is represented by the worker's union. Normally the communication that happens in between the employer and the workforce generally takes place through the union. Above all the trade unions are liable and responsible for maintaining discipline among the workers.The core purpose is to see that proper relations are maintained between the management and workers.The trade unions empowered to take disciplinary action against the workers whoever misbehaves, disturbed peace and harmony in the workplace and maintenance indisipline. The union and the office beares enjoys certain rights and privileges and at the same time they are obliged and duty bound to adhere to the provisons of the act and the members.

15.10 KEY WORDS

Trade Union: According to Sec.2 (h) of the Act, a Trade Union means an association of workers. Under the Bombay Industrial Relations Act 1946, a union of employers is not a Trade Union. A Trade Union may be temporary or permanent.

Workman: Sec.2 (g) of the act stipulates that, all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises are workmen i.e., all persons employed in Trade or Industry.

15.11 SELF ASSESSMENT QUESTIONS

1. Explain the provisions under the Trade Unions Act to register a union.
2. State the advantages of having a Trade Union and discuss the functions of a Trade Union.
3. Enum erate the Rights and Privileges enjoyed by the office bearers of a registered Trade Union.

15.12 REFERENCES

1. Kapoor N.D. - Hand Book on Industrial Laws
2. Mishra S.N. - Labour and Industrial Laws
3. Srivatsava S.C. - Industrial Relations and Labour Laws
4. Tripathi P.C. & Gupta B.C.- Industrial Relations and Labour Legislations

UNIT - 16 : TRADE UNION ACT, 1926

Structure:

16.0 OBJECTIVES

After studying this unit, you should be able to;

- Explain the Recognition of the Trade Union Act
- Discuss how a cancellation of trade union be underdone the Act
- Analyze thedisqualification of members of a Trade Union

16.1 RECOGNITION OF TRADE UNION

Recognition of a trade union is very different from Registration of the union, under the Trade Union Act, 1926. *Recognition* means the management conferring right to the Union:

1) To represent its members as the *bargaining agent* during the various discussions and deliberations made while negotiating terms of employment/conditions of labour;

2) To enter into agreements [settlements] with the management on behalf of its union-members; and

3) To air its opinion when general opinion of workmen are sought while formulating managerial policies and decisions.

When the employer agrees to recognize trade union, a memorandum of agreement by the employer and the office bearers of the trade union, or their authorized representatives may be presented to the Registrar, who shall record it in the register in the prescribed form.

In *All India Por t & Dock W orkers' Federation and othersv . Union of India* , the petitioner union represented third largest membership from amongst Unions. It was held that the Union of India,is not justified in refusing to recognize the petitioner in the matter of negotiating the terms and conditions of service of the Port and Dockworkers. Supreme Court opined that, such refusal is against law and justice.

In case where a registered Trade Union having applied for recognition to an employer has failed to obtain recognition within a period of three months from the date of making such application, it may approach the Labour Court citing the grounds for refusal for recognition. If the Labour Court is satisfied that the Trade Union is fit to be recognized by the employer, it shall make an order directing such recognition.

16.2 CANCELLATION OF REGISTRATION OF A TRADE UNION

The Registrar of Trade Union has the powers to cancel the registration of the Trade Union under the following circumstances:

a. On the application of the Trade Union

b. If the registrar is satisfied that the certificate of registration has been obtained by fraud ;

c. Mistake or that the Trade Union has ceased to exist ;

d. Has willfully and after notice from the registrar, contravened any provisions of the Trade Union Act and

e. Allowed any rules to continue in force which is inconsistent with any provisions of the Act.

Before taking the decision to cancel the registration of the union, the Registrar should satisfy himself that a general meeting of the Trade Union approved the withdrawal or cancellation of registration.

From the date of cancellation of the certificate, the union absolutely ceases to enjoy any privileges of a registered Trade Union. But it remains liable for anything done before such cancellation and such liability can beenforced.

16.2.1 Appeals

A limited right of appeal from the decisions of the Registrar is granted by the Act, to the High Court. Any person aggrieved by the refusal of the Registrar to register a Trade Union or by the withdrawal or cancellation of a certificate of

16.2.3 Re-registration

The union may apply for re-registration after the expiry of 6 months from the date of cancellation. If the cancellation was on the ground that the union has failed to comply without any of the requirements provided by or under this Act, it shall not be registered until, it has complied with such requirement.

16.2.4 Withdrawal of recognition

Where the recognition of a Trade Union has been directed under the Act, the Registrar or employer may apply in writing to the Labour Court for withdrawal of recognition on the following grounds:

a) That the executive or the members of the Trade Union have committed any unfair practice set out under the Act, within three months prior to the date of application;

b) That the Trade Union has failed to submit any return referred under the Act and

c) That the Trade Union has ceased to be representative of the workmen referred to in clause(b) of Sec.23-D.

16.3 PROPORTION OFFICERS CONNECTED WITH THE INDUSTRY

Not less than one-half of the total number of office bearers of every registered Trade Union in an unorganized sector shall be persons actually engaged or employed in an industry with which the Trade Union is connected. The appropriate government may, by special or general order, declare that the provisions of this section shall not apply to any Trade Union or class of Trade Union. No member of the Council of Ministers or a person holding an office of profit in a Union or a State shall be a member of the executive or other office bearer of a registered Trade Union. All the office bearers of a Registered Trade Union, except not more than one-third of the total number of the 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.

16.4 AMALGAMATION OF TRADE UNIONS

Any 2 or more unions may be amalgamated as one union, with or without dissolution or division of funds of such Trade Unions, provided that the votes of at least 1/2 of the members of each of every such union entitled to vote are recorded and also that at least 60% of the voters recorded are in favour of proposal of amalgamation.

A notice uniting for amalgamation signed by the secretary and by seven members of each and every Trade Union, which is a party,send the same to the Registrar of the state in which any of the amalgamated union has a registered office. If the Registrar is satisfied, will register the amalgamation and it will have effect from the date of such registration.

The change in the name of a registered union shall not affect any rights or obligations of the Trade Union or render defective any legal proceedings by or against the union.

Any amalgamation of 2 or more registered Trade Unions shall not prejudice any right of such Trade Union or any right of creditor of any of such Trade Unions.

The Registrar of the State in which the head office of the amalgamated Trade Union is situated, shall, if he is satisfied that the provisions of this Act in respect of amalgamation have been complied with and the Trade Union formed thereby is entitled to registration under section 6, register the Trade Union in the manner provided in section 8 of the Act.

16.5 DUTIES AND LIABILITIES IMPOSED ON TRADE UNIONS

The Act imposes certain duties and liabilities on registered Trade Unions. They are as follows:

1. Change of registered office:

Notice of any changes in the address of the Head Office must be given to the registrar in writing within 14 days of such change. The change of address shall be recorded in the register (Sec.12).

2. *Maintain General funds of the registered Trade Union (Sec.*15):

The general funds of a registered Trade Union shall be spent for all or any of the following purposes:

a. The payment of salaries, allowances, and expenses of the office bearers of the Trade Union;

b. The payment of expenses for the administration of Trade Union including payment for the audit of the general funds;

c. The prosecution or defense of any legal proceedings to which the Trade Union or any member thereof is a party when such prosecution or defense is undertaken for the purpose of securing or prosecuting any rights of the Trade Union as such or any rights - arising out of the relations of any member with his employer or with a person whom the member employs;

d. The conduct of trade disputes on behalf of the Trade Union or any member thereof;

e. The compensation to members for the loss arising out of trade disputes;

f. Allowances to members or their dependents on account of death, old age, sickness, accidents or unemployment of such members;

g. The issue of, or undertaking of liability under policy of assurance for the lives of members or under policies insuring members against sickness, accident or unemployment.

h. The provision of educational, social or religious benefits for members (including payment of expenses of funeral or religious ceremonies for deceased members) or for the dependents of members.

i. The upkeep of a periodical, published mainly for the purpose of discussing questions affecting employers or workmen as such.

j. The payment in furtherance of any of the objects on which the general funds of the Trade Union may be spent, of contribution to any cause intended to benefit workmen in general provided that the expenditure in respect of such contribution in any financial year shall not at any time during that year be in excess of 1/4th of the combined total of

the gross income which has up to that time accrued to the general funds of the Trade Union during that year and of the balance at the credit of the funds of the commencement of that year and

k. Subject to any conditions contained in the notification, any other object notified by the appropriate government in the official gazette.

It will be illegal to spend the union fund for any purpose other than those stated above. Further, it is illegal to spend union funds in support of an illegal strike or lock-out. According to Sec.15, a Trade Union can be restrained by an injunction from applying its funds to any unlawful purpose.

3. *The Political Fund*:Sec.16

Empowers a registered Trade Union to constitute a separate fund from contribution to be used for political purposes. Contributions must be collected separately and on voluntary basis. No member can be excluded from any benefit or deprived of any privilege by reason of his not contributing to it. The political fund can be used for the following purposes:

a. The payment of any expenses incurred either directly or indirectly, by a candidate or a prospective candidate for election as a member of any legislative body constituted under the constitution or of any local authority before, during or after the election in connection with his candidature or election or

b. The holding of any meeting or the distribution of any literature or documents in support of any such candidate or

c. The maintenance of any person who is a member of any legislative body constituted under the constitution or any local body or

d. The registration of electors or the election of a candidate for any legislative body or for any local authority or

e. The holding of political meetings of any kind or the distribution or political documents of any kind.

4.Returns:Every year an audited general statement of all receipts and expenditure must be sent to the Registrar on or before the prescribed date. It must also send the statement of assets and liabilities of Trade Union existing at the end of each year. Together with the general statement, a statement showing all changes of office bearers made by the Trade Union during the year should be sent.

A copy of every alteration made in the rules of registered Trade Union must be sent to the Registrar within 15 days of the making of the alteration.

5.*Penalties for failure to submit returns and supplying false information (Sec. 31)*: Every office bearer bound by the rules of the Trade Union or if there is no such office bearer, then every member of the executive of Trade Union, shall be punishable with fine if default is made in giving notice or sending any statement or other documents as required under any provisions of the Act. Similarly, they are punishable with fine for supplying false information regarding Trade Union.

6. Audit: An auditor authorized to audit the accounts of companies, under the Companies Act 2013,shall conduct the annual audit of accounts of any registered Trade Union. The auditor so appointed shall be given access to all the books of the Trade Union and shall verify the annual returns with accounts and vouchers relating thereto.

Sec.28A, 28.B and 28C empowers a Registrar to verify the Trade Union activities and refer disputes to Arbitration and pass necessary orders in this regard.

16.6 DISSOLUTION OF TRADE UNIONS

Giving a notice signed by seven members and by the Secretary within 14 days of the dissolution may dissolve a registered Trade Union. If the Registrar is satisfied he can accept the same by doing necessary procedure.

Where the dissolution of a registered Trade Union has been registered and the rules of Trade Union do not provide for dissolution of funds of the Trade Union on dissolution, the Registrar shall divide the funds amongst the members in such manner as may be prescribed.

16.7 CASE STUDY

The office bearers of the registered Trade Union of M/s UnitexFabs Limited, a textile company registered at Bangalore, purchased shares of TCSI in their own name on behalf of the union as Investment from the general funds of the union. They said that the purpose investment is to get more returns to the union. This was objected by a section of members to the union. Now the aggrieved members approach you to get the relief. Give your valuable advice against the conduct of the office bearers.

16.8 NOTES

16.9 SUMMARY

Recognition of Trade Union is an act to recognize the activities of the workmen to consolidate their strength to make their dream to collectively bargain with the management. It is a convenient mechanism, where a body of workmen can represent the large section of them to represent on their behalf. This Act has paved the way for the workman to vociferously demand and claim their rightful share for their sweat. The only limitation is, the office bearers of the union should not act hand-in-glove with the management, which may defeat the purpose of the legislation. No doubt the provisions are made for the welfare of the workmen, but still the results are not up to the expectation. The Registrar is empowered to register, monitor and cancel the registration conferred on a union.

16.10 KEY WORDS

Returns:Every year anregistered Trade Union should send audited general statement of all receipts and expenditure to the Registrar on or before the prescribed date. It must also send the statement of assets and liabilities of Trade Union existing as on 31st December of each year.

Political fund:Sec.16 empowers a registered Trade Union to constitute a separate fund from contribution to be used for political purposes. Contributions must be collected separately and on voluntary basis.

16.11 SELF ASSESSMENT QUESTIONS

1. Explain the provisions for registration and recognition of a Trade Union.
2. Discuss the Duties and Liabilities imposed on Trade Unions under the Act.
3. Write and explanatory note on Registration, Recognition, Cancellation and Amalgamation of Trade Unions.
4. Write notes on:
    a. Amalgamation of Trade Unions
    b. Recognition Trade Unions
    c. Dissolution of Trade Union.

16.12 REFERENCES

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5. Explain the Recognition of the Trade Union Act
6. Discuss how a cancellation of trade union be underdone the Act
7. Analyze thedisqualification of members of a Trade Union

MODULE - 5
OTHER RELATED LEGISLATION

UNIT - 17 : INDUSTRIAL EMPLOYMENT ACT 1946

Structure:

17.0 OBJECTIVES

After studying this unit, you should be able to;

- Define industrial Act
- Explain the features of Industrial Employment Act, 1946
- Discuss the Mines Act, 1952
- Highlights the features of Workman Compensation Act, 1923

17.1 INDUSTRIAL EMPLOYMENT ACT, 1946

Check list

Section 1: Applicability:

- Every industrial establishment wherein 100 or more (In many states it is 50 or more)
- Any industrial covered by Bombay Industrial Relations Act 1946
- Industrial establishment covered by M P industrial employment (standing orders) Act 1961.

2. Conditions for certification of standing orders:

- Every matter to be set out as per schedule and rule 2A
- The standing orders to be in conformity with the provisions of Act.

3. Matters to be provided in standing orders: Sections 2(g) 3 (2) and rule 2A:

- Classification of workman,e.g.whetherpermanent,temporary,apprentices, probationers, bad lies.
- Manner of intimating to workmen periods and house of work, holidays, pay days and wage rates.
- Attendance and Late coming
- Conditions of procedure in applying for, and the authority which may grant, leave and holidays.
- Retirements to enter premises by certain gates, and liability to search.
- Closing and reopening of sections of the industrial establishments and temporary stoppages of work and the rises and liabilities of the employer and workmen arising there from.

- Termination of employment and the notice thereof to be given by employer and workmen.
- Suspension or dismissal or misconduct, and acts of omissions which constitute misconduct.
- Means of redresser for workmen against unfair treatment or wrongful exactions by the employer or his agents or servants.

Additional details:

- Service record
- Matters related to service card
- Tokens and tickets taken
- Certification of service
- Change of Residential address of workers
- Record of age
- Confirmation
- Age of Retirement
- Date of transfer
- Medical benefit taken in case of accident
- Medical examination record
- Secrecy and
- Exclusive service.

4. Submission of draft standing orders (section 3):

- Within 6 months from the date when the Act becomes applicable to an industrial establishment.
- 5 copies of Draft standing orders are to be submitted to the certifying officer under the Act.

5. Procedure for certification of standing orders Section 5:

Certifying officer to forward a copy of draft standing orders to the trade union, or in the absence of union, to the workman of the industry. The trade union or the other representation, as the case may be are to be heard.

6. Date of operation of standing orders: Section 7:

On the date of expiry of 30 days from certification or on the expiry of 7 days from authentication of standing orders.

7. Posting of standing orders (section 9):

The test of standing orders or finally certified shell prominently is pasted in English or in the language understood by majority of workers or a special board at or near the entrance for the majority of workers.

8. Temporary application of model standing orders Section 12A:

Temporary application of model standing orders shall be deemed to be adopted till the standing orders as submitted are certified.

9. Payment of subsistence allowance to the suspended workers Section 10A:

- At the rate of 50% of the wages which the workman was entitled immediately proceeding the date of such suspension, for the first 90 days of suspension.
- At the rate of 75% of such wages for the remaining period of suspension if the delay in the completion or disciplinary proceeding against such workman is not directly attributable to the conduct of such workman.

PENALTIES: SECTION 13:

- Failure of employer to submit the draft standing orders fine of Rs 5000 and Rs 200 for every day or continuation of offense.
- Fine of Rs 100 on contravention and on continuation of offense Rs 25 per day.
- This Act forces employee to define conditions of employment under them. This Act also says employees 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.

OBJECT:

This Act aims to perceive the conditions in the form of standing orders.

Section 1: It applies to every industrial establishment where 100 or more worker is appointed or was employed on the preceding 12 months.

In Karnataka in Section 1- For the words " One hundred " occurring in sub Section(3) of the provision to if the word "Fifty" should be there vide Karnataka Act 37 of 1975 WEF 11-7-1975.

Section 2: Interpretation section 2 (A) "Appellate authority – if is an authority appointed by the appropriate government to do the functions as specified in the notification. Section 2(E): Certifying officer: it is a labor commissioner or a regional labor commissioner and includes any officer appointed by the appropriate government.

Section 3: Submission draft standing order: Within 6months form the date of which this Act becomes applicable to the employer should submit to the certified officer, 5 copies of draft standing order. It should be accompanied by a statement giving prescribed particulars of women employed. It also contains the name of trade union if any and to which they belong.

Matters to be provided in standing order section 2 (G) 3 (2) and ruled 2 (a)

- Classification of workmen i.e. whether permanent, temporary, apprentices, probationers, bad lies
- Manner of intimation to workmen periods and hours of work holidays, pay days and wage rates.
- Shift working
- Attendance and date coming.
- Conditions, procedure in applying for, and the authority which may grant leave and holiday.
- Requirement to enter premises by certain gates and liabilities to search.
- Closing and reopening of sections of industrial establishments and temporary stoppage of work and the rights and liabilities of the employer and the workmen.
- Termination of employment and the notice thereof to be given by employer.
- Suspension or dismissal for

a) Misconduct

b) Acts of omissions which constitute misconduct

- Means for redressal for workmen against unfair treatment or wrongful exactions by the employer or his agents or servants.

Additional information:

- Service record
- Matter like service card, tokens, tickets, certification of service, change or residential address of workers.
- Record of age

- Confirmation
- Age of retirement
- Transfer
- Medical Aid In case of accident
- Medical examination
- Secrecy
- Exclusive service

Section 4: Conditions for certification of standing orders:

Standing orders shall be certified that should be applicable to the establishment for this the certifying should see whether the provisions are fair and reasonable and whether they are according to schedule and rule 2.

Section 5: Procedure for certification of standing orders:

The certifying order section 2© shall send a copy to the trade union and of course, if need be it can be modified and within 7days such copies should be sent to the employer and to be trade union or to any prescribed representations of the workmen.

Section 6: Appeal:

Any aggrieved party can appeal to the appropriate appellate authority and their orders in term are final. However, this appellate authority should send the reply within 7 days and copies should be send to all concerned.

Section 7: Date of operation of standing orders:

Standing orders will come into force on the expiry of 30 days from the date on which authenticated copies thereof are sent to the appellate authority.

Section 8: Register of standing order:

One register should be maintained and copies of the same can be given to any person if he pays prescribed fee for them.

Section 9: Pasting of standing orders:

It should be in English and a regional language where majority of workers are understanding or should be pasted in a prime place or at the entrance of the main gate.

Section 10: Duration and modification of standing order,

Section 10 (A): Payment of subsistence allowance.

Subsistence allowance can be paid to a person even if he has been suspended or where investigation is yet to be done, or where misconduct has taken place, by the division has not been made. It can be paid-

- At the rate of 50% of the wages when the workmen are entitled to immediately preceding the date of such suspension for the first 90 days.
- At the rate of 75% of such wages for the remaining period of suspension of the delay in the completion of disciplinary proceeding against such person is not directly attributable to the conduct of such workmen.

Section 11: Certifying officers and appellate authorities will have the powers of civil court.

Section 12: Oral evidence in contradiction of standing order is not admissible.

Section 12(A): Temporary application of model standing orders shall be deemed to be adopted till the standing orders submitted and certified.

Section 13: Penalties and procedures:

Any employer who fails to submit draft standing orders as required by Section 3 or who modifier his standing orders otherwise than in accordance with section 10, shell be permissible with time which may extend to Rs 100 and in the case of continuing offence with a further fine which may extend to Rs 25 per day after the first during which the offence continues.

Section 13(A): Interpretation of standing order- Labor courts can interpret.

Section 13(B): Act not to apply certain establishments.

Section 14: Power to exempt- State government can exempt fully or partly to any industrial establishment.

Section 14(A): Delegation of power- Appropriate government may delegate powers to any authority.

Section 15: Power to make rules: the appropriate government has the power to make rules depending on the needs.

17.2 MINES ACT, 1952

1. Applicability of the Act, Section 3: India.

2. Notice to be given on minor operation Section 16:

By owner, agent or manager before the commencement of any minor operation to the chief inspector.

3. Compensatory day of rest section 29

Within a month of the day of work.

4. Provisions as to health and safety Section 19,20 and 21

Drawing water, conservancy, medical appliances etc.

5. Duties and Responsibilities of owners, agents and managers section 18

- Making financial and other provisions of taking such steps may be necessary.
- To comply with the instrumentations of the authorities.

6. Notice of accident Section 23

- Whenever there occurs in or about a mine.
- An accident causing loss of life or services bodily injury or
- An explosion, ignition, spontaneous heating, outbreak of fire or
- Eruption or in rush of water or the liquid matter or
- An influx of inflammable or Noxious gases or
- A breakage of ropes, chains, or other gear by which persons or material are lowered or raised in a Shaffer an incline or
- An over minding of cases or other means of convenience in any shaft while persons or materials are being lowered or raised or
- A premature collapse of any part of working, or any other accident which may be prescribed

7. Section 25: Notice of certain diseases.

8. Extra wages for over time Section 33: Twice of ordinary rates of wages.

9. House of work, alone Section 30:

Not more than 5 hours continuously and the spread of over will be 12 hours to be extended to 14 hours under special circumstances.

10. Section 28 weekly day of rest: On more than 6 days working in a week.

11. Section 32: Night shifts.

12. Section 34: Prohibition of employment of certain persons, when making in another mine within prescribed 12 hours.

13. Limitation of daily hour of work within overtime: Not more than 10 hours in any week.

14. Hours of works below ground: Below ground not more than 48 hours in any week.

15. Exemption of persons: Below 18 years of age apprentices and other trainees not below 16 year of age.

16. Employment of women Section 46: Prohibited in any part of mine which is below ground, in any mine above ground except between 6am to 7pm.

17. Section 52: 15 days par annum when below ground or one day in every 20 days of work.

18. Payment in advance in certain cases Section 54; When leave allowed for not less than 45 days payment to be made.

Penalties

No.	Sections	Offence	No.	Punishment
1	64	Falsification of Records	1	Imprisonment up to 3 months or with time up to Rs 1000.
2	65	Use of false certificate of fitness	2	Imprisonment up to one month or with time up to Rs 2000
3	66	Omission to furnish return	3	Time up to Rs 1000
4	67	Provisions of Section 38 pertaining to exemption from provision regarding employment.	4	Imprisonment up to 3 months or up to Rs 1000
5	68	Providing employment of persons below 18 year of age	5	Five up to 500
6	70	Failure to give notice of accident	6	Imprisonment up to 3 months or time up to Rs 500
7	72-©	a)Contravention of law with dangerous result, when contravention result in loss of life b)when contravention result in serious infinites c) When contravention to persons employed in the mine or other persons in or about the mine.	7	a)Imprisonment up to 2 years or time up to Rs 5000 b)imprisonment up to 1 year or time up to Rs 3000 c)imprisonment up to 3 months or with time up to Rs 1000
8	73	General Provisions of disobeyance of orders	8	Imprisonment up to 3 months or with time up to Rs 1000
9	74	Enhancement penalty for previous conviction	9	Imprisonment double than the punishment prescribed

17.3 WORKMAN COMPENSATION ACT, 1923

Now rechristened as employees compensation act when our Mallikarjun Karge was the Union Minister of labor.

Major amendments that took place was

(a) Funeral expenses in case of death due to accidents has bees raised than Rs 2500 to 5000/- and disability to compensation has been raised from 90,000 to Rs 1.40 lakh and death compensation from Rs 80,000 to Rs 1.20 lakh. This is as per 2016 information.

OBJECTIVES OF THE ACT:

- Improving the obligations of empowers to pay compensation to workers for accidents that may happen out of and in the course of employment in the working place.
- This objective is not in lieu of wages, to compensation for the injury or infuses caused.

APPLICABILITY:

Section 1- India.

To whom it is applicable: This act applies to any person otherwise in a electrical capacity in Railways, Factories, Mines, Plantations, Machinery propelled vehicles, loading and unloading work in ship, constriction, maintenance and repair of roads, Constriction of bridges, Electricity generation, Cinemas, Catching or training of wild elephants, Circus and(now abolished) and other hazardous occupations and employment specified in schedule II of the Act.

To whom this is not applicable:

1. Armed Forces
2. Workers who are coming under E S of Act 1948

The state government can extend the scope of this Act after 3 months information in the official gazette to any other occupation

Section 1(B): Working abroad: All workers irrespective of their status or salaries either directly or through contracts or a person recruited to work abroad

Section 3: Employee's liability to pay compensation to a workman:

a) On death or personal injury resulting in to total or partial disablement or occupational dieses caused to a workman arising out of and during the cause of employment in such cases compensation has to be paid.

Where compensation need not be paid:

- For any disablement which does not continue for more than 3 days
- If the injury has taken place when the man was drunk or taken drugs
- willfully disobeyed the instructions or
- Where the worker has violated a rule about safety provisions
- Where the worker has deliberately refused to for medical checkup
- Deliberately refused to take medical treatment when the diseased has increased.

What are the bases for compensation:

- Compensation should be paid in terms of percentage or monthly wages
- If should be linked to the age of the worker of the time of death or disablement

In 1984 amendment was made and fined minimum compensation as Rs 20,000 as against Rs 7200 earlier.

Today the permanent disability at the age of 20 it is 1,20,000 and at the age of 40, it is Rs 93,000 and at the age of 55, it is Rs 68,000. Similarly, in case of death it is Rs 90,000 at the age of 20 and Rs 74,000 at 40 and Rs 54,000 at 55 years of age

Meaning of the following words:

1. Total disablement: If an accident incapacitates to work which he was working earlier, whether temporary or permanent than it is total disablement.

2. Disablement: Loss of capacity to work or move it may be temporary or permanent.

3. Accident: It is an event that was unanticipated, but it should have taken place during the cause of employment

In Act identified 54 types of injuries which result in loss of earning capacity.

Section 4; Amount of compensation:

a) Where death takes place due to injury: Amount equal to 50% of the monthly wages of the death person.

b) Where permanent total disablement results from injury: An amount equal to 60% of the monthly wages of the injury.

c) Where temporary disablement, whether partial or total: Half monthly payment of the sum equivalent of 25% of monthly wages.

Section 4 A: If compensation is not paid, then the employer shall pay interest at the rate of 12% per annum

Section 9: Compensation cannot be attached or charged.

In sexual commissioner will administer the law and appointed by the state government. The commissioner has power to increase penalty on employers who fail to pay compensation.

List of injuries that result in permanent total disablement:

Sl No.	Description of injuries	% of loss of earning capacity
1	Loss of both hands or amputation at higher sites	100%
2	Loss of hand and foot	100%
3	Very severe facial disfigurement	100%
4	Absolute deafness	100%

List of infuries that result in permanent partial Disablement:

Sl No.	Description of injuries	% of loss of earning capacity
1	Amputation through shoulder joint	90%
2	Loss of thumb	30%
3	Loss of 4 fingers in one hand	50%
4	Loss of 2fingers in one hand	20%
5	Amputation of both feet	90%
6	Loss of all toes	20%
7	Amputation at hip	90%
8	Loss of all toes in one feet	20%
9	Loss of one eye	40%
10	Loss of partial vision of one eye	10%

1. **Applicability Section-1:** All over India

2. **Coverage of workmen Section-1(3):** All workers irrespective of their status or salary either directly or through contractor or a person recruited to work abroad.

3. Employer's liability to pay compensation to a workman Section-3:

On death for personnel injury resulting into total or partial disablement or occupational disease caused to a workman arising out of and during the cause of employment.

4. Amount of compensation Section-4:

- Where death of a workman results from the injury
- An amount equal to 50% of the monthly wages of the diseased workman multiplies by the relevant factor or an amount of 80,000 rupees, whichever is more
- An amount equal to 60% of the monthly wages of the injured workman multiplied by the relevant factor or an amount of Rs 20,000 whichever is more.

Procedure for calculation: Higher-the age—lower the compensation

- Relevant factor specified in second column of schedule IV giving slabs depending upon the age of the concerned workman. Example: in case of death
- Wages Rs 3000 pm- Age 23 years
- Factors as schedule II- Rs 219.95
- Amount of compensation – 329,935
- In case of total disablement –Rs 395910

5. <u>When an employee is not liable for compensation Section-3(a) and (b):</u>

- In respect of any injury which does result in the total or partial disablement of the workman for the period not exceeding 3 days.
- In respect of any injury, not resulting in death or permanent total disablement caused by an accident which is directly attributable to
- The workman having been at the time thereof under the influence of drink or drugs or
- Willful disobedience of the workman to an order expressly given or to the rule expressly framed for the purpose of securing the safety of workman or
- Willful removal or disregarded by the workman of any safety guard or other advice which the knew to have been provided for the purpose of securing the safety of workman.

6. Wages Section 4(b): When the monthly wages are more than Rs 4000Pm it will be deemed Rs 4000/-.

7. **Notice of accident Section-10:** As soon as Practicable.

8. **Report of Accident (rule 1) form EE Section 10 B:** Report of total accident and serious injury within 7 days to the commissioner (not applicable when E S of Act applies.

9. **Bar upon out Section-17:** Any workman relinquishing his right for personal injury not permissible.

10. **Penalty:**

- In case of default by employee
- 50% of the compensation amount plus interest to be paid to the workman or his dependents as the case may be
- Deposit of compensation Section 4A ;
- Within one month with the compensation commissioner.

17.4 NOTES

17.5 SUMMARY

In this unit, we have studied industrial employment act, workman compensation act and its objectives, its applicability and features. We also studied mines act its object and sections of the act. Industrial employment act deals with the employment made under this act, the provision and section under this act. Workman compensation act deals with the various compensation plan made under this act.

17.6 KEYWORDS

- **Mines**
- **Industrial Employment**
- **Compensation**

17.7 SELF ASSESSMENT QUESTIONS

1. What is the industrial employment act?
2. Explain the salient features of industrial employment act
3. Discuss the objectives and provisions of mines act
4. Highlights the compensation plan under workman compensation act.

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UNIT - 18 : ESI ACT, 1948

Structure:

18.0 OBJECTIVES

After studying this unit, you should be able to;

- Define employee's state insurance Act
- Discuss the provisions of employee's state insurance Act
- Explain the objects of employee's provident fund and miscellaneous
- Highlights the features of child labor Act
- Bring out the provisions of maternity benefits Act

18.1 EMPLOYEE'S PROVIDENT FUND AND MISCELLANEOUS ACT, 1952

This was amended in 1976 with additional words "deposit dismal insurance scheme" in the Act

Checklist:

1. Eligibility: Any person who is employed or employee through contractor or in connection with the work is eligible

2. Applicability:

a) Factory or establishments employing 20 or more persons are employed schedule I and in which 20 or more persons are employed.

b) Any other establishment employing 20 or more persons which central government may, by notification specify in this behalf.

c) Any establishment employing less than 20 persons can be covered voluntarily under section 1(4) of the Act.

3. Benefits: Workers enjoy the benefit of social security in the form of un attachable or un withdraw able (Except in severely restricted circumstances like buying a house, manage education etc) financial one where workers and employees contribute equally. Sum will be paid on retirement or death.

4. Other benefits: Employees pension scheme, employees deposit linked insurance, normally called DLF i.e. employers, Deposit linked insurance.

5. Payment of contribution: The employer shall pay to EPF, DLG and employees pension fund. It is the duty of the principal employer to pay the contribution or by a contractor.

6. Clarification about contribution: After revision in wage from exiling Rs 5000 to Rs 6500 W.D.F 2001 per month. The government will continue to contribute 1.16% up to the actual wage of Rs 6500 pm towards employee's pension scheme. The employer's share in

the pension scheme will be Rs 541 with effect from 1.6.2001. Under this scheme the contribution at 0.50% is required to be paid up to a maximum limit of 6500. The employer will pay administrative charges at 0.01% on maximum limit of Rs 6500/- . Example establishment will pay inspection charge at 0.005% on the total wages paid.

Rate of contribution

Sl. No.	Scheme	Employees	Employers	Central Government
1	PF Scheme	12%	Amount > 8.33% (in case where contribution is 12% or 10% . 10% (in case of certain establishment as per details discussed earlier)	NIL
2	Insurance Scheme	NILL	0.5%	NILL
3	Pension Scheme	NILL	8.33% (Diverted out of PF contribution)	1.16%

Damages:

1. Less than 2 months at 17% PA
2. Two Months and above buy less than 4 months at 22% PA
3. 4 months and above but less than 6 months at 27% PA
4. 6 months and above at 37% PA.

7. Penal provision: Liable to be arrested without warrant being a cognizable offence. Default by employer in paying contributions or inspection/ administrative charges attract imprisonment up to 3 years and time up to Rs 10,000/- (section 14) for any application, all dues have to be paid by employer with damage up to 100% of arrears.

Details: On 15th November 1951, government of India promulgated an ordinance and it becomes an Act in 1952. The idea was to provide some social security to the workers after retirement or for his dependents in case of his death, also aimed to encourage saving habit among workers.

Again the idea was to protect the workers in their old age, disablement, early death and some other contingences.

Accordingly employee's family pension scheme came in to being. On 1976, the act amended and introduced employees deposit linked insurance scheme. The act now provides.

- Compulsory pension and deposit insurance linked fund and the act is applicable to all establishments employing 20 or more workers.

MAJOR FEATURES OF THE ACT:

1. The act applies to all establishments which have completed three years of their existence and employing 20 or more persons.
2. The act does not apply to co operative society's act 1912 employing less than 50 persons and working without aid of power.
3. The central government can extend this act to any establishment employing less than 20 persons after giving not less than 2 months notice of its intention to do. Once the act is introduced it will not change even if the number comes down.
4. Any establishment can introduce this scheme voluntarily with the consent of the employee and the majority of employees under section 1 (4).
5. Every employee is eligible whether he has been appointed by employer or contractor.
6. Payment of contribution: The employer shall pay contribution payable to E P F, D L G and pension fund.
7. It is the duty of the employer to pay the contributions or by the contractor if he has employed by him.

Classification of about contribution:

With effect from 1.6.2001 the government will contribute 1.16% up to the actual wage of maximum Rs 6500 pm. The employers share will be Rs 541.

Under employer deposit linked insurance scheme the contribution at 0.05% must be paid up to Rs 6500. The employer will also pay administrative charges at 0.01% on Rs 6500/- exempted establishment will pay inspection charges at 0.005% on the total wage paid.

Under the act basic wage means all emoluments which are earned by an employee while on duty as per the contract of employment.

- On retirement or death the sum will be paid to the employee or his legal survivors.
- Other benefit D L G Scheme

Section 14: If an employer violates the law shall be punished with imprisonment of 3 years and or fine of Rs 10,000/-.

Benefits:

- Un attachable and un withdraw able financial benefit.
- Employers and works contribute equally.What is eldest mean?This is about the date of marriage. Family pension is paid to only one person at a time and in the above order only.

EMPLOYEES FAMILY PENSION SCHEME

In order to give long time benefit to the workers families, this scheme came into using in 1971. It is compulsory that all employees who are member of PF should become a member of this scheme too.

Under the Act "Family" means: Wife, Husband, Minor sons and Unmarried daughters.

This scheme provides for family pension which is payable:

a) To the widow or widower up to the date of death or remarriage which ever is early?

b) Failing the above, the eldest surviving minor son until he attains the age 21 years.

c) Failing this, the eldest surviving unmarried daughter until she attains the age of 24 or marries which ever is early.

If there are two widows, than the pension should give to the eldest widow if she is alive, on her death the next widow gets.

Quantum of monthly pension:

It is related to the amount of full pay last drawn by the dead person and also depending on the age of that employee at which the member entered to this scheme.

This family pension is payable from the day immediately following the death of the member. If the member had contributed to this scheme for a period of not less 7 years before his death. The beneficiary will get the enhanced pension.

The employee's Deposit linked Insurance Scheme-1976

All the PF member employees both the exempted and non exempted establishments are covered under this scheme. Workers need not remined to contribute to the insurance fund. Employers must contribute to it all the rate of 0.05% of the pay the workers who are provident fund subscribers.

The central government also contributes at the rate of 0.25% to the covered employee.

The employers should contribute administrative charges to the insurance fund at the rate of 0.01% of the pay drawn by the workers subject to a minimum of Rs 2 pm under this scheme nominees will set the amount.

The employees provident fund organization is in charge of all the three schemes and the central provident fund commissioner will be the chief executive officer.

18.2 EMPLOYEES STATE INSURANCE ACT, 1948

Employees' State Insurance (abbreviated as ESI) is a self-financing social security and health insurance scheme for Indian workers. This fund is managed by the Employees' State Insurance Corporation (ESIC) according to rules and regulations stipulated there in the ESI Act 1948. ESIC is an autonomous corporation by a statutory creation under Ministry of Labor and Employment, Government of India

Employees' State Insurance Corporation (ESIC), established by ESI Act, is an autonomous corporation under Ministry of Labor and Employment, Government of India. As it is a legal entity, the corporation can raise loans and take measures for discharging such loans with prior sanction of the central government and it can acquire both movable and immovable property and all incomes from the property shall vest with the corporations. The corporation can set up hospitals either independently or in collaboration with state government or other private entities, but most of the dispensaries and hospitals are run by concerned state governments.

For all employees earning 21,000 (US$310) or less per month as wages, the employer contributes 4.75 percent and employee contributes 1.75 percent, total share 6.5 percent. State government's share is 1/8th and that by central government is 7/8th. This fund is managed by the ESI Corporation (ESIC) according to rules and regulations stipulated there in the ESI Act 1948, which oversees the provision of medical and cash benefits to the employees and their family. ESI scheme is a type of social security scheme for employees in the organized sector.

The employees registered under the scheme are entitled to medical treatment for themselves and their dependents, unemployment cash benefit in certain contingencies and maternity benefit in case of women employees. In case of employment-related disablement or death, there is provision for a disablement benefit and a family pension respectively. Outpatient medical facilities are available in 1418 ESI dispensaries and through 1,678 private medical practitioners. Inpatient care is available in 145 ESI hospitals and 42 hospital annexes with a total of 19,387 beds. In addition, several state government hospitals also have beds for exclusive use of ESI Beneficiaries. Cash benefits can be availed in any of 830 ESI centers throughout India.

Recent years have seen an increasing role of information technology in ESI, with the introduction of *Pehchan* smart cards as a part of *Project Panchdeep.* In addition to insured workers, poor families eligible under the Rashtriya Swasthya Bima Yojana can also avail facilities in ESI hospitals and dispensaries. There are plans to open medical, nursing and paramedical schools in ESI hospitals.

New Amendments

The Employees' State Insurance Corporation (ESIC) raised the monthly wage limit to Rs 21,000, from the existing Rs 15,000, for coverage with effect from October, 2016.

- Right to information
- Instruction/Circulars/Orders
- Publication
- News and Events
- Multi Media Gallery
- ESIC Radio
- ESIC Video
- Insured Person/ Employer
- Press Release
- Immovable Property Returns

ESIC Pensioners

1. Applicability of the Act and scheme

It applies to all establishments where 10 or more persons are working with the aid of power and 20 or more persons where power is used but involving in manufacturing. It applies to all persons drawing up to Rs 6500 pm. Today it has been entered to shops, Hotels, Restaurants, Road motor transport undertaking, equipment maintenance and staff in the hospitals.

2. Coverage of employees: Drawing wages up to Rs 6500 pm engaged either directly or through contractor.

3. Rate of Contribution of the wages: Employers-4.75%, workers 1.75%.

4. ESG Scheme today:

- No. of implemented centers 6.77
- No. of employees covered 2.38 lakhs

- No. of insured persons 8.5 lakhs
- No. of Beneficiaries 3.30 lakhs
- No. of Regional offiers 26
- No. of ESG hospitals/Annexes 183
- No. of ESG dispensaries 1453
- No. of panel 2950

5. Manner and time limit for making payment of contribution:

The total amount of contribution (employee's share and employers share) is to be deposited with the authorized bank through a chalan in the prescribed form in quadraduplicate on or before 21st month following a calendar month in which the wages fall due.

6. Benefits to the employees under the Act:

The following are the benefits.

- Medical
- Sickness
- Extended sickness for certain diseases
- Enhanced sickness
- Dependents
- Maternity
- Funeral expenses
- Rehabilitation allowance to insured persons and his/her spouse.

7. Register: Registers/files to be maintained by the employer.

8. Contribution period: 1st April to 30th September, 1st October to 31st march.

9. Benefit Period:

If a person joined insurable employment for the first time, say on January 5th, his first contribution period will be from 5th January to 31st march and his corresponding first benefit will be from 6th October to 31st December.

10. How many types of wages:

Two types in general

Sl. No.	To be deemed as wages	Sl no.	Not to be deemed as wages
1	Basic pay	1	Contribution paid by the employer to any pension/provident fund or under ESG Act
2	D.A	2	Sum paid to defray special expenses entitled by the nature of employment, D A paid for the period spend on tour.
3	H R A	3	Gratuity payable on discharge
4	C.C.A	4	Pay in lien of notice of refreshment compensation.
5	Overtime wages (but not to be taken into account for determining the coverage of an employee)	5	Benefit period under ESG scheme
6	Payment for day of rest	6	Enhancement of leave
7	Production incentive	7	Payment of gram which does not form part of the terms of employment
8	Bonus other than statutory bonus	8	Washing allowance
9	Night shift Allowance	9	Conveyance allowance
10	Heat, gas and dust Allowance	10	Conveyance amount towards reimbursement for duty related journey
11	Payment for unsubstituted holidays		
12	Meal/ Food Allowance		
13	Suspension Allowance		
14	Lay off compensation		
15	Children education allowance (not being reimbursement for actual tuition fee)		

11. Penalties: Different punishments for different offences Section 85.

This act is an attempt to give security for reasons of sickness, maternity or employment injury. This Act applies to all workers who are drawing up to Rs 6500 pm. This act applies as any other act i.e about using power and not using power. However, this act has been extended to

1. Shops
2. Hotels
3. Restaurants
4. Road motor transport undertaking
5. Equipment maintenance staff in the hospitals.

With regard to contributions it is 4.75% for employers and 1.75% for workers. The total contribution should be deposited in a nationalized bank on or before 21st every month.

This scheme is combination of ESG Fund, i.e. contribution from employees, workers, grants, donations. Gifts from various sources including government.

ESG BENEFITS TO EMPLOYEES:

Medical, sickness, extended sickness, enhanced sickness, dependent, maternity benefits, funeral expenses etc. Sickness benefits can be given in cash. But no benefits will be given for the first 2 days. This benefit is available only for 91 days in a year. Funeral benefits cannot exceed Rs 500.

Benefit period and contribution period: (1st April to 30th September-1st October to 31st march)

The act provides periodical benefit for:

- Conferment
- Miscarriage
- Sickness arising out of pregnancy
- Premature birth etc.

The date of maternity benefit is twice his standard benefit rate corresponding to the full average daily wages of the women. This benefit can be given up to 12 weeks now it is extended up to 26 weeks.

DISABLEMENT BENEFITS:

It is payable for employment injury (including occupational diseases) at the following rates.

1. Temporary Disablement:

The cash benefit to be made at the "full rate" during the period of disability, if it lost more than 7 days.

2. Permanent partial Disablement:

The cash benefit to be paid at a certain percentage of "full rate" proportionate to the loss of earning capacity for life.

3. Permanent total Disablement:

The cash benefit to be paid at the "full rate" for life (full rate indicates to 6.25% of the average daily wages of the person concerned during the presiding 52 weeks.

Dependents Benefits:

If an employee (insured one) dies as a result of an employment injury, his dependents are entitled to the cash benefits at the following rates.

1. To the widow/ widower during life or until remarriage an amount of 3/5 of full rate.

2. To each legitimate or adopted son 2/5th of the full rate to be paid until he attains 18 years of age.

3. To each legitimate unmarried daughter, 2/5th of the full rate until she attains 15 years of age or until marriage whichever is earlier

4. In case the diseased person does not leave a widow/ legitimate or adopted child, dependents benefits may be paid to a parent for like as may be determined by the employee's insurance court.

MEDICAL BENEFITS:

1. Free medical treatment in case of sickness, employment injury and maternity.

2. Hospital facilities by reserving seats for injured person in existing hospitals.

3. Arrangement for providing artificial limbs, teeth, spectacles, free of cost, ambulance and other forms of transport free of cost.

General provisions regarding Benefits:

1. If a person gets any benefit under the Act, he is not eligible to get the same benefit in any other act.

2. Recipients of sickness or disablement benefits must observe the following:

- He should not do anything not to recover
- If a person received any improper benefits due to any reason by fault, he should return the same to the corporation.
- Employer should not dismiss, or discharge or punish a worker to avoid in giving benefits.
- Every claim should be writing in a preserved form.

18.3 CHILD LABOUR ACT, 1986

Objective of the Act: Mainly to protect children in their working conditions.

Section 2: Definitions:

a) Child: Child means a child who has not completed 14 year of age.

b) Establishment: It includes a shop, commercial establishment, workshop, form, residential hotel, Restaurant, eating house, theater or other place of public amusement or entertainment.

c) **Section 3:** Prohibition of employment of children in certain occupations and process. No child should be employed in occupation in part of the schedule or any workshop where in any of the process set forth in part B of the schedule.

d) **Section 7:** House and period of work:

- Not to exceed 3 hours
- Interval of rest 1 hour
- Spread over not more than 6 hours inclusive of interval and the time spent in waiting.

e) Section 7 also says- No child should be allowed to work

- Between 7 pm to 8 pm
- Over time

If such a child is working in another establishment it is also an offence. Therefore no child should work in two establishments.

f) **Section 8:** Weekly holidays: One while day, not to be altered more than once in three months.

g) **Section 9:** Notice to the inspective- Furnishing details of

- Name and situation of establishment
- Name of the person in actual management of the establishment
- Address for communication
- Nature of occupation

h) **Section 10:** Dispute as to age: In the absences of a certificate of age, it can be referred for decision of prescribed medical authority.

i) **Section 11:** Maintenance and production of register by occupies:

- The name and date of birth of every child so employed or permitted to work
- Hours and period of work and the interval given
- Any other particulars as required from time to time.

Sl. No.	Offence	Punishment
1	For violation of section 3	Imprisonment for not less than 3 months which may extend to one year, or five not less than Rs 10000/- which may extend up to Rs 20,000/- or both.
2	Repetition of violation	Imprisonment for a term not less than 6 months which may extend to 2 years.
3	For failure to: a) Give notice as required by the section 9 b) Maintain a register as remained by section 11 or make any false entry in any such registers or c) Display a notice containing an obstruct of section 3 and this section as remained by section 12 or d) Comply with or contravene any other provisions of this act or the rules made there under.	Shall be punishable with simple imprisonment which may extend to one month or with five which may extend t Rs 10,000/- or with both.

18.4 MATERNITY BENEFITS ACT, 1961

In 1919 the convention held under ILO passed a resolution called "protection of motherhood" with the following objectives.

♦ To protect the dignity of motherhood and the dignity of new person birth. To achieve this, the connection provided all possible norms to protect women and her child. Moreover protection is a must when she is not working for some time after child's birth.

Coverage of the Act and the areas covered:

a) Every establishment, Factory, Mine, Plantation.

b) It includes establishment belonging to government and where persons are employed in equation, aerobatic and other performances.

In 1963 this act was extended to mines industry.

Section 3: The Act has given freedom to the state government to extend the provisions if they desire to shops, commercial establishments,.Bihar, Punjab, Hariyana, West Bengal,U P, Odessa and AP have already done so.

The act excludes the applicability to where ESG applies. In 1976, the act was amended and included all women employees.

This Act is a social legislation to promote the welfare of women this act prohibits payment women for a specified period before and after delivery. It also gives some benefits like maternity leave and payment of maternity benefits for women workers during the period when they are out of employment on account of their pregnancy. Further, the services of women workers cannot be terminated during the period if her absence on account of pregnancy, except for gross misconduct.

Section 5: Conditions for eligibility of Benefits:

Women are eligible for this benefit when she is expecting a baby and has worked for her employer at least 80 days in 12 months immediately preceding the dates of her expected delivery.

Conditions for claiming benefits:

1. Ten weeks before the date of her expected delivery, she may ask the employer to give her light work for a month. At that time she should produce a certificate stating that she is pregnant.
2. She should give a written letter to the employer about 7 weeks before the date of her delivery stating that she will be absent about six weeks before and after her delivery. She should also mention a name to which payment can be made if she cannot take herself.
3. She should take the payment for the first six weeks before she goes on leave.
4. She should set her payment for the six weeks after her child birth within 48 hours of giving proof that she has a child.
5. She should be entitled to two nursing breaks of 15 minutes each in the course of her daily work till her child is 15 months young. For this every state has its own rules.
6. Her employer cannot discharge her or change her conditions of service when she is on maternity leaves.

IMPORTANT FEATURES OF THE ACT:

1. Maximum period is 12 weeks for maternity benefit of these six weeks before the delivery on the child and 6 weeks after the delivery.

2. To get maternity benefit, she must have worked 20 days in the 12 months immediately preceding the day of delivery.

3. Only working days will be counted to calculate these 80 days weekly holidays and all leave paid or unpaid all not included. However, if a woman is laid off from work, such periods are deemed as working house.

4. For 6 weeks leave, the maternity benefit has to be paid in advance to the women or her nominee.

5. For the 6 weeks leave from the date of delivery, one notice must be given along with a certificate of delivery after the child is born. The failure to give such informs does not disentitle women from maternity benefit.

6. Every woman entitled to maternity benefit is also eligible to medical bonus of Rs 250 if no pre-natal conferment and post natal care has been provided for by the employer face of charge.

7. In case of miscarriage, the women are eligible to 6 weeks leave with pay from the day of his miscarriage. In this case too she must give notice together with a certificate of miscarriage.

8. For illness due to pregnancy, deliver, premature birth, or miscarriage she can take extra one month leave. But one certificate must be given by a doctor in the presented form. This leave can be taken at any time during pregnancy or can be attached to the 6 weeks prior to or after delivery or miscarriage.

9. A woman can ask for light work for one month when she is pregnant. For this employer cannot reduce the salary on account of light work.

10. An employer is prohibited employing a woman during the 6 weeks immediately following the day of her delivery or miscarriage if he knows that information.

11. Women are prohibited from working during the period of 6 weeks.

12. A women cannot be dismissed or discharged on grounds of absence or arising out of pregnancy, miscarriage or delivery or nor her service conditions can be altered to her disadvantage during this period.

13. If the woman dies before receiving her maternity benefit dues, the employer has to pay to the nominee to her legal representative in case there is no nominee.

14. If a women dies during the 6 weeks before delivery, maternity benefit is payable only for the days up to and including the day her death.

15. If the women dies during delivery or during the following 6 weeks, leaving the child behind, the employer has to pay the benefit for the entire 6 weeks, but if the child also dies, during the period , then for the days upto and including the death of a child.

Benefits have be divided into two groups, they are 1) Cash benefits and 2) Non- Cash benefits/ privileges.

Sl. No.	Cash Benefits	Non Cash Benefits
1	Leave with average pay for 6 weeks before the delivery	Light work for 10 weeks (6 weeks plus on month) before the date of her expected delivery, if she asks for it.
2	Leave with average pay for 6 weeks after the delivery	Two nursing breaks in the course of her daily work until the child is 15 month journey.
3	A medical bonus of Rs 250 if the employer does not provide free medical case to the women	No discharge or dismissal while she is on maternity leave
4	An additional leave with pay upto one month if the women shows proof if illness due to pregnancy , delivery, miscarriage or premature birth	No change to her disadvantage in any of the conditions if he employment while on maternity leave
5	In case of miscarriage, 6 weeks leave with average pay from the date of miscarriage	Pregnant women discharged or dismissed may still claim maternity benefit. Exception: women dismissed from gross misconduct loss her right under the act for maternity benefit.

Section 9 to 13: leave for miscarriage and tubeworm operation:

Leave with wages at the rate of maternity benefit for a period of 6weeks immediately following the day if her miscarriage or her medical termination of pregnancy. She is eligible for leave with wages at the rate of maternity benefit for a period of two weeks immediately following the day of her tubeworm operation.

Section 10: leave for illness arising out of pregnancy:

A women suffering from illness arising out of pregnancy, delivery pre mature birth of a child (miscarriage, medical termination pregnancy or tubeworm operation) be entitled, in addition

to the period of absence allowed to her leave with wages at the rate of maternity benefit for a maximum period of one month.

Section 12: Prohibition of dismissal during absence of pregnancy:

1. Discharge or dismissal or an account of such absence or to give notice of discharge or dismissal on such a day that the notice will expire during such absence or to vary to her disadvantage any of the conditions of her service.

2. She is also entitled for medical bonus.

Section 19:

If the employer fails to display the law imprisonment up to 1 year and fine may be levied. This should he announced in a language where majority of workers can understand.

When a women employee can be deprived of maternity benefits:

If after availing maternity leave, she works in any other place during that period she losses the right.

If during the period of her pregnancy she is dismisses for gross misconduct she loses the right.

What is gross misconduct?

1. Willful destruction of employer's goods or property.

2. Assenting any superior or ex employee at the place of work.

3. Criminal offence that involves moral tiptoed resulting in conviction in a court of law.

4. Theft, Fraud, Dishonesty in connection with the employer's business or property.

5. Willful non-obscene of any safety measure or rules or willful interference with safety devices or with fire fighting equipment.

Rights of an aggrieved employee:

Within 60 days from the date of deprivation, she can appeal to the appropriate authority. The decision of that authority is final

State government can give additional benefits.

18.5 NOTES

18.6 SUMMARY

In this unit, we have learned about various act of labor legislation such as employees provident fund and miscellaneous provision act, child labor act, maternity benefit act their features, objectives and applicability and provision of this act.

18.7 KEYWORDS

- Funds
- Miscellaneous
- Child labor
- Insurance

18.8 SELF ASSESSMENT QUESTIONS

1. What is employee's state insurance Act?
2. Explain the features of employee's state insurance Act.
3. Discuss the provisions of child labor Act
4. Explain the features of maternity benefits Act

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UNIT - 19 : EQUAL REMUNARATION ACT, 1976 AND OTHER ACT

Structure:

19.0 OBJECTIVES

After studying this unit, you should be able to;

- Define equal remuneration Act
- Explain the features of contract labor Act
- Discuss the concept of apprentice Act

19.1 EQUAL REMUNERATION ACT, 1976

Object of the act: To give equal remuneration both for men and women. 2-70 prevent discrimination on the grounds of gender.

Section3: This section provides that no other law can come in the way of implementing this law.

Section 4: Duty of employer to pay remuneration to men and women workers for same work or work of similar nature:

1. No employer can discriminate women in terms of payment as long as both men and women are doing the same work or work of a similar nature.
2. No employer can reduce the rate of remuneration.
3. If there was discrimination between the two genders before the commencement of this Act, then the higher or highest rate at which remuneration must be paid.

Section 5: No discrimination in recruitment:

1. No discrimination on promotion, training or transfer except where employment of women's restricted.
2. This law will not effect when recruitment is to take place with regard to schedule casts, schedule tribes, retrenched employees.

Section 8, Rule 6: Maintaining a Register:

Register must be maintained for all workers employed In form D at the place where the workers are employed.

Section 10:

Penalties

Sl. No.	Penalties	Punishment
1	Where any employer: a) Omits or fails to maintain any register or other document in relation to workers b) Omits or fails to produce any register muster rolls or other document. c) Omits or refuses to give any evidence or prevents his agent, servant etc from giving evidence or d) Omits or refuses to give any information	Simple imprisonment up to one month or fine up to Rs 10000/- or both
2	If any employer: a) Make any recruitment in contravention to the provisions of the act or b) Makes any payment of remuneration at unequal rates to men and women workers for the same work or work of similar nature or c) Make any discrimination between men and women workers, in contravention of the provisions of the act or d) Omits or fails to carry out any direction made by the appropriate government, under sub-section (5) of section 6	Fine not less than Rs 10,000/- which may extent to Rs 20,000/- or imprisonment not less than 3 month which may extend up to one year for 1st offence, and up to 2 years for second and subsequent offence
3	On omission or failure to produce any register or record	Fine up to Rs 500/-

19.2 CONTRACT LABOUR ACT, 1970

Object of the Act:

1. Regulating employment of contract labor is certain establishment.

2. Providing a provision to abolish contract labor is certain circumstances and for matters connected there with.

Section 1 Applicability: It applies to every establishment where 20 or more workmen are employed or were employed on any day of the proceeding 12 months as contract labor.

Section 7: Registration of Establishment: Principal employer should deposit the remained amount duly filled form I after mentioning the number of employees.

Section 9: Revocation of Registration: If can be revoked if registration has been obtained by misrepresenting the facts or by sup presenting the material facts after giving an opportunity to the principal employer.

Section 10: Prohibition of employment of contract labor: By issuing a notification after consulting the board prohibition of employment can be made.

Section 12 Rule 21: Licensing the contractor: License can be given to those who engage 20 or more than 20 workers and on deposit of remained for after filling the form IV.

Such license will be valid for a specific period.

Section 14: Revocation of suspension and Amendment of License:

1. When obtained by misrepresentation or suppression of material facts or
2. When the contractor has failed to comply with the conditions laid down or any contravention of the act or the rules.

Section 16 and 17: Welfare measures to be taken by the contractor. If a contractor has employed 100 or more laborers, then

- He should maintain one or more canteens and maintain them
- Secondly, he should keep ready first aid facilities
- Thirdly, he must keep member of rest rooms as remained by law.
- Fourthly, good drinking water, latrines and washing facilities should he provided.

Section 20: Liability of principal employer:

1. He must ensure a provision for canteen, rest rooms, sufficient supply of drinking water latrines and urinals and washing facilities.
2. Principal employer is entitled to recover from the contractor for providing such amenities or to make deductions from amount payable.

Section 21, Rule 25: Responsibility of contractor for payment of wages:

1. To pay timely and to ensure the disbursement of wages in the presence of the authorized representative of the principal employer.
2. Rate of wages not less than the rates as fixed or prevailing in such employment as fixed by agreement.

Section 30: Laws, agreement or standing orders inconsistent with the Act- Not permissible:

If the privileges in the contract between the parties are more favorable than the those prescribed in the Act, than such provision will be valid.

Section 74, 75, 76 and 77:

Section 74: Register of contractors: Principal employer must maintain a register of contractors for every establishment in form XII.

Contractor: section 75, 76 and 77: The employer must maintain a register of workers for each establishment in form XIII. He must issue an employment card to each worker in form XIV. He must issue a service certificate to every workman on his/her termination is form XV.

Section 81; Rule 79: The contractor should also maintain a muster roll, wages register, deduction register and over time register. Therefore, every contractor shall

a) Maintain muster roll and register of wages in form XVI and form XVII respectively when combined.

b) Register or wage cum muster roll in form XVIII where the wage period is a fortnight of loss.

c) Maintain a register of deductions for damages or loss, register for fines and advances in form XX and XXI and form XXII respectively.

d) Maintain a register for over time in form XXIII.

e) To issue wages slips in form XIX, to the women at least a day prior to the disbursement of wages.

f) Obtain the signature or thumb impression of the worker concerned against the entries relating to him on the register of wages or muster roll cum-wages register.

g) When covered by payment of wages act, register and records to be maintained under these rules.

h) Muster-Roll-Register of wages, register for deductions, register for overtime, register for fines, register for advances and wage slip.

Rule 80: To display an abstract of the act and rules in English and Hindi and in the language spoken by the majority of workers in such a form as may be approved by appropriate authority.

Rule 81: Display notices showing the rates of wages, hours of work, wage period, date of payment, names and addresses of the inspector and to send a copy to the inspector and any change forth with.

Rule 82: Returns: Contractor should send half yearly return in form XXIV in duplicate within 30 days. Principal employer should send annual return in form XXV in duplicate before 15th February, following the end of the concerned year.

Penalties

Section	Offence	Punishment
Section 22	Obstructions	For obstructing the inspector or failing to produce register etc. 3 months imprisonment or fine up to Rs 500 or both.
Section 23	Violation	For violation of the provisions of the act or the rules, imprisonment of 3 months or fine up to Rs 1000/- on containing contravention, additional fine up to Rs 100 per day.

19.3 APPRENTICE ACT, 1961

Object of the Act:

1. Promoting skills of employer or manpower

2. Improving or reining of old skills through theoretical and practical training in number of trades and occupation.

Section 1: Applicability of the Act: If applies to all areas and industries as notified by the central government.

Section 2: Apprenticeship advisor: Central government will appoint central apprenticeship advisor.

Section 2 (k): Industry: Industry means any industry or business or in which any trade, occupation or subject/ field in engineering or technology or any vocational course may be specified as a designated trade.

Section 3: Qualification for being trained as on apprentice: A person cannot be an apprentice in any designated trade unless:

- He is not more than 14 years of age
- He satisfied such standard of education and physical fitness as may be prescribed.

Section 4: Contract of apprenticeship: To contain such terms and conditions as may be agreed to by the apprentice or his guardian (in case he is a minor) and employees.

Section 5: Conditions for novation of contract of apprenticeship:

- There exists an apprenticeship contract.
- The employer is unable to fulfill his obligation.
- The approval of the apprenticeship advisor is obtained.
- Agreement must be registered with the apprenticeship advisor.

Section 6: Termination of apprenticeship:

1. It can be done on the expiry of the period of apprenticeship training.
2. On the application by either of the parties to the contract to the apprenticeship advisor.

Payment to apprentices: The employer can pay stipend at a rate not less than the prescribed minimum rate as may be specified.

Section 8: Number of apprentices in designated trade: To he designated by the central government after consulting the central apprenticeship council.

Section 11: Period of apprenticeship: Training period will he decided by national council.

Obligations of employers:

1. To provide the apprentice with the training in his trade.
2. To ensure that a person duly qualified is placed in charge of the training of the apprentice.
3. To carry out contractual obligation.

Section 15: Obligations of apprentices:

1. To learn his trade conscientiously diligently.
2. To attend practical and instructional classes regularly.
3. To carryout all lawful orders.
4. To carry out his contractual obligations.

Health safety and welfare measure for apprentices:

As per factories Act, or Mines Act as the case may be when under going training.

Hours of work:

1. 42 to 48 in a week while on theoretical training.
2. 42 in a week while on basic training
3. 42-45 in a week in second year of training.
4. As per other worker (in the third year)

5. Not allowed to work between 10 pm to 4 am unless approved by apprenticeship advisor.

Leave and Holidays:

1. Casual leave for the maximum period of 12 days in a year.
2. Medical leave for the maximum period of 15 days and the accumulated leave up to 40 days in a year.
3. Extraordinary leave up to maximum period of 10 days in a year.

Section 16: Employers liability to pay compensation for injury: As per provisions of workmen's compensation Act.

Section 30 and 31: Offences and Punishment: Imprisonment of a term up to 6 month or with fine when employer engages as an apprentice a person who is not qualified for being so engaged or

Fails to carry out the terms and conditions of a contract of apprenticeship

Contravenes the provisions of the Ac t relating to the number of apprentices which he is required to engage under those provisions.

19.4 NOTES

19.5 SUMMARY

In this unit, we have learned that equal remuneration act, its features, objects and section comes under the act. We have also learned about contract labor act its various features, objectives and basis principles, and we also discuss about the concept of apprenticeship act and its functions.

19.6 KEYWORDS

- Apprenticeship
- Equal remuneration
- Contract labor

19.7 SELF ASSESSMENT QUESTIONS

1. What is equal remuneration act?
2. Explain the features of equal remuneration Act
3. Discuss the provision of contract labor Act
4. Explain the concept of apprenticeship Act

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UNIT - 20 : CRITICAL EVALUATION OF WORKING OF LABOUR LEGISLATION IN INDIA

Structure:

20.0 OBJECTIVES

After studying this unit, you should be able to;

- Define Labor Legislation
- Explain the recent changes made in labor legislation in India
- Discuss the concept of Sexual harassment at work place

20.1 CRITICAL EVALUATION OF WORKING OF LABOUR LEGISLATION IN INDIA

Recent changes in Labor Laws and their implications for the working class

Introduction

Sweeping changes in labor laws are taking place in India. While launching the "Shramyev Jayate" (i.e. only hard work will win) programme, the Prime Minister urged us to take a compassionate view on "Shram Yogi" (worker) and use them as a source of "Rastra Nirmaata" (nation builder). It would therefore appear from this, that the current government is championing the cause of labour. Curiously, according to the media reports on the event, the industry lobby (CII, FICCI, ASSOCHAM etc.) unanimously applauded the proposed changes in labour laws, while the central trade unions (including Bharatiya Mazdoor Sangh, the trade union affiliated with the Bharatiya Janata Party [BJP]) complained about not being consulted at all and threatened to launch a nationwide protest on December 5, 2014 (see 17 October 2014, The Hindu). Therefore, clearly there is some confusion over the *real* content of the labour reforms. Thus, it becomes imperative to analyze the class character of the reforms and identify their possible impact on different sections of society. This is precisely what the present article seeks to do, in order to clear some confusion that currently prevails.

Self certification by Manufacturing firms and their Inspection

Mr. Modi's emphasis on building a robust manufacturing sector in India is well-known from his "Make in India" campaign. Towards that end he launched a couple of policy measures aimed at increasing the ease of doing business in India: "Ease of business is the first and foremost requirement if Make in India has to be made successful" (see17 October 2014, The Indian Express). India's rank in the "Ease of Doing Business" index actually slipped from 140 to 142 in 2014-15 (out of 189 countries) and Modi's measures are primarily aimed at improving India's ranking next year.

A significant move in that direction is the unveiling of Shram Suvidha Portal, which would allow employers to submit a self-certified single compliance report for 16 Central labour laws. This reform is expected to simplify business by putting the onus of compliance with

the firms through self-certification. The Prime Minster described this reform as follows: "These facilities are what I call minimum government, maximum governance". He justified these in the following terms: "Let's start with trust" (ibid.). However, self-certification suffers from a basic drawback of non-revelation of truthful information, if there are incentives for doing so (like saving on a range of compliance cost in this case) [For a different critique see the article by Jesim Pais in 06 November 2014, The Hindu].

One might argue that the problem of non-revelation of truthful information may be largely curbed if there is a rigorous inspection mechanism in place. It is precisely here that Mr. Modi announced another radical change. In the name of ending the 'Inspector Raj' from now on labour inspectors would not be allowed to decide on their own, the establishments to be inspected. Instead, they would be sent to randomly selected establishments (administered centrally through computerized draw of lot; similar to those done during random scrutiny of income tax returns) and have to upload their reports within 72 hours, without future scope of modifying them. However, since labour inspectors generally have better ground level information about establishments and their functioning, centralized selection of enterprises for inspection even if randomly chosen, is certainly going to compromise on the effectiveness of inspection.

In fact trade unions are apprehensive that even if there are complaints of violation of safety norms by workers, even then labour inspectors might not inspect the offending factories – since now inspection of factories can only be done through random draw of lots. In any case, centralized controlling of inspections violates the International Labour Organization's (ILO) labour inspection convention 81 (1947) – to which India is a signatory. This is because according to Article 12 of the labour inspection convention 81, labour inspectors are empowered *inter alia*, "to enter by day *any premises* which they may have reasonable cause to believe to be liable to inspection; and to carry out any examination, test or enquiry which they may consider necessary in order to satisfy themselves that the legal provisions are being strictly observed" (emphasis mine). The new stipulation, by *regulating* inspectors' visit to establishments curbs the freedom of inspectors to visit *any* enterprise, thus violating the provisions of ILO convention.

Moreover, the above move is expected to bring down annual labour inspections (currently 3 lakhs; see, 17 October 2014, The Indian Express) very sharply. But cutting down on labour inspections will adversely impact industrial safety, in a country where the culture of adhering to industry safety standards is already abysmal. It does not need mentioning that the workers will be at the receiving end of such deteriorating industrial safety norms. Moreover, this is introduced at a time when there is clear evidence to show that inspection standards in establishments relating to labour and industrial regulations have declined drastically. In the

last two decades especially there has been serious under reporting of accidents – only fatal accidents are reported, since they are difficult to conceal, whereas non-fatal accidents go unreported (06 November 2014, The Hindu). This is reflected in the secular rise in share of fatal injuries in total injuries

Recent labor law changes in Rajasthan

The subject of labor being in the concurrent list, the BJP government in Rajasthan led by Ms. Vasundhara Raje recently proposed amendments to three key labour legislations namely, the Contract Labour (Regulation and Abolition) Act (CLRA), 1970; the Factories Act, 1948 and the Industrial Disputes Act (IDA), 1947. Her cabinet approved these amendment bills. The proposals then went for Centre's approval and faced no hurdle – as the BJP in its election manifesto promised to amend the labour laws. Finally, it went to the President seeking his approval and acquired so – thereby turning them into law (see 8 November 2014, Business Standard). These changes are supposed to set off a domino effect as other states are likely to follow suit [According to the media reports the states of Haryana and Madhya Pradesh are already moving along these lines]. This would in effect decentralize the Indian labour market, with 29 states each vying to offer the most lucrative labour regime to attract industries.

The concrete change in case of Contract Labour Act, 1970 is that it would now be applicable only in case of establishments employing 50 or more workers instead of the earlier threshold of 20 workers. Before amendment the Factories Act, 1948 covered those factories employing 10 or more workers (using power) or 20 or more workers (without using power). The recent amendment increased this threshold to 20 workers (using power) and 40 workers (without using power). Finally, according to Chapter VB of the Industrial Disputes Act (IDA), 1947 previously it was necessary to obtain prior government permission to retrench, layoff workers and closedown factories in an establishment employing 100 or more permanent workers1. The recent amendment raised the employment threshold to 300 workers. In this article we shall comment on each of these labour law changes seriatim.

With regard to the Contract Labour Act our observation would be limited to the following implication: making Contract Labour Act (restricting the use of contract workers) applicable to establishments employing 50 or more workers instead of 20 workers would mean that all regular jobs in establishments below 50 workers (but above 20 workers) would be abolished. According to 2010-11 data, around one-third of 2.15 lakh regular workers in the manufacturing sector of Rajasthan were located in establishments employing less than 50 workers. This move would bring in insecurity in the lives of these workers. Moreover, this employer-friendly move would also implicitly encourage the use of contract workers more liberally in establishments employing more than 50 workers.

Let us now discuss the implications of the amendment to the Factories Act, 1948. Any firm engaged in manufacturing activity and registered under the Factories Act comes under the organized segment of manufacturing. Therefore, by increasing the workers' threshold in establishments that is required to register under the Factories Act, some of the factories erstwhile registered under the Factories Act (namely, factories employing 10-19 workers using power and 20-39 workers not using power) would no longer be required to do so. Thus, at the stroke of a pen, these manufacturing establishments would now be categorized under the unorganized sector. Consequently, workers in these establishments now being placed in the unorganized segment of manufacturing would stand to lose on various rights like social security benefits, old age benefits and other benefits (Chandru, 2014).

Additionally, this would deteriorate the quality of manufacturing sector data. This is because Annual Survey of Industries (ASI) conducts survey every year only for the organized manufacturing sector i.e. only those manufacturing establishments registered under the Factories Act, 1948. Because survey is carried out every year therefore data on organized manufacturing is considered to be reliable/firm. However, the same cannot be said for the unorganized manufacturing sector data – since survey in this segment is conducted in five years interval – and for non-survey years estimates are obtained by updating the survey year's figures by the Index of Industrial Production (IIP) (see Roychowdhury, 2005 for details). With the recent amendment, since some of the erstwhile organized manufacturing firms would be pushed into the unorganized segment therefore, as things stand, they would not be surveyed every year by ASI – leading to deterioration of data quality. Next we turn to the most contentious move of amending the IDA, 1947 and try to examine its rationale.

It is normally argued in the literature that Chapter VB of IDA creates unnecessary obstacle in adjusting the workforce of an establishment (and its closure) and consequently hinders employment creation in the manufacturing sector (Kapoor, 2014). Also notice that this particular legislation gives some bargaining power to the working class vis-à-vis employers, by conferring security of livelihood even in midst of a vast pool of unemployed workers.

The reason typically put forward as to why supposedly rigid labour regulations result in stymied employment growth, is succinctly captured by the following observation: "In face of adverse shocks employers have to reduce the workers' strength; but they are not able to do so owing to the existence of stringent job security provisions. On the other hand, when the going is good and the economic circumstances are favourable, the firms may want to hire new workers. But they would hire only when they would be able to dispense with workers as and when they need to. Thus, separation benefits accruing to workers become potential hiring costs for the employers. This affects the ability and the willingness of firms to create jobs" (Shyam Sundar,

2005). This piece of legislation is also identified to be the main reason for India's inability to build a proper manufacturing base.

However, there is neither proper theoretical backing nor any empirical evidence to suggest that the slow employment growth in Indian manufacturing is primarily due to the labour laws. The two most quoted empirical studies in favour of undertaking labour reforms are Fallon and Lucas (1993) and Besley and Burgess (2004). The first study has been criticized thoroughly on grounds that the results are not statistically sound (Bhalotra, 1998). With regards to the second study Bhattacharjea (2006 and 2009) noted that the labour regulation index constructed by Besley and Burgess suffers from a number of shortcomings. Besley and Burgess classified the states of India (pro-worker, pro-employer and neutral) according to their constructed regulatory index and it is precisely here that the shortcoming of their index comes out most starkly. Among various shortcomings in the construction of the index, one important aspect is to neglect the implementation of law. For example, according to their index Kerala is designated as a pro-employer state whereas Gujarat and Maharashtra are demarcated as pro-worker states. This is so even though a World Bank (2003) study [quoted in Anant et. al. (2006) p.256] reports that small and medium enterprises in Kerala receive twice as many factory inspections per year as in Gujarat and Maharashtra.

Such anomalies arise because Besley and Burgess, by putting excessive emphasis on legal statutes, missed out on important counts like implementation of the law and larger macroeconomic issues during their sample period (1958-92). For example, Anant et. al. (2006) noted that reading off directly from state amendments to measure rigidities could be exceedingly misleading because the effect of laws could only be fully realised into labour market outcomes through proper implementation. Implementation in turn depends upon a range of intermediate factors like enforcement environment, culture of governance and compliance, among others. Limited consideration of these aspects can very easily deflect or nullify the presumed effect of the statutes – and hence impair accurate construction of the regulatory index. Now, Bhattacharjea pointed out that since the study profusely used this evidently flawed regulatory index in deriving its results, the outcome of the study is open to question. In fact, there is no study at the all India level conclusively showing manufacturing employment to be adversely affected by restrictions on hiring and firing (the content of Chapter VB).

Alternatively, many micro-level studies document large scale employment adjustments in face of adverse demand shocks. For example, Breman (2004) provides evidence on thousands of workers having lost their jobs in the collapse of Ahmedabad's textile factories in 1980s and 1990s; specifically, restrictions on retrenchment did not stand in the way of adjusting the workforce when about 36000 workers lost their jobs due to closure of several mills in

Ahmedabad during 1983 and 1984 (see Papola 1994). Similarly, Sharma and Sasikumar (1996) studying 233 manufacturing firms in the Ghaziabad and Noida industrial belt found that neither employment growth nor fixed capital investments of firms were constrained by labour laws. In fact, at the all India level Nagaraj (2004) noted that, "Between 1995-96 and 2001-02, 1.3 million employees (13 per cent of workforce) lost their jobs". Now, if restrictions on hire and fire really operated as a constraint, how is it that the firms could retrench such large sections of the workforce in such short period of time?

On the other hand, there is evidence on systematic downsizing of the workforce through innovative means like the voluntary retirement schemes (VRS). Indian government constituted a dedicated fund to that end namely, National Renewal Fund (NRF) as part of its 1991 reform process "to provide funds [among others] …. for compensation of employees affected by restructuring or closure of industrial units both in the public and private sector" (Zagha, 1999). It is estimated that until July 1995 the dedicated fund enabled firms to retrench 78,000 labourers from the public sector and further aimed to reduce 2 million workers (ibid).

On top of this there is evidence on firms already introducing reform in the labour market through the back door or, to use Nagaraj's term "reform by stealth". This is through the route of creating informal employment within the formal sector. Commentators have pointed out that employers enjoy enough *de facto* flexibility through the employment of contract workers in the organized manufacturing sector (Guha, 2009). This is easy to understand; Chapter VB of the IDA applies to only *permanent* workers of an establishment and not to workers employed through contractors (contractual workers). *Thus, there is no prior permission needed to retrench contractual workers of an establishment.* Let us see in figure2 what happened to this contractual workforce in the organized manufacturing sector.

20.2 SEXUAL HARASSMENT AT WORK PLACE

Equal Employment Opportunity Commission (EEOC) guidelines defined sexual harassment as "un welcome sexual advances, request for sexual favors, and other verbal or physical conduct of sexual native that takes place under any of the following conditions.

1. Submission of such conduct is made either explicitly or implicitly a term or condition of a individuals employment.
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.
3. Such conduct has the purpose or effect of unreasonably interfering with an individuals work performance or creating an intimidating, hostile or offensive with environment.

How to prove sexual harassment?

There are three ways an employee can prove sexual harassment.

1. Quid pro Quo: The most direct way an employee can prove sexual harassment is to prove that rejecting a supervisions advance adversely affected the employee's tangible benefits, such as raise or promotion for Example, in one case the employee was able to show that continued job success and advancement were dependent on her agreeing to the sexual demands of her supervisors.

2. Hostile environment created by supervisor:

It is not always necessary to show that the harassment had tangible consequence such as demotion or termination.

For Example: In one case the court found that a male supervisor's sexual harassment had substantially affected a female's employee's emotional and psychological ability to the point that she felt she had to quit her job.

Therefore, even through no direct threats or promises were made in exchange for sexual advances, the fact that the advances interfered with the women's performances and created an offensive work environment were enough to prove that sexual harassment had occurred. On the other hand, the courts do not interpret as sexual harassment any sexual relationships that arise during the course of employment but that do not have a substantial effect on that employment.

3. Hostile environment created by co-workers or non-employees:

Advances do not have to be made by person's supervisor to quality as sexual harassment. Employee's co-workers (or even the employee's customers) can cause the employer to be held responsible for sexual harassment.

For Example: The employer may fix a particular uniform which the worker (women) does not like. In this case if the uniform is not necessary to maintain decency of that work, then it amounts to sexual harassment. EEOC guidelines state that an employer is liable for the sexually harassing acts of its non-supervisor employee if the supervisor knew or should have known of the harassing conduct.

HR in practice: What employers should do to minimize liability in sexual harassment claims?

1. Issue a strong policy statement condemning such behavior.
2. Inform all employees about the policy prohibiting sexual harassment and of their results under the policy.
3. Develop and implement a complaint procedure.

4. Discipline managers and employees involved in sexual harassment.

5. Republish the sexual harassment policy periodically.

6. Encourage up ward communication through periodic written attitude surveys, hotlines, suggestion boxes and other feed back procedure to discover employee's feelings concurring any evidence of sexual harassment and to keep the management informed.

What employer's can do?

1. Should take steps to ensure that harassment does not take place.

2. Should take corrective action, even if the offending party is a non-employee, once it knows (or should know) of harassing conduct.

In simple words what is harassment to a woman may be innocent to a man. However, women perceive a broader range of socio sexual behavior as harassing, particularly when those behaviors involve "Hostile work environment harassment "derogatory attitudes toward women, dating pressure, or physical sexual contact.

What the employee can do?

Hostile sexual harassment in sexual means that the discriminatory intimidation, insults and ridicule that per meated the workplace were sufficiently severe or pervasive to alter the conditions of employment.

Steps that the employee can take is:

1. File a verbal contemporaneous complaint or protest with the harasser and the harasser's boss stating that the unwanted overtures should cease because the conduct in un welcome.

2. Write a better to the accrued. This may be a polite, law key letter that does three things.

a) Provide a detailed statement of the facts as the writer sees then

b) Deserve the feelings and what damage the inter thinks has been done.

c) State that he/she would like to request that the future relationship be on a purely on a professional basis.

d) Deliver this letter in person, with a witness if need be.

3. If the un welcome conduct does not cease file a verbal or written report regarding the unwelcome conduct and unsuccessful efforts to get it stop with the harassers manager and or the human resource director.

4. If the letter and appeals to the employer do not suffice, the accuse should turn to the local office if the EEOC to file the necessary claim.

5. If the harassment is of serious nature, the employee can also consult an authority about serving the harasser for assault and battery, intentional relief, and to recover compensatory and punitive damages.

Then the question is what will happen if a woman voluntarily advances to words a man?

20.3 NOTES

20.4 SUMMARY

In this unit, we have learned that various measures taken to eradicate the changes made in labor legislation in India. We also studied the concept of work place sexual harassment at various organizations and its measure taken.

20.5 KEYWORDS

- Labor Legislation
- Sexual harassment

20.6 SELF ASSESSMENT QUESTIONS

1. What is labor Legislation?
2. Explain the recent changes taken place for worker of labor legislation in India
3. Discuss the concept of sexual harassment at work place

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