

# Industrial and Labour Laws



## Message for the Students

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***“We want the education by which the character is formed, strength of mind is Increased, the intellect is expand and by which one can stand on one’s own feet”.***

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# **Industrial and Labour Laws**

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# **UNIT-1 INTRODUCTION TO INDUSTRIAL AND LABOUR LEGISLATION**

## **1.1 Introduction**

## **1.2 Needs for labour legislation**

## **1.3 The objective of labour legislation**

## **1.4 Importance of labour legislation**

## **1.5 The principles of the 6th labour policy of I.L.O**

## **1.6 Introduction to employee relations**

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## **1.8 Employee relations**

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## **1.10 Objectives of labour relations**

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### **1.1 Introduction**

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Society as an institution is always governed by some rules. As society advances economic, social, and technological domains the need to frame new laws arises. With time, old laws are discarded and newer ones are framed and implemented. This process requires management of public opinions and sentiments as laws especially labour laws are ‘for the people, of the people and by the people.’

Labour laws serve as an important guide on matters pertaining to employment and regulation of labour in industries. In case of disputes, labour laws act as the guiding light to protect the interests of the aggrieved party, generally the employees. There are wide number of laws for the protection of labour in India which are broadly discussed under the term of ‘Labour Legislation.’

Labour Legislation is a body of laws to regulate terms of employment between employer and employee and to protect the exploitation of the latter.

Labour law also known as employment law is the body of laws, administrative rulings, and precedents which address the legal rights of, and restrictions on, working people and their organizations. As such, it mediates many aspects of the relationship between trade unions, employers, and employees.

The term ‘Labour Legislation’ is used to cover all the laws which have been enacted to deal with “employment and nonemployment” wages, working conditions, industrial relations, social security, and welfare of persons employed in industries.

### **Various Domains of labour legislation are:**

1. To recognise and certify Labour Unions
2. To assist the process of collective bargaining
3. To help improve labour-management relations
4. To ensure health and safety of workers at workplace.

5. To create standards of employment for regulating terms of employee contracts.

#### ❖ **Need for labour legislation**

During the 18<sup>th</sup> and 19<sup>th</sup> century, a lot of countries were witnessing Industrial Revolution. With more and more industries, the demand for labour laws was felt to prevent the exploitation of labour class from the employers. The laissez faire system which was in function in many western economies gave rise to unregulated capitalism. Child labour had become a visible problem in England. Finally in 1802, England became the first country to regulate labour laws by restricting hours of work, age of employment etc in industrial establishments. Similarly, France followed England's way after French Revolution in 1845 and enacted labour laws.

With the establishment of International Labour Organisation (ILO) in 1919 and the signing of treaty of Versailles it was imperative that the member countries were serious about improving the conditions of labour in their respective countries. A tri-partite executive body was constituted including the heads of employers, employees, and the Government. This executive body was in-charge of framing laws relating to minimum and maximum hours of work, health and safety protocols at workplace, unemployment, maternity compensation etc. A specialised agency of the UN supervised the working of this body. Soon, the labour issues started resolving with these laws. With passage of time, new issues evolved which required a change in legislation.

In India, labour laws are a part of concurrent list in the constitution. The constitution acts as a guardian to ensure equal pay, conditions of work etc. and ensures fundamental rights to all citizens irrespective of class. Soon after independence, The Factories Act, 1948 was laid down which replaced all labour laws which were in place before the Independence. Thus, there has always been a need to frame labour laws. As time changes, these laws are modified and some are even discarded off when they become irrelevant.

#### ❖ **Objectives of Labour Legislation**

- **Labour legislation seeks to attain following objectives.**

1. To establish justice of all kinds- Social, Political and Economic.
2. To provide equal opportunities to all workers; irrespective of caste, creed, religion, beliefs; for the development of their personality.
3. To protect weaker sections of the community.
4. To maintain industrial peace.
5. To create conditions for economic growth.
6. To protect and improve standards of labour.
7. To protect workers from exploitation.
8. To guarantee rights to workmen to combine and form association or unions.
9. To ensure rights of workmen to bargain collectively for the betterment of their service conditions.
10. To make state interfere as protector of social wellbeing than to remain an onlooker.
11. To ensure human rights and human dignity.

- **Importance of labour legislation**

1. Labour laws are necessary to ensure industrial peace and as they help resolve industrial conflicts in a legalised manner.
2. Labour laws help to set standards of work and working conditions. For example, hours of work, minimum wages for work, bonus, incentives are all calculated in a scientific manner in such a way that they adhere to designed labour laws. This ensures that workers remain productive and are not exploited financially.
3. In case of industrial accidents, labour laws help to fix accountability and ensure that the victim is well compensated for it.
4. Labour laws promote healthy industrial environment where workers, employers, and third-parties can transact based on faith which otherwise is not possible without legal legislation.
5. Labour laws ensure job security for workers by framing laws relating to dismissal of workers, notice period for the same and monetary compensation till the labourer finds another job.
6. For the employers, labour laws help to deal with industrial unrest by framing laws relating to strikes, protests, trade unionism etc.so that the unit remains productive and the production isn't hampered unnecessarily.
7. Labour laws ensure that the workers get fair and equal wages for their work.
8. Labour laws help to maintain harmony between employers & employees, employers and employees.
9. Labour laws help to ensure social justice to all workers by providing a mechanism to implement various social welfare schemes.
10. Labour laws help to ensure health, safety, and welfare of workers at workplace.

- **The principles of the 6<sup>th</sup> labour policy of International Labour organisation (ILO)**

The fundamental principles of labour legislation are as follows.

- 1. Principle of social justice**

All the laws shall be framed in such a way that they ensure social justice among the people of society. Laws shall serve as the voice of the weaker section of society. Nobody shall be denied any opportunity to work based on caste, religion, gender or otherwise. The social status of the people shall not be the ground for any discrimination. All citizens are equal before law.

## **2. Principle of Social Equity**

Equity means justice and fairness. Social Equity means to design laws in such a manner that they cater to current social scenarios and to make necessary amendments from time to time to ensure social equity. Laws should be flexible and dynamic to ensure justice to the actual victims and shall not provide any ground for the misuse of laws for self-interests of parties.

## **3. Principle of Social Security**

It is the responsibility of the state to protect and secure every citizen who contributes positively for the growth of the state. However, the state also holds power to punish the elements who disturb industrial peace and harmony by mechanism of laws.

## **4. Principle of National Economy**

Labour laws shall be designed keeping National Economy at centre. All laws shall be directed towards the welfare of the economy. The nature of economy shall direct the nature of laws.

## **5. Principle of International Uniformity**

Although the nature of economy shall direct the nature of laws but the legislation shall have international uniformity with respect to general conditions of work, protection of labour, hours of work etc. ILO acts as an international agency to ensure the same.

Based on these principles all countries are directed to make their labour policies. India's labour policies are based on the Directive principles of State policy as laid down in the constitution.

## **❖ Employee Relations**

### **• Introduction**

Employees are the backbone of all industrial establishments. Human Labour of the organisation working towards a common goal is often referred to as 'Employees.' In today's time, with all resources being the same it is the human resource that determines the success or the failure of any organisation. Just like all other resources, human resources are scarce and are to be utilised optimally to derive efficiency. Thus, it requires a proper scientific framework for the management of human resources within organisation, to manage their relations with each other and with the employers. This practice is often referred to as 'Employee Relations Management.' However, often the term 'Employee relations' and 'Employee relations management' are used interchangeably to mean the organisation's efforts and strategies for the management of relations between employers and employees.

One such most trusted approach is to see employees as the stakeholders in the organisation. Stakeholders are people who have financial or otherwise vested interest in the organisation and who are affected directly or indirectly by the success and the failure of the organisation. When employees are treated as the integral part of the organisation, they feel more valued and contribute like partners with a stake. Employee relations are covered under the broader of 'Industrial relations.' ILO defines Industrial Relations as the domain which deals with relations between the state, employers, and employees or between the organisations themselves.

- **Importance of Employee Relations.**

Organisations invest rigorously in the employee relations programme because they are important for the reasons listed below:

- 1. Interdependent Tasks**

Most tasks in organisation are inter-related and interdependent. Thus, there are teams working towards a common objective. These teams should be managed efficiently for efficiency of output. Employee relations serve as a mechanism to achieve this end.

- 2. Employee Engagement**

An employee who shares cordial relations with employers engages like a partner in the assigned task. This increases the efficiency and overall output of the labour in the organisation.

- 3. Employee motivation**

When employees are happy, they become more productive and motivated to contribute towards the output. Employee relations help avoid any ambiguity related to tasks, position and make employers more accessible for the employees. This positively motivates the employees.

- 4. Reduced Turnover**

An obvious outcome of motivated workforce is the reduced labour turnover and the cost associated with it. Employees who are paid well but are not treated well often leave organisations sooner or later. For organisations to keep functioning smoothly it is important to have right people at right place and in right number. Employee relations help to ensure this with the right approach in practice.

- 5. Growth and Development**

When employees bring their best on the table, organisation as a whole grows and develops. Behind all the profitability, success and wealth stands an employee who made it possible to achieve this with his/her dedicated efforts. Harmonious relations are the key to motivate employees to command loyalty of employees who then work to the best of their capacity for the growth and development of the organisation.

- 6. Reduced Conflicts**

Workplace conflicts are common and inherent to all organisations. Most conflicts are positive and do not require resolution. They resolve on their own and Infact contribute to the better health of the organisation. However, some conflicts tend to bring negative output and it is then when employee relations help resolve the situation. Employee relations help create a workplace where employees do not see their employers as the opposition party but rather see them as partners in work. Overall positive environment helps to build employee morale who is focussed on the work rather than conflicts. Reduced overall conflicts save the costs associated with grievance redressal and contribute to overall growth of the organisation.

## **7. Increased Revenue**

A happy, healthy workforce contributes positively to organisations outputs. The results are felt not just within the organisation but also are felt by end-users like consumers. Employees who are motivated and engaged deliver better consumer satisfaction than the ones who are not.

## **8. Employee loyalty**

Even the best of the incentive programmes fails to gain employee loyalty when employees do not feel happy at their workplaces. A happy, healthy workplace devoid of frequent conflicts is the key to gain employee loyalty. A loyal employee is the greatest resource for the organisation often not reflected by the balance-sheet. Employee relations serve as a mechanism to gain employee loyalty by ensuring that a workplace is welcoming and inviting place to employees and that they feel pleasant and happy to come to work every single day.

### **• Employee Relations**

Employee relations in human resource management refer to the practices and processes designed to maintain positive and productive relationships between employees and the organization. This generally is achieved by fostering open communication, addressing grievances, ensuring fair treatment, and creating a supportive and conducive work environment. The primary goal of employee relations is to build trust and collaboration between employees and management, adding to job satisfaction, employee engagement, and organizational success. HR professionals play a critical role in strengthening these relationships by addressing employee concerns and a culture of mutual trust and respect.

Employee and Labour relations are two related concepts with some important differences. Both concepts involve workplace issues like wages, benefits, or overtime. The difference is largely in the scope of how employers address those issues.

- Employee relations involve individual employees' concerns, such as a new hire's starting salary, a senior employee's eligibility for a raise, or an employee's harassment complaint against a supervisor.
- Labor relations involve large groups of employees, such as company-wide policies regarding raises or harassment investigations. Other issues that affect most or all employees, such as workplace safety policies and practices, may also fall under the labour relations category.

### **❖ Origin and Growth of Labour Relations**

The origin of labour legislation in India can be traced back to the pre-independence era when British colonial authorities enacted various laws to regulate the relationship between employers and workers. Key legislations during this period include the Factories Act of 1881 and the Workmen's Compensation Act of 1923, which addressed issues of working conditions, safety, and compensation. After attaining Independence in 1947, the constitution of India was laid down in 1950. The Directive principles of state policy laid down in the constitution emphasised on the idea of social and economic justice. With the rapid growth of industries in India, particularly after the 1991 economic liberalization, there emerged a pressing need for comprehensive labour laws to address new challenges. The government

introduced several laws to protect workers' rights, including the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, the Employees' State Insurance Act, 1948, and the Payment of Bonus Act, 1965, among others. In recent years, the Indian government has undertaken significant labour law reforms with the aim of promoting ease of doing business while safeguarding workers' interests. The Code on Wages, 2019, consolidated multiple wage-related legislations, while the Industrial Relations Code, 2020, seeks to simplify and streamline industrial dispute resolution processes. Additionally, the Social Security Code, 2020, aims to provide comprehensive social security coverage to workers across various sectors including workers in Gig Economy and unorganised sectors.

Employee relations started gaining significant importance in the last 20 years due to the changes taking place in the business landscape. The changes taking place at the organisation level include rise of white-collar jobs over blue collared ones, weak trade unions, emergence and rise of atypical employment like temporary, part time worker etc. With the beginning of the 21st century, the term 'industrial relation' started to lose its sheen and the term employee relations started gaining prominence in the paradigm of academics.

Employment relationship as an agenda was first discussed during the 85th International Labour Conference of International Labour Organization (ILO). Initially Industrial relations were broadly defined to include the relationships and interactions between employers and employees. Industrial relations covered all aspects of the employment relationship, including human resource management, employee relations, and union management (or labour) relations. Today, the meaning has become more specific and restricted. Industrial relations refer to the study and practice of collective bargaining, trade unionism, and labour management relations, while human resource management is a separate, largely distinct field that deals with non-union employment relationships and the personnel practices and policies of employers. The term Employee Relations is treated as the reinterpretation of the Industrial Relations and/or Labour relations.

#### ❖ Objectives of Labour Relations

Mahatma Gandhi once said “A nation can do without millionaires and capitalists but not without labour.” Labour relations are the foundation stone for the growth of the organisation. The primary objective of labour relations is to bring about good and healthy relations between the two partners in industry labour and management. It is around this objective that other objectives revolve. Kirkland propagates the idea of involving the state in the employee relations to ensure welfare of both (employer and employees). He divides the objectives of labour relation into 4 sub-objectives as follows.

1. To improve the economic conditions of workers.
2. To help state gain control over production and industries for the welfare of society.
3. To nationalise the industries.
4. To vest the proprietorship of industries to workers

#### ❖ Other objectives of employee relation are:

1. To establish industrial democracy where labour gets an opportunity to represent themselves in management.

2. To increase productivity by reducing labour turnover and promoting harmonious relationships.
3. To reduce industrial conflicts by setting right working standards and better working conditions for workers
4. To encourage the State to gain control over loss-making industrial establishments for protecting the livelihoods of workers.

**Keywords:** *Employee relations, Labour law, ILO, Industrial peace.*

### ❖ Exercise

Read the following question and choose the right option from the options given below.

1. The first country to initiate labour laws was
  - a. The Great Britain (UK)
  - b. China
  - c. India
  - d. USA
2. The first labour law to be enacted in India post -independence was
  - a. The Factories Act
  - b. The Maternity Act
  - c. The Workers compensation Act
  - d. The Minimum wages Act
3. Organisational efforts to strengthen relationship between Employers and employees are referred to as
  - a. Employee relationship management
  - b. Human Resource Management
  - c. Industrial peace
  - d. Labour laws
4. Which international agency was created for supervising labour legislation of member countries as per treaty of Versailles
  - a. ILO
  - b. UNICEF
  - c. Child labour Committee
  - d. Ministry of Labour and Employment.

### ❖ Answer the following questions:

1. Discuss the importance of Labour Relation.
2. Draw out the distinction among the terms- Labour relation, Employee Relation, and Industrial relation.
3. Discuss the Objectives of Employee Relation and Labour Legislation
4. Discuss and compare the role of Labour legislation and Employee relation in reducing industrial conflicts.

## **UNIT-2 FACTORIES ACT, 1948 AND EMPLOYMENT EXCHANGES ACT-1959**

### **2.1 Introduction**

### **2.2 Objective of the Act**

### **2.3 Scope and Applicability of the Act**

### **2.4 Definitions**

### **2.5 Approval, Licencing and Registration of Factories**

### **2.6 The Inspecting Staff**

### **2.7 Provisions relating to Health**

### **2.8 Provisions relating to Safety**

### **2.9 Provisions Relating to Hazardous Processes**

### **2.10 Welfare of Workers**

### **2.11 Working Hours of Workers**

### **2.12 Employment of Young Persons**

### **2.13 Annual Leave with Wages**

### **2.14 Conclusion**

### **2.15 The Employment Exchange Act, 1969**

### **2.16 The object of Employment Exchange Act**

### **2.17 Conclusion**

### **2.18 Keywords**

### **❖ Exercise**

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### **2.1 Introduction**

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With the establishment of a Cotton Mills in 1851, and a Jute Mill in Bengal in 1855, modern factory system began in India. Women and children were employed. Driven by lust of profits, there were several cases of exploitation and long hours of work with little recreation. In 1881, the Indian Factories Act was passed which gave protection to the employees, especially to the children. So, the first Factories Act in India was passed in 1881. It was enacted to protect children and to provide for some health and safety measures to factory workers. The Factory Commission was appointed in 1890 by the Government of India. So, the first Factories Act was followed by new Acts in 1891, 1911, 1922 and 1934 with amendments. The Act of 1934 was passed to implement the recommendations of the Royal Commission on Labour in India and the conventions of the ILO.

The Factories Act, 1948 came into force on the 1<sup>st</sup> day of April, 1949 to overcome loopholes of the Factories Act, 1934. The Act was amended periodically

till 1976. By this time a very large number of chemical factories had been set up In India involving the manufacture and handling of hazardous and toxic chemicals. This brought in more problems of safety and health. By the time the Government could assess the possible impact of the problem and foresee the possibilities of major disasters, the world's worst tragedy- The Bhopal gas tragedy had occurred wiping out thousands of innocents, ignorant, lives and rendering many more with permanent physical disabilities. In 1987, Factories (Amendment) Act, 1987 was passed, a memorial to the victims of Bhopal.

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## 2.2 The Objective of the Act

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The Factories Act, 1948 extends to whole of India. The objective of this Act is to ensure health, safety, welfare, and other benefits to workers working in manufacturing establishments. The Act ensures to protect human beings from being subject to unduly long hours of bodily strain or manual labour. It also seeks to provide that employees should work in healthy and sanitary conditions so far as the manufacturing process will allow and that precautions should be taken for their safety and for the prevention of accidents.

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## 2.3 The Scope and Applicability of the Act

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The Act applies to all factories including factories belonging to Central or any State Government unless otherwise excluded. The benefits of this Act are available to persons who are employed in the factory and be covered within the meaning of the term "worker" as defined in the Act. Accordingly, the term Factory as defined under the Act means **any premises including the precincts thereof—**

- 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
- whereon 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-

In case, if there is no manufacturing taking place in any premise then we cannot consider such a premise as 'factory' even if the Electronic Processing Unit or Computer Unit is installed in such premise.

### **Section 2 (1) of the Factories Act, 1,948 defines a "worker" to mean:**

A person employed, directly or through any agency (including a contractor) with or without knowledge of 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.

It is important to note that the term ‘workers’ include contract labourers but the term ‘Factory’ does not include an establishment wherein The Mines Act is already applicable.

## 2.4 Definitions

Section 2 of the Act deals with definitions. The most important of them are discussed below in alphabetical order.

Serial Number	Term	Meaning	Section
1.	Adult	An ‘Adult’ means a person who has completed his eighteenth year of age.	Sec.2(a)
2.	Adolescent	An “Adolescent” means a person, who completes his fifteenth year of age but not his eighteenth year. Hence, he is someone who crosses the age of a child but is not an adult yet.	Sec. 2(b)
3.	Child	A ‘child’ means a person who has not completed his 15th year of age.	Sec. 2(c)
4.	Competent Person	A “competent person”, in relation to any provision of this Act, means a person or an institution recognized as such by the Chief Inspector for the purposes of carrying out tests, examinations and inspections required to be done in a factory	Sec. 2(ca)
5.	Calendar Year	‘Calendar Year’ means the period of 12 months beginning with the first day of January in any year. Hence, it is different from the Financial Year (starts from 1st April).	Sec. 2 (bb)
6.	Day	It means a period of 24 hours beginning at midnight.	Sec. 2 (e)
7.	Week	It means a period of seven days beginning at midnight on Saturday night or such other night (which CIF certifies).	Sec. 2(f)
8.	Transmission Machinery	It means any shaft, wheel, drum, pulley, a system of pulleys, coupling, clutch, driving belt or other	Sec. 2(i)

		appliance or device by which the motion of a prime mover reaches any machinery or appliance	
9.	Worker	“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 the 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.	Sec. 2 (l)
10.	Shift and Relay	Where work of the same kind is carried out by 2 or more sets of workers working during different periods of the day, each of such sets is called a ‘relay’ and each of such periods is called a ‘shift’.	Sec. 2 (r)
11.	Manufacturing process	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	Sec. 2(k)

		(iv) Composing types for printing, printing by letterpress, lithography, photogravure, other similar process, or bookbinding; (v) Constructing, reconstructing, repairing, refitting, finishing, or breaking up ships or vessels; (Inserted by the Factories (Amendment) Act, 1976, w.e.f. 26-10-1976.) (vi) Preserving or storing any article in cold storage	
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Section 2 (n) of the Act defines "occupier" of a factory to mean

The person who has ultimate control over the affairs of the factory: Provided that

- a) in the case of a farm or other association of individuals, any one of the individual partners or members thereof shall be deemed to be the occupier.
- b) in the case of a company, any one of the directors shall be deemed to be the occupier.
- c) in the case of a factory owned or controlled by the Central Government or any State Government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government, or the local authority, as the case may, shall be deemed to be the occupier.

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

- a) The owner of the dock shall be deemed to be the occupier for the purposes of important matter laid down in the Act.
- b) The owner of the ship or his agent or master or other officer-in-charge of the ship or any person who contracts with such owner, agent or master or other officer-in charge to carry out the repair or maintenance work shall be deemed to be the occupier for the purpose of any matter provided for by or under Section 13, Section 14, Section 16 or Section 17 or Chapter IV (except Section 27) or Section 43, Section 44 or Section 45, Chapter VI, Chapter VII, Chapter VIII or Chapter IX or Section 108, Section 109 or Section 110, in relation to
  - (a) The workers employed directly by him, or by or through any agency; and
  - (b) The machinery, plant, or premises in use for the purpose of carrying out such repair or maintenance work by such owner, agent, master, or other Officer in charge or the assigned person.

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## 2.5 Approval, licencing, and registration of factory

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The responsibility for getting the premises approved, when the factory is to be established, lies on the occupier.

Under Section 6, the State Government have been vested with the powers to frame rules which are to be complied with while obtaining the licence for the establishment of the Factory.

The State Governments are also empowered to exempt any factory or any class of factories from all or any of the provisions of the Act (except section 67) for a specified period on the conditions notified in case of public emergency, which means grave emergency whereby the security of India or any part thereof is threatened, whether by war or external aggression or internal disturbance. Such a notification can be made for 3 months at a time.

### • Procedure for Approval, Licensing and Registration of Factories

The factory is to be approved and registered after obtaining a licence by the occupier in accordance with the rules framed by the State Government in this behalf.

The occupier is required to submit full building plans along with necessary particulars of specifications according to which the building is to be approved in accordance with the rules to the state Government.

The registration, obtaining of licence or renewal of licence is to be done by the occupier in accordance with the rules prescribed in the Act by paying the prescribed fees. The permission relating to site on which the factory is proposed to be constructed or extension to be executed in the existing factory is to be given within 3 months by the prescribed authority to whom, the request is made.

If no reply is received within the aforesaid period, the permission is presumed. In case permission is refused then the applicant may appeal to the State Government.

The request for permission can be made to the Central Government within 30 days if the permission is refused by the State Government.

No license or renewal of license shall be granted unless the occupier gives at least 15 days' notice in writing to the Chief Inspector of factories before he proposes to occupy or use any premises as factory.

### **The notice shall state the full particulars of the factory, namely:**

- i. The name and situation of the factory.
- ii. The name and address of the occupier.
- iii. The name and address of the owner of the premises or building.
- iv. The nature of manufacturing process.
- v. The total rated horsepower installed or to be installed in the factory, which shall not include the rated horse power of any separate standby plant;
- vi. The name of manager of the factory for the purpose of this Act;
- vii. The number of workers likely to be employed in the factory.

viii. such other particulars as may be prescribed under the rules. [Section 7 (1)]

Any change in the appointment of a manager or the factory is to be intimated within 7 days by the occupier to the Chief Inspector, [Section 7 (4)].

During the time no manager functions in the factory, the occupier is deemed as manager for the purpose of the Act. Non-compliance with the provisions of Section 6 and 7 is an offence for which the occupier can be punished.

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## **2.6 The Inspecting Staff**

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For the enforcement of the provisions of the Act the State Government is empowered to appoint Inspectors having prescribed qualifications. This may be done by notification. They may be assigned such local limit as the State Government may think fit.

These inspecting staff can be (i) Chief Inspector (ii) Additional Chief Inspectors, (iii) Joint Chief Inspectors (iv) Deputy Chief inspectors (v) Inspectors and Additional Inspectors.

Every Chief Inspector, Additional Chief Inspector, Joint Chief Inspector, Deputy Chief Inspector, Inspector, and every other officer appointed shall be deemed to be a public servant within meaning of the Indian Penal Code, (1860), and shall be officially subordinate to such authority as the State Government may specify in this behalf.

### **Powers of Inspector**

- (a) He may enter any premises which is used or which he 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 public authority or with an expert as he thinks fit.
- (b) Makes examination of the premises, plant, machinery, article, or substance.
- (c) Inquires into any accident or dangerous occurrence, whether resulting in bodily injury, disability or not, and take on the spot or otherwise statements of any person which he may consider necessary for such inquiry.
- (d) Requires the production of any prescribed register or any other document relating to the factory.
- (e) Seizes, or takes copies of a 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) Directs the occupier that any premises or any part thereof or anything lying therein shall be left undisturbed (whether generally or in particular aspects) for so long as is necessary for the purpose of any examination under clause M.
- (g) Takes measurements and photographs and make such recordings as he considers it necessary for the purpose of any examination under clause (b), taking with him any necessary instrument or equipment.

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

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## **2.7 Provisions relating to Health**

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Section 11 of the Act provides for general cleanliness of the factory.

It lays down that dust, fumes and refuse should be removed daily; floors, stair-cases and passages should be cleaned regularly by sweeping and other effective means while washing of interior walls and roofs should take place at least once in 14 months and where these are painted with washable water paint, be repainted after every three years and -where oil paint is used at least once in five years.

Section 12 of the Act makes it obligatory on the owner of every factory to make effective arrangements for the treatment of wastes and effluents due to the manufacturing process carried on therein,

Section 14 of the Act deals with measures relating to adequate ventilation in the factory and keeping workrooms free from dust and fumes.

To eliminate overcrowding, the Factories Act, 1948 prescribes that no room of any factory shall be overcrowded to the extent it is injurious to the health of the workers.

Section 17 (1) provides that in every part of the factory, where workers are working or passing, there shall be provision and maintenance of sufficient and suitable lighting, natural, artificial or both.

Section 19 provides that in every factory there shall be provision and maintenance of, separate arrangement for toilets for male and female workers at convenient places. Which should be adequately lighted, ventilated, and maintained in a clean sanitary condition.

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## **2.8 Provisions relating to safety**

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Section 21 of the Act deals with proper fencing of the machinery to ensure safety of workers.

Section 22 of the Act requires that all parts of the machinery shall be inspected from time to time. Such examination or operation shall be made or carried out only by a specially trained Adult male worker wearing tight-fitting clothing (which shall be supplied by the occupier).

Section 23 prohibits the employment of a young person on dangerous machine unless he has been fully instructed as to the dangers arising from machine and the precautions to be observed and (i) has received sufficient training in work at the

machine, or (ii) is under adequate supervision by a person who has a thorough knowledge and experience of the machine.

The Factories Act, 1948 prohibits the employment of women and children in any part of the factory for pressing cotton where the cotton opener is at work.

Section 28 requires that hoists and lifts must be of good mechanical construction, sound material and adequate strength. They should not only be properly maintained but also thoroughly examined at least twice a year by competent persons.

Section 38 of the Act requires that in every factory all practical measures shall be taken to prevent outbreak of fire and its spread, both internally and externally, and to provide and maintain (i) safe means of escape for all persons in the event of fire, and (ii) the necessary equipment and facilities for extinguishing fire.

Section 40 (B) of the Act requires the appointment of Safety Officers in factories employing 1,000 or more workers or where any manufacturing process or operation is carried on, which process or operation involves any risk of bodily injury, poisoning or disease, or any other hazard to health, to the persons employed in the factory.

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## **2.9 Provisions relating to Hazardous Process**

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Section 41 of the Act makes it mandatory of the occupier to disclose all information relating to hazardous processes dangers, health hazards and the measures to overcome them arising from the exposure to or handling of the material to: (i) Workers employed in the factory (ii) the Chief Inspector, (iii) the local authority within whose jurisdiction the factory is situated and (iv) public in the vicinity.

Every occupier with the approval of the Chief Inspector, shall draw up an on-site emergency plan and detailed disaster control measures for his factory and make them known to the workers employed therein and to the public living in the vicinity of the factory.

In case the occupier fails to comply with above mentioned provisions his licence is liable to be cancelled, and he is to draw upon the penalty as prescribed by the Act.

The Act also suggests establishment of a safety committee within the premises.

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## **2.11 Provisions relating to welfare of the workers**

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Section 42 of the Act provides that in every factory adequate and suitable separate facilities for washing conveniently should be provided and maintained for the use of both male and female workers. The above facilities provided for the use of female workers, should be adequately screened to protect privacy of female workers.

The occupier of factory is required to provide the facility of first aid boxes to be used of by the workers in an emergency. These first aid boxes shall be easily accessible to workers.

The Act provides that where 250 workers or more are ordinarily employed, canteen facilities are required to be provided by the occupier.

In every factory wherein more than thirty women workers are employed rooms of adequate size, well lighted and ventilated, shall be maintained in clean and sanitary condition for the use by women and the children of women workers.

The Act provides that in every factory where more than 500 workers are ordinarily employed the occupier of a factory appoints such number of welfare officers as may be prescribed by the State Government in this respect.

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### **2.13 Provisions relating to working hours**

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Section 51 and 54 contain general provisions regarding weekly and daily working hours. According to Section 51 no adult worker shall be required or allowed to work in a factory for more than 48 hours in a week.

As regards daily working hours no adult worker shall be required or allowed to work in a factory for more than 9 hours in a day.

In case a worker of a factory required to work more than the maximum hours of work prescribed under Section 51 and Section 54 is to be paid extra wages for overtime work done by him. A worker shall be paid at twice the ordinary rate of wages for the extra hours of work done by him.

Section 52 discusses weekly holiday to the workers of a factory. Accordingly, an adult worker shall not be allowed or required to work in a factory on the first day of the week, i.e. Sunday. But if it becomes necessary to make Sunday a working day, a substituted holiday is made compulsory.

No woman shall be required or allowed to work in any factory except between the hours of 6 a.m. and 7 p.m.; except when the state Govt. vary the limits laid down. There is absolute prohibition on employment of woman between the hours of 10 p.m. and 5 a.m. in a factory.

The Act regulates the working hours for children above age of 14 years eligible for employment in the factory. They cannot be employed for more than 4-1/2 hours in a day.

Every adult worker working in a factory shall be allowed rest of at least half an hour during working hours after working for maximum five hours at a stretch.

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### **2.14 Employment of Young persons**

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Section 67 of the Act puts absolute restriction on employing children below 14 years of age. With respect to adolescents, i.e., above the age of 15 years but below 18 years, section 68 states that he cannot be employed in a factory unless he

as well as the manager of a factory are in possession of certificates of fitness granted by the Certifying Surgeon.

An adolescent who has been granted certificate of fitness to work as an adult in a factory by the Certifying Surgeon is to be treated as an adult for the purposes of working hours and annual leave with wages.

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### **2.15 Annual Leave with wages**

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For calculating Annual wages, the period in consideration shall be the previous calendar year during which workers have worked in a factory. Only those workers who have worked for at-least 240 days during the previous calendar year is entitled to Annual leaves.

Accordingly in the case of an adult, one day for every twenty days of work performed by him during the previous calendar year and ii) In the case of child one day for every fifteen days of work performed by him during the previous calendar year shall be allowed as a leave.

If a worker has not availed of portion of his leave in one calendar year, such remaining portion of leave shall be carried over and added to the- leave to be allowed to him in the succeeding calendar year (not more than 30 days in case of adult and more than 40 in case of a child).

Section 82 of the Act states that any sum required to be paid by an employer under the above provisions but not paid by him to the worker concerned, can be recovered by the worker under the provisions of Payment of Wages Act, 1936.

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### **2.16 Conclusion**

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The Factories Act, 1948 is a breakthrough legislation that protects the rights of workers and ensures their welfare. The Act has helped to combat exploitation of workers and ensures distribution of social justice to weaker section of society from the time of its enactment till date. The Acts provision must be well understood by workers and their representatives to make employers aware and accountable of their legal responsibilities.

### **The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959**

The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 lists down various rules for mandatory notification of vacancies to the Employment Exchange. The Act came into effect on 1<sup>st</sup> day of May, 1960. Accordingly, the employer in every establishment in public sector in that State or area shall, before filling up any vacancy in any employment in that establishment, notify that vacancy to such employment exchanges as may be prescribed by this act.

Following are the various definitions as discussed in the Act.

1. "Act" means the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 (31 of 1959).
2. "Central Employment Exchange" means any Employment Exchange established by the Government of India, Ministry of Labour, and Employment.
3. "Director" means the officer-in-charge of the Directorate administering Employment Exchanges in a State or a Union Territory.
4. "Form" means a form appended to these Rules.
5. "Local Employment Exchange" means —
  - a) in the whole of India except the Union Territory of Chandigarh that Employment Exchange (other than the Central Employment Exchange) notified in the official Gazette by the State Government or the Administration of the Union Territory as having jurisdiction over the area in which the establishments concerned are situated or over specified classes or categories of establishments concerned or vacancies; and
  - b) in the Union Territory of Chandigarh that Employment Exchange established either by the Union Territory Administration of Chandigarh or by the State Government of Punjab or Haryana notified in that State's respective Official Gazette as having jurisdiction over specified classes or categories of establishments or vacancies, provided that the employment exchanges established by the State Government of Punjab or Haryana shall not have jurisdiction over—
    - The Public Sector offices/establishments other than those belonging to the respective States; and
    - Private Sector establishments.

Employment Exchanges to which vacancies are to be notified as follows.

- (a) vacancies in posts of a technical and scientific nature carrying a basic pay of Rs. 1,400 or more per month occurring in establishments in respect of which the Central Government is the appropriate Government under the Act, and
- (b) vacancies which an employer may desire to be circulated to the Employment Exchanges outside the State or Union Territory in which the establishment is situated,
- (c) Vacancies other than those specified in sub-rule (a) shall be notified to the local Employment Exchange concerned.

Act not to apply in relation to certain vacancies —

- (a) in any employment in agriculture (including horticulture) in any establishment in private sector other than employment as agricultural or farm machinery operatives;
- (b) in any employment in domestic service;
- (c) in any employment the total duration of which is less than three months;
- (d) in any employment to do unskilled office work;

- (e) in any employment connected with the staff of Parliament.

Unless the Central Government otherwise directs by notification in the Official Gazette in this behalf, this Act shall not also apply in relation to— (a) vacancies which are proposed to be filled through promotion or by absorption of surplus staff of any branch or department of the same establishment or on the result of any examination conducted or interview held by, or on the recommendation of, any independent agency, such as the Union or a State Public Service Commission and the like; (b) vacancies in an employment which carries a remuneration of less than sixty rupees in a month.

After the commencement of this Act in any State or area thereof, the employer in every establishment in public sector in that State or area shall furnish such information or return as may be prescribed in relation to vacancies that have occurred or are about to occur in that establishment, to such employment exchanges as may be prescribed by this act.

If any employer fails to notify to the employment exchanges prescribed for the purpose of any vacancy, he shall be punishable for the first offence with fine which may extend to five hundred rupees and for every subsequent offence with fine which may extend to one thousand rupees.

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## **2.17 Object of the Employment Exchange Act**

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The Act serves to accomplish the following objectives:

### **1. Facilitating Employment:**

The foremost aim of this legislation is to furnish a dynamic platform for job seekers, a place where they can securely register their qualifications, competencies, and preferences. This fundamental objective helps to empower job seekers and enable them to secure gainful employment, thus not only alleviating their personal circumstances but also contributing to the broader socio-economic well-being.

### **2. Efficient Utilization of Workforce:**

A second critical objective is the efficient and judicious utilization of the available workforce. The Act aims to align the skills and credentials of job searchers with the current market need, with a clear emphasis on eradicating unemployment and underemployment. In this way, it seeks to guarantee that labour force utilisation is optimised, hence optimising productivity and economic development and minimising the wasting of human resources that may arise from underutilization.

### **3. Skill Development:**

The Act adopts a proactive approach in promoting skill development and training programmes. By assessing and acknowledging the existing skill sets of job seekers, the legislation prompts them to embark on a journey of self-improvement. This route results in long-term flexibility in a labour market.

#### **4. Information Gathering and Sharing about the Labour Market:**

The Employment Exchange Act of 1959's, last but no less important, goal is to gather and distribute labour market data in an organised manner. Employment Exchanges are entrusted with the responsibility of amassing a repository of data regarding employment trends, skills in demand, job seekers' demographics, and regional job disparities. It provides the essential insights needed for crafting effective labour policies, identifying emerging job opportunities, and addressing the challenges associated with employment and underemployment.

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#### **2.17 Conclusion**

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The Employment Exchange Act, 1959, bears the mantle of fostering an equitable and efficient employment landscape in India. Its objectives underscore the legislation's enduring relevance in addressing the dynamic challenges posed by the contemporary job market while heralding a brighter, more inclusive future for job seekers and employers.

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#### **2.18 Keywords**

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Factory, workers, vacancies, employment, employment exchange, welfare, health, safety.

#### **❖ Exercise**

1. Define 'Factory,' 'Manufacturing process,' and 'worker' under the Factories Act, 1948.
2. Discuss the objectives of the Employment Exchange Act, 1959.
3. Discuss the provisions of the Annual leaves under the Factories Act, 1948.
4. Discuss the exceptions of vacancies under the Employment Exchange Act, 1959.
5. Can children be employed in factories? Discuss with respect to the provisions relating to employment of children, women, and adolescents in the factory.
6. Discuss the various bodies under the Factories Act for the smooth functioning of the provisions under the Act.

## **UNIT-3 TRADE UNIONS ACT, 1926 AND LABOUR WELFARE FUND ACT, 1948**

### **TRADE UNIONS ACT, 1926**

#### **3.1 Introduction- Trade unions act, 1926**

#### **3.2 Key Provisions of the Trade Union Act, 1926**

#### **3.3 Object of the Trade Unions Act**

#### **3.4 Sections of Trade Unions Act**

#### **3.5 Registration of Trade Union**

#### **3.6 Forms of Trade Union**

#### **3.7 Functions of Trade Union**

#### **3.8 Classifications of Trade Union**

### **LABOUR WELFARE FUND ACT, 1948**

#### **3.9 Introduction**

#### **3.10 Purpose**

#### **3.11 Key Provisions**

#### **3.12 Coverage**

#### **3.13 Exemptions**

#### **3.14 LWF Board**

#### **3.15 Functions**

#### **3.16 Benefits**

#### **3.17 How to Claim Funding of LWF**

#### **3.18 Compliance with LWF Regulations**

#### **3.19 Registration of LWF**

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#### **3.1 Introduction- Trade Unions act, 1926**

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According to the **Trade Unions Act, 1926**, 'Trade Union' means "any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more trade unions".

The origin of the passing of Trade Union Act in India was the historic Buckingham Mills Case of 1920 in which the Madras High Court granted an interim injunction against the Strike Committee of Madras Labour Union forbidding them

to induce certain workers to break their contract of employment by refusing to return to work. The Trade Union Act, 1926, is an important piece of legislation in India that regulates the formation, registration, and functioning of trade unions.

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### **3.2 Key Provisions of the Trade Union Act, 1926**

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- **Definition of a Trade Union**

The Act defines a trade union as any combination of workmen or employers, formed for the purpose of regulating relations between workmen and employers, or for imposing restrictive conditions on the conduct of any trade or business. Trade Unions in India are registered and file annual returns under the Trade Union Act (1926). Its statistics are collected annually by the Labour Bureau of the Ministry of Labour, Government of India.

- **Registration of Trade Unions**

The Act provides for the registration of trade unions with the appropriate authorities, which includes submitting an application, a copy of the rules of the union, and a list of office bearers. Once registered, a trade union is a legal entity and can enter into contracts, hold property, and sue or be sued in court.

- **Rights and Privileges of Registered Trade Unions**

The Act sets out the rights and privileges of registered trade unions, which includes the right to bargain collectively with employers, the right to take legal action on behalf of their members, and the right to participate in the management of certain industries.

- **Legal Protections for Trade Union Members**

The Act provides legal protections for trade union members, including protections against discrimination, unfair labour practices, and victimization by employers. The Trade Union Act, 1926, is a crucial piece of legislation in India that protects the rights of workers by regulating the formation, registration, and functioning of trade unions. Understanding the Act is essential for both employers and employees to ensure healthy labour relations in the workplace.

Trade Union leaders found that they were liable to prosecution and imprisonment for bonafide union activities and it was felt that some legislation for the protection of trade unionism was necessary.

In March, 1921, Mr. N. M. Joshi, the then General Secretary of the all India Trade Union Congress successfully moved a resolution in the Central Legislative Assembly that Government should introduce legislation for registration and protection of trade unions. But opposition from employers to adoption of such measure was so great that it was only in 1926 that Trade Union Act was passed.

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### **3.3 Object of Trade Unions Act**

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The object of passing the Act was to make necessary provisions in regard to the registration of Trade Unions and to define the law relating to registered Trade Unions.

The Royal Commission on Labour in India observed that the object is to give trade unions the necessary protection from civil suits and criminal laws relating to conspiracy in order to enable them to carry on their legitimate activities. The Act extends to the whole of India including the state of Jammu and Kashmir. It came into force on the first day of June, 1927.

- **Trade Dispute**

A trade dispute means any dispute: between employers and workmen, between workmen and workmen, between employers and employers. Any such dispute as mentioned to be a Trade Dispute must also be associated with the employment, non-employment, the terms of employment, the conditions of labour of any person.

The definition of Trade Dispute in this Act is almost similar to the definition of Industrial Dispute given in the Industrial Disputes Act, 1947. In Trade Dispute, it is necessary that there must be a demand from one party and refusal to accept those demands by other party.

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### **3.4 Sections of the Trade Union**

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The term trade union can be expressed both in an ordinary sense and in broad sense. In ordinary sense it is a combination of workmen and in a broader sense it includes combination of employers and federation of two or more such combinations. The trade union means:

- Any combination whether temporary or permanent formed for the purpose of regarding relations between workmen and employers; workmen and workmen; employers and employers. These combinations put restrictions on the conduct of any trade or business but certain agreements given below have been excluded from the scope of the term trade union.
- Agreement between partners in a business: Agreement in consideration of the sale of the goodwill of a business or of instruction in any profession, trade, or handicraft.

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### **3.5 Registration of Trade Union**

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- i. Appointment of Registrars (Section 3)
- ii. Mode of registration of trade union
- iii. Application for Registration (Section 5)
- iv. Rules for Registration of Trade Union (Section 6)
- v. Registration
- vi. Certificate of Registration (Section 9)
- vii. Advantages of Registration
- viii. Cancellation of Registration (Section 10)
- ix. Appeal (Section 11)
- x. Body Corporate (Section 13)

- xi. The Objects on which General Funds may be spent (Section 15)
- xii. Penalties and Procedure

### **i. Appointment of Registrars**

As regards registration of a trade union, the Act empowers the appropriate Government to appoint a person to be the Registrar of Trade Union for each state. The appropriate Government may appoint as many additional and deputy registrar's trade unions as it think fit.

They shall work under the superintendence and direction of the Registrar. The appropriate Government shall specify and define the local limits within which any additional and Deputy Registrar shall exercise and discharge his powers and functions.

### **ii. Mode of registration of trade union**

The registration of a trade union can be made under this Section 4 of the Indian Trade Unions Act, 1926 Act, which says that any seven or more members of a trade union may by subscribing by their names to the rules of trade union and by otherwise complying with the provision of this Act with respect to registration, apply for registration of the trade union Trade Union Legislation under this Act.

The section also provides that in case members applying for registration disassociate themselves from the application, or cease to be members of the union, after the date of application, but before the registration of the union and their number does not exceed half of the total number of the persons applying, the application shall not be deemed to be invalid.

### **iii. Application for Registration**

For registration of a trade union, seven or more members of the union can submit their application in the prescribed form to the Registrar of trade unions.

The application shall be accompanied by a copy of the 'rules of the trade union' and a statement giving the following particulars:

- Names, occupations and addresses of the members making the application;
- The name of the trade union and the address of its head office;
- The titles, names, ages, addresses and occupations of the office bearers of the trade union as per the format given in the Trade Unions Act 1926.

Every application for registration of a Trade Union shall be made to Registrar. It shall be accompanied by a copy of the rules containing matters as given in Section 6. It also contains a statement of the following particulars.

- The names, occupations and addresses of members making the application
- The name of the Trade Union and the address of its head office; and
- The titles, names, ages, addresses and occupations of the office-bearers of the Trade Union

Where a Trade Union has been in existence for more than one year before its registration, a general statement of the assets and liabilities of the Trade Union in the prescribed form must be submitted along with the application.

#### **iv. Registration**

The Section 8 of the Indian Trade Unions Act, 1926, prescribes a duty on the Registrar to register the trade union if all the requirements of the Act with regard to registration have been complied with. The Registrar will, in such a case enter the particulars relating to the trade union in a register maintained in the prescribed form. The Registrar has the powers to examine whether the Union is to be registered or not and after fulfilling the conditions prescribed in the Act and the Registrar will have to make the registration of the trade union.

Where that is a dispute as to who are elected office bearers of trade union, it is not within the jurisdiction of the Trade Union, to determine which of the rival group of office bearers the real one is. In the absence of any provision in the Act such dispute has to be resolved in a Civil Court.

#### **v. Certificate of Registration**

The Registrar, on registering a Trade Union, shall issue a certificate of registration which shall be conclusive evidence that the Trade Union has been duly registered under the Act. It is obligatory on the part of the Registrar to register a Trade Union provided the provisions of the Act are complied with. He is not entitled to question whether the Union is lawful or unlawful.

#### **vi. Advantages of Registration**

Although it is not legally necessary for a Union to be registered, registration does provide it with certain advantages. Some of the advantages gained by registration as given in Section 13 are as under:

- A Trade Union becomes a body corporate by name under which it is registered and it a legal entity distinct from its members of which it is composed.
- It gives perpetual succession and common seal.
- It can acquire and hold both movable and immovable property.
- It can enter into a contract.
- It can sue and be sued in its registered name.

#### **vii. Cancellation of Registration**

Power to withdraw or cancel registration of a Trade Union is given to the Registrar. The Registrar can exercise the power in the following case, namely:

- On the application of the Trade Union for such a course.
- Where the certificate of registration has been obtained by fraud or mistake.
- Where the Trade Union ceased to exist.

- Where the Trade Union has, willfully and after notice from the Registrar, allowed any rule to continue in force which is inconsistent with the provision of this Act.
- Where the Trade Union has, willfully and after notice from the registrar, violated any provisions of this Act.
- Where the primary objects of the Union are no longer statutory objects Where the Union desires to have its certificate of registration withdrawn or cancelled, the Registrar on receiving such application, must, before granting the application satisfy himself that the withdrawal or cancellation was approved by a general meeting of the Trade Union or if it was not so approved, it had the approval of the majority of the members of the Trade Union.

The Registrar is not competent to cancel registration of a Trade Union without giving requisite notice and giving an opportunity to the Trade Union to show cause against the proposed action.

### **viii. Appeal**

Section 11 of the Act gives a limited right of appeal from the decisions of the Registrar. Any person who is aggrieved by the refusal of the Registrar to register a Trade Union or the withdrawal or cancellation of certificate of registration is given the right of appeal. The appeal must be within 60 days of the date of which Registrar passed the order against which appeal is made.

### **ix. Body Corporate**

Every registered Trade Union is a body corporate by the name under which it is registered. A registered Trade Union is an artificial person in the eyes of law capable of enjoying rights like a natural person. It has a perpetual succession and a common seal. It has the right to acquire and hold both movable and immovable property. It can enter a contract and can sue and be sued in its registered name. The registered trade unions (workers & employers) are required to submit annual statutory returns to the Registrar regarding their membership, general funds, sources of income and items of expenditure and details of their assets and liabilities, which in turn submits a consolidated return of their state in the prescribed proforma to Labour Bureau, Ministry of Labour Bureau, Ministry of Labour and employment.

### **x. The Objects on which General Funds may be spent**

- Salaries, allowances, and expenses to office bearers
- Expenses for administration and audit of the accounts of funds of the union
- Towards Prosecution or defense of any legal proceeding to which the union or its member is a party
- The conduct of trade disputes on behalf of the union or its members
- Compensation for the members at the time of dispute.

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## **3.6 Forms of Trade Unions Act**

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There are three forms of trade unions: -

- 1) Classical: A trade union's main objective is to collectively safeguard the interests of its members in a given socio-economic-political system. Trade

unions are the realistic expressions of the needs, aspirations and wishes of the working class.

- 2) Neo-classical: It goes beyond the classical objectives and attempts to improve other wider issues like tax reliefs, raising saving rates, etc.
- 3) Revolutionary change in the system: Establishing the rule of working class even through revolutionary means such as violence, use of force, etc.

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### 3.7 Functions of trade unions

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- 1) **Militant or Protective or Intra-mutual functions:** These functions include defending the workers' interests, i.e., hike in wages, providing more benefits, job security, etc., through the means of collective bargaining and direct action such as strikes, gheraos, etc.
- 2) **Fraternal or extramural functions:** These functions include ensuring the financial and non-financial assistance available to workers during the periods of strikes and lock-outs, extension of medical facilities during slackness and casualties, provision of education, recreation, recreational and housing facilities, provision of social and religious benefits, etc.
- 3) **Political functions:** These functions include affiliating the union to a political party, assisting the political party in enrolling members, amassing donations, seeking the help of political parties during the periods of strikes and lock-outs.
- 4) **Social functions:** These functions include getting involved in social service activities, discharging social responsibilities through various sections of the society like educating the customers etc.

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### 3.8 Classifications of trade unions

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#### A. Classification based on ideology

- **Revolutionary Unions:** They believe in destruction of existing social/economic order and creation of a new one. They want a change in power and Authority and use of force - Left Unions.
- **Reformist or Welfare Unions:** These work for changes and reforms within the existing socio-political framework of the society like a European Model.
- **Uplift Unions:** They believe that scope of extensive reforms well beyond the area of working condition, i.e., change in taxation system, elimination of poverty, etc.

#### B. Classification Based on Trade

- **Craft Unions:** Most of the unions have memberships and authorities based on the trades they represent. The craft unions are very narrow in terms of their membership, which represents only members certified in a given craft or trade, such as pipe fitting, carpentry and clerical work. Although quite common in the Western world, craft unions are not common in countries like India and Sri Lanka.

- **General Unions:** At the other extreme, in terms of the range of workers represented in the general union, which has members drawn from all trades. Most unions in India and Sri Lanka are in this category.
- **Blue-Collar/White Collar Unions:** Another common demarcation of unions, based on trades or crafts, is so-called blue-collar workers and white-collar workers. Unions which are representing workers employed on the production floor or outdoor trades such as in construction work, are called blue-collar unions. Contrary to it, those employees in shops and offices and who are not in management grades and perform clerical and similar functions are called white-collar workers.
- **Industrial Unions:** In addition, trade unions may be categorised on the basis of the industries in which they are employed. Examples of these are workers engaged in agriculture or forestry: hence, agricultural labour unions or forest workers' unions.

### C. Classification Based on Agreement

Another basis on which labour agreements are sometimes identified, is the type of agreement involved, based on the degree to which membership in the union is a condition of employment.

- **Closed Shop:** Where management and union agree that the union would have solitary responsibility and authority for the recruitment of workers, it is called a Closed Shop agreement. The worker joins the union to become an employee of the shop. According to Taft-Hartley Act of 1947 closed shop agreements are banned in USA, although they still exist in the construction and printing trades. Sometimes, the closed shop is also called the 'Hiring Hall.'
- **Union Shop:** If there is an agreement that all newly recruited workers must join the union within a fixed period after employment such a union is called a union shop. **Preferential Shop:** When a union member is preferred in filling a vacancy, such an agreement is called Preferential Shop.
- **Maintenance Shop:** In this type, there is no compulsory membership in the union before or after recruitment. However, if the employee opts to become a member after recruitment, his membership remains compulsory right throughout his tenure of employment with that particular employer. This is called maintenance of membership shop or maintenance shop.
- **Agency Shop:** In terms of the agreement between management and the union a non-union member has to pay the union a sum equal to a member's subscription in order to continue in employment with the employer. This is called an agency shop.
- **Open Shop:** Membership in a union is in no way compulsory either before or after recruitment. This is the least desirable form for unions. This is referred to as an open shop.

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### 3.9 Introductions- Labour Welfare Fund Act, 1948

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The Labour Welfare Fund (LWF) is an essential mechanism established to ensure workers' well-being and social security in various industries across India. Governed by the Labour Welfare Fund Act, LWF helps provide employees with

critical welfare measures, including healthcare, housing, education, and other financial benefits. Both employers and employees must understand the implications and benefits of LWF in complying with regulations and accessing welfare benefits.

The Labour Welfare Fund (LWF) is a fund created by employers and state governments to provide financial and social support to employees in various industries. It is a crucial tool in improving the quality of life for workers, especially those in low-income sectors. By offering healthcare, housing, education, and more, LWF aims to uplift workers' overall welfare.

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### 3.10 Purpose of LWF

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- **Improving Quality of Life:** LWF is designed to enhance the standard of living for workers, particularly in low-income sectors like factories, plantations, and construction.
- **Social Security:** It ensures that workers receive necessary financial and social support during times of need, including medical emergencies, education, and housing.

The Labour Welfare Fund Act was enacted to provide statutory backing to the collection and disbursement of funds for worker welfare programs. The Act outlines the creation of Labour Welfare Fund Boards, details the types of benefits, and defines the funding mechanisms that support worker welfare programs.

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### 3.11 Key Provisions of the Labour Welfare Fund Act

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1. **Establishment of LWF Boards:** The Act mandates the creation of state-specific Labour Welfare Fund Boards, which manage and oversee the funds.
2. **Types of Benefits Offered:** These include medical assistance, education support, housing, and other social welfare programs.
3. **Funding Mechanisms:** Contributions are collected from employers and employees, along with state aid in some cases, to fund these welfare schemes.

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### 3.12 Coverage of the Labour Welfare Fund Act

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The LWF covers various categories of workers, including:

1. **Factory Workers:** Employees working in factories involved in manufacturing, processing, and assembly operations. These workers often engage in physically demanding tasks and may be exposed to occupational hazards.
2. **Plantation Workers:** Workers in agricultural production in large estates, especially in tea, coffee, rubber, and spice plantations.
3. **Construction Workers:** Workers involved in constructing roads, bridges, and other infrastructure projects.
4. **Mine Workers:** Employees working in mines to extract minerals, coal, and metals.

5. **Transport Workers:** Workers in the transport sector, including those involved in operating buses, trucks, and delivery vehicles.
6. **Textile Workers:** In textile mills and garment factories engaged in spinning, weaving, dyeing, and garment manufacturing.
7. **Beedi and Cigar Workers:** Workers involved in the production of beedis (hand-rolled cigarettes) and cigars, often working in small-scale or home-based setups.
8. **Domestic Workers (In some states):** Individuals employed in households for cleaning, cooking, child care, and elderly care.
9. **Hotel and Restaurant Workers:** Employees working in the hospitality sector, including hotels, restaurants, and catering services.
10. **Shop Workers and Small Establishment Workers:** Employees in retail shops, small stores, and commercial establishments like salons, boutiques, and repair shops.

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### 3.13 Exemptions under the Labour Welfare Fund Act

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While the Labour Welfare Fund Act covers a wide range of workers, certain categories are exempt:

- **Government Employees:** Central and state government employees typically do not come under the LWF as they have separate social security benefits.
- **Managerial Staff:** Managers, executives, and other supervisory personnel in private industries are exempted from the Labour Welfare Fund.
- **High-Income Workers:** Depending on state regulations, employees earning above a certain threshold may not be eligible for LWF benefits.

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### 3.14 Labour Welfare Fund Board

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The Labour Welfare Fund Board is a key regulatory body that manages and administers welfare funds collected from employers and employees. It ensures that these funds are used to improve workers' well-being. The board operates at the state level and is key in implementing welfare schemes.

#### ❖ Composition of the LWF Board

- **Government Representatives:** Oversee the alignment of welfare schemes with state labour policies.
- **Employer Representatives:** Represent the interests of employers in fund utilization and decision-making.
- **Employee Representatives:** Advocate for workers' needs and ensure welfare schemes benefit them.
- **Independent Experts:** Provide impartial guidance to ensure effective fund management.

- **Chairperson:** Leads the board and ensures Labour Welfare Fund Act compliance.

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### 3.15 Functions of the LWF Board

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1. **Policy Formulation:** Creates policies for worker welfare programs like healthcare, education, and housing.
2. **Fund Management:** Oversees welfare fund collection, investment, and disbursement.
3. **Implementation of Welfare Schemes:** Executes welfare programs such as medical and housing assistance.
4. **Monitoring and Supervision:** Ensures the effective functioning and auditing of welfare schemes.
5. **Advising the Government:** Provides recommendations for policy improvements related to worker welfare.
6. **Compliance Enforcement:** Ensures employers comply with LWF regulations and contributions.
7. **Auditing and Reporting:** Regular audits to maintain transparency in fund usage.

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### 3.16 Benefits Provided by Labour Welfare Funds

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The Labour Welfare Fund offers various benefits to employees, aiming to provide them with financial, healthcare, and educational assistance.

#### 1. Medical Benefits

- **Healthcare Assistance:** LWF offers financial support for medical treatments, including outpatient and inpatient care, surgeries, and medications. This ensures that workers have access to necessary healthcare services.
- **Hospitalization Benefits:** Employees can receive reimbursements for hospital expenses, covering treatments, surgeries, and related medical costs.
- **Accident and Disability Assistance:** Workers who suffer workplace accidents or disabilities may receive compensation or support for ongoing medical care and rehabilitation.

#### 2. Educational Benefits

- **Scholarships:** LWF provides scholarships for workers' children, ensuring access to education at various levels, including primary, secondary, and higher education.
- **Educational Assistance:** Financial assistance is provided for school fees, books, and other educational expenses.

- **Vocational Training:** Workers and their children can benefit from vocational training programs to improve their skills and employability.

### 3. Housing Benefits

- **Subsidies and Loans:** The LWF offers housing loans or subsidies, making it easier for workers to purchase or build homes.
- **Group Housing Schemes:** Some states provide group housing schemes, offering affordable housing options to workers and their families.
- **Repairs and Renovations:** Assistance for repairs or renovations to existing homes may also be available under certain state LWF schemes.

### 4. Maternity Benefits

- **Financial Assistance:** Pregnant female workers are eligible for financial assistance during maternity leave, helping them cover medical and living expenses.
- **Maternity Care:** In some states, maternity care services, including prenatal and postnatal care, are offered to female workers.

### 5. Retirement Benefits

- **Pension Schemes:** Some states provide pension plans for retired workers, ensuring financial support in their post-retirement years.
- **Gratuity Payments:** Retirement benefits may also include gratuity payments to support workers once they have completed their service.

### 6. Welfare Assistance

- **Financial Aid for Emergencies:** Workers or their families may receive financial assistance in case of emergencies such as accidents, natural disasters, or deaths.
- **Funeral Assistance:** Financial help for funeral expenses may be provided to the families of deceased workers.

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## 3.17 How to Claim the Labour Welfare Fund?

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Workers can claim LWF benefits by applying to their employer or directly to the Labour Welfare Fund Board. The process typically involves submitting proof of employment, medical or educational bills (if applicable), and other necessary documentation. Employees can check with their respective state boards for detailed procedures.

### • Funding of Labour Welfare Funds

LWFs are primarily funded by contributions from both employers and employees. In some cases, the state government may also provide additional funds to support welfare schemes.

### ❖ Contribution Rates

- **Employers:** The employer's contribution is typically higher than the employee's.
- **Employees:** Contributions are deducted directly from employee salaries.

For example, in Maharashtra, employees contribute ₹6, while employers contribute ₹18, collected semi-annually.

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### 3.18 Compliance with Labour Welfare Fund Regulations

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Ensuring compliance with Labour Welfare Fund (LWF) regulations is crucial for employers and employees to access the benefits provided under the scheme. Employers are responsible for adhering to state-specific LWF rules, while employees must ensure that their contributions are properly deducted. Below are the key aspects of LWF compliance that every employer and employee should be aware of:

#### 1. Employer Responsibilities

- **Deduction of Employee Contributions:** Employers must deduct the designated amount from employees' salaries per the contribution rates specified by the state's LWF regulations.
- **Employer Contributions:** Employers are also required to contribute, typically higher than the employee's share. The exact amount varies depending on the state.
- **Timely Submission:** Employers must ensure that employee and employer contributions are submitted to the Labour Welfare Fund board within the prescribed timelines (monthly, quarterly, or annually). Delays can lead to penalties.
- **Maintain Records:** Employers must maintain accurate records of LWF contributions and employee details. These records should be readily available for audits or inspections by state authorities.
- **Filing Returns:** In some states, employers may be required to submit returns detailing the LWF contributions made for each employee, ensuring full **compliance** with the LWF Act.

#### 2. Employee Responsibilities

- **Verify Contribution Deductions:** Employees should regularly verify that the LWF contribution is being deducted from their salaries and that the amounts are accurate per state regulations.
- **Track Eligibility:** Employees should meet the eligibility criteria for availing of the benefits under the LWF scheme by ensuring their contributions are consistent.

### 3. Penalties for Non-Compliance

- **Fines:** Non-compliance with LWF regulations, such as failing to deduct or submit timely contributions, can result in fines. These penalties vary by state, with some imposing fines ranging from ₹500 to ₹5,000.
- **Legal Action:** Continued non-compliance or failure to maintain proper records can result in legal action being taken against employers. In extreme cases, licenses can be revoked, or further legal consequences may be imposed.
- **Audits and Inspections:** State authorities may conduct audits and inspections to ensure compliance. Employers who fail to meet the requirements could face additional penalties.

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### 3.19 Registration of LWF

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#### 1. Online Registration Process:

- **Visit the State LWF Portal:** Go to your state's official Labour Welfare Fund portal.
- **Create an Account:** Register with business and contact details.
- **Fill in the Form:** Complete the registration with business and employee details.
- **Upload Documents:** Provide necessary documents such as company registration certificates and employee records.
- **Make Payment:** Pay the required contributions through online payment methods.
- **Receive Confirmation:** Get a registration certificate or acknowledgement via email or portal.

#### 2. Offline Registration Process

- **Obtain the Form:** You can collect the registration form from the nearest Labour Welfare Fund office or download it from the website.
- **Fill Out the Form:** Complete the form with accurate business and employee details.
- **Attach Documents:** Submit the required documents, such as business registration certificates and proof of contributions.
- **Submit the Form:** Please hand over the completed form and documents to the Labour Welfare Fund office along with the payment.
- **Collect Confirmation:** Receive a registration certificate or acknowledgement after completing the process.

## **UNIT-4 INDUSTRIAL DISPUTES ACT, 1947**

### **4.1 Introduction**

### **4.2 Meaning**

### **4.3 Objectives**

### **4.4 Controversy Regarding the Industrial Disputes Act, 1947**

### **4.5 Applicability and important definitions**

### **4.6 Authorities and sections under the Act**

#### **❖ Exercise**

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### **4.1 Introduction**

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The Industrial Disputes Act, 1947 regulates Indian labour law so far as that concerns trade unions as well as individual workmen employed in any industry in the Indian mainland. The Industrial Dispute Act was one of the last legislative acts before the passing of the Indian Independence Act of 1947. The Industrial Disputes Act, 1947 was introduced to take care of the industrial disputes in the country. It was approved on March 11, 1947, and was enforced on April 1, 1947. The Industrial Disputes Act, 1947 extended to the whole of India and regulated Indian labour law concerning trade unions as well as Individual workman employed in any industry within the territory of Indian mainland. It was enacted on 11 March 1947 and it came into force 1 April 1947. It was replaced by the Industrial Relations Code, 2020.

The Industrial Disputes Act, 1947 came into existence in April 1947. It was enacted to make provisions for prevention and settlement of industrial disputes and for providing certain safeguards to the workers. Under this Act, authorities like Conciliation Officers, Courts of Inquiries, reference of disputes to Boards, Court and Tribunals, powers and duties of authorities, prohibition of strikes and lockouts, penalties for contravention of the provisions of the Act etc. are incorporated. The Act contains 40 Sections divided into 7 Chapters, as under:

Chapter-I deals with the title, definitions, etc.

Chapter-II contains Works Committee in an industrial establishment in which one hundred or more workmen are employed consisting of representatives of employers and workmen engaged in the establishment. The main purpose of the Works Committee to promote measures for securing and preserving amity and good relations between the employer and workmen and, to that end, to comment upon matters of their common interest or concern and endeavour to compose any material difference of opinion in respect of such matters. This Chapter also provides for various authorities such as Conciliation Officers, Labour Courts and Tribunals.

Chapter –III contains the main scheme of the Act such as reference of disputes to labour Courts and Industrial Tribunals.

Chapter-IV lays down the procedure, power and duties of the authorities constituted under the Act.

Chapter- V contains provisions to prohibit strikes and lock-outs, declaration of strikes and lock-outs illegal, and provisions relating to lay-off and retrenchment and closure which are applicable to establishments employing 100 and more workers.

Chapter VI contains provisions of various penalties under the Act.

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## **4.2 Meaning**

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Industrial Disputes Act, 1947 is the Act that regulates the labour laws as it concerns all the workmen or all the people employed on the Indian mainland. It came into force on 1 April 1947. The capitalists or the employer and the workers always had a difference of opinion and thus, it leads to lots of conflicts among and within both of these groups. So, these issues were brought to the attention of the government and so they decided to pass this Act. This Act was formed with the main objective of bringing peace and harmony to industrial disputes between parties and solving their issues in a peaceful manner. Industrial Disputes Act, 1947 is the Act that regulates the labour laws as it concerns all the workmen or all the people employed on the Indian mainland. It came into force on 1 April 1947. The capitalists or the employer and the workers always had a difference of opinion and thus, it leads to lots of conflicts among and within both of these groups. So, these issues were brought to the attention of the government and so they decided to pass this Act. This Act was formed with the main objective of bringing peace and harmony to industrial disputes between parties and solving their issues in a peaceful manner.

### **❖ An overview of Industrial Disputes Act, 1947**

- Long Title: An Act to make provision for the investigation and settlement of industrial disputes, and for certain other purposes.
- Territorial Extent: Territories under direct British control, later implemented in the Princely States upon their integration with the Indian Union
- Enacted by Central Legislative Assembly
- Assented on 11th March 1947
- Commenced on 1st April 1947

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## **4.3 Objectives of the Industrial Disputes Act, 1947**

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The main aim of the Industrial Disputes Act, 1947 is to maintain a balance between labour and industry welfare by ensuring industrial peace and harmony. It focuses on the mechanism and procedure for the investigation and settlement of industrial disputes by conciliation, arbitration and adjudication which is provided under the statute.

The act was drafted to make provision for the investigation and settlement of industrial disputes and to secure industrial peace and harmony by providing mechanisms and procedures for the investigation and settlement of industrial disputes by conciliation, arbitration and adjudication which is provided under the statute.

This Act was passed with the key objective of “Maintenance of Peaceful work culture in the Industry in India” which is mentioned under the Statement of Objects & Reasons of the statute, an act to make provision for the investigation and settlement of industrial disputes, and for certain other purposes. The objective of the Industrial Disputes Act is to secure industrial peace and harmony by providing mechanism and procedure for the investigation and settlement of industrial disputes by conciliation,

arbitration and adjudication which is provided under the statute. The main and ultimate objective of this act is "Maintenance of Peaceful work culture in the Industry in India" which is clearly provided under the Statement of Objects & Reasons of the statute.

The laws apply only to the organised sector. Chapter V talks about the most important and often in news topic of 'Strikes and Lockouts'. It talks about the Regulation of strikes and lockouts and the proper procedure which is to be followed to make it a Legal instrument of 'Economic Coercion' either by the Employer or by the Workmen. Chapter V-B, introduced by an amendment in 1976, requires firms employing 300 or more workers to obtain government permission for layoffs, retrenchments and closures. A further amendment in 1982 (which took effect in 1984) expanded its ambit by reducing the threshold to 100 workers. The Industrial Dispute Act also lays down:

1. The provision for payment of compensation to the workman on account of closure or layoff or retrenchment.
2. The procedure for prior permission of the appropriate Government for laying off or retrenching the workers or closing down industrial establishments
3. The actions to be taken against unfair labour practices on the part of an employer, a trade union or workers.

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#### **4.4 Controversy Regarding the Industrial Disputes Act, 1947**

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The act was implemented to provide for machinery and procedures for the investigation and settlement of industrial disputes, applicable to all irrespective of size and sector. It even has provisions regarding conditions for layoffs, retrenchment (reduction in the size of operations) and closure of industry. This clause raises controversy regarding the act, particularly as per Chapter V-B. There have been multiple amendments that have been made over the years for this clause. The chapter states the following:

If an industrial establishment employs more than 50 persons, it needs to give 60 days' notice, citing reasons of closure to the appropriate government before the closure of the industry. It was increased to 90 days in 1982. If the establishment employs more than 300 employees, it must obtain prior approval of the proper government authority regarding approval for layoffs, retrenchment and closure. This limit was lowered to 100 employees in the 1982 amendment.

These two provisions of Chapter V-B of the Industrial Disputes Act are interpreted as rigidity in the labour market. The main objective of this provision is to ensure that an employer cannot hire or fire an employee at will. To take any such action, they need to seek permission from the labour commissioner. This subject is also under the concurrent list which is why individual states have made even stricter rules and conditions so that the layoff, retrenchment and closure become even more difficult. As a result, it has caused the following problems in the labour industry: like, Lower output by labour, Lower productivity, Hesitation in hiring, Lower investments, Lower overall manufacturing performance.

Apart from Chapter V-B, Section 9-A is also a cause of concern. This section says that if employers are modifying the wages and other allowances, they need to provide the labour commission a notice, about 21 days in advance. Thus, if employers

quickly need to redeploy the employees to meet certain time-bound targets, this practice disallows that. What the industry demands, is that this law needs rationalization as per the demand of the current era of globalization. It is the complexity of the Industrial Dispute Act that is generally held responsible for the fact that only 6% of the total labour force is working in the organised manufacturing sector and the remaining are employed in the unorganised sector.

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#### **4.5 Applicability and important definitions**

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The Industrial Disputes Act extends to whole of India and applies to every Industry and its various industrial establishment carrying on any business, trade, manufacture or distribution of goods and services irrespective of the number of workmen employed there in. Every person employed in an establishment for hire or reward including contract labour, apprenticeship and a part-time employee to do any manual, clerical, skilled, unskilled, technical, operational or supervisory work, is covered by the Act.

This Act furnishes us with specific guidelines and guidelines in regards to the works committee for both the businesses and all the workmen to advance measures for good working relations and comprehension among the workmen and the businesses later on, and to end that, it additionally vows to resolve any material difference in views of opinion in regard to such issues.

##### **1) Industrial Dispute**

Industrial dispute implies any distinction of conclusion, contest, injury between the business and the representatives, or between the labourers and bosses, or between the labourers or workers itself, which is all concerned with the work or non-business terms or terms of business dependent on the terms of state of work of any person.

The conflict between the employers and the employees is inherent in the industrial society. One argues for more investment opportunity and the other argues for better standard of living. There cannot be any rule or regulation through which such conflicting interests can be eliminated permanently.

However, the Industrial Disputes Act was enacted to provide machinery and forum for the settlement of such conflicting and seemingly irreconcilable interests without disturbing the peace and harmony in industry in assuring industrial growth, which is a prerequisite of a welfare state. It has been rightly said that the Industrial Disputes Act is a piece of legislation calculated to ensure social justice to both employers and employees and advance progress of industry by bringing about harmony and cordial relationship between the parties.

In the words of Justice Krishna Iyer : “The Industrial Disputes Act is a benign measure which seeks to pre-empt industrial tensions, provide energies of partners in production may not be dissipated in counterproductive battles and assurances of industrial justice may create a climate of goodwill.”

The Act aims at settlement of all industrial disputes arising between the capital and labour by peaceful method and through the machinery of conciliation, arbitration and, if necessary, by approaching the adjudication under the Act.

In light of the background above the principal objects of the Act are as follows:

- i. Promotion of measures for securing and preserving amity and good relations between the employer and workmen;
- ii. An investigation and settlement of industrial disputes, between employers and employees, employers and workmen or workmen and workmen;
- iii. Prevention of illegal strike and lock-out;
- iv. Relief to workmen in the matter of lay-off and retrenchment
- v. Collective bargaining.

The focus and emphasis given to each object, stated above, differs from industry to industry, depending on the growth of unionism, attitude of management and workers, leadership qualities and the Government policy. If adjudication finds favour with some industries, collective bargaining is preferred by some.

Yet others opt for either conciliation or arbitration, and so on. Industrial Disputes Act has provided an elaborate machinery comprising the following agencies for the settlement of disputes.

- Works Committee
- Conciliation Officer
- Boards of Conciliation
- Courts of Inquiry
- Labour Courts
- Tribunals
- National Tribunal
- Grievance Settlement Authority
- Voluntary Arbitration

The long title of the Act provides the object of the Act as follows: An Act to make provision for the investigation and settlement of industrial disputes, and for certain other purposes. Whereas it is expedient to make provision for the investigation and settlement of industrial disputes, and for certain other purposes hereinafter appearing.

**2) Average Pay 2(aa)** average pay means the average of the wages payable to a workman

- I. in the case of monthly paid workman, in the three complete calendar months,
- ii. in the case of weekly paid workman, in the four complete weeks, in the case of daily paid workman,

in the twelve full working days, preceding the date on which the average pay becomes payable if the workman had worked for three complete calendar months or four complete weeks or twelve full working days, as the case may be, and where such calculation cannot be made, the average pay shall be calculated as the average of the wages payable to a workman during the period he actually worked.

**3) Industry 2(j)** Industry means any business, trade, undertaking, manufacture or calling of employers and anything includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen; The definition of industry may be divided in two parts, i.e. substantive part and inclusive part.

The first part of the definition provides the meaning of industry whereas the second part is included to the first part of the definition. The first part of the definition can be looked from the employer's point of view as the last two words used in the first part are 'of employers', and accordingly the second part of the definition can be looked from the workman's point of view as the last two words incorporated in the second part are 'of workman'.

**Triple Test** Where there is a systematic activity organized by the cooperation between the employer and the employee, for the production and/or distribution of goods and services calculated to satisfy human wants and wishes, "not spiritual nor religious wants. The triple test is an indicator or may be a guideline to determine whether a particular organization or activity would be considered as an industry. Once the triple test is satisfied, without going further, one can safely draw the conclusion that the activity or organization in question is an industry.

**Industrial Dispute 2(k)** Industrial dispute means any dispute or difference between employers and employees or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any persons. The definition of 'industrial dispute' in S. 2(k) requires three things: There should be a dispute or difference, The dispute or difference should be between employers and employees, or between employers and workmen, or between workmen and workmen and The dispute or difference must be connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.

**4) Lay Off 2(kkk)** Section 2 (kkk) defines a lay-off as similar to the failure, refusal or inability on the part of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery or natural calamity or for any other connected reason to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched. Lockout means the temporary closing of a place of employment or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him.

**5) Retrenchment 2 (oo)** Retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include- a. voluntary retirement of the workman; or b. retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or (bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or c. termination of the service of a workman on the ground of continued ill-health.

**6) Settlement 2 (p)** Settlement means a settlement arrived at in the course of conciliation proceeding and it includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer.

Section 2 (q) defines 'strike' as: “a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment.”

**7) Workman-** The expression “workman” signifies any individual (counting a student or apprentice) who works in an industry who needs to do any manual, skilled/unskilled, incompetent, specialized, operational, administrative, supervisory and so forth work for contract or reward, regardless of whether the terms of business are communicated or inferred, and for motivations behind any procedure under this Act in connection to an industrial dispute, incorporates any person who has been expelled, released or saved regarding, or as an outcome of the case, or who's rejection, release or conservation has prompted that dispute, however, does exclude any such individual-

- Who is dependent upon the Air Force Act 1950, or the Army Act 1950, or the Navy Act 1957; who is employed in the police administration or as an official or other representative of a jail; who is employed primarily in an administrative or managerial limit.
- An individual, being underemployed in a supervisory limit draws compensation surpassing Rs. 10000 for every month or activities, either by the idea of the obligations to the workplace or by reason of forces vested in him, works fundamentally of an administrative sort.

**8) Lay-off -** Layoff or “Cutback” signifies the refusal or lack of power to refuse, disappointment or failure of a business by virtue of lack of coal, power or crude material, etc. or the aggregation of stocks or the breakdown of apparatus to offer work to a workman whose name is on the muster rolls of his industrial foundation and who has not been retrenched.

**9) Closure -**This implies the shutting down of a part of an establishment or an entire place of employment.

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#### **4.6 Authorities and sections under the Act**

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- **Section 3: Works board of trustees**

If there should be an occurrence in any industrial foundation wherein one hundred or more workers are employed in a day or in the previous year, the concerned government may be a general or an exceptional offer require the business to do in the endorsed way, a works advisory group comprising of delegates of representatives and workers occupied with the foundation so that the quantity of agents of workers on the Committee will not be not exactly the quantity of agents of the business. The delegates of the workers will be picked in the recommended way from among the workers

occupied with the foundation and in counsel with their worker's guild, assuming any, enrolled under the Indian Trade Unions Act.

It is the obligation of the works advisory group to advance proportions of verifying and saving great and serene relations between the businesses and the workers and at the end of that, to finalise upon the issues of their normal intrigue or attempt to make any material contrast out of perspectives in such issues.

- **Section 4: Conciliation Officer**

The fitting government may, by seeing in the authority, name such people as it believes fit to be conciliation officials, delegated of the obligation of intervening and advancing the settlement of industrial audits.

An appeasement official might be designated for a predetermined zone or for explicit industries in a predefined region or for at least one explicit industry and either for all time or for a constrained period.

- **Section 5: Boards of Conciliation**

1. The reasonable Government may as an event emerges by notice in the Official Gazette speak to a Board of Conciliation for advancing the settlement of an industrial contest.
2. A Board will incorporate an administrator and 2 or 4 unique individuals, as the Government thinks fit.
3. The administrator will be an independent individual and along these lines, different individuals will be people delegated in equivalent numbers to speak to the party to the case and any individual selected to speak to a gathering will be designated on the proposal of that party:

Given that, if any gathering neglects to make a suggestion as previously mentioned inside the endorsed time, the fitting Government will select such people if it thinks they're fit to speak to that party. A Board, having the recommended majority, may act despite the nonattendance of the administrator or any of its individuals or any opening in its number, given that if the appropriate Government tells the Board that the administrations of the executive or of some other parts have been stopped to be accessible, the Board will not Act till a substitute director or part, by and large, has been designated.

## **Section 6: Courts of Inquiry**

- The proper Government may as an event emerges, by notice in the official journal comprise a court of value for enquiring into some other issue seeming, by all accounts, to be associated with or applicable to an industrial contest.
- A court may comprise of one free individual or number of such autonomous people as suitable Government may think fit and where a court comprises of at least two individuals, one of them will be named as the executive chairman.
- A court, having the endorsed majority, may dispute the nonappearance of the executive chairman or any of its individuals or any kind of vacancy in its number.

## **Section 7: Labor Court**

- The proper Government may, by warning in the official journal, add to at least one industrial councils for the settling of industrial disputes and identifying with any issue, regardless of whether indicated in the subsequent calendar or the 3rd schedule.
- A court should comprise of just a single individual designated by the appropriate government.
- An individual will not be equipped for arrangement as the directing official of a council except if he is, or has been a judge of the high court or has been a vice president labour commissioner (central) or joint chief of the state work office, having a degree in law.

### **Anand Bazar Patrika v. Their Employees**

This case was between the Anand Bazar Patrika Pvt. Ltd., the appellant and between the workers, the respondent. This issue was about a person, Gupta, whose retirement was against the service conditions of the company. The court also held the decision against the appellant that Gupta was a workman on the day of his retirement and thus, the award was given against the appellant.

#### **• Section 7-A: Tribunals**

The reasonable government may, by warning in the official newspaper, establish at least one industrial courts for the mediation of industrial disputes identifying with any issue, regardless of whether indicated in the subsequent calendar or the third schedule. A council will comprise of one individual just to be selected by the corporate Government.

An individual will not be equipped for the arrangement as the managing official of a Tribunal except if: He/she has been a judge of the high court or has been one, a vice president work official (focal) or joint magistrate of the state work office, having a degree in law.

### **Minerva Mills Ltd. Bangalore v Their Workmen**

Two disputes of the Minerva Mills Ltd, Bangalore between the management and the workers and two disputes of Mysore spinning and manufacturing co. limited, also between the management and the workers were referred to the said industrial tribunal 10 (1) c of the Act for adjudication; several other disputes were also referred to the tribunal. Till 15th June 1952; it was seen that only 5 out of 22 disputes were referred to it when the period of one year expired. In the four disputes which are concerned, the tribunal had only framed the issues and not actually proceeded to record any evidence.

### **Lipton Ltd. case**

In the Lipton limited case, the appellant company was incorporated in the United Kingdom, with most of its stores from London, of groceries and tea, which included 10% of its business there. Its operations in India were carried out by a branch with its head office in Calcutta, and the business there consisted mainly of the sale of 'packaged tea' throughout all of India. The Delhi office of its Indian branch controlled

the workmen of Punjab, Delhi, Rajasthan, and Uttar Pradesh but had no connection with the other side of the business.

### **Jurisdiction**

The appropriate government may appoint assessors to the case and may give its decision in the court as they may seem fit.

Delay in filing appeal -If there are delays in filing appeal the case of a person may become weaker.

Appeal- Appeal can be made to Labour court, district court, tribunal or national tribunal.

- **Section 7-B: National councils**

The government at the centre may, by warning in the official gazette comprise at least one national industrial Tribunal for the settling of industrial disputes which, in the assessment of the government at the centre, including inquiries of national significance or are of such a nature, that industrial foundations arranged in more than one state are probably going to be keen on, or influenced by, such disputes.

- A national council will comprise of just a single individual that will be named by the government at the centre.
- An individual will not be equipped for arrangement as the directing official of a national council, except if he is or has been a judge of the High Court.
- The government at the centre may, if it thinks so fit select two people as assessors to encourage national council in the procedure before it.

**Section 7-C:** Disqualifications for the managing workplaces of work courts, tribunals and national tribunals, no individual will be designated to, or proceed in the workplace of the managing official of a work Court, council or national court if the person is not an autonomous individual and has not achieved the age of 65 years.

### **Constitutional legitimacy of Section 10**

Where any industrial question in connection to which the government at the centre is not fit, the government alludes to national court at that point despite anything contained in this Act in reference to Sections 15, 17, 19, 33A, 33B, 36A to the reasonable government in connection with such contest will be understood as a source of perspective to the central government yet, spare as previously mentioned and as generally explicitly given in this Act, any reference in some other arrangement of this Act to the suitable government in connection to that case will mean a reference to the state government.

- **Section 10-A: Voluntary references to disputes to the discretion**

If there is any industrial case exists or is captured and the business and the workman consent to allude the question to mediation, they may, whenever before the contest. It has been alluded to under Section 10 to a work Court or council or national court by a composed understanding, allude to the question to discretion and the differential to be such an individual or people (counting the managing officials of a

work Court or council or national council) as a judge as might be determined in the assertion understanding.

- **Section 11: Procedure, Powers and Duties of Authorities**

### **Notice to enter premises**

An appeasement official or an individual from the board, may with the end goal of an investigation into any current or captured industrial dispute, in the wake of giving sensible notice, enter the premises involved by any foundation to which the question relates.

### **Production of documents before Tribunals**

An appeasement official may implement the participation of any individual with the end goal of assessment of such individual or call for and review any archive which he has ground for considering to be important to the industrial question.

### **Cost**

The council, national council or work courts, all things considered, will have full capacity to decide by who and whom and to what degree and subject to what conditions, assuming any, such expenses must be paid, and to give every single essential bearing for the reasons previously mentioned and such expenses may, on application made to the fitting government by the individual entitled, can be recovered by that legislature in a similar way as an arrear of land income.

### **Granting of adjournments**

A bench of judges in the national tribunal, courts, labour courts, tribunals will grant the adjournment notice to the respective parties.

### **Powers of the Tribunal**

Each board, court, work court, council and the national council have the power will have similar forces vested in a common court under common court of procedure, 1908, when attempting to document a suit, in regard of the accompanying issues specifically

- Authorizing the participation of an individual and inspecting him on vow
- Convincing the creation of reports and material objects
- Giving commissions for the assessment of witness

In regard of such different issues as might be endorsed; and each request or examination by a board, court, work court, council or national court, will be esteemed to be a legal proceeding inside the Sections 193 and 228 of the Indian penal code (45 and 1860).

### **Fixation of wage structure**

He who draws compensation and works of supervisory limit, he draws compensation surpassing 1600 for each month or activities, either commonly of obligations connected to him by the workplace or by the power vested in him, works basically of an administrative sort.

Retirement age on account of industrial workers- Retirement of the workman on arriving at the time of superannuation if the contract between the business and the worker comprises of a stipulation for that sake.

**Incentive Payment Scheme-** Incentives are given to those who are wrongfully terminated of the services.

Jurisdiction to decide the dispute in respect of closure of factory- Courts can also resolve disputes in the cases of closure of factory based on all of the right facts as regardless of the closure of the factory as an individual or a party's right must be served.

Power of the Tribunal to interfere with the action taken by the management - Tribunal can also interfere with anything wrong done by the management only under court supervision.

**Award of Industrial Tribunal -** The award of the tribunal should only be in writing and only be signed by the presiding officer.

### **Power of Labour Court**

The labour court may by the notification given in the official gazette, shall decide industrial disputes by adjudication according to the second schedule.

Finding of fact by Labour Court- A labour court can also find the facts by formal investigation. Power of High Court to issue a writ against decisions of the Tribunal High court can also issue a writ against decisions of the tribunal if an official appeal is made. Special leave under Article 136 of the Constitution against the decision of the Industrial Tribunal Special leave petition means any person who wants to be heard in the case of any tribunal/national tribunal verdict.

- **Section 11-A:** Powers of Labor Courts, Tribunals and National Tribunals to give appointment alleviation if there should arise an occurrence of release or expulsion of workers.

Intensity of work courts, councils and national courts to give fitting help on account of release of workers. Where an industrial case identifying with release and expulsion of a workman in labour court, council, court or national council and on account of settling procedures, the court, or the national council, by and large, in the event that they imagine that the release or rejection of the workman was treacherous, it might, by its reward, put aside request of remuneration or do a legitimate restoration of the workman on such terms and conditions.

- **Section 12: Duties of Conciliation Officers**

- **Conciliation Proceedings and settlement**

The conciliation official will, to achieve a settlement in the case, immediately, research the question and all issues influencing the benefits and the correct settlement thereof and may do every single such thing on the off chance that he considers as qualified for the reason to carry the gatherings to a reasonable and agreeable settlement.

- **Power of Government to make a reference**

In the event that, on the thought of the report is alluded to, the suitable government is fulfilled that there is a case for reference to a board, so it might make the reference. At the point when the concerned government doesn't make any reference, it will record it and convey it to the concerned gatherings in this way.

- **Submission of report by Conciliation Officer**

The report ought to be submitted within 14 days inside the beginning of the assuagement procedures or inside a shorter period as may be fixed by the proper government.

- **Section 13: Duties of Boards**

Where a case has been alluded to a Board under this Act, it will be the obligation of the board to attempt to achieve a settlement and for this the board will, and doing this immediately, examining every one of the issues of the question influencing the benefits and the settlement thereof and may do every such thing fit to instigate the gatherings to go to a reasonable and legitimate settlement of the dispute.

- **Section 14: Duties of Courts**

A court will ask into the issues alluded to it and report it subsequently in the administration usually within six months of time span from the initiation of its request.

- **Section 15: Duties of Labor Courts, Tribunals and National Tribunals**

At the point when an industrial contest has alluded to a working court, council or national court for mediation, it should hold its procedures quickly and will, inside the predetermined period broaden and should present the honour to the fitting government.

Parties to make available all relevant papers for the proper decision of a dispute. All the parties have to provide the relevant papers for proof, as then only it will give proper decision of the dispute.

Jurisdiction and Powers of Tribunal and Court- At the point when an industrial contest has alluded to a working court, council or national court for mediation, it should hold its procedures quickly and will, inside the predetermined period broaden and should present the honour to the fitting government.

Modification of pleadings- Pleadings can be modified as and when required.

- **Discharge or Dismissal of a workman**

When the issue has been reported to the court, labour court, tribunal, national tribunal regarding the unfair discharge or dismissal of the workman, the court or the tribunal can award the reinstatement of the workman into the establishment.

- **Limitation on power to make award**

The powers of the courts can give an award to the parties who deserve the award if anything wrong has been done with them.

- **Power of High Court to interfere with the award**

If the party tries to file a complaint in the high court, the award can be given to the party whoever the judge feels worthy and they will be obliged to perform it.

- **Power of Tribunal to grant interim relief**

When an issue or dispute regarding the industrial dispute has been referred to the labour court, tribunal, national tribunal for referring, and after proper referring done by the respective courthouse, it could provide an award to the party if it's satisfied that discharge or dismissal was not justified. Also, if it thinks fit, it may also provide relief to the workman and also the award of lesser

**punishment.**

- **Section 16: Form of report and award**

The report of a board or court will be recorded as a hard copy and will be marked by every one of the individuals from the board or court, all things considered: gave that nothing in this Section will be regarded to stop any individual from the board or court from recording any moment of the contradiction from a report or from any suggestions made in that.

- **Section 17: Publication of report and award**

Each report of a board or court together with any moment of difference recorded therewith, every mediation grant and each grant of a work court, council or national council will be distributed in a manner by which the suitable government thinks fit, inside a time of 30 days from the day of its receipt by the proper government.

- **Section 17-A: Commencement of award – Enforceability of award**

An honour (counting the assertion grant) will get enforceable on the expiry of the 30 days from the date of its distribution under Section 17 given that:

- if the reasonable Government is conclusion, regardless of any place the honour has been given by a Labor Court or council with respect to an industrial question to which it is a party; or
- if the Central Government is of opinion, regardless of any place the reward has been given by a National court, that it'll be inexpedient on open grounds contacting national economy or social equity to offer impact without limit or any piece of the reward, the appropriate Government, or in light of the fact that the case could likewise be, the Central Government could, by notice in the Official Gazette, pronounce that the reward will not be enforceable upon the termination of the previously mentioned time of thirty days.

**Production of award**

Where any announcement has been made concerning a reward, the appropriate Government or the Central Government could, inside ninety days from the date of production of the honor in Section 17, make a request dismissing or altering the honor, and will, on the primary possible possibility, lay the honor related to a copy of the request previously the get together of the State, if the request has been made by a state

government, or before Parliament if the request has been made by the Central Government.

- **Section 17-B: Payment of full wages of workman pending procedures in higher Courts**

Where regardless, a working court, council or a national council by its reward, coordinates the restoration of any workman and the business inclines toward any procedures against such grant in a high court or a preeminent court, full wages last drawn by him, comprehensive of any support stipend acceptable to him under any standard if the workman had not been utilized in any foundation during such period and an oath by such workman had been recorded with that impact in such Court.

Provided that where it is demonstrated to the satisfaction of the High Court or the Supreme Court that such workman had been utilized and had been getting satisfactory compensation during any such period or part thereof, the Court will arrange that no wages will be payable under this Section for such period or part, as the case may be.

- **Section 18: Persons on whom settlements and grants are authoritative**

People bound by settlement - A settlement landed at by understanding between the business and the labourer generally than in course assuagement continuing will tie on the parties to the understanding.

Reasonableness of settlement - A discretion award that has become enforceable will tie on the parties who alluded the question to assertion.

Intensity of the Tribunal to include other vital and legitimate parties - All the pertinent parties to the industrial question and the various parties are likewise added who are significant to the case and on the off chance that they don't have an appropriate case, they won't be recorded.

- **Section 19: Period of Activity of settlements and awards**

- **Time of Activity of awards**

A settlement will come into activity on such date as is settled upon by the parties to the question, and if no date is settled upon, on the date on which the update of the settlement is marked by the parties to the contest.

- **Audit of Activity of award**

An award will, subject to the arrangements of this Section, stay inactivity for a time of one year from the date on which the award gets enforceable, given the reasonable government may diminish the said period.

- **Res Judicata and Section 19(6)**

An award will be inactivity for 1 year from the date on which the award gets enforceable, subject to the arrangements of this Section. Be that as it may, despite the activity time frame, the award will be proceeding to tie for more than 2 months from the date the individual party has pulled out of their goal to end the award.

- **End of the award**

No notice given by the above Section will have an impact except if it is given by the party speaking to most of people bound by the settlement or award or all things considered.

- **Section 20: Commencement and finish of procedures**

- **Conciliation Proceedings**

An appeasement continuing must be started on the date of which a notice of strike or lockout has been given to the placation official or on the date of the request alluding the question to the board, all things considered.

- **Conclusion of Conciliation procedures**

A Conciliation Proceeding is said to be finished up when:

- When the settlement is landed at, when a reminder of the settlement is marked by parties to the question.
- At the point when no settlement is landed at, when the report of the placation official is gotten to the suitable government or when the report of the board is distributed under Section 17.
- At the point when a reference is made in the court, work court, tribunal or national tribunal under Section 10 during the pendency of the appeasement gatherings.

### **Discretion and settling procedures**

Procedures before a referee under Section 10A or under the watchful eye of a working court, tribunal or national tribunal will be regarded to have started on the date of the reference of the case for discretion or mediation.

- **Section 21: Certain issues to be kept private**

They will not be remembered for any report or award under this demonstration any data got by a conciliation official over the span of request as to a worker's organization or as an individual business which isn't accessible generally than through the proof given under the steady gaze of such official, board, court.

### **Strikes and Lock-outs**

- **Section 22: Prohibition of Strikes and lock-outs**

Denial of Strike- No utilized individual can go to a strike in open utility in rupture of agreement without giving the business the earlier notice of the strike.

#### **Notice of Strike**

- Notice of strike must be allowed inside about a month and a half, after given, inside a half year before striking.
- Which means of the expressions "inside about a month and a half before striking" and "inside fourteen days of giving such notice"

- An individual can't go on a strike inside a half year of the past strike or inside 14 days of going on such a strike.

**During the pendency of conciliation procedures-** Before a conciliation official and seven days after the finishing of such proceeding.

Denial of lock-out

Without giving them notice of the lockout or as hereinafter gave, inside about a month and a half of lockout or inside 14 days of giving such notice or any expiry of the lockout in any such notice previously mentioned or during the pendency of any placation procedures previously and appeasement official and seven days after the appeasement of such procedures.

- **Section 23: General preclusion of strikes and lock-outs**

**In breach of contract**

- ✓ No worker will go into a strike in rupture of agreement and no labourer will proclaim a lockout-
- ✓ During the pendency of mollification procedures before aboard and 7 days after the finish of such procedures.
- ✓ During the pendency of procedures before a tribunal, national tribunal or a working court and two months after the finish of such procedures.
- ✓ During the pendency of assertion procedures before a mediator and two months after the finishing of such procedures.

**Comparison between Section 22 and 23 - Matters secured by the Settlement**

Section 22 discussions about how the workers can't go to a strike dependent on the earlier notification given to the business inside the organization, etc while Section 23 discussions about the general forbiddance in which we cannot go for a strike on the off chance that we have an earlier case pending.

- **Section 24: Illegal strikes and lock-outs**

Discipline for unlawful strikes

Any worker who does an illicit hit it culpable with detainment, up to a term for one month or a fine of which might be up to Rs. 50 or both.

- **Section 25: Prohibition of money related guide to unlawful strikes and lock-outs**

No individual will purposely exhaust or apply any cash in the immediate facilitation of help of any illicit strike or a lockout.

**Lay-off and Retrenchment**

- **Section 25-A: Application of Sections 25-C to 25-E**

To industrial establishments in which under fifty labourers on a normal for every working day have been utilized in the previous schedule month.

To industrial establishments which are of a regular character wherein work is performed just discontinuously.

- **Section 25-A(2)**

On the off chance that the inquiry emerges if the industrial establishment is of regular character or in which work is performed just irregularly, the choice of the fitting government is then last.

- **Section 25-B: Definition of continuous service**

- (1) a working man will be aforementioned to be in persistent help for a period in case he is, for that period, in continuous assistance, just as administration which might be hindered on record of ailment or approved leave or a mishap or a strike that isn't unlawful, or a lock-out or a stop of work that isn't a direct result of any deficiency with respect to the worker;
- (2) any place a working man isn't in nonstop assistance inside that method for statement (1) for a time of 1 year or half a year, he will be esteemed to be inconsistent help under a business –
  - (a) for a time of 1 year, if the working man, during a time of twelve schedule months going before the date regarding which estimation is to be made, has, in reality, worked under the business for at the very least – one hundred and ninety days on account of a working man utilized subterranean in a mine; and two hundred and forty days, in some other case;
  - (b) for a time period of half a year, if the working man, during a time of six schedule months going before the date regarding which count is to be made, has all things considered work under the business for at least – ninety-five days, on account of a working man, utilized subterranean in a mine 120 days, in the other case.

Clarification- For the reasons for condition (2), the number of days on which a worker has really worked under a business will remember the days for which:

- (i) he has been laid-off under an understanding or as reasonable by standing requests made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under the other law relevant to the business establishment;
- (ii) he has been inert with full wages, earned in the earlier years;
- (iii) he has been missing a result of brief impedance caused incidentally emerging out of and inside the course of his work; and
- (iv) on account of a female, she has been on maternity leave; in this manner, notwithstanding, that the general time of such maternity leave does not surpass twelve weeks.

- **Section 25-C: Right of workers laid-off for pay**

**Lay-off remuneration**

Right of workers laid-off for pay.- Whenever a working man (other than a *badli* worker or easy going worker) whose name is borne on the summon moves of an industrial establishment and who has finished at least one year of persistent assistance under a business is laid-off, regardless of whether endlessly or irregularly, he will be paid by the business for all days all through that he's along these lines laid-off, besides such week by week occasions as could intercede, remuneration that will be up to 50%

of brimming with the basic wages and dearness stipend that may have been because of him had he not been subsequently laid-off: giving it all through any time of a year, a representative is in this manner laid-off for more than forty-five days, no such pay will be expected in regard of any time of the lay-off once the end of the initial forty-five days, if there's a consent with that impact between the worker and in this manner the business: Provided further that it will be legal for the business regardless falling among the previous precondition to conserve the working man as per the arrangements contained in Section 25F whenever once the expiry of the initial forty-five days of the lay-off and when he does as such, any remuneration paid to the workman for having been laid-off during the first year could likewise be set out against the payment due for conservation.

### **Badli Workman**

“Badli workman” signifies a workman who is utilized in an industrial establishment in the spot of another workman whose name is borne on the muster rolls of the establishment, yet will stop to be viewed in that capacity for the motivations behind this Section, on the off chance that he has finished one year of persistent assistance in the establishment.

- **Section 25-D: Duty of a business to keep up muster rolls of workmen**

Obligation of the business is to make muster rolls of their workmen. Despite that workmen in any industrial establishment have been laid off, it will be the obligation of the business to keep up the reasons for the part a muster roll and to accommodate the creation of passages in that by workmen who may introduce themselves for work at the establishment at the delegated time during typical working hours.

- **Section 25-E: Workmen not qualified for pay in specific cases**

- ✓ **Any elective business**

On the off chance that he will not acknowledge any elective work in a similar establishment from which he has been laid-off, the creation of passages in that by workmen who may introduce themselves for work at the establishment at the designated time during typical working hours.

- ✓ **Industrial establishment**

In the event that he doesn't speak to himself at the establishment at the delegated time during typical working hours, at any rate, one time a day.

- **Section 25-F: Conditions point of reference to conservation of workmen**

No workman utilized in any industry who has been in persistent assistance for at least one year under a business will be saved by that business until-

- ✓ **Degree of Tribunal's Jurisdiction**

The workman has been given one month's see in writing demonstrating the purposes behind conservation and the time of notice has terminated, or the workman has been paid in lieu of such notice, compensation for the time of the notice.

✓ **Right of boss to redesign his business**

In India, courts have given the privilege to individuals to rearrange their business, given that they don't do this with the ulterior goal of deceiving representatives.

✓ **Terms within probation**

In the occasion, the business isn't happy with the presentation of the representative during probation, the business is allowed to fire the administrations of the worker before the probation time frame subject to the notice time frame, assuming any, recommended in the representative's letter of organization approach.

**Work for 240 days in a schedule year**

Each worker who has worked for 240 days in a schedule year in a production line, is permitted to leave for a couple of days with the wages.

**Conservation Compensation and Gratuity**

According to tip Act worker who has finished ceaseless, 5 years administration is qualified to get tip @ 15 days compensation for per finished year of administration. In the event of death of a representative while in administration, there is no arrangement to pay Retrenchment Compensation to the lawful beneficiaries of them perished.

**Restoration of a saved workman**

The courts don't structure reestablishment in instances of illicit end or conservation. Sometimes, courts request payment in lieu of the conservation, though now and again conservation is requested with a full or a portion of back wages or network administration.

Clubbing of administrations -The administrations are generally clubbed together for the reason.

Status of Service - Status in the administration will be dictated by the date of request of arrangement to the administration.

**Restoration with full back wages of a conserved workman**

Ever industrial workman argues under the steady gaze of the official courtroom that after the end of his administration, he couldn't locate some other productive business. On this declaration itself, the weight of evidence shifts upon the business/the board to demonstrate that the workman has been in beneficial work during the period he had been rendered jobless. Without evidence of beneficial work of the workman, the workman gets qualified for back wages if the end has been seen as awful in law.

• **Section 25-FFF: Compensation to workmen if there should arise an occurrence of shutting down of undertakings**

Pay to workmen just if there should arise an occurrence of shutting down of undertakings, Where an undertaking is shut down in any capacity whatsoever, each workman who has been in nonstop assistance for at least one year in that undertaking preceding such conclusion will, subject to the arrangements of sub-Section (2), be

qualified for notice and pay as per the arrangements of Section 25F, as though the workman had been saved: as long as any place the endeavour is shut down by virtue of inescapable conditions outside the ability to control of the business, the remuneration to be paid to the workman under (b) of Section 25F will not surpass his normal compensation cash for 3 months. A defence- An undertaking which is shut somewhere near reason only of-

- money related challenges (counting budgetary misfortunes); or
- amassing of undisposed of stocks; or
- the finish of the time of the rent or permit conceded to it; or
- for a situation any place the venture is occupied with mining Activities, fatigue of the minerals in the region in which such tasks are continued; will not be considered to be shut down because of inescapable conditions outside the ability to control of the business.

- **Section 25-G: Procedure for Retrenchment**

Where any workman in an industrial establishment, who is a resident of India, is to be saved and he has a place with a specific classification of workmen in that establishment, without any understanding between the business and the workman for this benefit, the business will commonly conserve the workman who was the last individual to be utilized in that classification, except if for motivations to be recorded the business saves some other workman.

- **Section 25-H: Re-employment of retrenched workmen**

Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for reemployment and such retrenched workman who offer themselves for re-employment shall have preference over other persons.

- **Section 25-J: Effect of Laws conflicting with this Chapter**

- (1) The arrangements of this Chapter will have an impact despite anything conflicting therewith contained in some other law including standing requests made under the Industrial Employment (Standing Orders) Act, provided that where under the arrangements of some other Act or rules, requests or notices gave thereunder or compelled or under any award, agreement of administration or something else, a working individual is qualified for focal points in regard of any issue that are more ideal to him than those which he would be entitled under this Act, the working individual will, in any case, be qualified for a ton of positive advantages in regard of that issue, despite that he gets benefits in regard of different issues under this Act.
- (2) For the expulsion of questions, it is therefore proclaimed that nothing contained in this Chapter will be esteemed to influence the arrangements of some other law for the time being compelling in any State to the extent that the law accommodates the settlement of industrial disputes, anyway the rights and liabilities of businesses

and workmen in so far as they identify with lay-off and conservation will be resolved as per the arrangements of this Chapter.

- **Section 25-K: Application of Chapter V-B**

1. The arrangements of this Section apply to an industrial establishment (not being an establishment of regular character or work being performed irregularly) in which not more than one hundred workmen were utilized on a normal for each working day for as long as a year.
2. On the off chance that an inquiry emerges whether an industrial establishment is of an occasional character or whether work is performed in that just discontinuously, the choice of the proper Government consequently will be conclusive.

- **Section 25-M: Prohibition of lay-off**

No workman (other than a *badli* workman or an easy going workman) whose name is borne on the muster rolls of an industrial establishment to which this Chapter applies will be laid-off by his manager aside from the one with the earlier consent of the fitting Government or such authority as could likewise be determined by that Government by notice inside the

- Official Gazette (hereinafter in this Section referenced as the predetermined position), acquired on an application made for this sake, except if such lay-off is because of deficiency of intensity or to regular catastrophe, and on account of a mine, such lay-off is expected additionally to fire, flood, overabundance of inflammable gas or explosion.
- An application for authorization under sub-Section (1) will be made by the business in the endorsed way expressing unmistakably the purposes behind the expected lay-off and a duplicate of such application will be served simultaneously on the workmen associated with the recommended way.
- Any place the working individual (other than *badli* workmen or easy going workmen) of an industrial foundation, being mine, have been laid-off under sub-Section (1) for reasons of fire, flood or abundance of inflammable gas or blast, the business, in connection with such establishment, will, inside a time of thirty days from the date of the beginning of such lay-off, apply, inside the recommended way, to the suitable Government or the predetermined expert for consent to proceed with the lay-off.
- Where an application for authorization under sub-Section (1) or sub-Section (3) has been made, the proper Government or the predefined authority, in the wake of making such enquiry as it might suspect fit and once giving a sensible possibility of being heard to the business, the workmen concerned and the people inspired by such lay-off, may, having respect to the validity and sufficiency of the explanations behind such lay-off, the interests of the workmen and each option important elements, by request and for motivations to be recorded in writing, allow or decline to give such consent and a reproduction of such request will be conveyed to the business and furthermore the workmen.

- Where an application for authorization under sub-Section (1) or sub-Section (3) has been made and the proper Government or the predefined authority doesn't convey the request giving or declining to give consent to the business inside a time of sixty days from the date on which such application is made, the authorization applied for will be esteemed to have been allowed on the termination of a similar time of sixty days.
- A request for the appropriate Government or the ideal authority allowing or declining to concede authorization will, subject to the arrangements of sub-Section (7), be conclusive and official on every one of the parties in question and will remain viable for one year from the date of such request.
- The reasonable Government or the ideal authority could, either all alone movement or on the application made by the business or any workman, audit its request giving or declining to concede authorization under sub-Section (4) or allude the issue or, all things considered, cause it to allude to a Tribunal for arbitration: Provided that where a reference has been made to a tribunal under this sub section, it will pass an award inside a time of thirty days from the date of such reference.
- Where no application for authorization under sub-section (1) is made, or where no application for consent under sub-section (3) is made inside the period determined in that, or where the authorization for any lay-off has been can't, such lay-off will be considered to be illicit from the date on which the workmen had been laid-off and the workmen will be qualified for any or all advantages under any law for the time being compelling as though they'd not been laid-off.
- Even so, something contained inside the former arrangements of this section, the suitable Government may, on the off chance that it is fulfilled that inferable from such uncommon conditions as mishap in the establishment or on the other hand the demise of the business or structure, it is essential so to do, by request, direct that the arrangements of sub-Section (1), or, all things considered, sub-Section (3) will not matter in connection to such an establishment for such period as may be determined in the request.
- The arrangements of Section 25C (other than the second stipulation thereto) will apply to instances of lay-off referenced in the Section.

- **Section 25-N: Conditions point of reference to conservation of workmen**

Conditions point of reference to the conservation of workmen. No workman utilized in any industrial business, who has been in persistent help for at least one year, under a business will be saved by that business until:

- The workman has been given three months see in writing demonstrating the purposes behind conservation and the time of notice has lapsed, or the workman has been paid in lieu of such notice, compensation for the time of notice;
- The earlier consent of the proper government or such authority as might be determined by that government by notice in authentic paper has been gotten on an application made for this sake.

- **Section 25-O: Procedure for bringing down an undertaking**

- A business who expects to shut down his undertaking of an industrial establishment will, in the endorsed way apply for earlier consent at any rate 90 days before the date on which the planned conclusion is to get powerful, to the suitable government, expressing obviously the aim of conclusion and the purposes behind the proposed conclusion of the undertaking and will likewise be served all the while on the workmen of the establishment in a recommended way. (nothing in this subsection applies to undertaking taking every necessary step of building streets, channels, dams, bridges, structures and other development work.
- An application for the consent of conclusion of the undertaking is given to the suitable government by the business, the government makes legitimate enquiry and the sensible opportunity to be heard by the business, representatives/workmen and every one of the people keen on the conclusion may, the sensibility and legitimacy of their point is viewed as remembering the interests of the overall population is remembered in addition to all other important variables, the award or refusal is given to the business dependent on the entirety of this by the proper government.
- At the point when an application has been submitted to the proper government inside 90 days, and the suitable government doesn't give the letter of award or refusal inside 60 days, it is regarded to be allowed after the termination of 60 days.
- The last request of the government allowing or denying of the conclusion of the undertaking is conclusive and will tie the entirety of the parties and it will stay in power for a whole year.
- The gave government may likewise survey the award or refusal offer, in view of its own movement or an application, put together by the workman or allude to a tribunal or mediation.
- At the point when the use of conclusion had not been made by the business inside the period determined, at that point the authorization would be rejected by the fitting government and on the off chance that despite everything they go on with the conclusion, at that point the conclusion would be viewed as illicit, however, all the workmen will be given all advantages under the law until further notice in power as though the undertaking hadn't shut.
- Despite anything contained in the previous arrangements of this Section, the suitable government may, on the off chance that it is fulfilled that inferable from such uncommon conditions as mishap in the undertaking or passing of the business or the like it is essential so to do, the arrangements of this Section will not matter in connection to such undertaking for such period as might be determined in the request.

### **Retention in service**

Where an undertaking is allowed to be shut down or where authorization for conclusion is esteemed to be in all actuality, each workman who is utilized in that undertaking preceding the date of use for consent under this Section, will be qualified

for getting remuneration which will be equal to fifteen days' normal compensation for each completed year of constant service or any part thereof more than a half year.

### **Legality of old Section 25-O**

The alterations made in Section 25-O by the Orissa Ordinance 3 of 1983, Section 3 (w.e.f. 21-2-1983) identify with Section 25-O before its substitution by the Central Act 46 of 1982, Section 14 (w.e.f. 21-8-1984).

### **Defendability of corrected Section 25-O**

A business who expects to shut down his undertaking of an industrial establishment will, in the recommended way apply for earlier consent at any rate 90 days before the date on which the proposed conclusion is to get viable, to the proper government, expressing unmistakably the aim of conclusion and the purposes behind the planned conclusion of the undertaking and will likewise be served all the while on the workmen of the establishment in an endorsed way. (nothing in this subsection applies to undertaking taking the necessary steps of building streets, waterways, dams, bridges, structures and other development work.

#### **• Section 25-P: Special Provision as to controlling of undertaking shut down before initiation of the Industrial Disputes (Amendment) Act, 1976**

Unique arrangements as to restarting the undertaking shut down before the industrial disputes (revision) Act, 1976. On the off chance that the suitable government knows about any undertaking of an industrial establishment to which this Section applies and is shut down before the beginning of industrial disputes (change) Act 1976-

- That such undertaking was shut down dependent on unavoidable conditions outside the ability to control the business.
- That there are potential outcomes of restarting the undertaking
- It is important for the recovery of the workmen utilized in such an undertaking before its conclusion or for the upkeep of provisions and services fundamental to the life of the network to restart the undertaking or both.
- The restarting of the undertaking won't bring about hardship to the business and workmen, in any connection to the undertaking, it might, in the wake of allowing a chance to manager and workmen, direct, by request distributed in the official periodical, that the undertaking will be restarted inside such time as might be indicated in the request.

#### **• Section 25-Q: Penalty for lay-off and retrenchment**

Any business who contradicts any arrangements of Section 25M and Section 25N will be rebuffed with detainment for a term of a half year or would be charged a fine of Rs. 5000 or both.

- **Section 25-R: Penalty for conclusion**

1. Any business who shuts down an undertaking without following the arrangements of the above Sections will be culpable with detainment for a term which may reach out to a half year or a fine which might be of 5000 rupees or both.
2. Any business who negates, a request declining to allow consent to shut down an undertaking under the above Sections will be culpable with detainment for a term which may broaden up to 1 year or a fine which may expand up to 5000 rupees, or with both, and where the contradiction is proceeding with one, with a further fine which may expand up to 2000 rupees for consistently during which the repudiation proceeds after the removal.

### **Unfair Labor Practices**

Unreasonable work practices are those practices which are finished by the businesses, representatives or the workmen which are unscrupulous or unlawful in nature and they could likewise be deserving of law. Such activities ought to be kept away from by the businesses, representatives and workmen no matter what.

### **Section 25-T: Prohibition of out of line work practices**

No business or a workman or a trade union, regardless of whether enlisted under trade unions Act 1926 or not, will not submit any uncalled for work practice.

- **Section 25-U: Penalty for submitting unreasonable work practices**

### **Unfair Labor Practices**

Unreasonable work practices are those practices which are finished by the businesses, representatives or the workmen which are untrustworthy or unlawful in nature and they could likewise be deserving of law. Such activities ought to be stayed away from by the businesses, representatives and workmen no matter what.

Out of line work practices with respect to managers and trade unions of businesses;

With respect to businesses and trade union of managers-

- (1) To meddle with, control, or pressure, workmen in the activity of their entitlement to arrange, structure, join or help a trade union or to take part in deliberate activities for the motivations behind aggregate bartering or other common guide or security, in other words.-
  - Compromising the workmen with release or expulsion, on the off chance that they join a trade union;
  - Compromising a lockout or conclusion if a trade union is sorted out.
  - Conceding compensation to increment workmen at significant times of trade union association, with the end goal of undermining the endeavours of the trade union at associations.
- (2) To overwhelm, meddle with or contribute support, budgetary or something else, to any trade union, in other words,

- A business taking an Active enthusiasm for sorting out a trade union of his workmen.
  - A business demonstrating incompletely or giving support to one of a few trade unions endeavouring to compose his workmen or to his individuals, where such a trade is certifiably not a perceived trade union.
- (3) To set up business supported trade unions of workmen.
- (4) To energize or dishearten enrolment in any trade union by suppressing any workman, in other words,
- releasing or rebuffing a workman since he asked other workmen to join or organize a trade union;
  - releasing or expelling a workman for participating in any strike (not being a strike which is esteemed to be an illicit strike under this Act;
  - Changing the position rating or workmen due to trade union activities;
  - Declining to advance workmen of higher posts because of their trade union activities;
  - Giving outlandish advancements to certain workmen with the end goal of making conflict among other workmen, or to undermine the quality of their trade union;
  - Releasing office-bearers or Active individuals from the trade union by virtue of their trade union activities.
- (5) To release or expel workmen-
- By method for exploitation
  - Not in accordance with some basic honesty, however in the colourable of businesses rights.
  - By erroneously ensnaring a workman on a criminal case on bogus proof or on composed prove. For plainly bogus reasons.
  - On false or exaggerated charges of nonattendance without leave
  - In absolute negligence of the standards of national equity in the direction of household enquiry or with undue flurry.
  - For the wrongdoing of a minor specialized character, without having any respect to the idea of the incomplete unfortunate behaviour or the past record or service of the workman, along these lines prompting a misappropriate discipline.
- (6) To cancel crafted by a standard nature being finished by workmen, and to give such work to contractors as a proportion of breaking a strike.
- (7) To move a workman mala fide starting with one spot then onto the next, under the pretence of following administration strategy.

- (8) to demand individual workmen, who are on an individual strike to sign a decent direct bond, as a precondition to enable them to continue working.
- (9) to demonstrate preference to a labourer or indicating them somewhat to one lot of workers paying little heed to the legitimacy.
- (10) To utilize workmen as “*badlis*”, casuals or alternates and to proceed with them in that capacity for a considerable length of time, with the object of denying them of the status and benefits of the changeless workmen.
- (11) To release or oppress any working man for recording charges or affirming against a business in any request or proceeding concerning any industrial question.
- (12) to enrol a workman during a strike which is not an illicit strike.
- (13) Failure to actualize award, settlement or understanding.
- (14) To enjoy acts of power or brutality.
- (15) To decline to deal altogether in accordance with some basic honesty with the perceived trade unions.
- (16) Proposing or proceeding with a lock-out esteemed to be illicit under this Act.

#### Unfair work practices with respect to workmen and trade unions of workmen

- To prompt or actively bolster or impel any strike to be considered illicit under this Act.
- To pressure workmen justified to self-association or to join a trade union or to avoid joining any trade union, in other words
- for a trade union or its individuals to picketing in such a way that non-striking workmen are physically suspended from entering the work environments;
- to enjoy Acts of power or brutality or to hold out dangers of terrorizing regarding a negative mark against non-striking workmen or against administrative staff.
- ❖ For a perceived union to decline to deal by and large in compliance with common decency with the business.
  - To enjoy coercive activities against the confirmation of a bartering agent.
  - To arrange, energize or induce such types of coercive actions as wilful, “go-moderate”, hunching down on the work premises subsequent to working hours or “gherao” of any of the individuals from the administrative or other staff.
  - To organize showings at the habitation of the businesses or the administrative staff individuals.
  - To instigate or enjoy obstinate harm to boss’ property associated with the industry.

- To enjoy Acts of power or savagery or to hold out the dangers of terrorizing against any workman so as to keep him from going to work.

## **Penalties**

### **• Section 26: Penalty for illicit strikes and lock-outs**

- Any workman who proceeds, starts, or Acts generally in encouragement of a strike which is unlawful under this Act, will be culpable with detainment for a term which may reach out to as long as a half year or a fine which may stretch out up to 60 rupees, or with both.
- Any business who starts, proceeds or Acts in encouragement of a lock-out which is illegal under this Act will be culpable with detainment for a term which may reach out to multi-month, or a fine which may stretch out to 1000 rupees or with both.

### **• Section 27: Penalty for affectation, and so on**

Any individual who actuates or affects others to partake in, or generally acts in assistance of a strike or lockout, which is unlawful under this Act, will be culpable with detainment of a term which may stretch out to a half year, or a fine which may reach out to 1000 rupees or both.

### **• Section 28: Penalty for giving money related guide to unlawful strikes and lock-outs**

Any individual who exhausts or applies cash in direct facilitation or backing of any unlawful strikeout lockout will be culpable with detainment for a term which may reach out to half a year, or a fine which may stretch out to 1000 rupees or both.

### **• Section 29: Penalty for break of settlement or award**

Any individual who submits a break of a term of any settlement or award, which is authoritative on him under this Act, will be culpable with detainment for a term which may reach out to a half year, or with fine, or with both, and where the rupture is proceeding with one, with a further fine which may stretch out to 200 rupees for consistently during which the break proceeds after the conviction for the first and the Court attempting the offence.

### **• Section 30: Penalty for unveiling secret data**

Punishment for unveiling secret data.- Any individual who wilfully uncovers any such data as is alluded to in Section 21 in negation of the arrangements of that Section will, on protest made by or in the interest of the trade union or individual business influenced, be culpable with detainment for a term which may reach out to a half year, or with fine which may stretch out to one thousand rupees, or with both.

### **• Section 30-A: Penalty for conclusion without taking note**

Any business who shuts down any undertaking without consenting to the arrangements of the above Section will be culpable with detainment for a term which may reach out to half a year, or a fine which may stretch out to 5000 rupees or both.

- **Section 31: Penalty for different offences**

- (1) Any business who contradicts the arrangements of Section 33 will be culpable with detainment for a term which may stretch out to a half year, or with fine which can be one thousand rupees, or with both.
- (2) Whoever repudiates any of the arrangements of this Act or any standard made under that will, if the same punishment is somewhere else given by or under this Act for such contradiction, be culpable with fine which may stretch out to 100 rupees.

### **Miscellaneous**

- **Section 32: Offense by organizations and so on**

Offence by organizations, and so on.- Where an individual submitting an offence under this Act is an organization, or other body corporate, or a relationship of people (regardless of whether fused or not), each chief, administrator, secretary, operator or other official or individual worried about the administration thereof will, except if he demonstrates that the offence was submitted without his insight or assent, be considered to be liable of such offence.

- **Section 33: Conditions of service, etc.to stay unaltered**

During the pendency of any such continuing in regard of an industrial question, the business may, as per the standing requests material to a workman worried in such case or, where there are no such standing requests, as per the particulars of the contract, regardless of whether express or suggested, among him and the workman-

- adjust, concerning any issue not associated with the question, the states of service pertinent to that workman preceding the initiation of such continuing; or
- for any unfortunate behaviour not associated with the contest, or release or rebuff, regardless of whether by rejection or something else, that workman: Provided that no such workman will be released or expelled, except if he has been paid wages for one month and an application has been made by the business to the authority before which the procedure is pending for endorsement of the action taken by the business.

During the pendency of any such continuing in regard of an industrial case, the business may, as per the standing requests appropriate to a workman, worried in such question or where there are no such standing offers, as per the terms of the contract, regardless of whether express or suggested, among him and the workman-

- Modify, concerning any issue associated with the contest, the states of service pertinent to that workman before the initiation of such continuing
- For any wrongdoing not associated with the question, or release or rebuff, regardless of whether by rejection or something else, that workman: gave that no workman will be released or expelled, except if he has been paid wages for one month and an application is made to the business by the authority before

which the procedure is pending for endorsement of the action taken by the business.

### **Protected workman**

Despite anything contained in the above sub-section, no business will, during the pendency of any such continuing in regard to an industrial case, make any move against any ensured workman worried in such question

- By changing, to the preference of such ensured workman, the states of service relevant to him preceding the beginning of such procedures.
- By releasing or rebuffing, regardless of whether by rejection or something else, such secured workman, spare with the express authorization in writing of the authority before which the proceeding is pending. Like, with the end goal of this sub-section, a “secured workman”, in connection to an establishment, implies a workman who, being an individual from the official or other office carrier of an enlisted trade union associated with the establishment, is perceived all things considered as per rules made for his benefit.

### **Dismissal for misconduct**

For any unfortunate behaviour associated with the case, release or rebuff, regardless of whether by expulsion or something else, any workmen engaged with such question, spare with the express authorization in writing of the authority before which the proceeding is pending.

Also, for any expulsion not associated with the question, release or rebuff, regardless of whether by rejection or something else, that workman: Provided that no such workman will be released or expelled, except if he has been paid wages for one month and an application has been made by the business to the authority before which the procedure is pending for endorsement of the action taken by the business.

### **Suspension of workmen before acquiring consent**

For any offence associated with the question, release or rebuff whether, by expulsion or something else, any workmen worried in such contest, spare with the express consent in writing of the authority before which the proceeding is pending.

#### **• Section 33(1)(b)**

For any unfortunate behaviour associated with the case, release or rebuff whether by expulsion or something else, any workmen worried in such question, spare with the express authorization in writing of the authority before which the proceeding is pending.

### **Jurisdiction of the Tribunal to allow endorsement under Section 33(2)**

During such pendency of any such continuing in any such industrial question, the business may, as per the standing requests material to a workman in such case or where there are no such standing requests, as per the provisions of the contract, regardless of whether express or suggested, among him and the workman-

1. Modify, as to any issue not associated with the question, the states of service appropriate to that workman preceding the initiation of such continuing.
2. For any wrongdoing not associated with the contest, or release or rebuff, regardless of whether by expulsion or something else, that workman: gave that no workman will be released or expelled, except if he has been paid wages for one month and an application has been made by the business to the authority before which the procedure is pending will be pending for endorsement of the Action taken by the business.

### **Regularisation of daily wages**

The wages have to be regularised irrespective of the pendency of proceedings only if the worker hasn't done something wrong.

### **Jurisdiction under Section 33 after the publication of award**

In accordance with the provisions of this Act, the award may be given to the party as per the appropriate provisions of the government.

**Section 33-A:** Special provision for adjudication as to whether the conditions of service etc. changed during the pendency of proceedings

During the pendency of proceedings

When an employer fails to comply with the provisions of Section 33 before the conciliation office, any employee aggrieved by such contravention may make a complaint.

- **Adjudication under Section 33-A**

The conciliation officer should take into account in initiating in, and promoting the settlement of, such industrial dispute

- **Award under Section 33-A**

The arbitrator, labour court, tribunal, national tribunal will look into the matters after the receipt of such complaint, will look into it for adjudication and will submit its award to the appropriate government for adjudication and the provisions of this Act shall be applied accordingly.

- **Section 33-B: Power to move certain procedures**

The fitting government may, by request in writing and the reasons expressed in that, pull back any procedure under this Act, pending under the watchful eye of a working court, tribunal and national tribunal.

- **Section 33-B: Recovery of money due from an employer**

### **Recovery certificate**

If the suitable government is satisfied by the money that is due, it shall issue a certificate of that amount to the collector in which they would issue a certificate of that amount based on the land revenue. (Section 33-C)

## **Who can make an application**

When a workman has his money due under a settlement or an award from an employer, he can send a representative without prejudice authorised in writing on his behalf, or also in the case of death of the worker, make an application to the suitable government so that the employer pays his dues.

## **Jurisdiction of the Labour Court under sub-Section (2)**

Without prejudice, any tribunal or national tribunal under the appropriate government may transfer the proceedings to the labour courts specified for the disposal of such government by providing notice in the official gazette.

## **Money or benefit capable of being computed in terms of money**

For the purposes of considering money as a benefit, the labour court may consider all the evidence available and then shall determine the award after submitting a report to the labour court.

Limitation period for making application- An application has to be made within 3 months.

Application under sub-Section (2)

An application can be made to the suitable government for the recovery of money that is due.

Labour Court as specified by the appropriate Government

A matter can be brought up to the labour court and be passed on to them by the appropriate government.

- **Section 34: Cognizance of offences**

1. No court will take the insight into any offence culpable under this Act or of the abetment of any such offence, save money on objection made by or under the authority of the suitable government.
2. No court substandard compared to that of the metropolitan officer or a legal justice of the five star will attempt any offence culpable under this Act.

- **Section 35: Protection of people**

1. No individual declining to partake or keep on participating in any strike or lockout which is illicit under this will, by reason of such refusal or by reason of any action taken by him under this Section, be dependent upon ejection from any trade union or society, or to any fine or punishment, or hardship of any privilege or any advantage to which he or his legitimate delegates would somehow or another be entitled, or be at risk to be put in any regard, either straightforwardly or in a roundabout way, under any incapacity or at any detriment as contrasted and different individuals from the union or society, anything despite what might be expected in the guidelines of a trade union or society in any case.

2. Nothing in the standards of a general public or a trade union requiring the settlement of disputes in any way will apply to any procedure for authorizing any privilege or exclusion verified by this Section, and in such continuing the common court may, in lieu of requesting an individual who has been ousted from enrolment of a trade union or society to be reestablished to participation request that he be paid out of the assets of the trade union or society such entirety by method for remuneration or harms as the Court might suspect just.

- **Section 36: Representation of parties**

1. A workman who is a party to a contest will be qualified for being spoken to in any proceeding under this Act by-
  - Any individual from the office or the workplace conveyor of an enrolled trade union of which he is a part.
  - Any individual from the official or other office carrier of an organization of trade unions to which the trade union alluded to in the above provision is partnered.
  - Where the labourer isn't an individual from any trade union, by any individual from the official or any office conveyor of any trade associated with, or by some other workman utilized in, the industry wherein the specialist is utilized and approved in such a way as might be endorsed.
2. A business who is a party to the case will be qualified to be spoken to in any proceeding under this Act by –
  - An official of a relationship of bosses of which he is a part.
  - Any individual from the official or other office bearer of a league of trade unions to which the trade union alluded to in the above provision is partnered;
  - Where the labourer isn't an individual from any trade union, by any individual from the official or other office carrier of any trade union associated with, or by some other workman utilized in, the industry wherein the specialist is utilized and approved in such way as might be endorsed.

- **Section 36-A: Power to expel challenges**

1. In the event that, in the assessment of the suitable any trouble or uncertainty emerges with regards to the elucidation of any award or settlement, it might allude to address to such work court, tribunal or national tribunal as it might suspect fit.
2. The work court, tribunal or national tribunal will to which the inquiry is alluded, in the wake of giving the parties a chance of being heard, choose such question and its choice will be conclusive and official on the entirety of the parties.

- **Section 36-B: Power to exclude**

Where the fitting government is fulfilled in connection to any industrial establishment or undertaking or any class of industrial establishment or undertakings carried on by a branch of that government that sufficient arrangements exist for the

examination and settlement of industrial disputes in regard to workmen utilized in such establishment or undertaking or class of establishments or undertakings, it might, by notice in the official periodical, excluded, restrictive or genuinely such establishment or undertaking or class of establishment or undertakings from all or any arrangements of the Act.

- **Section 37: Protection of action taken under the Act**

No suit, arraignment or other lawful continuing will lie against any individual which is done in compliance with common decency or expected to be done incompatibility of this Act or any standards made thereunder.

- **Section 38: Power to make rules**

- The fitting government may, subject to the state of past distribution, make rules to offer production to this Act.
- In preference and without bias to the sweeping statement of the previous power, such rules may accommodate all or any of the accompanying issues, to be specific –
  - The forces and systems of conciliation officials and sheets, courts, labour courts, tribunals, national tribunals including rules as to bringing of witnesses, the generation of archives pertinent to the topic of a request or examination, the number of individuals important to frame a majority and the way of accommodation of reports and awards.
  - The type of assertion understanding, the way where it might be marked by the parties, the way wherein it might be marked by the parties, the way wherein a notice might be given under sub Section 3A and 10A, the intensity of the referee named in the discretion understanding and the methodology pursued by him.
- The arraignment of assessors in procedures under this Act.
- The constitution of complaint settlement experts in settlement 9C in Section 38, the way where industrial disputes might allude to such experts for settlement, the system to be trailed by such experts in the procedures in connection with disputes alluded to them and that period inside which such procedures will be finished.
- The constitution and the elements of and documenting of the opportunities in works advisory groups, and the system to be trailed by such councils in the release of their obligations.
- The recompenses allowable to individuals from courts and sheets and managing official of work courts, tribunals and national tribunals and to assessors and witnesses.
- The minstrel establishment which might be dispensed to a court, board, work court, tribunal or national tribunal and the pay rates and stipends payable to individuals from such establishments.

- The way where the individual by and to whom notice of strike and lockout might be given and the way in which such notification will be imparted.
- The conditions to which parties could be relevant to be spoken to by legitimate practitioners in procedures under this Act under the steady gaze of a court, work court, tribunal or national tribunal.
- Some other issue which is to be or might be endorsed.
- Rules made under this Section will give that a repudiation will thereof be culpable with a fine not exceeding fifty rupees.
- All guidelines made under this Section will, at the earliest opportunity after they're made, be laid before the state lawmaking body or, where the proper government is the government at the centre, before the two places of parliament.
- Each standard made by the government at the centre will be laid, when might be after it is made, before each place of parliament while it is in session for an all-out time of thirty days which might be undermined in one session or in at least two progressive sessions, and if, before the expiry of the session promptly following the session or the progressive sessions aforementioned, the two houses concur in making any adjustment in the standard, or the two houses concur that the standard ought not be made, the standard will from thereon have impact just in the changed frame or be of no impact, by and large; along these lines, nonetheless, that any such alteration or revocation will be without preference to the legitimacy of anything recently done under the standard.

- **Section 39: Delegation of forces**

The fitting government may, by notice in the official periodical, direct that any power exercisable under this Act or rules made thereunder will, in connection to such issues and subject to such conditions, assuming any, as might be indicated toward the path, be exercisable moreover

1. Where the fitting government is the government at the centre, by such official or authority subordinate to the government at the centre or by the state government or by such official or authority subordinate to the state government, as might be indicated in the warning.
2. Where the fitting government is a state government, by such official or authority subordinate to the state government as might be indicated in the warning.

- **Section 40: Power to correct Schedules**

- The proper government may, on the off chance that it is of assessment that it is practical or vital out in the open enthusiasm to do as such, by warning in the official newspaper, add to the main calendar any industry, and on such notice being given, the primary timetable will be considered to be corrected as needs be.
- The government at the centre may, by warning of its official journal, add to or modify or alter the subsequent calendar or the third timetable and on any such

notice being given, the subsequent calendar or the third timetable, by and large, will be done to be revised in like manner.

- Each such notice will, at the earliest opportunity after it is given, be laid before the assembly of the state, if the notice has been given by a state government, or before the parliament, if the notice has been given by the government at the centre.

### ❖ Exercise:

#### Q-1 MCQ

1. Under which of the following legislations there is a provision called ‘protected workmen’?

- (A) Trade Unions Act, 1926
- (B) Industrial Employment (Standing Orders) Act, 1946
- (C) Factories Act, 1948
- (D) Industrial Disputes Act, 1947

**Answer - (D)**

2. Which one of the following is not a machinery for settlement of Industrial Disputes under the Industrial Disputes Act, 1947?

- (A) Conciliation Officer
- (B) Board of Conciliation
- (C) Collective Bargaining
- (D) Labour Court

**Answer - (C)**

3. Under which Schedule of the Industrial Disputes Act, 1947 Public Utility Services have been listed out?

- (A) 1st Schedule
- (B) 2nd Schedule
- (C) 3rd Schedule
- (D) 4th Schedule

**Answer - (A)**

4. Which of the following statements about the definition of industry as given in the Industrial Disputes Act, 1947 is not right?

- (A) It means any business, trade, undertaking, manufacture or calling of employers.
- (B) It includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen.
- (C) This definition has been revised in 1982 in a leading case of 1978.
- (D) The revised definition has been implemented after due notification.

**Answer - (D)**

5. ‘First come last go and last come first go’ is the principle of

- (A) Lay-off
- (B) Closure
- (C) Retrenchment

(D) Dismissal

**Answer - (C)**

6. Which of the following is machinery for settlement of industrial disputes?

- (A) Indian Labour Conference
- (B) Joint Management Council
- (C) Industrial Tribunal
- (D) Standing Labour Committees

**Answer - (C)**

7. 'Award' under Industrial Disputes Act, 1947 is

- (a) Not interim determination of labour court
- (b) Not arbitration award under Section 10A
- (c) Not final determination of labour court
- (d) Not final determination of arbitration award under section 10A

- (A) All statements are true.
- (B) (a) and (d) are true.
- (C) (b) is true.
- (D) All statements are wrong.

**Answer - (D)**

8. Grievance Handling Machinery is given in

- (A) Industrial Disputes Act
- (B) Factories Act
- (C) Both (A) and (B)
- (D) None of the above

**Answer - (A)**

9. The dispute of individual workman is deemed to be industrial dispute if the dispute or difference is connected with or arising out of the following where no other workman nor any union of workman is a party to the dispute.

- (A) Grievance of an individual workman.
- (B) Discharge of an individual workman.
- (C) Dismissal of an individual workman.
- (D) Discharge, dismissal, retrenchment or otherwise termination of services of an individual workman.

**Answer - (D)**

10. List of unfair labour practices on the part of the trade unions and employers was included in

- (A) Factories Act
- (B) Industrial Dispute Act
- (C) Trade union Act
- (D) None of the above

**Answer - (B)**

## **UNIT-5 THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946**

### **5.1 Object of the Act**

### **5.2 Important Legal Provisions:**

- 5.2.1 Applicability of Act:**
- 5.2.2 Important Definitions:**
- 5.2.3 Submission of Draft Standing Orders:**
- 5.2.4 Conditions for certification of Standing Orders: (Section 4)**
- 5.2.5 Certification of S.O. : (Section 5):**
- 5.2.6 Appeals : (Section 6):**
- 5.2.7 Date of operation of S.O.: (Section 7)**
- 5.2.8 Register of S.O. : (Section 8)**
- 5.2.9 Publication of S.O.: (Section 9):**
- 5.2.10 Modification of S.O. :(Section 10):**
- 5.2.11 Temporary application of Model S.O.: (Section 12 A):**
- 5.2.12 Penalties and Procedure : (Section 13):**
- 5.2.13 Delegation of Powers: (Section 14A):**
- 5.2.14 Power to make rules: (Section 15):**

### **5.3 Self Practice:**

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#### **5.1 Object of the Act**

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Before introduction of this Act, the relationship of employer-employee of industrial undertaking was governed by contracts and agreements entered by them. After commencement of Trade Unions Act, 1926, Workmen's compensation Act, 1923, Payment of wages act, 1936 new problems of maintaining industrial peace and production for society were started emerging. It was then considered that the society had a vital interest in the settlement of terms of employment of industrial labour and thus the settlement of labour problems became tripartite. The importance of making law relating to matters connected with employment and conditions of employment was accentuated during the Tripartite Labour Conference, 1942. For giving effect to this new emerging ideology Industrial Employment (Standing Orders) Act, 1946 was passed by the Central Government.

The object and reasons of the said act says that “ It is expedient to require employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them.”<sup>1</sup> The object of the act specifies that the Act will regulate the conditions of employment, discharge, disciplinary action, holidays etc. of the workers employed in industrial undertakings. Standing Orders framed under

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the Act have the force of law and can be contravened at the risk of penalty provided by the act itself. Therefore, as regards the nature of the Standing Orders framed, under the Act it was held that: “Certified Standing Orders framed in accordance with the Act have the source of law like any other statutory instrument.”

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## **5.2 Important Legal Provisions:**

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### **5.2.1 Applicability of Act:**

It applies to every industrial establishment wherein one hundred or more workmen are employed, or were employed on any day of the preceding twelve months: Provided that the appropriate Government may, after giving not less than two months’ notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any industrial establishment employing such number of persons less than one hundred as may be specified in the notification.

Nothing in this Act shall apply to an industrial establishment in so far as the workmen employed therein are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defense Service (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations than may be notified in this behalf by the appropriate Government in the Official Gazette, apply. (Section 13 B)

Further Section 1 of the Act provides that nothing in this Act shall apply to-

- (i) any industry to which the provisions of Chapter VII of the Bombay Industrial Relations Act, 1946, apply; or
- (ii) any industrial establishment to which the provisions of the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 apply.

The Section further clarifies that this Act shall apply to all industrial establishments (in accordance with this section) under the control of the Central Government.

### **5.2.2 Important Definitions:**

- **Certifying Officer:** This includes a Labour Commissioner or a Regional Labour Commissioner, or it includes any other officer appointed by the appropriate Government, by notification in the Official Gazette, to perform all or any of the functions of a Certifying Officer under this Act.
- **Employer:** This includes the owner of an industrial establishment to which this Act for the time being applies, and includes- (i) in a factory, any person named under 14[clause (f) of sub-section (1) of Section 7 of the Factories Act, 1948], as manager of the factory; (ii) in any industrial establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf, or where no authority is so appointed, the head of the department; (iii) in any other industrial establishment, any person responsible to the owner for the supervision and control of the industrial establishment.

- **Industrial establishment :** This means (i) an industrial establishment as defined in clause (ii) of Section 2 of the Payment of Wages Act, 1936, or 15[(ii) a factory as defined in clause (m) of Section 2 of the Factories Act, 1948, or ] (iii) a railway as defined in clause (4) of Section 2 of the Indian Railway Act, 1890, or (iv) the establishment of a person who, for the purpose of fulfilling a contract with the owner of any industrial establishment, employs workmen.
- **Standing orders:** This means rules relating to matters set out in the Schedule.

Following matters are assigned to Standing Orders according to the Schedule:

1. Classification of workmen, e.g., whether permanent, temporary, apprentices, probationers, or *badlis*.
2. Manner of intimating to workmen periods and hours of work, holidays, pay-days and wage rates.
3. Shift working.
4. Attendance and late coming.
5. Conditions of, procedure in applying for, and the authority which may grant leave and holidays.
6. Requirement to enter premises by certain gates, a liability to search.
7. Closing and reporting of sections of the industrial establishment, temporary stoppages of work and the rights and liabilities of the employer and workmen arising there from.
8. Termination of employment, and the notice thereof to be given by employer and workmen.
9. Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct.
10. Means of redress for workmen against unfair treatment or wrongful exactions by the employer or his agents or servants.
11. Any other matter which may be prescribed.

### **5. 2.3 Submission of Draft Standing Orders:**

As per the provisions of Section 3 employer of establishment shall submit, within six months from the commencement of this act, to the Certifying Officer in five copies, proposed Draft Standing Order for adoption in his industrial establishment. Each matter, as specified in the Schedule of the Act, applicable to industrial establishment must be covered under in the Standing Order. Such Draft shall be accompanied with a statement containing prescribed particulars of employed workmen of that establishment. Details of Trade Union to which the workmen belong should also be attached with the Draft Standing Orders.

The section also gives option to submit joint Standing Orders (herein after as S.O.) from a group of employers in similar industrial establishment.

When the Act provides that the S.O. drafted by the employers should, as far as practicable, be in conformity with the Model Standing Orders, it simply means that the model only presents a pattern and the draft should try to resemble it. It does not mean that the Draft Standing Order should follow the model verbatim.

#### **5.2.4 Conditions for certification of Standing Orders: (Section 4)**

Standing orders shall be certifiable under this Act if –

- (a) provision is made therein for every matter set out in the Schedule which is applicable to the industrial establishment, and,
- (b) the standing orders are otherwise in conformity with the provisions of this Act; and it 17 [shall be the function] of the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any standing orders.

The certifying officer or the appellate authority shall have the power to adjudicate upon the reasonableness of the provisions of the S.O.. Modification of S.O. is permissible under Section 10 but that can be achieved only by adhering to the prescribed manner. Modification of S.O. requiring giving of reasons in cases of discharge of workman was held to be fair and reasonable. It is the duty of Certifying Officer or appellate authority to see whether the S.O. satisfy the conditions necessary for certification. They can make necessary additions or modifications in the Draft S.O. submitted to them for certification.

#### **5.2.5 Certification of S.O. : (Section 5):**

On receipt of the draft under Section 3, the Certifying Officer shall forward a copy thereof to the trade union, if any, of the workmen, or where there is no such trade union, if any, of the workmen or where there is no trade union, to the workmen in such manner as may be prescribed, together with a notice in the prescribed form requiring objections, if any, which the workmen may desire to make to the draft standing orders to be submitted to him within fifteen days from the receipt of the notice.

After giving the employer and the trade union or such other representatives of the workmen as may be prescribed an opportunity of being heard, the Certifying Officer shall decide whether or not any modification of or addition to the draft submitted by the employer is necessary to render the draft standing orders certifiable under this Act, and shall make an order in writing accordingly. The Certifying Officer shall thereupon certify the draft standing orders, after making any modifications there in which his order under sub-section (2) may require, and shall within seven days thereafter send copies of the certified standing orders authenticated in the prescribed manner and of his order under sub-section (2) to the employer and to the trade union or other prescribed representatives of the workmen.

The purpose of framing and certification of S.O. is that the conditions of service of that employment shall be regulated by it. Certified S.O. are binding on all workmen whether originally employed before or after S.O. were certified. No modification in S.O. is permissible when a settlement relating to that matter is in operation. i.e. in course of settlement, the demand in respect of age of retirement was not accede to, the modification of S.O. raising the age of superannuation from 58 years to 60 years cannot be made.

#### **• Powers of Certifying Officer:**

Certifying officer and appellate authority shall have all the powers of Civil Court for the purposes of receiving evidence, administering oaths, enforcing the

attendance of witnesses and compelling the discovery and production of documents. Every such authority is also deemed to be a Civil Court within the meaning of Sections 345 and 346 of Criminal Procedure Code, 1973.

Clerical or arithmetical mistakes in any order passed by a certifying Officer or appellate authority, or errors arising therein from any accidental slip or omission, at any time, it should be corrected by that officer or authority or the successor in office of such officer or authority, as the case may be.

#### **5.2.6 Appeals : (Section 6):**

Any employer, workmen, trade union or other prescribed representatives of the workmen aggrieved by the order of the Certifying Officer may, within thirty days from the date on which copies are sent, appeal to the appellate authority, and the appellate authority, whose decision shall be final, shall by order in writing confirm the standing orders either in the form certified by the Certifying Officer or after amending the said standing orders by making such modifications thereof or additions there to as it thinks necessary to render the standing orders certifiable under this Act.

The appellate authority shall, within seven days of its order send copies thereof to the Certifying Officer, to the employer and to the trade union or other prescribed representatives of the workmen, accompanied, unless it has confirmed without amendment the standing orders as certified by the Certifying Officer, by copies of the standing orders as certified by it and authenticated in the prescribed manner.

“Appellate Authority” means an authority appointed by the appropriate Government by notification in the Official Gazette to exercise in such area as may be specified in the notification the functions of an appellate authority under this Act. (Section 2 (a)). The decision of the Appellate Authority shall be final which means that there is no further appeal or revision against that order. The Section 12 states that the finality given to the certification by the Appellate Authority cannot be challenged in the Civil Court. Further the section provides that no oral evidence having the effect of adding or otherwise varying or contradicting S.O. finally certified under the S.O. shall be admitted to the Court.

#### **5.2.7 Date of operation of S.O.: (Section 7)**

Certified S.O. shall come into operation on the expiry of thirty days from the date on which authenticated copies thereof are sent or where an appeal as aforesaid is preferred, on the expiry of seven days from the date on which copies of the order of the appellate authority are sent. It is not open to the employer and the workmen to contract out of the right and obligations created by the S.O. Section 7 is subject to no limitations, therefore, the S.O. after being certified must come into operation in accordance with the Section.

#### **5.2.8 Register of S.O. : (Section 8)**

A copy of all S.O. as finally certified under this Act shall be filed by the Certifying Officer in a register in the prescribed form maintained for the purpose. A copy of Certified S.O. shall be furnished to any person applying for it on payment of the prescribed fee.

### **5.2.9 Publication of S.O.: (Section 9):**

The text of the standing orders as finally certified under this Act shall be prominently posted by the employer in English and in the language understood by the majority of his workmen on special boards to be maintained for the purpose at or near the entrance through which the majority of the workmen enter the industrial establishment and in all departments thereof where the workmen are employed.

### **5.2.10 Modification of S.O. :(Section 10):**

Standing orders finally certified under this Act shall not, except on agreement between the employer and the workmen or a trade union or other representative body of the workmen be liable to modification until the expiry of six months from the date on which the standing orders or the last modifications thereof came in to operation. The object of providing a time of 6 months for modification from the date of S.O. or the modification came into operation was to allow the S.O. to work for a sufficiently long time to see whether they work properly or not.

An employer or workman or a trade union or other representative body of the workmen may apply to the Certifying Officer to have the standing orders modified and such application shall be accompanied by five copies of the modifications proposed to be made, and where such modifications are proposed to be made by agreement between the employer and the workmen or a trade union or other representative body of the workmen, a certified copy of that agreement shall be filed along with the application. Any modifications in the S.O. shall be certified in the same manner as the first S.O. In case, if modification in the existing S.O. is proposed by agreement between employer and workmen then also the certifying officer is not bound to accept the changes if they are not in conformity the prescribed model S.O.

### **5. 2.11 Temporary application of Model S.O.: (Section 12 A):**

Notwithstanding anything contained in Sections 3 to 12 for the period commencing on the date on which this Act becomes applicable to an industrial establishment and ending with the date on which the S.O. as finally certified under this Act come into operation under Section 7 in that establishment; the prescribed Model S.O. shall be deemed to be adopted in an establishment and the provisions of Section 9,13(3), 13A shall apply to such Model Standing Orders as they apply to the S.O. so certified. These provisions shall not apply to an industrial establishment in respect of which the appropriate Government is the Government of Gujarat or Maharashtra.

The S.O. represent a contract between the employer and the employee and whether the employer or the employees have voluntarily agreed to certain contract and would take its place where the original contract is contrary to these S.O.

### **5.2.12 Penalties and Procedure : (Section 13):**

An employer who fails to submit draft standing orders as required by Section 3 or who modifies his standing orders otherwise than in accordance with Section 10, shall be punishable with fine which may extend to five thousand rupees, and in the case of a continuing offence with a further fine which may extend to two hundred rupees for every day after the first during which the offence continues.

An employer who does any act in contravention of the standing orders finally certified under this Act for his industrial establishment shall be punishable with fine which may extend to one hundred rupees, and in the case of a continuing offence with a further fine which may extend to twenty-five rupees for every day after the first during which the offence continues.

No prosecution for an offence punishable under this section shall be instituted except with the previous sanction of the appropriate Government. Further the section provides that no Court inferior to that of a Metropolitan or Judicial Magistrate of the second class shall try any offence under this section.

### **5.2.13**

**Delegation of Powers: (Section 14A):** The appropriate government may be a notification in the official Gazette, delegate the exercise of any power exercisable by such Government under the Act. Where the appropriate government is the Central Government it can delegate its authority as aforesaid to any officer or authority subordinate to it or to the State Government, or to any office or authority subordinate to the State Government. Where the appropriate government is the State Government it can delegate its powers to any officer or authority subordinate to it.

### **5.2.14 Power to make rules: (Section 15):**

- (1) The appropriate Government may after previous publication, by notification in the Official Gazette, make rules to carry out the purposes of this Act.
- (2) In particular and without prejudice to the generality of the foregoing power, such rules may—
  - (a) prescribe additional matters to be included in the Schedule, and the procedure to be followed in modifying standing orders certified under this Act in accordance with any such addition;
  - (b) set out model standing orders for the purposes of this Act;
  - (c) prescribe the procedure of Certifying Officers and appellate authorities;
  - (d) Prescribe the fee which may be charged for copies of standing orders entered in the register of standing orders;
  - (e) provide for any other matter which is to be or may be prescribed;

Provided that before any rules are made under clause (a) representatives of both employers and workmen shall be consulted by the appropriate Government.

- (3) Every rule made by the Central Government under this section shall be laid as soon as, may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or 34 [in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid] both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have

effect only in such modified form or be of no effect, as the case may be ; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

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### 5.3 Self Practice:

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❖ **Theoretical Questions:**

1. Discuss the objects and applications of Industrial Employment (Standing Orders) Act, 1946.
2. Explain Standing Orders and Model Standing Orders under the Industrial Employment (Standing Orders) Act, 1946.
3. Describe the procedure for certification and cancellation of Standing Orders.
4. Define the term Industrial establishment and appropriate authority in detail.
5. Explain the provisions regarding Appeal under the Industrial Employment (Standing Orders) Act, 1946.

❖ **Short Notes:**

1. Modification of Standing Orders.
2. Provisions relating to offence and Penalty under the Industrial Employment (Standing Orders) Act, 1946.
3. Powers and Duties of Certifying Officer
4. Matters assigned to Standing Orders according to the Schedule.
5. Provisions relating to rule making powers under the Industrial Employment (Standing Orders) Act, 1946.

❖ **Check whether the following statements are True or False.**

- 1 Within 6 months from the date of application of the Act, the employer shall submit to the Certifying Officer 5 copies of the draft standing orders. (True/False)
- 2 There is no provision to refer the draft standing orders to the Union/workmen by the Certifying Officer. (True/False)
- 3 Draft standing orders are to be submitted within six months from the date on which the Act is applicable in five copies. (True/False)
- 4 The appellate authority shall, within seven days of its order send copies thereof to the Certifying Officer. (True/False)
- 5 The Industrial Employment (standing orders) Act, 1946 applies to every  
1 establishment employing  
2 The appeal on the certified standing orders may be preferred within ----- days  
3 before the appellate authority

- 4 The appeal on the certified standing orders may be preferred within ----- days
- 5 before the appellate authority
- 6 There is no provision to refer the draft standing orders to the Unions/Workmen by the certifying officer.

**MBA  
SEMESTER-4  
(SPECIALIZATION) (HR)  
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## **UNIT-6 EMPLOYEES COMPENSATION ACT, 1923 AND EQUAL REMUNERATION ACT, 1976**

### **6.1 Introductions- Employees Compensation Act, 1923**

#### **6.2 Scope**

#### **6.3 Definitions**

#### **6.4 Employer's Liability for Compensation**

#### **6.4 Obligations of Employers and Workmen**

#### **6.5 Appeals and Penalties**

### **6.8 Introduction – Equal Remuneration Act, 1976**

#### **6.9 Objectives**

#### **6.10 Provisions**

#### **6.11 Payment of remuneration at equal rates to men and women workers**

#### **6.12 Advisory Committee**

#### **6.13 Appointment of authorities for Hearing and deciding claims and Complaints**

#### **6.14 Penalties**

#### **❖ Exercise**

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### **6.1 Introduction**

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The beginning of social security in India was effective with the passing of the Workmen's Compensation Act in 1923. Prior to 1923 it was almost impossibility on the part of an injured workman to recover damage or compensation for any injury sustained by him in the ordinary course of his employment. Of course, there were rare occasions when the employer was liable for the same under the common law for his own personal negligence. The dependents of a deceased workman could, in rare cases, claim damages under the Indian Fatal Accidents Act, 1885, if the accident was due to the wrongful act, neglect or fault of the person who caused the death.

In 1921, the government made proposals for the grant of compensation and circulated them for opinion. The proposals received general support and as a result, the Workmen's Compensation Act was passed in March 1923 and was put into force on July 1, 1924. Subsequently, there were a number of amendments in the Workmen's Compensation Act. The Workmen's Compensation Act, 1923 has been renamed as "The Employees' Compensation Act, 1923" and the term "workman" or "workmen" as "employee" and "employees," for making the Act gender neutral. For the words "workman" and "workmen" in the Principal Act, the words "employee" and "employees" have been substituted respectively. The amendment has been brought about by the Workmen's Compensation (Amendment) Act; 2009 with effect

from January 18, 2010. The amendments applicable to this study lesson have been incorporated at relevant places.

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## 6.2 Scope

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The object of the Act is to impose an obligation upon employers to pay compensation to workers for accidents arising out of and in the course of employment. The scheme of the Act is not to compensate the workman in lieu of wages but to pay compensation for the injury caused. The Act extends to the whole of India and applies to any person who is employed, otherwise than in a clerical capacity, in railways, factories, mines, plantations, mechanically propelled vehicles, loading and unloading work on a ship, construction, maintenance and repairs of roads and bridges, electricity generation, cinemas, catching or training of wild elephants, circus, and other hazardous occupations and employments specified in Schedule II the Act.

Under Sub-Section (3) of Section 2 of the Act, the state governments are empowered to extend the scope of the Act to any class of persons whose occupations are considered hazardous after giving three months' notice in the official gazette. The Act, however, does not apply to members serving in the Armed Forces of Indian Union, and employees covered under the provisions of the Employees' State Insurance Act, 1948 as disablement and dependents' benefit is available under this Act.

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## 6.3 Definitions

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Some important definitions are given below-

### ❖ Dependant

Section 2(1)(d) of the Act defines "dependant" as to mean any of the following relatives of a deceased employee, namely:

- (i) A widow, a minor legitimate or adopted son, an unmarried legitimate or adopted daughter, or a widowed mother, and
- (ii) If wholly dependent on the earnings of the employee at the time of his death, a son or a daughter who has attained the age of 18 years and who is infirm; and
- (iii) death: If wholly or in part dependent on the earnings of the employee at the time of his
  - A widower,
  - A parent other than a widowed mother,
  - A minor illegitimate son, an unmarried illegitimate daughter or a daughter
  - legitimate or illegitimate or adopted if married and a minor, or if widowed
  - and a minor,

- A minor brother or an unmarried sister, or a widowed sister if a minor,
- A widowed daughter-in-law,
- A minor child of a pre-deceased son,
- A minor child of a pre-deceased daughter where no parent of the child is alive or a paternal grandparent, if no parent of the employee is alive.

#### ❖ **Employee**

The definition of workmen has been replaced by the definition of employee. The term "employee" has been inserted by the Workmen's Compensation (Amendment) Act, 2009

Under a new clause (dd) in Section 2 of the Act. Clause (n) defining "workman" has been omitted. Under Section 2(dd) "employee" has been defined as follows:

"Employee" means a person, who is-

A railway servant as defined in clause (34) of section 2 of the Railways Act, 1989 (24 of 1989), not permanently employed in any administrative district or subdivisional office of a railway and not employed in any such capacity as is specified in Schedule II; or

- A master, seaman or other members of the crew of a ship,
- A captain or other member of the crew of an aircraft,
- A person recruited as driver, helper, and mechanic, cleaner or in any other capacity in connection with a motor vehicle.
- A person recruited for work abroad by a company, India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India; or Employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to any employee who has been" injured shall, where the employee is dead, include a reference to his dependants or any of them; Clause (n) shall be omitted.

#### ❖ **Employer**

The following persons are included in the definition of "employer":

- Anybody of persons incorporated or not;
- Any managing agent of the employer;
- Legal representative of a deceased employer. Thus, one who inherits the estate of

the deceased is made liable for the payment of compensation under the Act. However, he is liable only upto the value of the estate inherited by him;

- Any person to whom the services of an employee are temporarily lent or let on hire by a person with whom the employee has signed a contract of service or apprenticeship. (Section 2(1)(e)]

#### ❖ **Seaman**

"Seaman" under Section 2(1)(k) means any person forming part of the crew of any ship but does not include the master of the ship.

#### ❖ **Wages**

According to Section 2(1)(m), the term "wages" include any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer to an employee towards any pension or provident fund or a sum paid to employee to cover any special expenses entailed on him by the nature of his employment.

#### ❖ **Disablement**

The Act does not define the word Disablement. It only defines the partial and total disablement. After reading the partial or total disablement as defined under the Act one may presume that disablement is loss of earning capacity by an injury which depending upon the nature of injury and percentage of loss of earning capacity will be partial or total. The Act has classified disablement into two categories, viz.

##### **(i) Partial disablement**

Partial disablement can be classified as temporary partial disablement and permanent partial disablement.

- (a) Where the disablement is of a temporary nature: Such disablement as reduces the earning capacity of an employee in the employment in which he was engaged at the time of the accident resulting in the disablement; and
- (b) Where the disablement is of a permanent nature: Such disablement as reduces for all time his earning capacity in every employment which he was capable of undertaking at the time. [Section 2(1)(g)] But every injury specified in Part II of Schedule I shall be deemed to result in permanent partial disablement.

**(ii) Total disablement:** Total disablement can also be classified as temporary total disablement and permanent total disablement. "Total disablement" means, such disablement whether of a temporary or permanent nature, which incapacitates an employee for all work which he was capable of performing at the time of accident resulting in such disablement. Provided further that permanent total disablement shall

be deemed to result from every injury specified in Part I of Schedule I or similarly total disablement shall result from any combination of injuries specified in Part II of Schedule I, where the aggregate percentage of loss of earning capacity, as specified in the said Part II against these injuries amount to one hundred per cent or more. [Section 2(1)(I)]

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#### **6.4 Employer's Liability for Compensation**

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##### **(i) Personal injury:**

There must be personal injury caused to an employee. Normally, Injury implies physical or bodily injury caused by an accident. However, such personal injury will also include nervous shock or break-down or mental strain.

##### **(ii) Accident:**

The personal injury must be caused by an "accident". The term "accident" has not been defined in the Act but its meaning has been sufficiently explained in number of decided cases. The expression accident must be construed to its popular sense. It has been defined as a mishap or an untoward event which is not expected or designed. What the Act intends to cover is what might be expressed as an accidental injury.

##### **(iii) Arising out of employment and in the course of employment:**

To make the employer liable, it is necessary that the injury is caused by an accident which must be raised out of and in the course of employment.

##### **❖ Arising out of employment :**

The expression "arising out of employment" suggests some causal connection between the employment and the accidental injury. The cause contemplated is the proximate cause and not any remote cause. Thus, where a workman suffers from heart disease and dies on account of strain of work by keeping continuously standing or working, held that the accident arose out of employment (Laxmibai Atma Ram v. Bombay Port Trust, AIR 1954 Bom.180). Generally if an employee is suffering from a particular disease and as a result of wear and tear of his employment he dies of that disease, employer is not liable. But if the employment is contributory cause or has accelerated the death that the death was due to disease coupled with the employment, then the employer would be liable as arising out of the employment.

##### **❖ Arising in the course of employment :**

The expression "in the course of employment" suggests the period of employment and the place of work. In other words, the workman, at the time of accident must have been employed in the performance of his duties and the accident took place at or about the place where he was performing his duties.

The expression "employment" is wider than the actual work or duty which the employee has to do. It is enough if at the time of the accident the employee was in actual employment although he may not be actually turning out the work. Even when the employee is resting, or having food, or taking his tea or coffee, proceeding from the place of employment to his residence, and accident occurs, the accident is regarded as arising out of and in the course of employment.

❖ **Employment** - The word "employment" has a wider meaning than work. A man may be in course of his employment not only when he is actually engaged in doing something in the discharge of his duty but also when he is engaged in acts belonging to and arising out of it (*Union of India v. Mrs. Noorjahan*, 1979 Lab. I.C. 652). For the expression "accident arising out of and in the course of employment" the basic and indispensable ingredient is its unexpectedness. The second ingredient is that the injury must be traceable within reasonable limits, to a definite time, place or occasion or cause. The Act should be broadly and liberally constructed in order to effectuate the real intention and purpose of the Act.

❖ **Theory of notional extension of employment**

To make the employer liable it is necessary that the injury caused by an accident must have arisen in the course of employment. It means that the accident must take place at a time and place when he was doing his master's job. It is well settled that the concept of "duty" is not limited to the period of time the workman actually commenced his work and the time he downs his tools. It extends further in point of time as well as place. But there must be nexus between the time and place of the accident and the employment. If the presence of the workman concerned at the particular point was so related to the employment as to lead to the conclusion that he was acting within the scope of employment that would be sufficient to deem the accident as having occurred in the course of employment (*Weaver v. Tredgar Iron and Coal Co. Ltd.*, (1940) 3 All, ER 15). It is known as doctrine of notional extension of employment; whether employment extends to the extent of accident depends upon each individual case.

A workman while returning home after duty was murdered within the premises of the employer. It was held that there was casual and proximate connection between the accident and the employment. Since the workman was on spot only for his employment and his wife is entitled for compensation (*Naima Bibi v. Lodhne Colliery (1920) Ltd.*, 1977 Lab. I.C. NOC 14). If an employee in the course of his employment has to be in a particular place by reason where he has to face a peril which causes the accident then the casual connection is established between the accident and the employment (*TNCS Corporation v. Poonamalai*, 1994 II LLN 950).

### **When employer is not liable,**

In the following cases, the employer shall not be liable:

- (i) When the injury does not result in disablement for a period exceeding 3 days.
- (ii) When the injury not resulting in death or permanent total disability is due to any of the following reasons:
  - (a) The employee was at the time of accident, under the influence of drink or drugs, or
  - (b) The employee wilfully disobeyed an order expressly given or a rule expressly aimed for the purpose of securing safety of workers or
  - (c) The employee wilfully disregards or removes any safety guards or safety devices which he knew to have been provided for the safety of the employee.

Thus, where an employee dies due to an accident arising out of and in the course of employment, it cannot be pleaded that death was due to any of the reasons stated from (a) to (c) (R.B. Moondra & Co. v. Mst. Bhanwari, AIR, 1970 Raj. 111).

### **❖ Suit for damages in a Court barred**

Under Section 3(5), an employee is not entitled to any compensation under the Workmen's Compensation Act, 1923, if he has instituted, in a Civil Court, a suit for damages against the employer or any other person. Similarly, an employee is prohibited from instituting a suit for damages in any court of law, (a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or (b) if the employee and the employer have entered into an agreement for the payment of compensation in accordance with the provisions of this Act.

### **❖ Employer's Liability when Contractor is Engaged**

Section 12 of the Act envisages the employer's liability to pay compensation to a contractor.

- (i) Sometimes, employer may engage a contractor instead of employing his own employee for the purpose of doing any work in respect of his trade or business. Such a contractor then executes the work with the help of the employee engaged by him. If any injury is caused by an accident to any of these employees, the employer cannot be held liable because they are not employed by him and hence are not his employees. Section 12(1) makes the employer liable for compensation to such employees hired by the contractor under following circumstances:
  - The contractor is engaged to do a work which is part of the trade or business of the employer (called principal).
  - The employees were engaged in the course of or for the purpose of his trade or business.

- The accident occurred in or about the premises on which the principal employer has undertaken or undertakes to execute the work concerned. The amount of compensation shall be calculated with reference to the wages of the employee under the employer by whom he is immediately employed.
- (ii) According to Section 12(2), where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor or any other person from whom the employee could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section, he shall be entitled to be indemnified by any person standing to him in relation of a contractor from whom the employee could have recovered compensation and all questions as the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.
- (iii) The above provision, however, does not prevent an employee from recovering compensation from the contractor instead of the employer, i.e., the Principal.
- (iv) This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken, or usually undertakes, as the case may be to execute the work or which are otherwise under his control or management. [Section 12(4)].

#### ❖ Compensation

**(i) Meaning of compensation** - "Compensation" has been defined under Section 2(1)(c) of the Act to mean compensation as provided for by this Act. The meaning of the term will be more clear in the following paragraphs.

**(ii) Amount of compensation** - Amount of compensation is payable in the event of an employee meeting with an accident resulting into temporary or permanent disability or disease as stated in Schedule II and III in terms of Section 4 of the Act, read with Schedule IV. Schedule II contains a list of persons engaged in different employments/operations specified therein who are covered by the definition of employee and entitled to compensation e.g. a person employed for loading/unloading of materials in a factory or ship, persons employed in work incidental or connected with manufacturing process.

Schedule III contains a list of occupational diseases which if contracted while in employment entitles an employee to compensation such as disease caused by lead, mercury, etc. Schedule IV lays down the relevant factor (a certain figure) related to the age of the employee at the time of death, injury or accident by which wages are multiplied to arrive at compensation.

**(iii) Compensation to be paid when due and penalty for-** default time of payment of compensation: Section 4A of the Act provides that compensation under Section 4 shall be paid as soon as it falls due. Compensation becomes due on the date of death

of employee and not when Commissioner decides it (Smt. Jayamma v. Executive Engineer, P.W.D. Madhugiri Division, 1982 Lab. I.C. Noc 61).

The employer is required to deposit or to make provisional payment based on the extent of liability which he accepts with the Commissioner or hand over to the employee as the case may be even if the employer does not admit the liability for compensation to the extent claimed.

Where an employer is in default in paying compensation, he would be liable to pay interest thereon and also a further sum not exceeding fifty percent of such amount of compensation as penalty. The interest and the penalty stated above is to be paid to the employee or his dependent as the case may be.

**(iv) Method of calculating wages** - Monthly wages mean the amount of wages deemed to be payable for a month service and calculated as follows:

- (a) Where the employee has, during a continuous period of not less than 12 months immediately preceding the accident, been in the service of the employer who is liable to pay compensation, the monthly wages of the employee shall be 1/12th of the total wages which have fallen due for payment to him by the employer in the last 12 months of that period.
- (b) Where the whole of the continuous period of service was less than one month, the monthly wages of the employee shall be the average monthly amount which during the 12 months immediately preceding the accident was being earned by an employee employed on the same work by the same employer, or, if there was no employee so employed, by an employee employed on similar work in the same locality.
- (c) In other cases, including cases in which it is not possible to calculate the monthly wages under clause (d), the monthly wages shall be 30 times the total wages earned in respect of the last continuous period of service, immediately preceding the accident from the employer who is liable to pay compensation, divided by the number of days comprising such period. (Section 5). A period of service shall be deemed to be continuous which has not been interrupted by a period of absence from work exceeding 14 days.

**(v) Review of half-monthly payment** - Section 6 of the Act provides that any half-monthly payment payable under this Act, either under an agreement between the parties or under the order of a Commissioner may be reviewed by the Commissioner on the application either of the employer or of the employee accompanied by the certificate of a qualified medical practitioner that there has been a change in the condition of the employee or subject to rules made under this Act, an application made without such certificate. Any half monthly payment, may on review, under the above provisions be continued, increased, decreased or ended, or if the accident is found to have resulted in permanent disablement, be converted to the lump sum to

which the employee is entitled less any amount which he has already received by way of half-monthly payments.

**(vi) Commutation of half monthly payments** - Section 7 of the Act provides that any right to receive half-monthly payments may, by agreement between the parties or if the parties cannot agree and the payments have been continued for not less than 6 months on the application of either party to the Commissioner, be redeemed by the payment of a lump sum of such amount as may be agreed to by the parties or determined by the Commissioner as the case may be.

**(vii) Distribution of compensation** - No compensation has to be paid in respect of an employee whose injury has resulted in death and no payment of lump sum compensation to a woman or a person under a legal disability except by deposit with the Commissioner. The employer cannot make payment of compensation directly to the deceased legal heirs. It is the Commissioner who decides on the distribution of compensation to the legal heirs of the deceased employee. (Sec.8)

Right to claim compensation passes to heirs of dependant as there is no provision under the Act to this effect (AIR 1937 Cal. 496). Payment of ex-gratia or employment on compassionate grounds will not be employers' liability (LAB IC 1998 JK 767).

**(viii) Compensation not to be assigned etc.** - Save as provided by this Act, no lump sum or half-monthly payment payable under this Act can be assigned, or charged or attached or passed to any person other than the employee by operation of law nor can any claim be set-off against the same. (Section 9)

**(ix) Compensation to be first charge** - The compensation money shall bear the first charge on the assets transferred by the employer. It says that where an employer transfers his assets before any amount due in respect of any compensation, the liability whereof accrued before the date of transfer has been paid, such amount shall, notwithstanding any thing contained in any other law for the time being in force, be a first charge on that part of the assets so transferred as consists of immovable property. (Section 14A)

**(x) Contracting out of compensation** - Section 17 provides that any contract or agreement whereby an employee relinquishes any right of compensation from the employer for personal injury arising out of or in the course of the employment shall be null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under this Act. (Section 17)

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## **6.4 Obligations of Employers and Workmen**

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### **❖ Employers**

1. Pay compensation for the employment injury or deposit the amount with the Commissioner for Workmen's Compensation as soon as it falls due.

2. Do not deduct from the compensation amount any expenses incurred by the workman for his medical treatment.
3. Notify to the Commissioner, or any other authority specified by the Government for this purpose, any accident occurring on his premises which results in death or serious bodily injury, explaining the circumstances attending death or serious injury within seven days of occurrence.
4. Submit an annual return to the government specifying the number of injuries in respect of which compensation has been paid by the employer during the previous year, and the amount of such compensation together with such other particulars as may be required by the authority concerned.
5. Arrange to get registered any agreement made with the worker or his dependents settling the amount of lump-sum payable as compensation, or by way of redemption of half-monthly payments on account of temporary disablement, with the Commissioner.

#### ❖ **Workmen**

Give notice of the accident and the occupational disease in the prescribed form for claiming compensation. Submit to medical examination by a qualified medical practitioner and follow the treatment and instructions given by him.

#### ❖ **Administration**

The Act is administered by state governments which are required to appoint Commissioners for Workmen's Compensation. The functions of the Commissioner include: Settlement of disputed claims; Disposal of cases of injuries involving death; and Revision of periodical payments (Section 20).

The Commissioner may recover as an arrear of land revenue any amount payable by any person under this Act, whether under an agreement for the payment of compensation or otherwise (Section 31). The Act made provision for the framing of the rules by the State and Central Government and also their publication (Sections 32-36).

#### ❖ **Authority**

It is provided that all cases of fatal accidents should be brought to the notice of the Commissioner for Workmen's Compensation; and if the employer admits the liability, the amount of compensation payable should be deposited with him. Where the employer disclaims his liability for compensation to the extent claimed, he has to make provisional payment based in the extent of liability which he accepts: and such payment must be deposited with the Commissioner or paid to the workman. In such cases the Commissioner may, after such enquiry as he thinks fit; inform the dependants that it is open to them to prefer a claim and may give such other information as he thinks fit. Advances by the employers against compensation are permitted only to the extent of an amount equal to 3 months' wages. The employer is required to file annual returns giving details of the compensation paid, the number of injuries and other particulars (Section 4A, 8 and 16).

The amount deposited with the Commissioner for Workmen's Compensation is payable to the dependants of the workman. The amount of compensation is to be apportioned among the dependants of the deceased Workman or any of them in such proportion as the Commissioner thinks fit (Sections 2 and 8).

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

#### ❖ **Notice and Claim**

- (a) No claim for compensation shall be entertained by a Commissioner unless the notice of the accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before him within two years of the occurrence of the accident or, in case of death, within two years from the date of death. (Section 10)

#### **Provided that:**

- (i) Where the accident is the contracting of a disease the accident shall be deemed to have occurred on the first of the days during which the employee was continuously absent from work in consequence of the disablement caused by the disease;
- (ii) In case of partial disablement due to the contracting of any such disease and which does not force the employee to absent himself from work, the period of two years shall be counted from the day the employee gives notice of the disablement to his employer;
- (iii) If an employee who, having been employed in an employment for a continuous period specified under sub-section 3(2) in respect of that employment ceases to be so employed and develops symptoms of an occupational disease peculiar to that employment within two years of the cessation of employment, the accident shall be deemed to have occurred on the day on which the symptoms were first detected.
- (iv) The want of or any defect or irregularity in a notice shall not be a bar to the entertainment of a claim:
  - (a) If the claim is preferred in respect of the death of an employee resulting from an accident which occurred in the premises of the employer, or at any place where the employee at the time of the accident was working under the control of the employer or of any person employed by him, and the employee died on such premises, or at such place, or on any premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurred, or

- (b) If the employer or any one of several employers or any persons responsible to the employer for the management of any branch of the trade or business in which the injured employee was employed had knowledge of the accident from any other source at or about the time when it occurred.
- (v) The Commissioner may entertain and decide any claim to compensation in any case not withstanding that the notice has not been given, or the claim has not been preferred, in due time as provided in this sub-section, if he is satisfied that the failure to give the notice or prefer the claim, as the case may be, was due to sufficient cause.
  - (a) Every such notice shall give the name and address of the person injured and shall state in ordinary language the cause of the injury and the date on which the accident happened, and shall be served on the employer or upon any one of several employers, or upon any person responsible to the employer for the management of any branch of the trade or business in which the injured employee was employed.
  - (b) The State Government may require that any prescribed class of employers shall maintain at their premises at which employees are employed a notice-book, in the prescribed form, which shall be readily accessible at all reasonable times to any injured employee employed on the premises and to any person acting bona fide on his behalf.
  - (c) A notice under this section may be served by delivering it at, or sending it by registered post addressed to the residence or any office or place of business of the person on whom it is to be served or, where a notice-book is maintained, by entry in the notice-book.

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## **6.5 Appeals and Penalties**

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Appeals -An appeal shall lie to the High Court from the following orders of a Commissioner,

namely: An order awarding as compensation a lump sum whether by way of redemption of

a half- monthly payment or otherwise or disallowing a claim in full or in part for a lump sum; (aa)

(b) An order awarding interest or penalty under Section 4A; An order refusing to allow redemption of a half-monthly payment; An order providing for the distribution of compensation among the dependants of a deceased employee or disallowing any claim of a person alleging himself to be such dependant;

An order allowing or disallowing any claim for the amount of an indemnity under the provisions of Sub-section (2) of Section 12; or An order refusing to

register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions. (Section 30).

#### ❖ Penalties

Section 18A of the Act prescribes penalties for the contravention of the provisions of the Act which include fine up to Rs. 5,000. The following omissions attract this punishment under the Act: Whosoever fails to maintain a notice book which he is required to maintain under Section 10(3); or Whosoever fails to send to the Commissioner a statement of fatal accidents which he is required to send under Section 10A(1); or Whosoever fails to send a report of fatal accidents and serious bodily injuries which he is required to send under Section 10B; or Whosoever fails to make a return of injuries and compensation which he is required to make under Section 16.

No prosecution under Section 18A shall be instituted except by or with the previous sanction of the Commissioner and no court shall take cognizance of any offence under this section unless complaint is made within 6 months of the date on which the alleged commission of offence comes to the knowledge of the Commissioner.

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### **6.8 Introduction – Equal Remuneration Act, 1976**

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The Equal Remuneration Act, 1976 is an important legislation in India that prohibits discrimination in terms of remuneration on the grounds of gender. It means the Act ensures equal pay for men and women for the same or similar work. The Equal Remuneration Act of 1976 was enacted by the Indian Parliament on February 11, 1976, with an aim “to provide for the payment of equal remuneration to men and women workers and for the prevention of discrimination, on the ground of sex, against women in the matter of employment and for matters connected therewith or incidental thereto.” It extends to the whole of India including all establishments either public or private sectors (employing ten or more persons). By promoting gender equality in remuneration, the act seeks to establish fair and just working conditions for all employees, regardless of their gender. Also, it prohibits discrimination made by employers against women in matters of recruitment, training, promotion, and transfers.

#### **6.8.1 Meaning:**

Discrimination based on sex in regard to the payment of wages has been one of the most prevalent unfair labour practices in most of the countries in the world. Such a wide spread unfair labour practice could not escape the notice of the International Labour Organisation (I.L.O.) set up at Geneva in 1919 for promoting world peace by formulating international labour standards for its member countries. In fact the I.L.O. adopted equal remuneration for men and women workers for work of equal value, without discrimination based on sex as its fundamental principle included in its Constitution, The General Assembly of United Nations has also given

its support to this principle. It also became the subject of a Convention No. 100 and a Recommendation No. 90 adopted by the International Labour Conference in 1951.

The Constitutions of many countries specifically proclaim the principle or else prohibit sex discrimination. The principle is also approved by many non governmental organisations, including trade unions and international federations and confederations of trade unions. Though the principle of equal pay is widely accepted in the social policy of many countries, its practical application varies greatly. It is extensively applied in some countries, and substantial progress continues to be made.

In many of the countries the Governments set an example by implementing it with regard to their employees, while arbitration-awards, wage council decisions and many collective agreements between employer and trade unions fix the same rate for both men and women in various job classifications. In other countries, including many of the developing ones, implementation in practice has lagged far behind. In these countries the raising of the status and promotion of job opportunities of women are among the many problems involved in the transformation of traditional communities into modern State.

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## 6.9 Definitions

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India satisfied ILO, Convention 100 on equal remuneration in 1958. However it was only during 1975 the international year of the women that India promulgated the equal remuneration ordinance, 1975 to give an effect to article 39 of the Constitution of India which directed among other things, equal pay for equal work for both men and women. The ordinance was replaced in 1976 by the Equal Remuneration, Act, 1976.

**Scope and Coverage:** The act extends to whole of India. The act came into force on dates notified, from time to time, by the Central Government in respect of different establishments or employments, so that the total coverage is completed within 3 years from the passing of the Act which was February 1976.

Thus, the act was extended to all establishments, employments, public or private including domestic service and this is the only labour act with universal coverage (Sec. 1).

1. Some of the important definitions in the Act include:

- a) “Appropriate Government” means, i) in relation to any employment carried on by or under the authority of the Central Government, or a railway administration, or in relation to a banking company, a mine, oilfield or major port or any corporation established by or under of Central Act, the Central Government; and ii) in relation to any other employment, the State Government;
- b) “remuneration” means the basic wage or salary, and any additional emoluments whatsoever payable, either in cash or in kind to a person

- employed in respect of employment or work done in such employment, if the terms of the contract of employment, expenses or implied, were fulfilled;
- c) “same work or work of a similar nature” means work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions by a man or a woman and the differences, if any, between that skill, effort and responsibility required of a man and those required of a woman are not of practical importance in relation to the terms and conditions of employment;
  - d) “worker” means a worker in any establishment or employment in respect of which this Act has come into force;

Equal pay for equal work: Equal pay for equal work, it is self-evident, is implicit in the doctrine of equality enshrined in Art 14; it flows from it. Because Cl. (d) of Art. 39 spoke of "equal pay for equal work for both men and women" it did not cease to be a part of Art. 14. To say that the said rule having been stated as a directive principle of State Policy is not enforceable in a Court of Law is to indulge a sophistry.

Parts IV and III of the Constitution are not supposed to be exclusionary of each other. They are complementary to each other. The rule is as much a part of the Art 14 as it is of Cl. (I) of Art. 16. Equality of opportunity guaranteed by Art. 16 (I) necessarily means and involves equal pay for equal work. It means equality that it is neither a mechanical rule nor does it mean geometrical equality. The concept of reasonable classification and all other rules evolved with respect to Arts. 14 and 16 (I) come into play wherever complaint of infraction of this rule falls for consideration.

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## 6.10 Key Provisions

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The Equal Remuneration Act of 1976 has been a significant milestone in the journey towards gender equality in the workplace. By addressing gender-based wage discrimination, the Act has paved the way for a more inclusive and equitable working environment. Through its provisions and sections, it prohibits discrimination in remuneration based on gender and promotes the principle of equal pay for equal work. However, challenges such as the persistence of societal biases and the need for better enforcement mechanisms remain. It is crucial for organizations, policymakers, and society at large to continue their efforts to eliminate gender-based wage disparities and promote equal opportunities for all employees, irrespective of their gender.

### Section 3: Act to have overriding effect

The Equal Remuneration Act, 1976, establishes the supremacy and overriding effect of the provisions of the Act over any other law, agreement, or contract that may be in conflict with its principles. This is defined efficiently in Section 3 of the Act, “The provisions of this Act shall have effect notwithstanding anything

inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the commencement of this Act, or in any instrument having effect under any law for the time being in force.” Through this, it demonstrates that the goal of eliminating gender-based wage discrimination takes precedence over any conflicting provisions in other laws or contractual agreements. By having an overriding effect, Section 3 provides a robust legal mechanism to safeguard the principle of equal remuneration.

#### **Section 4: Duty of employer to pay equal remuneration to men and women workers for same work or work of a similar nature**

The Act mandates that men and women should receive equal remuneration for work that requires similar skill, effort, and responsibility performed under similar working conditions. It ensures that gender-based wage discrimination is eliminated. Section 4 of the Act also ensures that no employer can reduce the rate of remuneration of any worker to comply with the rule to provide equal wages to both men and women for the same or similar work.

Moreover, Section 4(3) states that “Where, in an establishment or employment, the rates of remuneration payable before the commencement of this Act for men and women workers for the same work or work of a similar nature are different only on the ground of sex, then the higher (in cases where there are only two rates), or, as the case may be, the highest (in cases where there are more than two rates), of such rates shall be the rate at which remuneration shall be payable, on and from such commencement, to such men and women workers...” The main reason for the enactment of this Act is the unfair treatment of women in the workplace and the increase in cases where women are paid lower salaries than men.

#### **Section 5: No discrimination to be made while recruiting men and women workers**

The Act prohibits employers from discriminating against women in matters of recruitment, employment, and promotion from the date of commencement of the Act. It ensures that women have equal opportunities for growth and advancement in their careers. Along with this, the Act also provides an exception where it prohibits the employment of women workers in hazardous places. Moreover, the provisions of this Act do not affect any priority or reservation for ex-servicemen, Scheduled Castes or Scheduled Tribes, retrenched employees, or any other category of persons for recruiting employees.

#### **Section 6: Advisory Committee**

It pertains to the establishment of an Advisory Committee that plays a significant role in advising the government on matters related to the implementation and enforcement of the Act. The Advisory Committee ensures to provide employment opportunities for women and advises the government regarding “which women may be employed in such establishments or employments as the central

government may, by notification, specify in this behalf.” It should not include less than ten persons of which one-half should be women. The persons will be nominated by the appropriate government.

The definition of ‘appropriate government’ under the Equal Remuneration Act is defined in Section 2(a). It states that appropriate government means, “

- (i) in relation to any employment carried on by or under the authority of the Central Government or a railway administration, or in relation to a banking company, a mine, oilfield or major port or any corporation established by or under a Central Act, the Central Government, and
- (ii) in relation to any other employment, the State Government.” Also, certain factors make a difference in the decision regarding employment opportunities for women and are considered by the Committee to bring the appropriate norm into effect. The factors are, the number of women employed in the concerned establishment or employment, the nature of work, Hours of work, Suitability of women for employment.

### **The need for providing increasing employment opportunities for women.**

Under the provisions of this Act, the Advisory Committee has the power to regulate its own procedure. Furthermore, after considering the advice from the Advisory Committee the appropriate government may issue directions for implementing the same in respect of employment of women workers.

### **Section 7: Power of appropriate Government to appoint authorities for hearing and deciding claims and complaints**

Section 7 empowers employees who believe they have been discriminated against to file complaints with the appropriate government regarding “...claims arising out of non-payment of equal wages at equal rates to men and women workers for the same work or work of a similar nature”. The section outlines the procedure for filing complaints and the powers of the authorities to hear and decide on such complaints. It provides a mechanism for employees to seek redressal in cases of violations of the Act. Section 7(6) of the Act states that any employee aggrieved of any order made by the authority can prefer an appeal to such authority within thirty days from the date of the order. After hearing the appeal, “the authority may confirm, modify or reverse the order appealed against and no further appeal shall lie against the order made by such authority.”

### **Section 8: Duty of employers to maintain registers**

It imposes a duty on employers to maintain registers containing prescribed information, including the names and addresses of employees, the work performed by them, and the remuneration paid to them. This provision promotes transparency and accountability in remuneration practices, enabling the effective implementation and enforcement of the Act.

## **Section 9: Inspectors**

This Section empowers the government to appoint inspectors who have the authority to enter and inspect establishments covered under the Act. As per Section 9(2), every inspector appointed for the purpose of investigation should be a public servant “within the meaning of Section 21 of the Indian Penal Code,” where public servant is divided into 12 different categories. Some of the powers given to the Inspector include:

- Enter at any reasonable time in any building, factory, premises, or vessel,
- May call for any employer or official to produce any register or other documents,
- May take the evidence of any person on the spot or at any other time.
- Examine the employer or any other person in charge of the establishment under investigation.
- Can make copies of documents maintained on the basis of the establishment under this Act.

## **Section 10: Penalties**

Section 10 stipulates penalties for non-compliance with the provisions of the Act. This section serves as a deterrent against discriminatory practices and reinforces the importance of adhering to equal remuneration principles. As per Section 10(1) of the Act, after the commencement of this Act, if an employer; fails to maintain any register, fails to produce any register or other document, refuses to give any evidence or prevents any other person from doing so, or refuses to give any information is punishable with an imprisonment extending to one month or with a fine extending to 10,000 rupees or with both. According to Section 10(2), after the commencement of this Act, if an employer; recruits anyone in contravention of the provisions of the Act, makes payment at unequal rates for the same work to men and women workers, makes any gender-based discrimination, or fails to follow any direction made by the appropriate government is punishable with imprisonment for a term not less than 3 months but which may extend to one year or with fine not less than 10,000 rupees but which may extend to 20,000 rupees or with both. In case, the offence is performed more than once then the imprisonment term will accordingly increase.

## **Section 11: Offences by companies**

This Section addresses the offences committed by companies under the Act. It states that if a company is found guilty of any offense under the Equal Remuneration Act, 1976, it will be held liable and may be prosecuted accordingly. This provision emphasizes that not only individuals but also the companies themselves can be held accountable for violations of the Act.

Moreover, Section 11 illustrates that holds directors, managers, secretaries, or other officers of the company responsible for offenses committed by the company. This means that individuals who hold positions of authority and decision-making

within the company can be held personally liable for the company's contravention of the Act. If a company is found guilty, it may be subject to penalties, which can include fines. The specific penalties will be determined by the court based on the nature and severity of the offense. Despite this, a due diligence defence is provided for directors, managers, secretaries, or other officers of the company. It demonstrates that if they can prove that the offense was committed without their knowledge, consent, or connivance and that they had exercised due diligence to prevent the contravention, they may be exempted from liability.

## **Section 12: Cognizance and trial of offences**

This Section of the Act was amended with the Equal Remuneration (Amendment) Act, 1987. Section 12(1) states that “No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.” It means a Metropolitan Magistrate or a Judicial Magistrate of the first class will be in the lowest position of authority for viewing the case.

Further, Section 12(2) illustrates that “No court shall take cognizance of an offence punishable under this Act except upon (a) its own knowledge or upon a complaint made by the appropriate Government or an officer authorized by it in this behalf, or (b) a complaint made by the person aggrieved by the offence or by any recognized welfare institution or organization.” It means that the Court can take cognizance of an offence only on its own knowledge, a complaint made by an appropriate government, authorized officer, aggrieved person, or by any recognized welfare institution. No other complaints are entertained by the Court as per the provision of this Act.

## **Section 13: Power to make rules**

It gives power to the Central Government to make rules for carrying out the provisions of the Equal Remuneration Act, 1976. These rules can be regarding the documents or registers to be maintained, how complaints shall be made, or any other matter. Further, the changes, when accepted by each House of Parliament, are implemented.

## **Section 14: Power of Central Government to give directions**

Section 14 empowers the Central Government to give directions to a State Government regarding the execution of the Act and the same has to be followed by the State Government appropriately.

## **Section 15: Act not to apply in certain special cases**

This Section outlines specific circumstances in which the provisions of the Act may not be applicable. The Section reads as follows:

“Nothing in this Act shall apply:

- (a) to cases affecting the terms and conditions of a woman's employment in complying with the requirements of any law giving special treatment to women, or
- (b) to any special treatment accorded to women in connection with
  - (i) the birth or expected birth of a child, or
  - (ii) the terms and conditions relating to retirement, marriage or death or to any provision made in connection with the retirement, marriage or death."

#### **Section 16: Power to make declaration**

It states that "Where the appropriate Government is, on a consideration of all the circumstances of the case, satisfied that the differences in regard to the remuneration, or a particular species of remuneration, of men and women workers in any establishment or employment is based on a factor other than sex, it may, by notification, make a declaration to that effect, and any act of the employer attributable to such a difference shall not be deemed to be a contravention of any provision of this Act." It means that there is an exemption that allows employers to discriminate on any grounds other than sex. However, the employer will only be exempt from prosecution if the government thoroughly examines the case and deems it appropriate to grant such an exemption.

#### **Section 17: Power to Remove Difficulties**

It empowers the Central Government to make any order, consistent with the provisions of this Act, which are necessary for removing the difficulty.

#### **Section 18: Repeal and Saving**

Section 18 states that the act, The Equal Remuneration Ordinance, 1975, governing before the implementation of the present Act, The Equal Remuneration Act, 1976, stands repealed. Any action taken under the repealed Ordinance (The Equal Remuneration Ordinance, 1975) will be deemed to have been taken under the corresponding provisions of the Equal Remuneration Act, 1976.

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### **6.11 Payment of remuneration at equal rates to men and women workers**

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Duty of employer to pay equal remuneration to men and women workers for same work or work of a similar nature-

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

- 3) Where, in an establishment or employment the rates of remuneration payable before the commencement of this Act for men and women workers for the same work of a similar nature are different only on the ground sex, then the higher (in case where there are only two rates), or as the case may be, the highest (in cases where there are more than two rates), or as the case may be, the highest (in cases where there are more than two rates), or such rates shall be payable, on and from such commencement, to such men and women workers: Provided that nothing in this sub-section shall be deemed to entitle a worker to the revision of the rate of remuneration payable to him or her with reference to the service rendered by him or her before the commencement of this Act.

#### **6.11.1 No discrimination to be made while recruiting men and women workers**

On and from the commencement of this Act, no employer shall while making recruitment for the same work or work of a similar nature (or 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 new law for the time being in force, provided that the provision of this section shall not affect any priority or reservation for Scheduled Castes or Scheduled Tribes, ex-servicemen, retrenched employees or any other class or category of persons in the matter of recruitment to posts in an establishment or employment. (Section 5)

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#### **6.12 Advisory Committee**

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- (1) For the purpose of providing increasing employment opportunities for women, the appropriate Government shall constitute one or more Advisory Committees to advise it with regard to the extent to which women may be employed in such establishments or employment as the Central Government may be notified, specify in this behalf.
- (2) Every Advisory Committee shall consist of not less than ten persons, to be nominated by the appropriate Government, of which one-half shall be women.
- (3) In tendering its advice, the Advisory Committee shall have regard to the number of women employed in the concerned establishment or employment, the nature of work, hours of work, suitability of women for employment, as the case may be, the need for providing increasing employment opportunities for women, including part-time employment and such other relevant factors as the Committee may think fit.
- (4) The Advisory Committee shall regulate its own procedure.
- (5) The appropriate Government may after considering the advice tendered to it by the Advisory Committee and after giving to the persons concerned in the establishment or employment an opportunity to make representations, issue such directions in respect of employment of women workers, as the appropriate Government may think fit. (Section

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### **6.13 Appointment of authorities for Hearing and deciding claims and Complaints**

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- 1) The appropriate Government may, by notification, appoint such officers, not below the rank of a Labour Officer, as it thinks fit to be the authorities for the purpose of hearing and deciding-
  - a) Complaints with regard to the contravention of any provision of this Act;
  - b) Claims arising out of non-payment of wages at equal rates to men and women workers for the same work or work of a similar nature and may by the same or subsequent notification, define the local limits within which each such authority shall exercise its jurisdiction.
- 2) Every complaint or claim referred to in sub-section (1) shall be made in such manner as may be proscribed.
- 3) If any questions arise as to whether two or more works are of the same nature or of a similar nature, it shall be decided by the authority appointed under subsection (1).
- 4) Where a complaint or claim is made to the authority appointed under sub-section (1), it may, after giving the application and the employer and opportunity of being heard, and after and such inquiry as it may consider necessary, direct-
  - a) in the case of a claim arising out of non-payment of wages at equal rates to men and women workers for the same work or work of a similar nature that payment be made to the worker of the amount by which the wages payable to him exceed the amount actually paid.
  - b) In the case of complaint, the adequate steps be taken by the employer so as to ensure that there is no contravention of any provision of this Act.
- 5) Every authority appointed under sub-section (1) shall have all the powers of a civil court under the Code of Civil Procedure 1978'(5 of 1908), for the purpose of taking evidence and of enforcing the attendance of witnesses and compiling the production of documents, and every such authority shall be deemed to be a civil court for all the purposes of Sec. 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).
- 6) Any employer or worker aggrieved by any order made by an authority appointed under sub-section (1), on a complaint or claim may within thirty days from the date of the order, prefer an appeal to such authority as the appropriate Government may, by notification, specify in this behalf, and that authority may, after hearing the appeal, confirm, modify or reverse the order appealed against and no further appeal, confirm, modify or reverse the order appealed against and no further appeal, shall lie against the order made by such authority.

- 7) The authority referred to in sub-section (6) may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the period specified in sub-section (6), allow the appeal to be preferred within a further period of thirty days but not thereafter.'
- 8) The provision of sub-section (1) of sec. 33-C of the Industrial Disputes Act, 1947 (14 of 1947), shall apply for the, recovery of monies due an employer arising out of the decision of an authority appointed under this section. (Section 7)
- 9) Duty of employer to maintain registers- On and from the commencement of this Act, every employer shall maintain such registers and other documents in relation to the workers employed by him as may be prescribed. (Section 8)
- 10) Inspectors
  - a) The appropriate Government may, by notification appoint such persons as it may think fit to be Inspector/for the purpose of making an investigation as to whether the provisions of this Act, or the rules Made there under, are being complied with by employers, and may define the local limits within which an Inspector may make such investigation.
  - b) Every Inspector shall be deemed to be a public servant within the meaning of Sec. 21 of the Indian Penal Code (45 of 1860). (Section 9).

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## **6.14 Penalties**

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### **1) If, after the commencement of this Act, any employer, being required by or under**

the Act, so to do-

- omits or fails to maintain any register or other document in relation-to workers employed by him, or
- omits or fails to produce any register, muster roll or other document relating to the employment of workers, or
- omits or refuses to give any evidence or prevents his agent, servant, or any other person in charge of the establishment, or any worker from giving evidence, or omits or refuses to give any information.
- He shall be punishable (with simple imprisonment for a term which may extend to one month or with fine which may extend to ten thousand rupees or with both).

### **2) If, after the commencement of this Act, any employer-**

- makes any recruitment in contravention of the provisions of this Act, or
- makes any payment of remuneration at unequal rates, to men and women workers, for the same work or work of a similar nature, or

- makes any discrimination between men and women workers in contravention of the provisions of the Act, or
- omits or fails to carry out any direction made by the appropriate Government under sub-section (5) of sec. 6.
- he shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with imprisonment for a term which shall be not less than three months, but which may extend to one year or with both for the first offence, and with imprisonment which may extend to two years for the second and subsequent offences.

**3) If any person being required so to do, omits or refuses to produce to an inspector and register or other document or to give any information, he shall be punishable with fine which may extend to- five hundred rupees. (Section 10)**

### ❖ **Exercise**

#### **Q-1 Long Questions:**

1. What is the object of the Workmen's Compensation Act, 1923?
2. What are the various benefits payable under the Act?
3. What are the circumstances under which the employer is not liable to pay compensation for injury to a workman?
4. What are the powers of the Commissioner for Workmen's Compensation?
5. Why are the wages of women often lower than those of men?
6. What difficulties arise in applying the principle of equal remuneration for same work or work of similar nature?
7. How can job evaluation be used to help the application of the principle of equal remuneration for work of equal value?
8. What do you think are some the features of the equal remuneration Act 1976 that distinguish it from other labour laws?

## **UNIT-7 MINIMUM WAGES ACT, 1948 AND PAYMENT OF WAGES ACT, 1936**

- 7.1 Introductions- Minimum Wages Act, 1948**
- 7.2 Objectives of Minimum Wages Act, 1948**
- 7.3 Need for Minimum Wages Act, 1948**
- 7.4 Essential Provisions of Minimum Wages Act, 1948**
- 7.5 Constitutional Validity of the Act**
- 7.6 Introduction- Payment of wages act, 1936**
- 7.7 Significance of the Payment of Wages Act, 1936**
- 7.8 Objectives and Scope of Payment of Wages Act 1936**
- 7.9 Features of Payment of Wages Act 1936**
- 7.10 Sections of The Payment of Wages Act, 1936**
- 7.11 Difference between Payment of Wages Act, 1936 and Minimum Wages Act, 1948**

The Payment of Wages Act of 1936 and Minimum Wage Act of 1948 are vital for understanding labour rules. Although the former concentrates on the administrative aspects of paying salaries, the latter is critical for calculating and changing minimum wage rates. When taken together, these laws form a robust legal framework that encourages fair employer-employee interactions and develops standards that benefit workers' well-being. To ensure compliance and uphold the goals of fair labour practices, both employers and employees must have a complete comprehension of these laws.

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### **7.1 Introduction- Minimum Wages Act, 1948**

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Minimum Wages Act, 1948 ensures workers receive fair compensation and don't face any form of abuse. The International Labour Organisation defines minimum wage as the lowest amount of remuneration that an employer is required to pay wage earners for the work performed during a given period which cannot be reduced by collective agreement or an individual contract. The purpose of this act is to protect the workers from unduly low pay enable them to earn adequate wages for the work done by them and maintain a minimum living standard of workers.

India's labour laws include important laws like the Minimum Wages Act, 1948 and the Payment of Bonus Act, 1965. The Indian Constitution places labour laws under the Concurrent List. It provides the federal and state governments the authority to enact laws and regulations about the subject. These laws are important because they safeguard employees' rights and interests, give them job opportunities, keep them safe from exploitation, and foster a positive work environment. It has been widely acknowledged that the minimum wage system helps to reduce poverty and stabilize the economy.

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### **7.2 Objectives of Minimum Wages Act, 1948**

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The objectives of the Minimum Wages Act, 1948 are as follows:

- The law makes sure that workers are paid enough to cover their essential expenses and maintain a respectable standard of living.
- To establish wages and prohibit employers from paying excessively low wages, and safeguard employees against being exploited.
- The law resolves economic inequalities and assures fair and just compensation for labour and these are the two ways to advance social justice.
- To increase productivity and make sure that employees receive fair compensation, which may boost morale and efficiency.
- To provide fair wages to workers and their families, the government can help lift them out of poverty.
- To reduce the number of labour disputes that result from wage-related complaints to promote industrial peace.
- To establish a uniform framework for calculating minimum wages that takes into consideration the location, type of work, and skill of the employee.
- To preserve a balance between the interests of employers and employees, the law supports a stable labour market and contributes to economic stability.

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### **7.3 Need for Minimum Wages Act, 1948**

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The minimum wages set for labourers in India are so low that, even after deducting the costs of housing, healthcare, and education, there is barely enough money for two meals a day. There should be two main reasons why minimum wages for workers should be set:

1. **Social Goals:** By giving workers a minimal standard of living, the minimum wage helps to end poverty.
2. **Economic Goals:** The minimum wage should be set at a rate that encourages employees to work hard at their jobs, boosting the nation's economy and raising living standards. The active support of labour associations, trade unions, and employees is necessary for minimum wage legislation to be implemented in India due to the following reasons:
3. The Indian Legislature passed the Minimum Wages Act, 1948 to address issues pertaining to paying workers the minimum wage so they could meet their basic needs and maintain a respectable standard of living. The act also ensures that all labourers receive a safe and sufficient living wage and that an employee makes enough money to support his family. The act gives the government bodies the authority to set the minimum wage.
4. Minimum Wages Act, 1948 established a mechanism for minimum wage revision. By establishing advisory boards to mediate disagreements between employers and employees over minimum wage payments, the act aims to better protect workers' rights. The act additionally designates a Commissioner for Workmen's Compensation or any other Central Government officer performing duties as a Labour Commissioner for any region, with prior judicial experience, to hear and determine cases pertaining to non-payment or payment of labourers less than the minimum wage. According to the act, employers who violate any of its rules or orders or fail to pay their employees the minimum wage will also be subject to penalties.

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## **7.4 Essential Provisions of Minimum Wages Act, 1948**

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### **1. Fixing and Revision of Wages**

The act gives the federal government and state governments the authority to set and recurrently adjust the minimum wage rates for various job categories, accounting for pertinent factors such as the cost of living and the nature of the work.

### **2. Scheduled Employment**

Each schedule under the act specifies the minimum wage rates that apply to different classes of work and groups employment into distinct categories. In addition, periodic reviews and modifications to these schedules are possible.

### **3. Component of Wages**

The act outlines the elements that make up the minimum wage rates, such as a base wage rate and special allowances at a rate that will be adjusted at intervals and in the way that may be specified.

### **4. Working Hours**

The act has provisions regarding working hours, outlining the number of hours that should be worked in a typical workday as well as the requirements and pay scales for overtime.

### **5. Payment Frequency:**

It establishes the rate at which wages must be incurred, and that they are paid on time and not postponed for extended periods of time.

### **6. Maintenance of Records**

Employers are expected to keep and preserve records and registers that include information about their workers, the tasks they complete, the money they are paid, and the receipts they submit. Inspection of these records is allowed by law.

### **7. Advisory Board**

The act mentions that the appropriate government must appoint advisory boards to coordinate the works of the committees and subcommittees and also to advise the appropriate government in the matters of fixing and revising the minimum wage rates.

### **8. Kind of Wages under the Minimum Wages Act, 1948**

- Section 11 of the act specifies how employees will be paid their wages:
- Cash payments shall be made for minimum wages under this act.
- The appropriate government may authorize the payment of the minimum wage in kind or in full under certain circumstances by notifying the Official Gazette.
- A provision for essential commodities at concession rates was authorized by the appropriate government through notification in the official gazette.
- The act specifies the prescribed method for authorizing the cash value of wages and concession rates.

- According to Section 12 of the act, which stipulates that the employer must pay the minimum rate, wages must be paid to employees under this act.

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## **7.5 Constitutional Validity of the Act**

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The court heard several challenges to this Act's constitutional validity. The judiciary; however, was crucial in establishing the constitutional validity of the Act, which safeguards the workers' rights to education, healthcare, food, shelter, and clothing, among other necessities. The judiciary has declared that paying employees less than the minimum wage is equivalent to using forced labour.

### **1. Not violative of Article 19 of the Constitution**

The Minimum Wages Act, 1948 was first contested as unconstitutional in the 1954 case of *Bijay Cotton Mills Ltd. v. The State of Ajmer*. Nonetheless, the Indian Supreme Court ruled that the Act's provisions are constitutionally permissible under Article 19 of the Indian Constitution and are not unreasonable.

### **2. Not violative of Article 14 of the Constitution**

Furthermore, the Act is not violative of Article 14 of the Indian Constitution which states equality before the law. In the case of *N.M. Wadia Charitable Hospital vs State of Maharashtra*, 1986, it was held that fixing different rates of minimum wages for different localities is permitted under the Constitution and the labour laws of the country.

In order to protect the rights and interests of workers employed in certain scheduled classes of employment as defined by the act, the Minimum Wages Act, 1948 was passed. The act aims to give workers fair employment opportunities and sufficient compensation to maintain a respectable standard of living. The provisions of the act include setting working hours during a typical workday and reversing wages every five years, demonstrating how they guard against the mistreatment of employees. The act also creates committees and advisory boards that employees can contact to pursue remedies in situations where their employers fail to pay their wages or pay them late.

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## **7.6 Introduction - Payment of Wages Act, 1936**

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Payment of Wages Act, 1936 aims at paying workers' salaries on time and sets out an acceptable method for paying wages. On the other hand, the Minimum Wages Act, 1948 aims at minimizing workers' exploitation and sets out minimum wages for different classes of workers. The Payment of Wages Act 1936 regulates the manner in which wages are paid to employees or workers, either directly or indirectly. It was enacted specifically to safeguard employees from unlawful wage deductions and prevent delays in wage payment. With the ultimate concern regarding safeguarding workers' rights, this Act provides on-time wage payments to workers, thus enhancing the overall productivity of the workforce.

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## **7.7 Significance of the Payment of Wages Act, 1936**

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- Worker Protection: By guaranteeing prompt and fair wage payments, the Act plays a critical role in protecting workers' rights.

- **Prevention of Exploitation:** By controlling the method and timing of wage distributions, the Act protects workers against capricious practices and serves as a deterrent against labor exploitation.
- **Promotion of Fair Employment Practices:** The act encourages a more just working relationship between companies and employees by setting clear guidelines for pay distribution and permissible deductions.

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## **7.8 Objectives and Scope of Payment of Wages Act 1936**

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The Payment of Wages Act 1936 is an Act responsible for regulating the payment of wages to a specified category of employed individuals. The objectives of the Payment of Wages Act 1936 are as follows:

- To ensure timely and proper payment of wages to employed individuals and protect them from unauthorised deductions.
- To ensure employers abide by the rules and comply with the Act's requirements by providing for penalties in case of non-compliance.
- To foster industrial harmony and peace by providing a fair and transparent wage payment process.
- To create a balanced and sustained approach, prioritising workers' financial well-being while promoting an effective industrial environment.

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## **7.9 Features of Payment of Wages Act 1936**

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The Payment of Wages Act 1936 mainly provides for the timely payment of wages to employees without further deductions by establishing rules related to the distribution of wages. Below are the notable features of the Payment of Wages Act 1936:

### **1) Applicability**

The Payment of Wages Act 1936 ensures the fair distribution of wages to employees earning wages below Rs.24,000 per month and protects their rights.

### **2) Period of Payment of Wages**

It is mandatory to pay out wages for a month on the seventh or tenth day of the following month. However, considering the type of work, employees can receive wages weekly and daily. Thus, employees receive accurate wages every month without delay or unauthorised deductions.

### **3) Mode of Payment**

Payment should be made in currency notes, coins, or cheques. With further permission from employees, wages can be transferred directly to their bank account, thus ensuring safety and security.

### **4) Authorised Deductions**

The Payment of Wages Act defines the authorised deductions that can be made by an employer while paying the wages to an employee. This ensures employers do not make unauthorised deductions from workers' wages.

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## 7.10 Sections of The Payment of Wages Act, 1936

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Details	Information
Enactment Date	April 23, 1936
Act Year	1936
Short Title	The Payment of Wages Act, 1936
Purpose of the Act	To regulate the payment of wages to certain categories of employed individuals.
Ministry Responsible	Ministry of Labour and Employment
Enforcement Date	March 28, 1937

- **Section 1: Title, Extent, Commencement, and Application**

1. **Title:** This law is called the Payment of Wages Act, 1936.
2. **Extent:** The Act applies to the entire country of India.
3. **Commencement:** The Act will take effect from a date decided by the Central Government, which will be announced through an official notification.
4. **Commencement:** The Act will take effect from a date decided by the Central Government, which will be announced through an official notification.
5. **Extension:** The appropriate government (Central or State) can, with three months' notice, extend the Act's provisions to cover additional classes of employees in other specified establishments.
6. **Wage Limit:** The Act applies to employees earning wages up to ₹24,000 per month, or a higher amount, based on data from the National Sample Survey Organisation, reviewed every five years by the Central Government.

- **Section 2: Definitions**

1. **Appropriate Government:** Refers to the Central Government for railways, air transport services, mines, and oilfields, and to the State Government for other cases.
2. **Employed Person:** Includes the legal representative of a deceased employee.
3. **Employer:** Also includes the legal representative of a deceased employer.
4. **Factory:** Defined as per the Factories Act, 1948.
5. **Industrial or Other Establishments:** Includes tramway, motor transport, air transport services (excluding military), docks, wharfs, jetties, mines, quarries, oilfields, plantations, workshops, and other establishments engaged in construction or maintenance of buildings, roads, bridges, canals, electricity generation, etc.

- **Section 3: Responsibility for Payment of Wages**

1. **Employer's Responsibility:** Employers are responsible for ensuring wages are paid to employees.
2. **Nominated Representatives:** In factories, the person named as the manager is responsible for payment. For industrial establishments or railways, the person responsible for supervision or nominated by the railway administration must ensure wages are paid. In the case of contractors, a designated representative is accountable for the payment of wages.
3. **Employer's Liability:** If the contractor or designated person fails to pay, the employer is still responsible for making sure wages are paid.

- **Section 4: Fixing Wage Periods**

1. Employers must establish specific periods (known as wage periods) for the payment of wages.
2. No wage period can exceed one month.

- **Section 5: Time of Payment of Wages**

1. **Payment Deadlines:** Wages for employees in factories or establishments with less than 1,000 workers must be paid by the 7th day after the wage period ends. For larger establishments, the deadline is the 10th day.
2. **Termination of Employment:** If an employee's employment is terminated, wages must be paid within two working days of the termination.
3. **Daily-Rated Workers:** Governments may issue orders to exempt daily-rated workers from the strict application of this section, provided they consult the Central Government for workers in public works departments.
4. **Payment Day:** All wages must be paid on a working day unless otherwise specified.

- **Section 6: Methods of Payment for Wages**

Wages must be paid using one of the following methods:

- In current coin (cash) or currency notes.
- By cheque.
- Directly deposited into the employee's bank account.

**State Amendments:**

- **Kerala:** The state government can notify certain industries or businesses where wages must be paid only by cheque or direct bank transfer without needing the employee's consent.
- **Maharashtra:** In Maharashtra, employees in continuous service earning ₹3,000 or more per month (excluding agricultural and sugarcane workers) must receive wages through a bank transfer or by cheque.

- In certain areas (like Thane District) or industries, all workers (regardless of wage amount) must be paid through bank transfer or cheque.
- The payment of bonuses exceeding one-fourth of the employee's earnings must be done in a prescribed manner.

- **Section 7: Deductions from Wages**

Employers cannot deduct any amount from an employee's wages unless the deduction is authorized by the Act. **Permissible Deductions Includes the following:**

1. Fines for misconduct.
2. Deductions for absence from duty.
3. Compensation for loss or damage to goods caused by the employee's neglect.
4. Housing accommodation provided by the employer or government authorities.
5. Authorized services and amenities offered by the employer.
6. Loan recoveries (including travel allowance advances).
7. Income tax deductions.
8. Court-ordered deductions.
9. Provident fund contributions.
10. Voluntary deductions for contributions to defense funds, insurance, cooperative societies, or any other approved funds.
11. Life insurance premiums or government securities, based on the employee's written consent.
12. Contributions to welfare or charitable funds (with employee consent).

**State Amendments:**

- **Kerala:** Deductions can also be made for repayments of financial aid provided under specific state rules.
- **Karnataka:** Employers can recover amounts from provident funds or gratuity when re-employing someone, but the recovery is limited to 20% of the employee's total earnings. Additionally, state-authorized deductions for employee benefits are permitted.
- **Maharashtra:** Employers can make deductions for contributions to public charitable causes, with employee consent.

**Total Deduction Limit:** Deductions cannot exceed 75% of the wages in cases where deductions are for payments to cooperative societies, and 50% in all other cases. If deductions exceed these limits, the excess must be recovered as per prescribed rules.

- **Section 8: Fines**

1. Employers can only impose fines on employees for specific acts or omissions. These acts must be approved by the appropriate government authority and displayed on a notice in the workplace.

2. This notice must be clearly visible in the area where employees work or, for railway workers, in a designated location.
3. No fine can be imposed on an employee without giving them an opportunity to explain their side. Fines must follow the prescribed procedures.
4. The total fine in any wage period cannot exceed 3% of the employee's wages for that period.
5. No fines can be imposed on employees under the age of 15.
6. Fines cannot be collected in instalments or after 90 days from when they were imposed.
7. Fines are considered to be imposed on the day the wrongful act or omission took place.
8. All fines must be recorded in a register by the person responsible for paying wages. The money collected from fines can only be used for purposes that benefit the employees, as approved by the relevant authority.

**Explanation:** If employees are part of a larger staff under the same management, the collected fines can go into a common fund, but the money must be used for approved purposes that benefit the staff.

- **Section 9: Deductions for Absence from**

1. Deductions can be made from an employee's wages only if they are absent from work. The amount deducted must be in proportion to the time they were absent.
2. If 10 or more employees are absent without giving proper notice or without a valid reason, the employer may deduct up to eight days' wages from those employees as a penalty for the absence.

**Explanation:** An employee is considered absent even if they are present at the workplace but refuse to work, such as during a strike without a valid reason.

- **Section 10: Deductions for Damage or Loss**

1. Deductions for damage or loss caused by an employee's neglect or default cannot exceed the actual cost of the damage or loss.
2. Deductions can only be made after giving the employee a chance to explain. All such deductions must be recorded in a register.

- **Section 11: Deductions for Services Rendered**

1. Deductions for house accommodation or other services provided to employees can only be made if the employee has agreed to it. The deduction amount cannot be more than the value of the service provided.

- **Section 12: Deductions for Recovery of Advances**

1. Deductions to recover money advanced to an employee before their employment can only be made from their first wage payment, but no deductions can be made for advances given for travel expenses.
2. If an advance is given after employment begins, the recovery process must follow rules set by the government.

3. Any recovery of wages not yet earned must follow government regulations on how much can be advanced and how it can be repaid.
- **Section 12A: Deductions for Recovery of Loans**
    1. Deductions for repaying loans provided by the employer must follow the rules set by the government regarding loan amounts and interest rates.
  - **Section 13: Deductions for Payments to Co-operative Societies and Insurance Schemes**
    1. Deductions for payments to cooperative societies and insurance schemes must follow the rules established by the government.
  - **Section 13A: Maintenance of Registers and Records**
    1. Employers must maintain records with details about employees, the work they do, wages paid, deductions made, and other required information.
    2. These records must be kept for three years from the last entry made.
  - **Section 14: Inspectors**
    1. Factory Inspectors are also responsible for enforcing this Act in factories within their assigned areas.
    2. The government may appoint inspectors to oversee the implementation of the Act for employees working in railways or other industries.
    3. Inspectors have the authority to enter workplaces, inspect records, and ensure compliance with the Act.
    4. Inspectors can seize or take copies of relevant documents and supervise wage payments if necessary.
    5. Inspectors are public servants as per the Indian Penal Code and must follow the procedures under the Code of Criminal Procedure for searches and seizures.
  - **Section 16: Single Application for Claims from Unpaid Group**
    1. **Unpaid Group Definition:** Workers belong to the same unpaid group if they work at the same establishment and either:
      1. Deductions were made from their wages without legal reason for the same cause and during the same wage period.
      2. Their wages were not paid by the date specified in Section 5.
    3. **Single Application:** A joint application can be submitted on behalf of several workers from the same unpaid group under Section 15. In such cases, each worker may be awarded the maximum compensation allowed.
    4. **Combining Applications:** If separate applications from the same unpaid group are pending, the authority may treat them as a single application for easier handling.
  - **Section 17: Appeal Process**
    1. **Who Can Appeal:** An appeal can be made within 30 days of an order or decision under Section 15. The appeal may be filed:
      2. By the employer if the total wages and compensation exceed ₹300 or if the liability exceeds ₹1,000.
      3. By the employee or a representative if the withheld wages exceed ₹20 for an individual or ₹50 for a group.

4. By a person ordered to pay a penalty under Section 15(4).
5. **Deposit Required:** No appeal from the employer is allowed unless they deposit the amount directed to be paid with the appeal authority.
6. **Finality of Orders:** Other than the above appeal provisions, any decision under Section 15 is considered final.
7. **Property Attachment During Appeal:** If the court suspects that the employer may try to avoid payment, it can order the temporary attachment of the employer's property to ensure that the wages are paid.

- **Section 18: Powers of Authorities**

The authorities appointed under Section 15 have the same powers as a Civil Court. This includes the authority to:

- Collect evidence.
- Enforce witness attendance.
- Compel the production of documents.

The authority is considered a Civil Court for certain purposes under the Code of Civil Procedure and Criminal Procedure Code

- **Section 19 [Omitted]**

This section has been removed by an amendment in 1964 and is no longer applicable.

- **Section 20: Penalty for Offences Under the Act**

1. **General Penalties:**

- If an employer fails to pay wages as required under certain sections of the Act (Section 5, 7, 8, 9, 10, and Sections 11 to 13), they can be fined between ₹1,500 and ₹7,500.

2. **Specific Penalties:**

- If an employer violates the provisions of Sections 4, 5(4), 6, 8(8), 10(2), or 25, they may face a fine of up to ₹3,750.
- If the employer fails to nominate someone responsible under Section 3, a fine of up to ₹3,000 can be imposed.

3. **Penalties for Records or Information:**

- Employers who fail to maintain proper records or provide false information may face a fine between ₹1,500 and ₹7,500 for each offence.

4. **Obstruction or Interference with Inspections:**

- Employers who obstruct inspectors or prevent them from performing their duties can be fined between ₹1,500 and ₹7,500.

## 5. Repeat Offences:

- If an employer repeats the same offence, the fine increases, ranging from ₹3,750 to ₹22,500.
- If convicted again for the same offence within two years, this increased penalty applies.

## 6. Failure to Pay Wages:

- Employers who fail to pay wages by the deadline may be fined an additional ₹750 for each day of delay.

### • Section 21: Procedure in Trial of Offences

1. A court cannot take action on a complaint against any person for an offence under Section 20(1) unless an application related to the offence has been filed under Section 15, and the authority or appellate court has approved it in full or in part. Additionally, the authority or court that granted the application must approve the complaint.
2. Before approving a complaint against a person for an offence under Section 20(1), the authority or appellate court must give that person a chance to explain their actions. The complaint will not be approved if the person can prove:
  - (a) There was a genuine mistake or dispute regarding the amount owed to the employee.
  - (b) There was an emergency or exceptional situation that prevented timely payment despite efforts to do so.
  - (c) The employee failed to collect or request payment.
3. A court cannot act on violations of Sections 4 or 6 or any rules under Section 26 unless an inspector under the Act files or approves the complaint.
4. When imposing a fine for an offence under Section 20(1), the court must consider any compensation already awarded in proceedings under Section 15.

### State Amendments:

- **Karnataka:** The words “authority or Appellate Court” are replaced with “State Government or any authorized officer.”
- **Maharashtra:** The phrase “employed person” now includes “or their legal representative.”

### • Section 22: Bar of Suits

A court cannot entertain a lawsuit to recover wages or deductions if:

- (a) The matter is already the subject of an application under Section 15.
- (b) The matter has already been ruled in favor of the plaintiff under Section 15.
- (c) The issue has already been decided in a proceeding under Section 15.
- (d) The wages could have been recovered through an application under Section 15.

- **Section 22A: Protection for Actions Taken in Good Faith**

No lawsuit or legal proceeding can be filed against the government or any government officer for actions taken in good faith under this Act.

- **Section 23: Contracting Out**

Any contract or agreement made before or after the commencement of this Act that deprives an employee of their rights under the Act is null and void.

- **Section 24: Delegation of Powers**

The appropriate government may delegate its powers under this Act to subordinate officers or authorities through a notification in the Official Gazette. For central government matters, this can be done by officers subordinate to the Central Government or State Government. For state matters, it applies to officers under the State Government.

- **Section 25: Display of Abstracts of the Act**

The person responsible for wage payment in factories or industrial establishments must display notices containing abstracts of this Act and related rules. These notices should be in English and the primary language of the workers.

- **Section 25A: Payment of Unclaimed Wages in Case of Death**

If an employed person dies before their wages can be paid, the employer must:

- a. Pay the wages to the person nominated by the deceased employee as per the rules.
- b. If no nomination is made, deposit the amount with the prescribed authority, which will manage it as per the rules.

Once the employer has paid the nominated person or deposited the amount with the authority, they are considered to have fulfilled their payment obligations.

- **Section 26: Rule-Making Power**

These rules may cover various matters such as:

- Maintaining records, registers, and notices.
- Displaying wage rates.
- Inspecting weights and measures used for wage calculation.
- Imposing fines and making wage deductions.
- Specifying the powers of inspectors.
- Determining court fees for proceedings under this Act.

Any rules made under this section are subject to prior publication, and the public must have at least three months to review the draft rules. Additionally, rules made by the

Central Government must be presented before Parliament, and those made by State Governments must be placed before the State Legislature

### **7.11 Difference between Payment of Wages Act, 1936 and Minimum Wages Act, 1948**

<b>Basis</b>	<b>Payment of Wages Act, 1936</b>	<b>Minimum Wages Act, 1948</b>
<b>Meaning</b>	Payment of Wages Act, 1936 is a seminal work in the field of labor legislation, mainly about the timely and complete payment of salaries to laborers.	The Minimum Wages Act, 1948 is an important law in India that sets minimum wages for different classes and periodically reviews them in an effort to minimize worker exploitation.
<b>Objective</b>	The act guarantees prompt and complete payment of salaries.	The act establishes and updates minimum wage rates.
<b>Focus</b>	It focuses on problems with payments and unapproved deductions.	It focuses on establishing the minimum pay for different types of work.
<b>Applicability</b>	It is applied to all workers, regardless of the kind of labor they do.	It is applicable to jobs that are planned.
<b>Scope</b>	The act controls when and how wages are paid.	The act establishes minimum pay rates.
<b>Components Regulated</b>	Here, the method of pay and allowable deductions are the main components.	The components are wage rate fixing, overtime compensation, and other aspects.
<b>Revision of Rates</b>	The act focuses mostly on the manner and timing of payments.	The act focuses on the minimum wage's recurring revisions.
<b>Impact on Employer-Employee Relations</b>	It builds confidence by guaranteeing prompt and complete payments.	It aims to maintain equitable compensation requirements.

## **UNIT-8 Payment of Bonus Act, 1965 and Payment of Gratuity Act, 1972**

### **Payment of Bonus Act, 1965**

#### **8.0 Learning objectives:**

#### **8.1 Introduction**

#### **8.2 Objective, Reasons And Applicability Of The Act:**

#### **8.3 Important provisions of the act:**

#### **8.4 Calculation of direct tax payable by the employer:**

#### **8.5 Eligibility and Disqualification for Bonus:**

#### **8.6 Payment of minimum and maximum bonus:**

#### **8.7 Time-limit for payment of bonus**

#### **8.8 Recovery of Bonus**

#### **8.9 Maintenance of registers, records, etc.:**

#### **8.10 Inspectors.**

#### **8.11 Offences and Penalty:**

### **Payment of Gratuity Act, 1972**

#### **8.12 Introduction:**

#### **8.13 Objects of the Act:**

#### **❖ Exercise**

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#### **8.0 Learning objectives:**

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"Payment of Bonus Act, 1965," is an Indian law that mandates employers to pay a minimum bonus to eligible employees based on a percentage of their salary, essentially sharing a portion of the company's profits with workers, aiming to promote industrial peace and harmony. Part 1 of this unit will reveal the underlying purpose of offering a bonus is to distribute the benefit received by the company to the employees. This added perk helps improve employee morale and productivity. It also encourages them to efficiently work towards their goals, thereby helping the company reach newer heights. In the second part of this unit, one will know that who is eligible for gratuity, how it is to be calculated and which are the offences punishable under criminal laws. This unit will help the learner to improve his legal knowledge regarding the labour and industries of India.

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#### **8.1 Introduction**

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The practice of paying bonus in India appears to have originated during First World War when certain textile mills granted 10% of wages as war bonus to their workers in 1917, under Rule 81A of Defence of India Rules, industrial disputes also included in certain cases the demand for payment of bonus. In 1950, the Full Bench of the Labour Appellate Tribunal evolved a formula for determination of bonus. A plea was made to raise that formula in 1959. At the second and third meetings of the

Eighteenth Session of standing Labour Committee (G.O.I.) held in New Delhi in March / April 1960, it was agreed that a Commission be appointed to go into the question of bonus and evolve suitable norms. On 6th December, 1960 the Government appointed a Bonus Commission. The Government of India vide Resolution No. W .B. 20 (3) 64, dated September 2, 1964 accepted the recommendations of the Commission subject to certain modifications. To implement these recommendations the payment of Bonus Ordinance, 1965 was promulgated on May, 1965 which was replaced by Payment of Bonus Act, 1965 assented on September 25, 1965.

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## **8.2 Objective, Reasons And Applicability Of The Act:**

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### **8.2.1 Objective and Reasons:**

Payment of bonus finds justification on the ground that the workers should have share in the prosperity of the establishment for which they toil. The objective of the Payment of Bonus Act, 1965 (herewith as Act) is to provide for payment of bonus to persons employed in certain establishments on the basis of profits or on the basis of production or productivity and for matters connected therewith.

### **8.2.2 Applicability of the Act:**

The Act extends to the whole of India. Under the provisions of Section 1, the Act applies to

- (i) every factory, and
- (ii) every other establishment in which twenty or more persons are employed on the any day during an accounting year.

The appropriate Government may after giving not less than 2 months' notice of its intention so to do, by notification in the official Gazette apply the provisions of this Act, with effect of such accounting year as may be specified in the notification, to any establishment which is a factory within the meaning of Section 2(m) (ii) of the Factories Act, 1948, employing such number of persons, less than twenty, as may be specified in the notification. But the number of persons so specified shall in no case be less than ten.

The provisions of this Act shall, in relation to a factory or other establishment to which this Act applies, have effect in respect of the accounting year commencing on any day in the year 1964 and in respect of every subsequent accounting year. Provided further that when the provisions of this Act have been made applicable to any establishment or class of establishments by the issue of a notification under the proviso to sub-section (3), the reference to the accounting year commencing on any day in the year 1964 and every subsequent accounting year or, as the case may be, the reference to the accounting year commencing on any day in the year 1968 and every subsequent accounting year, shall, in relation to such establishment or class of establishments, be construed as a reference to the accounting year specified in such notification and every subsequent accounting year. An establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein falls below twenty or, as the case may be, the number specified in the notification issued under the proviso to sub-section (3).

### 8.2.2.1 Act not to apply to certain classes of employees:

Nothing in this Act shall apply to—

- (i) employees employed by any insurer carrying on general insurance business and the] employees employed by the Life Insurance Corporation of India;
- (ii) seamen as defined in clause (42) of section 3 of the Merchant Shipping Act, 1958 (44 of 1958);
- (iii) employees registered or listed under any scheme made under the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), and employed by registered or listed employers;
- (iv) employees employed by an establishment engaged in any industry carried on by or under the authority of any department of the Central Government or a State Government or a local authority;
- (v) employees employed by—
  - (a) the Indian Red Cross Society or any other institution of a like nature (including its branches);
  - (b) universities and other educational institutions;
  - (c) institutions including hospitals, chambers of commerce and social welfare institutions established not for purposes of profit.
- (viii) Employees employed by the Reserve Bank of India; (ix) employees employed by—
  - (i) the Industrial Finance Corporation of India;
- (ii) any Financial Corporation established under section 3, or any Joint Financial Corporation established under section 3A, of the State Financial Corporations Act, 1951 (63 of 1951);
- (iii) the Deposit Insurance Corporation;
- (iv) the National Bank for Agriculture and Rural Development;
- (v) the Unit Trust of India;
- (vi) the Industrial Development Bank of India;
  - (fa) the Small Industries Development Bank of India established under section 3 of the Small Industries Development Bank of India Act, 1989 (39 of 1989);
  - (ff) the National Housing Bank;
- (vii) any other financial institution other than a banking company, being an establishment in public sector, which the Central Government may, by notification in the Official Gazette, specify, having regard to—
  - (i) its capital structure;
  - (ii) its objectives and the nature of its activities;

- (iii) the nature and extent of financial assistance or any concession given to it by the Government; and
- (iv) any other relevant factor;
- (v) employees employed by inland water transport establishments operating on routes passing through any other country.

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### 8.3 Important provisions of the act:

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**8.3.1 Definitions:** The following are the definitions which are to be considered in case of interpretation of any of the provisions of this Act.

- **Accounting Year means—**

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

Provided that an option once exercised by the employer under paragraph (b) of this sub-clause shall not again be exercised except with the previous permission in writing of the prescribed authority and upon such conditions as that authority may think fit.

- **Allocable Surplus: means—**

- (a) In relation to an employer, being a company other than a banking company which has not made the arrangements prescribed under the Income-tax Act for the declaration and payment within India of the dividends payable out of its profits in accordance with the provisions of section 194 of that Act, sixty-seven per cent. of the available surplus in an accounting year;
  - (b) In any other case, sixty percentage of such available surplus.
- **Banking Company:** means a banking company as defined in section 5 of the Banking Companies Act, 1949 and includes the State Bank of India, any subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 any corresponding new bank specified in the First Schedule to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 any corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 any co-operative bank as defined in clause (vii) of section 2 of the Reserve bank of India Act, 1934 and any other banking institution which may be notified in this behalf by the Central Government.

- **Direct Tax means;**

- (a) any tax chargeable under:

- (i) the Income-tax Act;
    - (ii) the Super Profits Tax Act, 1963
    - (iii) the Companies (Profits) Surtax Act, 1964
    - (iv) the agricultural income-tax law; and

- (b) any other tax which, having regard to its nature or incidence, may be declared by the Central Government, by notification in the Official Gazette, to be a direct tax for the purposes of this Act.

- Employee means any person (other than an apprentice) employed on a salary or wage not exceeding twenty-one thousand rupees per mensem in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied.

- **‘Employer’ includes—**

- (i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and where a person has been named as a manager of the factory under clause (f) of sub-section (1) of section 7 of the Factories Act, 1948 (63 of 1948), the person so named; and
  - (ii) in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent.

- ‘Salary or Wage’ means all remuneration (other than remuneration in respect of overtime work) capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment or of work done in such employment and includes dearness allowance (that is to say, all cash payments, by whatever name called, paid to an employee on account of a rise in the cost of living), but does not include—

- (i) any other allowance which the employee is for the time being entitled to;
    - (ii) the value of any house accommodation or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles;
    - (iii) any travelling concession;
    - (iv) any bonus (including incentive, production, and attendance bonus);
    - (v) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the employee under any law for the time being in force;
    - (vi) any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex gratia payment made to him;
    - (vii) any commission payable to the employee.

Explanation—Where an employee is given in lieu of the whole or part of the salary or wage payable to him, free food allowance or free food by his employer, such food allowance or the value of such food shall, for the purpose of this clause, be deemed to form part of the salary or wage of such employee.

### **8.3.2 Computation of gross profits and available surplus:**

The Act has laid down a detailed procedure for calculating the amount of bonus payable to employees. For that purpose, Gross profit should be calculated as per the provisions of Schedules of this Act and then deductions available under Section 6 will be deducted. This will be the amount of Gross Profit. If we add the sum equal to the difference between the direct tax calculated on gross profit for the previous year and direct tax calculated on gross profit arrived at after deducting the bonus paid or payable to the employees. The amount so received will be the available surplus. Out of this surplus:

Company (other than banking Company) 67 %

Other cases 60% amount will be the Allocable Surplus. Out of this allocable surplus payment of bonus to employees will be done. This calculation is given below –

### **8.3.3 Computation of gross profit:**

As per Section 4, the gross profit derived by an employer from an establishment in respect of any accounting year shall:

- a) in the case of banking company be calculated in the manner specified in the First Schedule.
- b) in any other case, be calculated in the manner specified in the Second

### **8.3.4 Deductions from gross profits:**

According to Section 6, the sums deductible from gross profits include;

- a) any amount by way of depreciation admissible in accordance with the provisions of Section 32(1) of the Income-tax Act or in accordance with the provisions of the Agricultural Income-tax Law, as the case may be.

Provided that where an employer has been paying bonus to his employees under a settlement or an award or agreement made before the 29<sup>th</sup> May, 1965 and subsisting on that date after deducting from the gross profits notional normal depreciation, then the amount of depreciation to be deducted under this clause shall, at the option of such employer (such option to be exercised once and within one year from that date) continue to be such notional normal depreciation.

What is deductible under Section - 6 (a), is depreciation admissible in accordance with the provisions of Section - 32(1) of the Income-tax Act and not depreciation allowed by the Income-tax Officer in making assessment on the employer.

- b) Any amount be a way of development rebate, investment allowance or development allowance which the employer is entitled to deduct from is income under the Income tax Act.
- c) Subject to the provisions of Section - 7, any direct tax which the employer is liable to pay for the accounting year in respect of his income profit and gain during the year.
- d) Such further sums as are specified in respect of employer in the Third Schedule.

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## **8.4 Calculation of direct tax payable by the employer:**

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Under Section - 7, any direct tax payable by the employer for any accounting year shall, subject to the following provisions, be calculated at the rates applicable to the income of the employer for that year, namely;

- a). In calculating such tax no account shall be taken of-
  - (i) any loss incurred by the employer in respect of any previous accounting year and carried forward under any law for the time being in force relating to direct taxes;
  - (ii) any arrears of depreciation which the employer is entitled to add to the amount of the allowance for depreciation for any following accounting year or years under sub-Section – (2) of Section - 32 of the Income-tax Act;
  - (iii) any exemption conferred on the employer under Section - 84 of the Income-tax Act or of any deduction to which he is entitled under Section - 101(1) of that Act, as in force immediately before the commencement of the finance Act, 1965;
- b). Where the employer is a religious or a charitable institution to which the provisions of Section - 32 do not apply and the whole or any part of its income is exempt from tax under the Income-tax Act, then, with respect to the income so exempted, such institution shall be treated as if it were a company in which the public are substantially interested within the meaning of the Act;
- c). where the employer is an individual or a Hindu undivided family, the tax payable by such employer under the Income tax Act shall be calculated on the basis of that the income derived by him from the establishment is his only income.

### **8.4.1 Computation of available surplus:**

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 Section - 6.

Provided that the available surplus in respect of the accounting year commencing on any day in the year 1968 and in respect of every subsequent accounting year shall be the aggregate of –

- a. the gross profit for that accounting year after deducting there from the sums referred to in Section - 6; and
- b. an amount equal to the difference between
  - i. the direct tax, calculated in accordance with the provisions of Section - 7, in respect of an amount equal to the gross profits of the employer for the immediately preceding accounting year and
  - ii. the direct tax calculated in accordance with the provisions of Section - 7, in respect of an amount equal to the gross profit of the employer for such preceding accounting year after deducting there from the amount of bonus which the employer has paid or is liable to pay to

his employees in accordance with the provisions of this Act for that year (Section -5).

#### **8.4.2 Available Surplus:**

It means the available surplus under Section - 5. (Sec. 2(6))

#### **8.4.3 Allocable Surplus:**

It means –

- a. In relation to an employer, being a company (other than a banking company) which has not made the arrangements prescribing under the Income-tax Act for the declaration and payment within India of the dividends payable out of its profits in accordance with the provisions of Section - 194 of the Act, 67% of the available surplus in an accounting year.
- b. In any other case sixty percent of such available surplus. (Section - 2(4)).

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#### **8.5 Eligibility and Disqualification for Bonus:**

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Every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of this Act, provided he has worked in the establishment for not less than thirty working days in that year. (Section - 7) An employee suspended but subsequently reinstated with full back wages cannot be treated to be ineligible for bonus for the period of suspension.

An employee shall be disqualified from receiving bonus under this Act, if he is dismissed from service for—

- (a) fraud; or
- (b) riotous or violent behaviour while on the premises of the establishment; or  
Theft, misappropriation or sabotage of any property of the establishment. (Section - 8)

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#### **8.6 Payment of minimum and maximum bonus:**

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Section - 10 and Section - 11 of the Act provides for payment of minimum and maximum amount of bonus to be payable to the employee.

**8.6.1 Minimum bonus:** Subject to the other provisions of this Act, every employer shall be bound to pay to every employee in respect of the accounting year commencing on any day in the year 1979 and in respect of every subsequent accounting year, a minimum bonus which shall be 8.33 per cent. of the salary of wage earned by the employee during the accounting year or one hundred rupees, whichever is higher, whether or not the employer has any allocable surplus in the accounting year.

Provided that where an employee has not completed fifteen years of age at the beginning of the accounting year, the provisions of this section shall have effect in relation to such employees as if for the words “one hundred rupees”, the words “sixty rupees” were substituted.

### **8.6.2 Maximum Bonus:**

- (1) Where in respect of any accounting year referred to in section 10, the allocable surplus exceeds the amount of minimum bonus payable to the employees under that section, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting year bonus which shall be an amount in proportion to the salary or wage earned by the employee during the accounting year subject to a maximum of 20% of such salary or wage.
- (2) In computing the allocable surplus under this section, the amount set on or the amount set off under the provisions of section 15 shall be taken into account in accordance with the provisions of that section.

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### **8.7 Time-limit for payment of bonus**

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All amounts payable to an employee by way of bonus under this Act shall be paid in cash by his employer—

- (a) where there is a dispute regarding payment of bonus pending before any authority under section 22, within a month from the date on which the award becomes enforceable or the settlement comes into operation, in respect of such dispute;
- (b) in any other case, within a period of eight months from the close of the accounting year:

Provided that the appropriate Government or such authority as the appropriate Government may specify in this behalf may, upon an application made to it by the employer and for sufficient reasons, by order, extend the said period of eight months to such further period or periods as it thinks fit; so, however, that the total period so extended shall not in any case exceed two years.

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### **8.8 Recovery of Bonus**

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Mode of recovery as prescribed in Section - 21 would be available only if bonus sought to be recovered is under settlement or an award or an agreement. The provisions of Section - 21 are as under:

Where any money is due to an employee by way of bonus from his employer under a settlement or an award or agreement, the employee himself or any other person authorised by him in writing in this behalf, or in the case of the death of the employee, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government or such authority as the appropriate Government may specify in this behalf is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

Provided that every such application shall be made within one year from the date on which the money became due to the employee from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that

the applicant had sufficient cause for not making the application within the said period.

In Sections - 21, 22, 23, 24 and 25, “employee” includes a person who is entitled to the payment of bonus under this Act but who is no longer in employment.

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### **8.9 Maintenance of registers, records, etc.:**

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

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### **8.10 Inspectors.**

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- (1) The appropriate Government may, by notification in the Official Gazette, appoint such person as it thinks fit to be Inspectors for the purposes of this Act and may define the limits within which they shall exercise jurisdiction.
- (2) An Inspector appointed under sub-section (1) may, for the purpose of ascertaining whether any of the provisions of this Act has been complied with—
  - (a) require an employer to furnish such information as he may consider necessary;
  - (b) 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 of wage or bonus in the establishment;
  - (c) examine with respect to any matter relevant to any of the purposes aforesaid, the employer, his agent or servant or any other person found in charge of the establishment or any premises connected therewith or any person whom the Inspector has reasonable cause to believe to be or to have been an employee in the establishment;
  - (d) make copies of, or take extracts from, any book, register or other document maintained in relation to the establishment;
  - (e) 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.
- (4) Any person required to produce any accounts, book, register or other documents or to give information by an Inspector under sub-section (1) shall be legally bound to do so.
- (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 section 34A of the Banking Regulation Act, 1949.

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## **8.11 Offences and Penalty:**

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### **8.11.1 Offences by Company: Section - 29**

- (1) If the person committing an offence under this Act is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.
- (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

For the purposes of Section - 29 (a) “company” means anybody corporate and includes a firm or other association of individuals; and (b) “director”, in relation to a firm, means a partner in the firm.

### **8.11.2 Cognizance of offences.**

- 1) No court shall take cognizance of any offence punishable under this Act, save on complaint made by or under the authority of the appropriate Government or an officer of that Government (not below the rank of a Regional Labour Commissioner in the case of an officer of the Central Government, and not below the rank of a Labour Commissioner in the case of an officer of the State Government) specially authorised in this behalf by that Government.
- (3) No court inferior to that of a presidency magistrate or a magistrate of the first class shall try any offence punishable under this Act.

### **8.11.3 Protection of action taken under the Act.**

No suit, prosecution or other legal proceeding shall lie against the Government or any officer of the Government for anything which is in good faith done or intended to be done in pursuance of this Act or any rule made there under.

### **8.11.4 Penalty:**

If any person—

- (a) contravenes any of the provisions of this Act or any rule made there under; or (b) to whom a direction is given or a requisition is made under this Act fails to comply with the direction or requisition, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

## Part – 2

### Payment of Gratuity Act, 1972

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#### **8.12 Introduction:**

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The right of industrial workers to receive gratuity has long been recognized by the Tribunals, yet the law relating to payment of gratuity was very vague and uncertain before passing of the present Act. The supreme court had made efforts to regulate through judicial decisions by laying down principles for grant of gratuity. Still controversies with regard to the rules and principles were continuing. Ultimately all controversies were set at rest by passing of the Payment of Gratuity Act in the year of 1972. As the preamble of the Act suggests that the Act aims to provide for a scheme for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments and for matters connected therewith or incidental thereto. The object of gratuity scheme is to provide a retiring benefit to the workmen who have rendered long and unblemished service to the employer and thereby contribute to the prosperity of the employer. Gratuity is a lump sum payment made by the employer as a mark of recognition of the service rendered by the employee when he retires or leaves service.

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#### **8.13 Objects of the Act:**

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Gratuity schemes serve as instruments of social security and their significance in a developing country like India where the general income level is low cannot be over emphasized. The main objects can be narrated as follows:

- To provide social security to the employees after retirement
- To act as a social security legislation to the wage-earning population in industries or establishments.
- Envisioned as a reward for those workers who have served for a long period of time as faithful employees.
- To impose a statutory liability upon employer to provide payment to employees when they suffer from any physical disability or death due to any disease or accident arising out of work.

##### **8.13.1 Scope and Applicability of the Act :**

The Act has received the assent of the President of India in August, 1972. This Act extends to the whole of India.

The Act is applicable to:

1. Every factory, mine, oilfield, plantation, port, and railway company;
2. Every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a state; in which 10 or more, persons are employed or were employed on any day of the preceding 12 months;
3. To every motor transport undertaking in which 10 or more persons are employed or were employed on any day of the preceding 12 months;
4. Such other establishments or class of establishments in which 10 or more employees are employed or were employed on any day of the preceding 12

months, as the Central Government may, by notification, specify in this behalf.

A shop or establishment once covered shall continue to be covered notwithstanding that the number of persons employed therein at any time falls below 10.

The Act fulfills the universally recognized need of compensation for loss of income due to unemployment arising either out of incapacity to work due to invalidity, old age or the desire of workman to lead retired life. Welfare measures such as pension, provident fund, gratuity, etc. are in conformity with the directive principle of State Policy as envisaged by Part IV of the Constitution of India.

### **8.13.2 Main provisions of the Act:**

#### **8.13.2.1 Definitions:**

- Appropriate Government means,—
  - (i) in relation to an establishment—
    - a. belonging to, or under the control of, the Central Government,
    - b. having branches in more than one State,
    - c. of a factory belonging to, or under the control of, the Central Government,
    - d. of a major port, mine, oilfield or railway company, the Central Government,
  - (ii) in any other case, the State Government.
- Completed year of service means continuous service for one year.
- Continuous Service means For the purposes of this Act,
  - (1) an employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order treating the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment), lay-off, strike or a lock-out or cessation of work not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act;
  - (2) where an employee (not being an employee employed in a seasonal establishment) is not in continuous service within the meaning of clause (1), for any period of one year or six months, he shall be deemed to be in continuous service under the employer-(a) for the said period of one year, if the employee during the period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—
    - (i) one hundred and ninety days, in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and
    - (ii) two hundred and forty days, in any other case;
    - (iii) for the said period of six months, if the employee during the period of six calendar

months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than—

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

(ii) one hundred and twenty days, in any other case.

The number of days on which an employee has actually worked under an employer shall include the days on which—

- (i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Industrial Disputes Act, 1947 (14 of 1947), or under any other law applicable to the establishment;
- (ii) he has been on leave with full wages, earned in the previous year;
- (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed such period as may be notified by the Central Government from time to time.

- (3) where an employee, employed in a seasonal establishment, is not in continuous service within the meaning of clause (1), for any period of one year or six months, he shall be deemed to be in continuous service under the employer for such period if he has actually worked for not less than seventy-five per cent. of the number of days on which the establishment was in operation during such period.

- Employee -- means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.
- Employer -- means, in relation to any establishment, factory, mine, oilfield, plantation, port, railway company or shop—
  - (i) belonging to, or under the control of, the Central Government or a State Government, a person or authority appointed by the appropriate Government for the supervision and control of employees, or where no person or authority has been so appointed, the head of the Ministry or the Department concerned,
  - (ii) belonging to, or under the control of, any local authority, the person appointed by such authority for the supervision and control of employees or where no person has been so appointed, the chief executive officer of the local authority,
  - (iii) in any other case, the person, who, or the authority which, has the ultimate control over the affairs of the establishment, factory, mine,

- (iv) oilfield, plantation, port, railway company or shop, and where the said affairs are entrusted to any other person, whether called a manager, managing director or by any other name, such person.
- Family, in relation to an employee, shall be deemed to consist of—
  - (i) in the case of a male employee, himself, his wife, his children, whether married or unmarried, his dependent parents and the dependent parents of his wife and the widow and children of his predeceased son, if any,
  - (ii) in the case of a female employee, herself, her husband, her children, whether married or unmarried, her dependent parents and the dependent parents of her husband and the widow and children of her predeceased son, if any.

**Explanation**—Where the personal law of an employee permits the adoption by him of a child, any child lawfully adopted by him shall be deemed to be included in his family, and where a child of an employee has been adopted by another person and such adoption is, under the personal law of the person making such adoption, lawful, such child shall be deemed to be excluded from the family of the employee;

- Wages -- means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance.

#### **8.13.2.2 Payment of gratuity:**

- (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years—
  - (a) on his superannuation, or
  - (b) on his retirement or resignation, or
  - (c) on his death or disablement due to accident or disease:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.

For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

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

Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account.

Provided further that in the case of an employee who is employed in a seasonal establishment and who is not so employed throughout the year, the employer shall pay the gratuity at the rate of seven days' wages for each season. In the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.

- (3) The amount of gratuity payable to an employee shall not exceed such amount as may be notified by the Central Government from time to time.
- (4) For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced.
- (5) Nothing in this section shall affect the right of an employee receive better terms of gratuity under any award or agreement or contract with the employer.

**Forfeiture of Gratuity:** Section - 4(6) provides for forfeiture of Gratuity. The provisions are as follows:

- (a) the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;
- (b) the gratuity payable to an employee may be wholly or partially forfeited—
- (i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act violence on his part, or
  - (ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

#### **8.13.2.3 Exemption:**

As per the provisions of Section - 5 the appropriate

Government may at any time exempt any employer from payment of gratuity. The detail provisions are as under:

The appropriate Government may, by notification, and subject to such conditions as may be specified in the notification, exempt any establishment, factory, mine, oilfield, plantation, port, railway company or shop to which this Act applies from the operation of the provisions of this Act if, in the opinion of the appropriate Government, the employees in such establishment, factory, mine, oilfield, plantation, port, railway company or shop are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act.

The appropriate Government may, by notification and subject to such conditions as may be specified in the notification, exempt any employee or class of employees employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop to which this Act applies from the operation of the provisions of this Act, if, in the opinion of the appropriate Government, such employee or class of employees are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act.

A notification issued under sub-section (1) or sub-section (2) may be issued retrospectively a date not earlier than the date of commencement of this Act, but no such notification shall be issued so as to prejudicially affect the interests of any person.

#### **8.13.2.4 Nomination:**

As per the provisions of Section – 6,

- (1) Each employee, who has completed one year of service, shall make, within such time, in such form and in such manner, as may be prescribed, nomination for the purpose of the second proviso to sub-section (1) of section 4.
- (2) An employee may, in his nomination, distribute the amount of gratuity payable to him under this Act amongst more than one nominee.
- (3) If an employee has a family at the time of making a nomination, the nomination shall be made in favour of one or more members of his family, and any nomination made by such employee in favour of a person who is not a member of his family shall be void.
- (4) If at the time of making a nomination the employee has no family, the nomination may be made in favour of any person or persons but if the employee subsequently acquires a family, such nomination shall forthwith become invalid and the employee shall make, within such time as may be prescribed, a fresh nomination in favour of one or more members of his family.

#### **8.13.2.5 Determination of amount of Gratuity:**

Section 7 of the Act, lays down the rules for the determination of the amount of gratuity. The person entitled to receive the gratuity amount shall send an application in writing to the employer. The employer shall calculate the gratuity amount and provide notice in writing to the concerned employee and the controlling authority. The payment should be made within 30 days from the date it is due to the employee. Failure to pay within the prescribed limit will result in the payment of simple interest. However, if the delayed payment is because of the employee, then the employer is not entitled to pay the simple interest. In the landmark case of *Y.K. Singla v. Punjab National Bank* (2012), the highest Court in India, the Supreme Court had to decide whether an employee whose gratuity has been withheld under

Regulation 46 of the Punjab National Bank (Employees) Pension Regulations is entitled to get interest because of the delay after the completion of the proceeding? The Court held that even though the provisions of the 1995 Regulations are silent on the issue of payment of interest, the appellant would be entitled to interest, on account of delayed payment under the Payment of Gratuity Act for the benefit of the employee.

The disputes arising between the employee and employer shall be referred to the controlling authority, and the proceedings for their resolution presided over by the controlling authority shall be considered judicial proceedings. The controlling authority has the authority to enforce the presence of any person and examine his oath, order the production of relevant documents, and issue commissions for the examination of witnesses if required. After due inquiry and giving the parties a reasonable opportunity to be heard, the controlling authority may determine the matters and pass appropriate orders. The aggrieved party can apply for appeals to the government.

#### **8.13.2.6 Inspector and his powers**

The government may appoint an inspector or inspectors who are deemed to be public servants under Section 21 of the Indian Penal Code for the purpose of ascertaining whether any of the provisions of this Act are being violated or not complied with and taking the necessary measures to ensure the fulfillment of all the provisions of this Act. The government, by notification, appoints an inspector for specific areas by designating them in particular. The appointed inspector has certain powers to ascertain whether the provisions of the Act are well complied with. These powers are as follows:

1. The inspector can demand that an employer provide whatever information that he may deem necessary.
2. He can enter and inspect the premises that come under the Act to examine the records or necessary documents.
3. He also has a right to inspect the employees on the premises. If he believes that any offence has been committed, then he may also make copies of the necessary documents that he examined.
4. The individuals are bound to furnish the relevant documents to the inspectors as per the relevant laws such as Sections 175 and 176 of the Indian Penal Code and Section 94 of the Code of Criminal Procedure, 1973.

#### **8.13.2.7 Recovery of Gratuity:**

If the employer delays the payment of the gratuity amount under the prescribed time limit, then the controlling authority shall issue the certificate to the collector on behalf of the aggrieved party and recover the amount, including the compound interest decided by the central government, and pay the same to the person. However, these provisions are subject to two conditions, as mentioned in Section 8:

The controlling authority should give the employer a reasonable opportunity to show the cause of such an Act. The amount of interest to be paid should not exceed the amount of gratuity under this Act.

### **8.13.2.8 OFFENCES AND PENALTIES:**

Violation of the provisions of the Act shall entail

certain penalties, as stated in Section 9. They are:

To avoid any payment, if someone makes a false representation or false statement, it shall be punishable with imprisonment for 6 months or a fine up to Rs. 10,000 or both.

Failure to comply with the provisions of this Act shall be punishable by a minimum of 3 months, which may extend up to 1 year, or a fine of Rs. 10,000, which may extend up to Rs. 20,000.

Non-payment of gratuity under the Act will lead to an offence, and the employer shall be punishable with imprisonment for at least 6 months, which may extend up to 2 years unless the court provides a sufficient reason for less payment.

No court shall take cognizance of any offence punishable under this Act save on a complaint made by or under the authority of the appropriate Government. Where the amount of gratuity has not been paid, or recovered, within six months from the expiry of the prescribed time, the appropriate Government shall authorise the controlling authority to make a complaint against the employer, whereupon the controlling authority shall, within fifteen days from the date of such authorisation, make such complaint to a magistrate having jurisdiction to try the offence. No court inferior to that of a Metropolitan magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act. (Section - 11)

### **8.13.2.9 Exemption of employer from liability in certain cases:**

Where an employer is charged with an offence punishable under this Act, he shall be entitled, upon complaint duly made by him and on giving to the complainant not less than three clear days' notice in writing of his intention to do so, to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the court—

- (a) that he has used due diligence to enforce the execution of this Act, and
- (b) that the said other person committed the offence in question without his knowledge, consent or connivance, that other person shall be convicted of the offence and shall be liable to the like punishment as if he were the employer and the employer shall be discharged from any liability under this Act in respect of such offence:

Provided that in seeking to prove as aforesaid, the employer may be examined on oath and his evidence and that of any witness whom he calls in his support shall be subject to cross-examination on behalf of the person he charges as the actual offender and by the prosecutor. If the person charged as the actual offender by the employer cannot be brought before the court at the time appointed for hearing the charge, the court shall adjourn the hearing from time to time for a period not exceeding three months and if by the end of the said period the person charged as the actual offender cannot still be brought before the court, the court shall proceed to

hear the charge against the employer and shall, if the offence be proved, convict the employer.

❖ **Exercise**

• **Theoretical Questions:**

- 1 Describe the scope, applicability, and extent of the Payment of Bonus Act.
- 2 Explain main provisions of the Payment of Bonus Act.
- 3 Discuss the formula to arrive at allocable surplus under the Payment of Bonus Act.
- 4 What are the general provisions relating to payment of gratuity under Labour Laws?
- 5 Explain Section - 4 of the Payment of Gratuity Act, 1972.
- 6 Write powers of Inspector under the Payment of Gratuity Act, 1972.

• **Short Questions:**

1. Write qualifications and disqualifications to receive bonus.
2. Write a note on payment of maximum and minimum bonus under the Payment of Bonus Act.
3. Write provisions of offences and penalties under the Payment of Bonus Act.
4. Write a short note on Inspector under the Payment of Bonus Act.
5. Write the provisions of offences under the Payment of Gratuity Act, 1972.
6. Write shot note on Nomination under the Payment of Gratuity Act, 1972

## **UNIT-9 THE EMPLOYEES' STATE INSURANCE ACT, 1948**

### **9.1 Introduction**

#### **9.1.1 Origin, Objectives, and Applicability**

### **9.2. Administration of the Act**

#### **9.2.1 The Employees' State Insurance Corporation (ESIC)**

#### **9.2.2 Composition of the Employees' State Insurance Corporation (ESIC)**

#### **9.2.3 Qualification of Members**

#### **9.2.4 Disqualification of Members**

#### **9.2.5 Powers of the Employees' State Insurance Corporation**

#### **9.2.6 The key functions of the ESIC**

#### **9.2.7 Role of State Governments**

#### **9.2.8 The key functions of the State ESI Boards include**

#### **9.2.9 Challenges in the Administration of the ESI Act**

#### **9.2.10 Benefits under the ESI Scheme**

#### **9.2.11 Importance of the ESI Act**

### **9.3 Importance Case Laws**

### **9.4 Evolution and Amendments**

### **9.5 Keywords**

### **9.6 Exercise**

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#### **9.1 Introduction:**

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The Employees' State Insurance Act, 1948 (ESI Act) represents one of the most significant strides in social security legislation in India, aimed at providing comprehensive protection to workers in case of sickness, maternity, injury, or death resulting from employment-related hazards. This legislation was a major step towards ensuring that the workforce in India, particularly in industrial and commercial sectors, received adequate protection against various risks associated with their employment.

The ESI Act establishes a scheme of health insurance for workers, which includes medical benefits, cash benefits during sickness and maternity, and compensation for employment-related injuries and diseases. The Act is designed to be a self-financing social security scheme where the employers and employees contribute to a fund that is utilized to provide various benefits to insured persons.

This Act is not only a crucial aspect of labor welfare but also an embodiment of the state's commitment to providing social security to its citizens, ensuring that workers have access to necessary medical care and financial assistance when they are most vulnerable. The ESI Act has undergone several amendments over the years, adapting to the changing needs of the workforce and expanding its coverage to include a broader range of employees and establishments.

The significance of the ESI Act lies in its comprehensive nature, providing both preventive and curative health care through a network of ESI hospitals and dispensaries, as well as financial support to employees during periods of incapacity. It is a cornerstone of the social security system in India, ensuring that the health and well-being of workers and their families are safeguarded.

### **9.1.1 Origin, Objectives, and Applicability**

#### **Origin of the ESI Act**

The genesis of the ESI Act can be traced back to the early 20th century, a period marked by growing industrialization in India. The rapid expansion of industries brought with it numerous challenges, including poor working conditions, long hours, and inadequate health and safety measures. These issues highlighted the need for a system that could provide workers with protection against the risks of illness, injury, and unemployment.

The idea of social security for workers was inspired by similar developments in Europe, particularly the social insurance schemes introduced in Germany under Chancellor Otto von Bismarck. The concept of workers' insurance gained momentum in India in the 1920s and 1930s, leading to the establishment of several committees and commissions to explore the feasibility of introducing such schemes in the country.

The Beveridge Report in the United Kingdom, which laid the foundation for the British welfare state, also influenced the thinking in India. The Indian National Congress, during its session in Karachi in 1931, passed a resolution advocating for the introduction of social security measures, including health insurance, for workers.

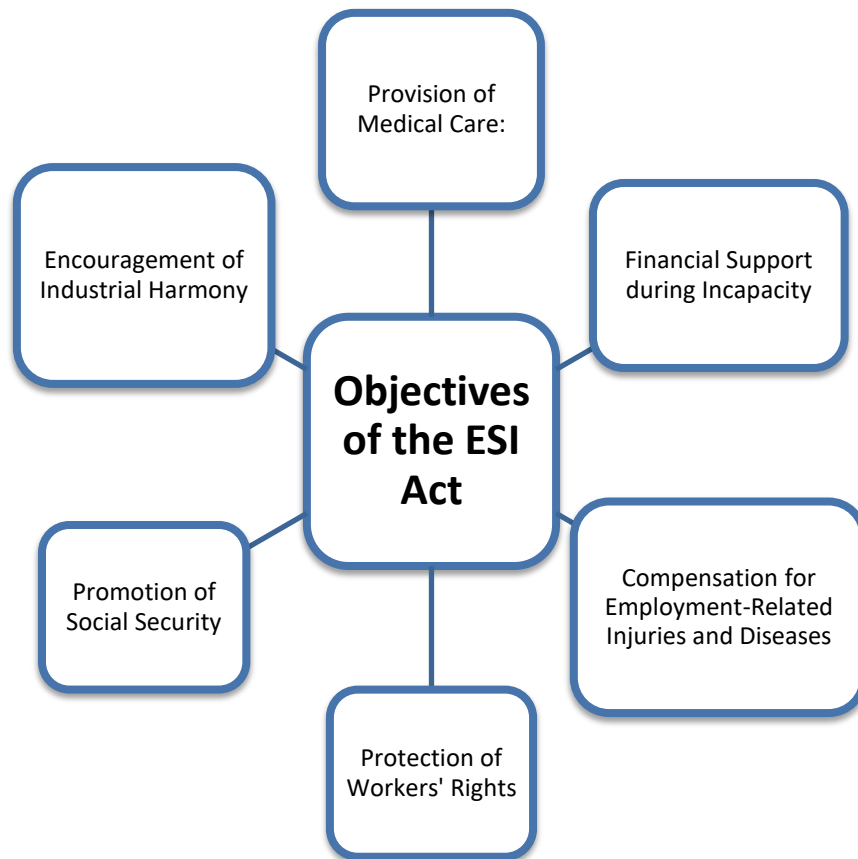
The Royal Commission on Labour in India (1931) further emphasized the need for a health insurance scheme for industrial workers. This led to the drafting of the first bill on the subject, which was introduced in the Legislative Assembly in 1942. However, due to various challenges, including World War II, the bill was not passed. After independence, the newly formed Indian government took up the matter with renewed vigor, leading to the enactment of the Employees' State Insurance Act in 1948.

The ESI Act was a pioneering piece of legislation, being one of the first comprehensive social security laws in post-independence India. It aimed to provide

a structured and statutory framework for the protection of workers, ensuring that they had access to medical care and financial support in times of need.

### ❖ Objectives of the ESI Act

The primary objectives of the ESI Act are:



#### ➤ **Provision of Medical Care:**

The ESI Act aims to provide comprehensive medical care to employees and their families. This includes preventive, promotive, and curative health services through a network of dispensaries and hospitals established under the ESI scheme.

#### ➤ **Financial Support during Incapacity:**

The Act provides financial assistance to workers during periods of sickness, maternity, and temporary or permanent disablement. This ensures that employees do not suffer financial hardship during times when they are unable to work due to illness or injury.

#### ➤ **Compensation for Employment-Related Injuries and Diseases:**

The ESI Act provides compensation to workers who suffer from employment-related injuries or occupational diseases. In case of death, the dependents of the deceased worker are entitled to compensation under the Act.

➤ **Protection of Workers' Rights:**

The Act aims to protect the rights of workers by ensuring that they are not exploited by employers. This includes provisions for the timely payment of contributions by employers and penalties for non-compliance with the Act.

➤ **Promotion of Social Security:**

The ESI Act is a key component of the broader social security framework in India. It promotes the concept of social security by ensuring that workers have access to essential services and financial support, thereby enhancing their overall well-being.

➤ **Encouragement of Industrial Harmony:**

By providing comprehensive social security to workers, the ESI Act helps in promoting industrial harmony. Workers who feel secure in their employment are more likely to be productive and less likely to engage in industrial disputes.

❖ **Applicability of the ESI Act**

The ESI Act applies to factories and other establishments as defined under the Act. Over the years, the applicability of the Act has been expanded to cover a wider range of establishments and employees. The key aspects of the Act's applicability include:

➤ **Coverage of Establishments:**

The ESI Act initially applied to factories employing 10 or more persons, but its scope has been expanded to include various other establishments, such as shops, hotels, restaurants, cinemas, road transport undertakings, and newspaper establishments. The government also has the power to extend the Act's applicability to any other establishment or class of establishments as it deems fit.

➤ **Coverage of Employees:**

The Act covers employees earning wages up to a specified limit, which is periodically revised by the government. Initially, the wage limit for coverage under the ESI Act was relatively low, but it has been progressively increased to cover a larger section of the workforce. Currently, employees earning a monthly wage of up to INR 21,000 are covered under the ESI scheme.

➤ **Geographical Applicability:**

The ESI Act applies to the whole of India. However, the implementation of the Act and the availability of ESI services may vary across different states and regions, depending on the establishment of ESI infrastructure, such as dispensaries and hospitals.

➤ **Voluntary Coverage:**

Establishments not covered under the ESI Act may opt for voluntary coverage by applying to the Employees' State Insurance Corporation (ESIC). This

allows employers and employees in smaller establishments to avail of the benefits provided under the ESI scheme.

➤ **Exemptions:**

Certain categories of employees, such as those employed in seasonal factories or engaged in work of a purely intermittent nature, may be exempted from coverage under the ESI Act. The government also has the power to exempt any establishment or class of establishments from the provisions of the Act if it is satisfied that the employees are receiving benefits substantially similar to those provided under the ESI scheme.

➤ **Compliance Requirements:**

Employers covered under the ESI Act are required to register their establishments with the ESIC and comply with various statutory requirements, including the payment of contributions, maintenance of records, and submission of returns. Non-compliance with the provisions of the Act can result in penalties and legal action.

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## **9.2 Administration of the Act**

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The administration of the Employees' State Insurance Act, 1948, is primarily the responsibility of the Employees' State Insurance Corporation (ESIC), an autonomous body established under the Act. The ESIC is a statutory organization that oversees the implementation and management of the ESI scheme across the country. The administration of the Act involves various functions, including the collection of contributions, provision of benefits, and maintenance of healthcare facilities.

### **9.2.1 The Employees' State Insurance Corporation (ESIC)**

The ESIC is the apex body responsible for the administration of the ESI scheme. It operates under the overall supervision of the Ministry of Labour and Employment, Government of India. The ESIC is tasked with ensuring that the objectives of the ESI Act are achieved and that the scheme functions efficiently and effectively.

The ESIC is governed by a board of directors, which includes representatives from the government, employers, employees, the medical profession, and the Parliament. This ensures that the interests of all stakeholders are taken into account in the administration of the ESI scheme.

### **9.2.2. Composition of the Employees' State Insurance Corporation (ESIC)**

The ESIC is composed of representatives from various sectors to ensure comprehensive governance. The composition includes:

<b>Sr. No.</b>	<b>Members</b>	<b>Details</b>
1.	<b>Chairman</b>	The Union Minister of Labour and Employment acts as the Chairman.
2.	<b>Vice-Chairman</b>	The Secretary, Ministry of Labour and Employment, serves as the Vice-Chairman.
3.	<b>Members of Parliament (MPs)</b>	5 members of the Lok Sabha (House of the People) and 1 member of the Rajya Sabha (Council of States) are elected to represent the Parliament.
4.	<b>Representatives of Central Government</b>	5 members nominated by the Central Government from ministries concerned with finance, labour, health, etc.
5.	<b>Representatives of State Governments</b>	1 member nominated by each of the State Governments and Union Territories in India.
6.	<b>Employer Representatives</b>	10 members representing employers, nominated by the Central Government after consulting the leading employer organizations.
7.	<b>Employee Representatives</b>	10 members representing employees, nominated by the Central Government after consulting leading employee organizations.
8.	<b>Medical Practitioners</b>	2 members representing the medical profession, nominated by the Central Government after consulting the Indian Medical Association.
9.	<b>Director-General of ESIC</b>	The Director-General of the ESIC is an ex-officio member, responsible for the execution of the policies and administration of the ESI scheme.
10.	<b>Financial Commissioner of ESIC</b>	The Financial Commissioner of ESIC is also an ex-officio member and responsible for the financial administration of the Corporation.

### 9.2.3 Qualification of Members

To be appointed or elected as a member of the ESIC, the following qualifications are generally required:

➤ **Representatives of Employers:**

Members must have significant experience and knowledge in the industry and be nominated by recognized employer organizations.

➤ **Representatives of Employees:**

Members must be associated with recognized trade unions or workers' organizations and be nominated by those bodies.

➤ **Medical Representatives:**

Must be qualified and registered medical practitioners, usually associated with professional bodies like the Indian Medical Association.

➤ **Parliamentary Members:**

Must be elected members of the respective houses (Lok Sabha or Rajya Sabha).

#### **9.2.4 Disqualification of Members**

A member of the ESIC may be disqualified under the following conditions:

➤ **Unsound Mind:**

If a member is declared of unsound mind by a competent court.

➤ **Bankruptcy:**

If a member is declared insolvent or has been adjudged bankrupt.

➤ **Conviction:**

If a member has been convicted of an offense involving moral turpitude.

➤ **Absenteeism:**

If a member fails to attend three consecutive meetings of the Corporation without prior permission.

➤ **Conflict of Interest:**

If a member has a conflict of interest with the ESIC, such as holding a position that could influence decisions in favor of a particular group or entity.

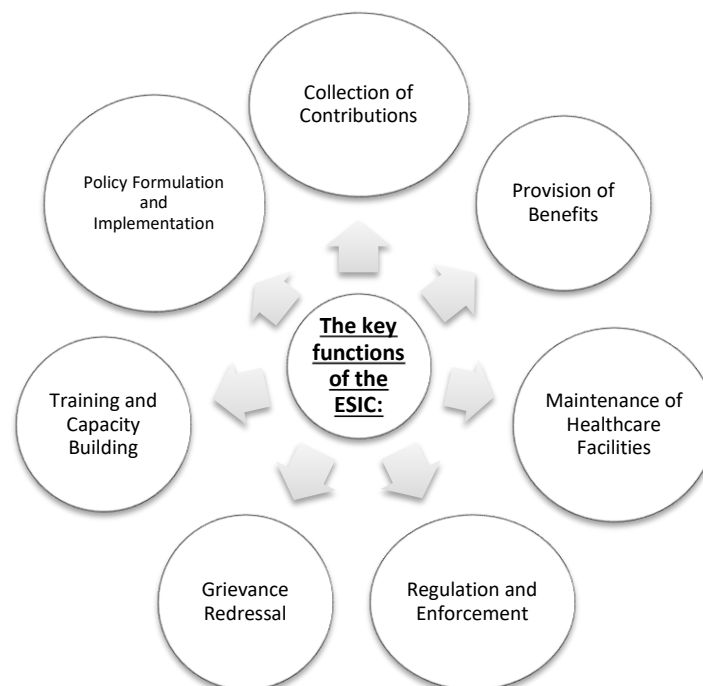
#### **9.2.5 Powers of the Employees' State Insurance Corporation:**

The ESIC has broad powers and functions related to the administration of the ESI scheme, as outlined below:

<b>Powers</b>	<b>Details</b>
<b>Policy Making</b>	Formulates policies related to the administration of the ESI scheme, including changes to contribution rates, benefits, and coverage.

<b>Financial Authority:</b>	Manages the ESI Fund, including the collection of contributions, payments of benefits, and investment of surplus funds.
<b>Regulation and Supervision:</b>	Supervises the implementation of the ESI scheme across India and ensures compliance with the ESI Act.
<b>Rule-making:</b>	Has the power to make rules and regulations necessary for carrying out the provisions of the ESI Act.
<b>Dispute Resolution:</b>	Acts as an adjudicating authority in disputes related to contributions, benefits, and other matters under the ESI scheme.
<b>Inspection and Enforcement:</b>	Authorized to conduct inspections of establishments to ensure compliance with the ESI Act and take enforcement actions against defaulters.
<b>Sanctioning Benefits:</b>	Approves and sanctions various benefits like medical, sickness, maternity, and disablement benefits under the ESI scheme.
<b>Coordination with State Governments:</b>	Works in coordination with State Governments and local authorities for the effective implementation of the ESI scheme.
<b>Appointments:</b>	Appoints various officers and staff for the administration of the ESI scheme, including Medical Officers, Inspectors, and other necessary personnel.

### 9.2.6 The key functions of the ESIC:



### ➤ **Collection of Contributions:**

The ESIC is responsible for the collection of contributions from employers and employees. These contributions form the ESI fund, which is used to finance the various benefits provided under the scheme. The ESIC ensures that employers comply with their statutory obligations regarding the payment of contributions.

### ➤ **Provision of Benefits:**

The ESIC is responsible for providing various benefits to insured persons and their dependents, including medical care, cash benefits during sickness and maternity, and compensation for employment-related injuries and diseases. The ESIC operates a network of dispensaries, hospitals, and diagnostic centers to provide healthcare services to insured persons.

### ➤ **Maintenance of Healthcare Facilities:**

The ESIC is responsible for establishing and maintaining healthcare facilities across the country. This includes setting up ESI dispensaries, hospitals, and super specialty centers to provide comprehensive medical care to insured persons. The ESIC also enters into agreements with private hospitals and medical institutions to provide specialized treatments that may not be available at ESI facilities.

### ➤ **Regulation and Enforcement:**

The ESIC is tasked with ensuring that employers comply with the provisions of the ESI Act. This includes conducting inspections, audits, and investigations to ensure that employers are fulfilling their obligations under the Act. The ESIC also has the power to impose penalties and take legal action against employers who violate the provisions of the Act.

### ➤ **Grievance Redressal:**

The ESIC provides mechanisms for the redressal of grievances of insured persons and their dependents. This includes addressing complaints related to the provision of benefits, quality of medical care, and other issues related to the administration of the ESI scheme. The ESIC has established a network of grievance redressal officers and appellate bodies to ensure that grievances are addressed in a timely and fair manner.

### ➤ **Training and Capacity Building:**

The ESIC is responsible for the training and capacity building of its staff and healthcare providers. This includes providing training in areas such as healthcare management, medical ethics, and the use of advanced medical technologies. The ESIC also conducts awareness programs for employers and employees to educate them about the provisions of the ESI Act and the benefits available under the scheme.

### ➤ **Policy Formulation and Implementation:**

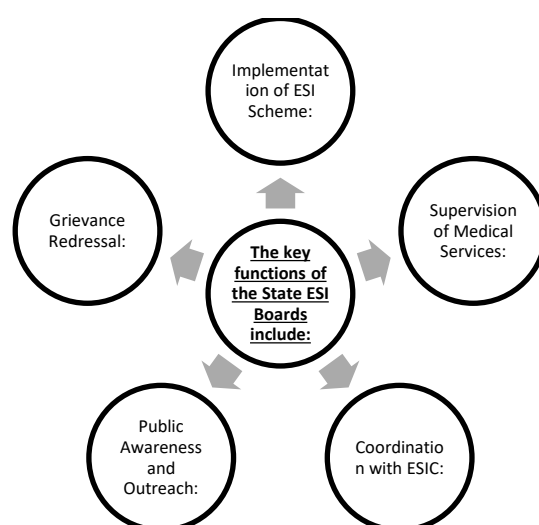
The ESIC plays a key role in the formulation and implementation of policies related to the ESI scheme. This includes making recommendations to the

government regarding amendments to the ESI Act, revising the wage limits for coverage, and introducing new benefits or services under the scheme. The ESIC also monitors the implementation of these policies and evaluates their impact on the beneficiaries.

### 9.2.7 Role of State Governments

While the ESIC is responsible for the overall administration of the ESI scheme, the state governments also play a significant role in its implementation. The ESI Act provides for the establishment of State ESI Boards, which are responsible for the administration of the scheme at the state level. These boards work in coordination with the ESIC to ensure that the scheme is implemented effectively across the state.

### 9.2.8 The key functions of the State ESI Boards include:



#### ➤ Implementation of ESI Scheme:

The State ESI Boards are responsible for the implementation of the ESI scheme within their respective states. This includes setting up and maintaining ESI dispensaries, hospitals, and other healthcare facilities, as well as ensuring the provision of benefits to insured persons.

#### ➤ Supervision of Medical Services:

The State ESI Boards are responsible for supervising the provision of medical services under the ESI scheme. This includes monitoring the quality of medical care provided at ESI facilities, ensuring the availability of essential drugs and equipment, and addressing any issues related to the provision of healthcare services.

#### ➤ Coordination with ESIC:

The State ESI Boards work closely with the ESIC to ensure the smooth functioning of the ESI scheme. This includes coordinating the collection of contributions, processing of claims, and provision of benefits to insured persons. The State ESI Boards also provide inputs to the ESIC on matters related to the administration of the scheme at the state level.

➤ **Public Awareness and Outreach:**

The State ESI Boards are responsible for conducting public awareness and outreach programs to educate employers and employees about the ESI scheme. This includes organizing workshops, seminars, and campaigns to promote the benefits of the scheme and encourage compliance with the provisions of the ESI Act.

➤ **Grievance Redressal:**

The State ESI Boards are responsible for addressing grievances related to the provision of benefits and medical services under the ESI scheme. This includes setting up grievance redressal mechanisms at the state level and ensuring that complaints are resolved in a timely and fair manner.

### **9.2.9 Challenges in the Administration of the ESI Act**

The administration of the ESI Act is a complex task that involves coordination between multiple stakeholders, including the ESIC, state governments, employers, employees, and healthcare providers. While the ESI scheme has made significant progress in providing social security to workers, several challenges remain in its administration:

➤ **Infrastructure and Resource Constraints**

One of the major challenges in the administration of the ESI scheme is the availability of adequate infrastructure and resources. In many regions, particularly in rural and remote areas, there is a shortage of ESI dispensaries, hospitals, and medical staff. This limits the accessibility and quality of healthcare services available to insured persons.

➤ **Compliance and Enforcement:**

Ensuring compliance with the provisions of the ESI Act is a significant challenge, particularly in the case of small and medium-sized enterprises. Many employers are unaware of their obligations under the Act or may intentionally evade compliance to avoid the financial burden of contributions. The ESIC faces challenges in conducting inspections and enforcing compliance due to resource constraints and the vast number of establishments covered under the Act.

➤ **Delays in Benefits Processing:**

Another challenge in the administration of the ESI scheme is the delay in the processing of claims and the disbursement of benefits. Insured persons often face long waiting times for the approval of their claims, which can cause financial hardship, particularly in cases of sickness or injury.

➤ **Quality of Medical Care:**

While the ESI scheme provides access to medical care, there are concerns about the quality of services provided at ESI dispensaries and hospitals. Issues such as the availability of trained medical staff, maintenance of facilities, and the supply of essential drugs and equipment can affect the quality of care provided to insured persons.

➤ **Awareness and Outreach:**

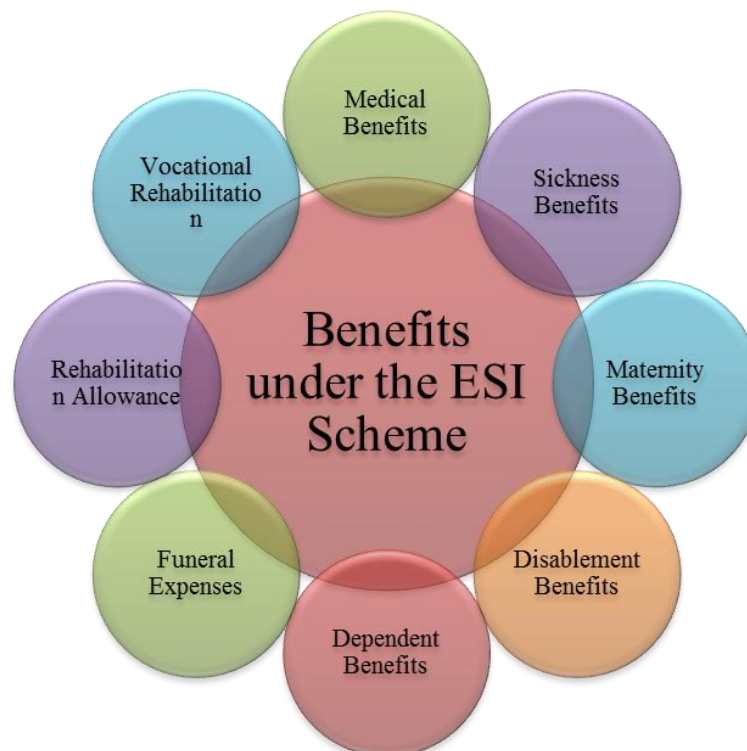
Despite the significant benefits provided under the ESI scheme, there is a lack of awareness among employers and employees about the provisions of the Act and the services available under the scheme. This can result in low enrollment rates and underutilization of the benefits provided under the ESI scheme.

➤ **Integration with Other Social Security Schemes:**

The ESI scheme operates alongside other social security schemes in India, such as the Employees' Provident Fund (EPF) and the Workmen's Compensation Act. There is a need for better integration and coordination between these schemes to ensure that workers receive comprehensive social security coverage.

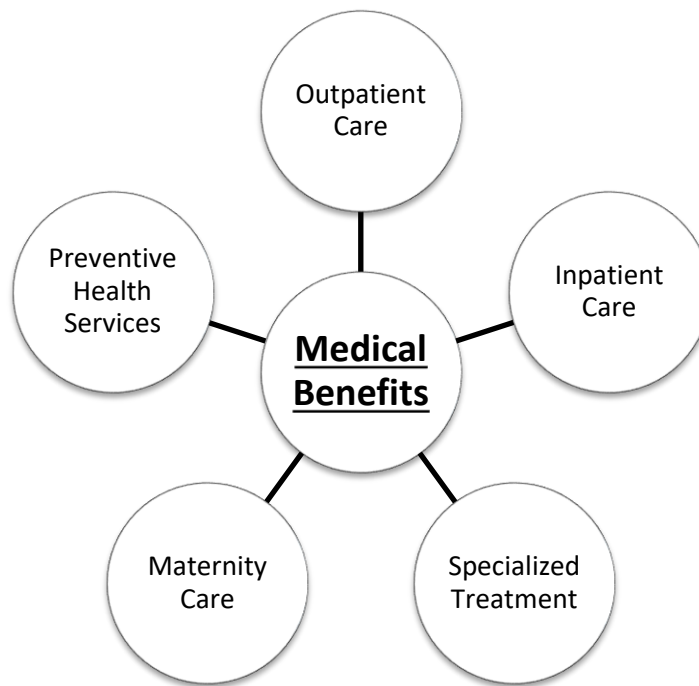
### 9.2.10 Benefits under the ESI Scheme

The Employees' State Insurance Act, 1948, provides a wide range of benefits to insured persons and their dependents. These benefits are designed to provide financial support and medical care during periods of sickness, maternity, injury, or death resulting from employment-related hazards. The benefits under the ESI scheme are categorized into the following major types:



#### 1. Medical Benefits:

The ESI scheme provides comprehensive medical care to insured persons and their families. This includes both outpatient and inpatient care, as well as specialized treatments and diagnostic services. The medical benefits under the ESI scheme include:



➤ **Outpatient Care:**

Insured persons and their dependents have access to outpatient care at ESI dispensaries and hospitals. This includes consultations with doctors, diagnostic tests, and the supply of essential medicines. The outpatient care provided under the ESI scheme covers a wide range of medical conditions, from minor ailments to chronic diseases.

➤ **Inpatient Care:**

In cases where hospitalization is required, insured persons and their dependents can avail of inpatient care at ESI hospitals. This includes admission to general wards, surgeries, and specialized treatments. The ESI scheme also covers the cost of medicines, diagnostic tests, and other medical services required during hospitalization.

➤ **Specialized Treatment:**

For medical conditions that require specialized treatment, the ESI scheme provides access to super-specialty services. This includes treatments for complex medical conditions such as cancer, heart disease, and kidney failure. The ESIC has established a network of super-specialty hospitals and has also entered into agreements with private hospitals to provide specialized treatments.

➤ **Maternity Care:**

The ESI scheme provides comprehensive maternity care to insured women. This includes prenatal care, delivery services, and postnatal care. The ESI scheme also covers the cost of medical treatments required during pregnancy and childbirth, including surgeries such as cesarean sections.

### ➤ Preventive Health Services:

In addition to curative care, the ESI scheme also provides preventive health services. This includes immunization programs, health check-ups, and health education initiatives. The preventive health services under the ESI scheme are aimed at promoting the overall health and well-being of insured persons and their families.

### Case Law:

#### **Regional Director, ESI Corporation v. Francis De Costa (1996)**

### Issue:

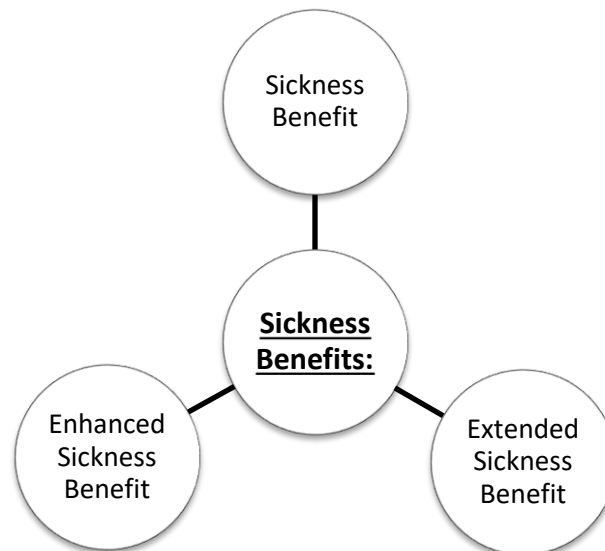
The employee challenged the denial of reimbursement for treatment obtained at a private hospital.

### Significance:

The Supreme Court ruled that the ESIC must reimburse the insured person for emergency medical treatment received at a non-ESI hospital if such treatment was necessary. This case reinforced the obligation of the ESIC to provide or reimburse necessary medical care.

### 2. Sickness Benefits:

The ESI scheme provides cash benefits to insured persons during periods of sickness when they are unable to work and earn a wage. The sickness benefits are designed to provide financial support to insured persons during temporary periods of incapacity due to illness. The key aspects of sickness benefits under the ESI scheme include:



### ➤ Sickness Benefit:

Insured persons are entitled to receive sickness benefit at the rate of 70% of their average daily wages during periods of certified sickness. The sickness benefit is payable for a maximum period of 91 days in a year. To qualify for sickness benefit, the insured person must have contributed to the ESI scheme for at least 78 days in the contribution period immediately preceding the period of sickness.

➤ **Extended Sickness Benefit:**

In cases where the insured person suffers from a chronic or long-term illness, the ESI scheme provides an extended sickness benefit. This benefit is payable at the rate of 80% of the average daily wages and can be extended for a maximum period of two years. The extended sickness benefit is available for specified diseases such as tuberculosis, cancer, and mental illness.

➤ **Enhanced Sickness Benefit:**

The ESI scheme also provides an enhanced sickness benefit to insured persons undergoing sterilization (vasectomy/tubectomy). This benefit is payable at the rate of full average daily wages for a period of 7 days for vasectomy and 14 days for tubectomy. The benefit period can be extended if there are medical complications arising from the procedure.

**Case Law:**

**ESI Corporation v. R.K. Swamy (1993)**

**Issue:**

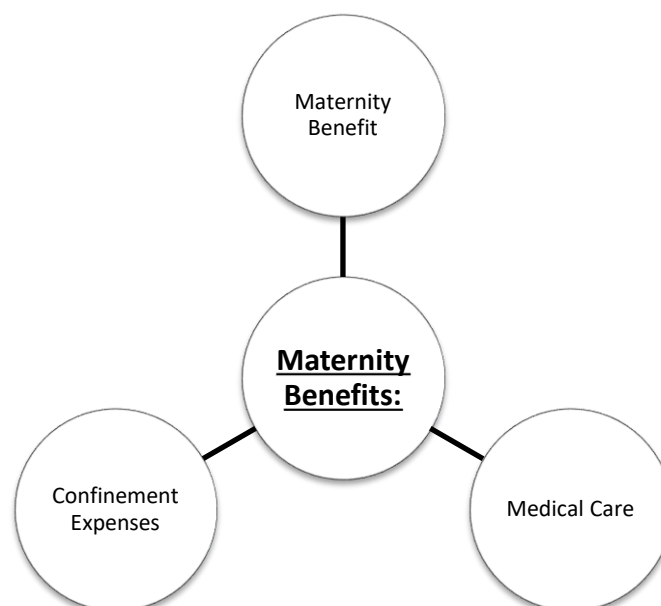
The case dealt with the denial of sickness benefits to an employee who had worked for 78 days but was absent for illness for a prolonged period.

**Significance:**

The court ruled in favor of the employee, stating that as long as the contribution conditions are met, the insured person is entitled to sickness benefits. This case highlighted the protective nature of the ESI scheme for employees during periods of illness.

**3 Maternity Benefits:**

The ESI scheme provides maternity benefits to insured women during pregnancy, childbirth, and the postnatal period. The maternity benefits are designed to provide financial support and medical care to women during this critical period. The key aspects of maternity benefits under the ESI scheme include:



**Maternity Benefit:**

Insured women are entitled to receive maternity benefit at the rate of 100% of their average daily wages for a maximum period of 26 weeks (6 months). The maternity benefit is payable for a period of 8 weeks before the expected date of delivery and 18 weeks after delivery. In the case of miscarriage, the benefit is payable for a period of 6 weeks from the date of miscarriage.

**➤ Medical Care:**

In addition to cash benefits, the ESI scheme provides comprehensive medical care to insured women during pregnancy and childbirth.

This includes prenatal care, delivery services, and postnatal care. The ESI scheme also covers the cost of medical treatments required during pregnancy, including surgeries such as cesarean sections.

**➤ Confinement Expenses:**

In cases where an insured woman is unable to avail of medical care at an ESI facility, she is entitled to receive a lump-sum payment towards confinement expenses. This payment is intended to cover the cost of delivery at a non-ESI facility. The amount of confinement expenses is fixed by the ESIC and is periodically revised.

**Case Law:****Bharat Electronics Ltd. v. ESI Corporation (1995)****Issue:**

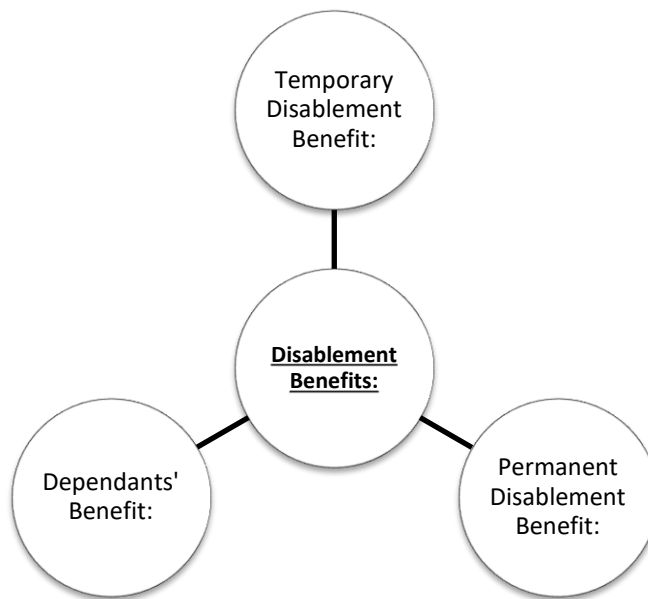
The case involved a challenge to the computation of maternity benefits based on the employee's average daily wages.

**Significance:**

The court ruled that maternity benefits must be calculated based on the actual wages received by the employee and not on the minimum wages, ensuring full compensation during maternity leave.

**4 Disablement Benefits:**

The ESI scheme provides disablement benefits to insured persons who suffer from employment-related injuries or occupational diseases. These benefits are designed to provide financial support to workers who are unable to work due to temporary or permanent disablement. The key aspects of disablement benefits under the ESI scheme include:



➤ **Temporary Disablement Benefit:**

Insured persons who suffer from temporary disablement due to an employment-related injury or occupational disease are entitled to receive temporary disablement benefit. This benefit is payable at the rate of 90% of the average daily wages for the entire period of certified incapacity. The benefit is payable from the first day of incapacity, irrespective of whether the insured person was on duty on that day.

➤ **Permanent Disablement Benefit:**

In cases where the employment-related injury or occupational disease results in permanent disablement, the insured person is entitled to receive a permanent disablement benefit. The amount of permanent disablement benefit is determined based on the extent of the disablement and is payable for the entire life of the insured person. The extent of disablement is assessed by a medical board appointed by the ESIC.

➤ **Dependent's Benefit:**

In cases where the employment-related injury or occupational disease results in the death of the insured person, the dependents of the deceased are entitled to receive dependent's benefit. This benefit is payable at the rate of 90% of the average daily wages of the deceased insured person and is distributed among the dependents as per the provisions of the ESI Act.

**Case Law:**

**Regional Director, ESI Corporation v. Ram Laxhan (2004)**

**Issue:**

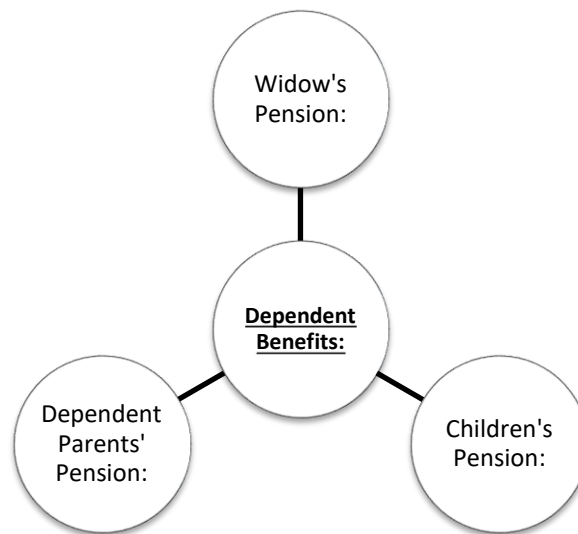
The case dealt with the denial of disablement benefits to an employee who was partially disabled due to an occupational injury.

**Significance:**

The court ruled in favor of the employee, affirming that even partial disablement due to employment injury qualifies for benefits under the ESI scheme, ensuring protection for all degrees of disability.

**5 Dependent Benefits:**

The ESI scheme provides dependent benefits to the family members of insured persons in cases where the insured person dies due to an employment-related injury or occupational disease. The dependent benefits are designed to provide financial support to the family members of the deceased insured person. The key aspects of dependent benefits under the ESI scheme include:

**➤ Widow's Pension:**

The widow of the deceased insured person is entitled to receive a widow's pension at the rate of 3/5th of the full rate of disablement benefit. The widow's pension is payable for the entire life of the widow or until her remarriage.

**➤ Children's Pension:**

The children of the deceased insured person are entitled to receive a children's pension at the rate of 2/5th of the full rate of disablement benefit. The children's pension is payable until the child attains the age of 25 years or, in the case of a daughter, until she gets married. If the child is suffering from a disability, the pension is payable for the entire life of the child.

**➤ Dependent Parents' Pension:**

If the deceased insured person was the sole breadwinner of the family, the dependent parents of the deceased are entitled to receive a dependent parents' pension. The amount of pension is determined based on the number of dependents and is payable for the entire life of the dependent parents.

**Case Law:****ESI Corporation v. Suresh Kumar Verma (1997)****Issue:**

The case involved a dispute over the eligibility of the deceased employee's parents for dependent's benefits.

**Significance:**

The court ruled that dependent parents are entitled to receive benefits, emphasizing the Act's broad coverage to support the family members of deceased insured persons.

**6 Funeral Expenses:**

The ESI scheme provides a lump-sum payment towards the funeral expenses of an insured person who dies while in employment. The amount of funeral expenses is fixed by the ESIC and is periodically revised. The funeral expenses are payable to the eldest surviving member of the family or, in the absence of a family member, to the person who actually incurs the expenses.

**Case Law:****ESI Corporation v. Sree Balaji Medical College (2007)****Issue:**

The case involved the denial of funeral expenses to the family of an insured person who died while under treatment.

**Significance:**

The court upheld the family's claim, ruling that funeral expenses must be paid irrespective of the circumstances of death, reinforcing the Act's provision for supporting the bereaved family.

**7 Rehabilitation Allowance:**

The ESI scheme provides a rehabilitation allowance to insured persons who suffer from disablement due to an employment-related injury or occupational disease. The rehabilitation allowance is intended to cover the cost of medical treatment and rehabilitation required for the insured person to regain their ability to work. The amount of rehabilitation allowance is determined based on the nature and extent of the disablement.

**Case Law:****ESI Corporation v. Dilip Kumar (2009)****Issue:**

The case involved the denial of rehabilitation allowance to an employee who was disabled due to an employment injury.

**Significance:**

The court ruled that the rehabilitation allowance is a crucial part of the ESI scheme, ensuring that disabled workers receive necessary support to reintegrate into the workforce, reinforcing the scheme's commitment to comprehensive employee welfare.

## **8 Vocational Rehabilitation**

The ESI scheme provides vocational rehabilitation services to insured persons who suffer from disablement due to an employment-related injury or occupational disease. These services are aimed at helping the insured person acquire new skills and find suitable employment. The vocational rehabilitation services provided under the ESI scheme include training programs, counseling, and job placement assistance.

### **Case Law:**

#### **ESI Corporation v. R. Kannan (2008)**

### **Issue:**

The case dealt with the denial of vocational rehabilitation to an employee who lost his job due to permanent disablement.

### **Significance:**

The court upheld the employee's right to vocational rehabilitation, emphasizing that the ESI scheme is designed to help disabled workers re-enter the workforce.

## **9.2.11 Importance of the ESI Act**

The Employees' State Insurance Act, 1948, is one of the most important social security legislations in India. The Act has played a significant role in improving the well-being of workers and their families by providing them with comprehensive social security coverage. The importance of the ESI Act can be understood through the following key points:

### **➤ Social Security for Workers**

The ESI Act is a key component of the social security system in India. It provides workers with access to essential services and financial support during times of need, such as sickness, maternity, and injury. By ensuring that workers are protected against various risks associated with their employment, the ESI Act enhances their overall well-being and security.

### **➤ Promotion of Health and Well-being**

The ESI Act promotes the health and well-being of workers by providing them with access to medical care and preventive health services. The Act ensures that workers have access to essential healthcare services, which helps in the early detection and treatment of diseases. By promoting the health of workers, the ESI Act contributes to their productivity and reduces the incidence of absenteeism due to illness.

### ➤ **Financial Support during Incapacity**

The ESI Act provides financial support to workers during periods of incapacity due to illness, injury, or maternity. This financial support helps workers and their families cope with the loss of income during these periods, thereby preventing them from falling into poverty. The financial support provided under the ESI scheme also ensures that workers can focus on their recovery without worrying about their financial situation.

### ➤ **Protection of Workers' Rights**

The ESI Act plays a crucial role in protecting the rights of workers by ensuring that they are not exploited by employers. The Act mandates the timely payment of contributions by employers and provides penalties for non-compliance. By enforcing these provisions, the ESI Act ensures that workers receive the benefits they are entitled to and that their rights are protected.

### ➤ **Encouragement of Industrial Harmony**

The ESI Act contributes to industrial harmony by providing workers with comprehensive social security coverage. Workers who feel secure in their employment are more likely to be productive and less likely to engage in industrial disputes. The ESI Act also promotes a positive relationship between employers and employees by ensuring that both parties fulfill their obligations under the Act.

### ➤ **Contribution to Economic Development**

The ESI Act contributes to the economic development of the country by promoting the health and well-being of workers. Healthy and productive workers are essential for the growth and development of industries, which in turn contributes to the overall economic development of the country. The ESI Act also helps in reducing the economic burden of healthcare costs on workers and their families, thereby contributing to their financial stability.

### ➤ **Integration with Other Social Security Schemes**

The ESI Act is an integral part of the broader social security framework in India. The Act operates alongside other social security schemes, such as the Employees' Provident Fund (EPF) and the Workmen's Compensation Act, to provide comprehensive coverage to workers. The integration of these schemes ensures that workers receive holistic social security coverage, addressing various risks associated with their employment.

### ➤ **Adaptability and Evolution**

The ESI Act has demonstrated adaptability and evolution over the years. The Act has undergone several amendments to expand its coverage, enhance the benefits provided under the scheme, and address emerging challenges. This adaptability ensures that the ESI scheme remains relevant and responsive to the changing needs of the workforce.

### ➤ **Social Equity**

The ESI Act promotes social equity by providing social security coverage to workers across different sectors and regions. The Act ensures that workers,

regardless of their economic status, have access to essential services and financial support. By promoting social equity, the ESI Act contributes to the overall social development of the country.

### ➤ **Legal Framework for Social Security**

The ESI Act provides a legal framework for the provision of social security to workers. The Act defines the rights and obligations of employers and employees, establishes the mechanisms for the administration of the scheme, and provides for the enforcement of its provisions. The legal framework provided by the ESI Act ensures that the scheme is implemented in a structured and transparent manner.

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### **9.3 Importance Case Laws**

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Here are 15 important case laws related to the Employees' State Insurance Act, 1948, along with their issues and significance:

#### **Case Law - 1.**

**Regional Director, ESI Corporation v. High Land Coffee Works of P.F.X. Saldanha & Sons (1991)**

##### **Issue:**

Whether the ESI Act applies to a coffee curing establishment that employed more than 20 workers.

##### **Significance:**

The Supreme Court ruled that the ESI Act applies to any establishment that fulfills the employment criteria, regardless of the nature of the work. This case affirmed the broad applicability of the ESI Act, ensuring more employees are covered under its benefits.

#### **Case Law - 2.**

**ESI Corporation v. Hotel Kalpaka International (1993)**

##### **Issue:**

Whether casual employees or daily wagers are covered under the ESI Act.

##### **Significance:**

The court held that even casual employees or daily wagers are entitled to benefits under the ESI Act, emphasizing the Act's inclusive nature for all workers employed in an establishment.

#### **Case Law - 3.**

**ESI Corporation v. All India Reporter Ltd. (AIR 1998 SC 2150)**

##### **Issue:**

Whether the payment of canteen allowance to employees is subject to ESI contributions.

**Significance:**

The Supreme Court ruled that all allowances, including canteen allowances, are considered wages under the ESI Act, and are subject to contributions. This clarified the definition of wages under the Act.

**Case Law - 4.****Bangalore Turf Club Ltd. v. Regional Director, ESI Corporation (2014)****Issue:**

Whether horse racing employees are considered employees under the ESI Act.

**Significance:**

The court held that the employees engaged in the horse racing business were also covered under the ESI Act. This expanded the scope of the Act to include various forms of employment.

**Case Law - 5.****ESI Corporation v. Apex Engineering Pvt. Ltd. (1998)****Issue:**

Whether the payment of overtime wages should be included in the calculation of ESI contributions.

**Significance:**

The court held that overtime wages are part of wages under the ESI Act, and contributions must be made on such payments, thereby providing greater security to workers earning overtime.

**Case Law - 6.****Regional Director, ESI Corporation v. Ramakrishna Foundry (1976)****Issue:**

Whether workers engaged on a piece-rate basis are entitled to ESI benefits.

**Significance:**

The Supreme Court ruled that even workers paid on a piece-rate basis are covered under the ESI Act. This judgment highlighted the Act's protection for workers, regardless of the mode of payment.

**Case Law - 7.****M/s. Hindustan Steel Works Construction Ltd. v. ESI Corporation (2005)****Issue:**

Whether a construction company is covered under the ESI Act.

**Significance:**

The court ruled that the ESI Act applies to construction companies, broadening the range of industries covered under the Act. This judgment increased the coverage of the Act to include more sectors.

**Case Law - 8.****Hyderabad Asbestos Cement Products Ltd. v. ESI Corporation (1978)****Issue:**

Whether certain allowances paid to employees are to be considered as wages under the ESI Act.

**Significance:**

The court clarified that allowances form part of wages under the ESI Act, ensuring that employees receive comprehensive coverage for all forms of remuneration.

**Case Law - 9.****Royal Talkies, Hyderabad v. ESI Corporation (1978)****Issue:**

Whether employees of a canteen run within a cinema theatre are covered under the ESI Act.

**Significance:**

The Supreme Court held that such employees are covered under the ESI Act. This case helped clarify that the Act applies to all employees working in connection with the operations of an establishment.

**Case Law - 10.****ESI Corporation v. Harrison Malayalam Pvt. Ltd. (1993)****Issue:**

Whether the ESI Act applies to a plantation company.

**Significance:**

The court ruled that the ESI Act applies to plantation companies, thereby extending the Act's benefits to workers in the agricultural sector as well.

**Case Law - 11.****M/s. Kirloskar Brothers Ltd. v. ESI Corporation (1996)****Issue:**

Whether payments made to employees during leave period are considered wages under the ESI Act.

**Significance:**

The court held that such payments are wages under the ESI Act, which helped to ensure that contributions are made for the full scope of employee earnings.

**Case Law - 12.****Braithwaite & Co. v. ESI Corporation (1968)****Issue:**

Whether workers employed through a contractor are covered under the ESI Act.

**Significance:**

The court ruled that workers employed through contractors are also covered under the ESI Act, ensuring that the Act's benefits reach all workers, regardless of their employment status.

**Case Law - 13.****Employees State Insurance Corporation v. C.C. Santhakumar (2007)****Issue:**

Whether the benefits under the ESI Act can be claimed by the heirs of a deceased employee.

**Significance:**

The court held that the benefits can be claimed by the heirs, ensuring that the Act provides comprehensive support to the family of the insured person.

**Case Law - 14.****ESI Corporation v. V. Bhaktavatsalam (1994)****Issue:**

Whether contributions made to the ESIC can be refunded if the employee did not avail of the benefits.

**Significance:**

The court ruled that once contributions are made, they cannot be refunded, reinforcing the principle that the ESI scheme operates on a pooled risk basis.

**Case Law - 15.****Rajashree Cement v. ESI Corporation (1997)****Issue:**

Whether the expenses incurred for engaging security personnel are subject to ESI contributions.

**Significance:**

The court ruled that such expenses are indeed subject to ESI contributions, ensuring broader compliance with the Act across various operational aspects of a business.

These case laws have significantly shaped the interpretation and application of the Employees' State Insurance Act, 1948, ensuring that the Act continues to serve as a robust framework for the social security of workers in India.

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**9.4 Evolution and Amendments**

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Since its inception in 1948, the ESI Act has undergone several amendments to expand its coverage and improve the benefits offered to employees. Notable amendments include:

**1956 Amendment:**

Expanded the scope of the Act to cover more establishments.

**1975 Amendment:**

Introduced the extended sickness benefit and dependents' benefit.

**2010 Amendment:**

Raised the wage ceiling for coverage to Rs. 15,000.

**2021 Amendment:**

Further increased the wage ceiling to Rs. 21,000 and expanded maternity benefits.

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**9.5 Keywords**

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**Insured Person:**

A worker who is covered under the Employees' State Insurance scheme and is entitled to receive benefits under the ESI Act.

**Employer:**

An individual or entity that employs workers and is responsible for making contributions to the Employees' State Insurance fund under the ESI Act.

**Contribution:**

The amount paid by the employer and the employee to the Employees' State Insurance fund, which is used to finance the benefits provided under the ESI scheme.

**Sickness Benefit:**

A cash benefit provided to insured persons during periods of certified sickness, payable at the rate of 70% of the average daily wages.

**Maternity Benefit:**

A cash benefit provided to insured women during pregnancy and childbirth, payable at the rate of 100% of the average daily wages for a maximum period of 26 weeks.

**Disablement Benefit:**

A benefit provided to insured persons who suffer from employment-related injuries or occupational diseases, payable at the rate of 90% of the average daily wages.

**Dependent's Benefit:**

A benefit provided to the dependents of a deceased insured person, payable at the rate of 90% of the average daily wages of the deceased insured person.

**Medical Care:**

The healthcare services provided to insured persons and their families under the Employees' State Insurance scheme, including outpatient care, inpatient care, and specialized treatment.

**ESI Corporation (ESIC):**

The statutory body responsible for the administration of the Employees' State Insurance scheme in India.

**State ESI Board:**

The body responsible for the implementation of the Employees' State Insurance scheme at the state level, working in coordination with the ESIC.

**❖ Exercise****• Multiple Choice Questions (MCQs)****1. The Employee State Insurance Act was enacted in which year?**

- A. 1948
- B. 1956
- C. 1962
- D. 1975

**2. What is the current wage ceiling for coverage under the ESI Act?**

- A. Rs. 10,000
- B. Rs. 15,000
- C. Rs. 18,000
- D. Rs. 21,000

**3. The ESIC provides funeral expenses of up to:**

- A. Rs. 5,000
- B. Rs. 10,000
- C. Rs. 15,000
- D. Rs. 20,000

**4. What percentage of an employee's wage is contributed by the employer under the ESI scheme?**

- A. 2.75%
- B. 0.75%
- C. 3.25%
- D. 4.25%

**5. For how long can sickness benefits be availed under the ESI Act in a year?**

- A. 91 days
- B. 50 days
- C. 120 days
- D. 365 days

**6. Which benefit is provided to dependents of an insured person who dies due to employment injury?**

- A. Disablement Benefit
- B. Dependents' Benefit
- C. Funeral Expenses
- D. Sickness Benefit

**7. The ESIC is administered under the Ministry of:**

- A. Ministry of Health and Family Welfare
- B. Ministry of Labour and Employment
- C. Ministry of Social Justice
- D. Ministry of Finance

• **Short Answer Questions**

1. What are the key objectives of the Employee State Insurance Act?
2. Explain the structure and role of the Employee State Insurance Corporation (ESIC).

3. Describe the sickness benefit under the ESI scheme.
4. What are the maternity benefits provided under the ESI Act?
5. How does the ESI Act contribute to labor welfare in India?

- **Essay Questions:**

1. Discuss the significance of the Employee State Insurance Act, 1948, in promoting social security and labor welfare in India.
2. Analyze the role of the Employee State Insurance Corporation (ESIC) in administering the ESI scheme.
3. Explain the various benefits provided under the ESI Act and their importance for workers and their families.

## **UNIT-10 CHILD LABOR ACT,1986, MATERNITY BENEFIT ACT, 2017BENEFIT**

### **10.1 Introduction**

### **10.2 Aims**

#### **10.2.1 Objective**

#### **10.2.2 Impact on Working Women**

#### **10.2.3Challenges and Criticisms**

### **10.3 Introduction of maturity**

#### **10.3.1 Types of Maturity**

#### **10.3.2 Maturity and Personal Development**

#### **10.3.4 Maturity and Responsibility**

#### **10.3.5 Maturity and Life Stages**

### **10.4 10.4 Benefits amendment act 2017**

#### **10.4.1 Key Benefits of the Maternity Benefit (Amendment) Act, 2017**

#### **10.4.2 Impact of the Maternity Benefit (Amendment) Act, 2017**

### **10.5 Maturity benefit**

#### **❖ Exercise**

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### **10.1 Introduction**

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The problem of child labour continues to pose a challenge before the nation. Government has been taking various pro-active measures to tackle this problem. However, considering the magnitude and extent of the problem and that it is essentially a socio-economic problem inextricably linked to poverty and illiteracy, it requires concerted efforts from all sections of the society to make a dent in the problem.

According to the Census 2001 figures there are 1.26 crore working children in the age group of 5-14 as compared to the total child population of 25.2 crore. As per survey conducted by National Sample Survey Organisation (NSSO) in 2004-05, the number of working children is estimated at 90.75 lakh. As per Census 2011, the number of working children in the age group of 5-14 years has further reduced to 43.53 lakh. It shows that the efforts of the Government have borne the desired fruits.

Way back in 1979, Government formed the first committee called The Gurupadswamy Committee to study the issue of child labour and to suggest measures to tackle it. The Committee examined the problem in detail and made some far-reaching recommendations. It observed that as long as poverty continued, it would be difficult to totally eliminate child labour and hence, any attempt to abolish it through legal recourse would not be a practical proposition. The

Committee felt that in the circumstances, the only alternative left was to ban child labour in hazardous areas and to regulate and ameliorate the conditions of work in other areas. It recommended that a multiple policy approach was required in dealing with the problems of working children.

Based on the recommendations of Gurupadaswamy Committee, the Child Labour (Prohibition & Regulation) Act was enacted in 1986. As per the Act, employment of children was prohibited in certain specified hazardous occupations and processes and regulates the working conditions in others. The list of hazardous occupations and processes is progressively being expanded on the recommendation of Child Labour Technical Advisory Committee constituted under the Act. Subsequently, the act was amended in 2016 with the enactment of the Child Labour (Prohibition & Regulation) Amendment Act 2016 prohibiting the employment of Children below 14 years in all employment and also with the provisions for prohibition on employment of adolescents(14-18 Years) in the scheduled hazardous occupations and processes .

In consonance with the above approach, a National Policy on Child Labour, formulated in 1987, seeks to adopt a gradual & sequential approach with a focus on rehabilitation of children and Adolescent .

The Action Plan outlined in the Policy for tackling this problem is as follows:

- Legislative Action Plan for strict enforcement of The Child & Adolescent Labour (Prohibition & Regulation) Act, 1986.
- Project based action plan in areas of high concentration of Child & Adolescent Labour - National Child Labour Project (NCLP) Schemes.
- Focuses on general developmental programmes for the benefit of the families of children

Government has accordingly been taking proactive steps to tackle this problem through strict enforcement of legislative provisions along with simultaneous rehabilitative measures. State Governments, which are the appropriate implementing authorities, have been conducting regular inspections and raids to detect cases of violations. Since poverty is the root cause of this problem, and enforcement alone cannot help solve it, Government has been laying a lot of emphasis on the rehabilitation of these children and on improving the economic conditions of their families.

#### HR Role in Preventing Child Labor

1. Policy Development: Establish policies prohibiting child labor.
2. Age Verification: Conduct age verification for new hires.
3. Training and Awareness: Educate employees on child labor laws and consequences.
4. Supply Chain Monitoring: Monitor suppliers for child labor practices.

## 5. Reporting Mechanisms: Establish reporting mechanisms for child labor concerns.

The Child Labour (Prohibition and Regulation) Act, 1986 was introduced to prohibit child labor, regulate working conditions, and prevent child abuse in the form of employment. The Maternity Benefit (Amendment) Act, 2017 expanded the maternity leave benefits available to women.

	<b>Child Labour (Prohibition and Regulation) Act, 1986</b>	<b>Maternity Benefit (Amendment) Act, 2017</b>
Purpose	Prohibit child labor and regulate working conditions	Expand maternity leave benefits
Key provisions	Prohibits children under 14 from working in certain hazardous occupations, including railway work, catering, and slaughterhouses	Provides maternity leave for women who have completed 80 days in the 12 months before their expected delivery, and for mothers adopting a child under three months old
Other provisions	Regulates working conditions of children in other employments	Requires establishments to inform women of their benefits at the time of their initial appointment

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### 10.2 Aims

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The **Maternity Benefit (Amendment) Act, 2017** was a significant reform introduced in India to address the concerns of working women, particularly in relation to maternity leave, job security, and workplace conditions during pregnancy and post-childbirth. The Act sought to enhance the welfare of women employees and ensure their rights to adequate maternity benefits. It was an amendment to the original **Maternity Benefit Act, 1961**, which had been in place for several decades but needed to be updated to meet contemporary requirements and international standards.

#### 10.2.1 Objective of the Maternity Benefit (Amendment) Act, 2017

The primary aim of the Maternity Benefit (Amendment) Act, 2017, is to ensure better working conditions, social security, and health benefits for women in India during and after pregnancy. The amendment aims to provide the following key objectives:

- 1. Increase in Maternity Leave:** The Amendment extended the duration of maternity leave from 12 weeks to 26 weeks for women who are working in organized sector establishments. This increase is intended to provide

mothers with adequate time to rest and recover post-childbirth, as well as to bond with their newborns. The 26-week leave is applicable for women with fewer than two surviving children.

2. **Provision for Adoption and Surrogacy:** Another important feature of the amendment is its inclusion of women who adopt children or opt for surrogacy. The Act grants a **maternity leave of 12 weeks** to women who legally adopt a child below three months of age or take a child through surrogacy. This is significant because it ensures that all women, irrespective of the mode of childbirth, are entitled to the benefits of maternity leave and related health benefits.
3. **Flexibility for Women Employees:** The amendment introduces the option of **working from home** after the maternity leave period, provided that the nature of work allows it and both the employer and employee mutually agree to the arrangement. This provision is especially helpful for new mothers who wish to continue contributing professionally without compromising on the care of their child. It allows women to strike a balance between work and family responsibilities.
4. **Creche Facility:** The Maternity Benefit (Amendment) Act, 2017 mandates that establishments with 50 or more employees must provide a **creche (childcare) facility** for the children of working mothers. Women employees are allowed to visit the creche four times during the day to feed their babies. This provision ensures that mothers can continue working while their young children are taken care of in a safe and monitored environment.
5. **Widened Scope of Eligibility:** The amendment expands the scope of the Act to include more women workers in the organized sector. It applies to all establishments, including private and public sector companies, and covers women in the workforce across sectors like government offices, private firms, factories, and even shops and establishments.
6. **Prohibition of Termination During Maternity Leave:** The Act provides strong protection against the termination of a woman's employment during her maternity leave. Employers are prohibited from firing or laying off a woman during her maternity leave or for a specified period before or after childbirth. This measure safeguards the rights of pregnant women and encourages employers to create a more inclusive and supportive environment for women in the workforce.
7. **Enhanced Penalties for Non-Compliance:** The Amendment increased penalties for employers who do not comply with the provisions of the Act. Any employer who fails to provide the maternity benefits, violates the provisions related to creche facilities, or dismisses a woman employee for taking maternity leave can face fines or even imprisonment. This ensures greater accountability and deterrence against unfair practices by employers.

### 10.2.2 Impact on Working Women

The introduction of the Maternity Benefit (Amendment) Act, 2017, has had several positive impacts on working women in India:

- **Health and Well-being:** The increase in maternity leave from 12 weeks to 26 weeks provides women with sufficient time to recover physically and mentally from childbirth. This helps reduce maternal mortality rates and provides a better chance for the mother to take care of her own health and the baby's well-being.
- **Work-Life Balance:** With provisions like working from home and creche facilities, the Act enables women to balance work and family life. This is crucial in promoting gender equality in the workplace, as women can continue their professional careers while raising children, without compromising on either.
- **Gender Equality in Employment:** The Act supports gender equality by ensuring that women are not forced to choose between their career and having children. It also encourages more women to join the workforce, as it reduces the fear of losing their jobs or being penalized for taking maternity leave.
- **Protection from Discrimination:** The prohibition of termination during maternity leave protects women from discrimination in the workplace due to pregnancy. This ensures that women are not penalized or ostracized for taking time off to have children.
- **Encouraging Corporate Responsibility:** The mandatory provision of creche facilities and other childcare support systems compels employers to adopt more family-friendly policies. This has led to the creation of a more inclusive and supportive working environment.

### 10.2.3 Challenges and Criticisms

Despite its benefits, the Maternity Benefit (Amendment) Act, 2017 has faced criticism and challenges in its implementation:

1. **Impact on Small Enterprises:** The requirement for creche facilities and the provision of extended maternity leave may prove to be challenging for smaller businesses with fewer than 50 employees. Some small businesses may struggle financially to comply with these provisions, leading to resistance or even non-compliance in certain cases.
2. **Limited Coverage:** The Act only applies to women working in the organized sector and establishments with 50 or more employees. This leaves out a significant portion of the workforce, particularly women employed in the unorganized sector, agriculture, and informal industries, who do not benefit from the maternity benefits provided under the Act.
3. **Cost to Employers:** While the Act is beneficial for women, it can also lead to increased costs for employers, particularly in the case of businesses that are small or struggling financially. Providing maternity benefits, creating creche facilities, and complying with other provisions may pose financial challenges for these employers.

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### 10.3 Introduction of maturity

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Maturity is a multifaceted concept that can be understood and expressed in various dimensions of human life, including emotional, social, intellectual, and physical growth. It is often regarded as a state of being fully developed, refined, or perfected. Maturity signifies the ability to respond to the demands of life with wisdom, understanding, responsibility, and self-control. It involves not only the passage of time but also the accumulation of experiences, lessons, and insights that shape an individual's behaviour, decision-making, and interactions with the world around them.

#### Defining Maturity

Maturity, in its broadest sense, refers to the state of being mature. It encompasses more than just aging or reaching a certain age. Instead, it reflects an individual's capacity to manage life's challenges in a thoughtful, effective manner. This includes the ability to make rational decisions, handle emotions constructively, accept responsibility, and demonstrate empathy and respect toward others.

The concept of maturity varies across different cultures, societies, and personal experiences. However, universally, maturity is associated with a sense of stability, self-awareness, and the ability to adapt to life's complexities and uncertainties. It often contrasts with immaturity, which can be characterized by impulsive behaviour, emotional instability, selfishness, and an inability to make sound judgments.

#### 10.3.1 Types of Maturity

- 1. Emotional Maturity:** Emotional maturity refers to an individual's ability to understand and manage their emotions in a healthy and appropriate manner. It involves having the emotional intelligence to recognize one's feelings, express them constructively, and navigate through emotional challenges with resilience. Emotionally mature people tend to handle stress, disappointment, and conflict in ways that are measured and thoughtful. They are less likely to react impulsively and more likely to consider the consequences of their actions before reacting. They also demonstrate empathy, allowing them to relate to others' emotions and respond with kindness and understanding.
- 2. Social Maturity:** Social maturity involves the ability to interact with others in a way that is respectful, considerate, and cooperative. It includes the development of social skills such as communication, listening, and conflict resolution. Socially mature individuals understand the importance of relationships and contribute positively to their communities, workplaces, and families. They show respect for others' boundaries, opinions, and differences, which helps build healthy, supportive connections. Social maturity also involves the ability to manage group dynamics and contribute to group efforts while remaining mindful of the collective needs.
- 3. Intellectual Maturity:** Intellectual maturity refers to the ability to think critically, reflect on one's ideas and beliefs, and make well-informed decisions. It involves developing a deeper understanding of the world,

questioning assumptions, and seeking knowledge. An intellectually mature individual recognizes that their opinions are shaped by their experiences and that other perspectives may offer valuable insights. Intellectual maturity is also characterized by the ability to adapt one's thinking based on new information or changing circumstances. It is the capacity to engage in thoughtful discussions, appreciate complexity, and make reasoned decisions based on a broad view of issues.

- 4. Physical Maturity:** Physical maturity is the natural progression of the body as it develops and reaches its full potential. In humans, this typically occurs in adolescence when the body undergoes significant hormonal and physical changes that lead to adulthood. Physical maturity includes reaching full stature, the stabilization of hormonal cycles, and the ability to reproduce. While physical maturity is often associated with adolescence and young adulthood, it is also closely linked to overall well-being and self-care. For example, maintaining physical maturity in later stages of life often requires regular exercise, proper nutrition, and a focus on health preservation.

### **10.3.2 Maturity and Personal Development**

Maturity is not merely an inherent quality; it is a developmental process that requires growth and learning. As individuals progress through different life stages, they accumulate experiences that contribute to their sense of self and understanding of the world. These experiences can include relationships, education, work, challenges, and personal reflection. Each experience provides an opportunity for growth, leading to greater wisdom and a deeper understanding of oneself and others.

For many people, maturity develops gradually over time. As children grow into adolescents and adults, they face a variety of challenges that test their emotional, intellectual, and social capabilities. For example, in adolescence, individuals often begin to explore their independence and form deeper relationships outside their families. These experiences contribute to emotional and social growth, fostering the development of maturity.

However, maturity is not always tied to chronological age. Many individuals who may appear mature on the surface might still struggle with certain aspects of emotional or intellectual maturity. Conversely, some younger individuals may demonstrate a high level of maturity, particularly in their ability to handle stress, manage relationships, or make thoughtful decisions. Maturity is, therefore, a personal journey shaped by the accumulation of diverse experiences, emotional growth, and cognitive development.

### **10.3.4 Maturity and Responsibility**

A key characteristic of maturity is the ability to take responsibility for one's actions. Mature individuals understand that their choices have consequences, and they make decisions with a sense of accountability. Whether in personal relationships, professional settings, or daily life, maturity often requires accepting responsibility for both successes and mistakes. It involves being able to reflect on past decisions, learn from them, and apply those lessons moving forward.

Mature individuals do not shy away from responsibility; instead, they take initiative and approach challenges with confidence and a sense of duty. This is particularly evident in leadership roles, where maturity is crucial in guiding and motivating others. Leaders who demonstrate maturity create environments of trust, respect, and collaboration.

### 10.3.5 Maturity and Life Stages

Maturity is closely tied to the stages of life, with different aspects of maturity becoming more prominent as an individual ages. In childhood, maturity is largely dependent on the ability to follow rules, understand basic emotions, and interact with others. As individuals enter adolescence, intellectual and emotional maturity begins to evolve, marked by the exploration of identity and greater independence. In adulthood, maturity deepens through personal, professional, and relational experiences, with individuals often becoming more grounded and self-aware. Later in life, maturity may involve accepting the realities of aging, dealing with loss, and reflecting on one's life choices.

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## 10.4 Benefits amendment act 2017

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The **Maternity Benefit (Amendment) Act, 2017** represents a significant step toward the welfare and protection of working women in India, especially in terms of providing better maternity leave, ensuring job security, and improving overall workplace conditions for mothers. This amendment to the original **Maternity Benefit Act, 1961** aims to align India's maternity benefits with global standards and reflect modern challenges and societal changes. The amendment was introduced in response to the growing recognition that women in the workforce require better support to balance their professional commitments with the demands of pregnancy and motherhood.

### 10.4.1 Key Benefits of the Maternity Benefit (Amendment) Act, 2017

1. **Extension of Maternity Leave:** One of the most significant provisions of the **Maternity Benefit (Amendment) Act, 2017** is the extension of the maternity leave period. Under the previous law (Maternity Benefit Act, 1961), female employees were entitled to 12 weeks of maternity leave. The Amendment increased this to **26 weeks** for women with fewer than two surviving children. The extended leave period provides new mothers with the necessary time to recover from childbirth, regain their health, and bond with their newborns. This extension recognizes the physical and emotional demands of childbirth and the importance of early-childhood bonding.

The 26-week maternity leave is a critical reform because it helps working women focus on their health and the welfare of their child without the pressure of returning to work too soon. For women with two or more children, the leave is limited to 12 weeks, which aligns with the earlier provisions.

2. **Provision for Adoption and Surrogacy:** The **Maternity Benefit (Amendment) Act, 2017** also extends maternity benefits to women who adopt children or opt for surrogacy. Prior to this, the law only provided maternity leave to women who gave birth. With the Amendment, women who adopt a child below the age of three months or those who take a child

through surrogacy are entitled to **12 weeks of maternity leave**. This is a progressive step, recognizing that the needs of a mother are the same regardless of whether the child is biological or adopted, or if surrogacy is involved.

This provision aims to ensure that all mothers, irrespective of the method of childbirth, receive the necessary support and recovery time to care for their newborns.

- 3. Work-from-Home Option:** Another important provision introduced by the amendment is the **work-from-home option** for new mothers. The Amendment allows women to request to work from home after completing their maternity leave, provided the nature of the work allows it and the employer agrees. This provision enables mothers to continue their professional duties while also being available to care for their child. It reflects the growing understanding of the need for flexible work options to support work-life balance.

For many working mothers, the ability to work from home after maternity leave offers a lifeline, as it allows them to continue earning while taking care of their child during the critical early months of their life.

- 4. Provision for Creche Facilities:** The amendment mandates that establishments with **50 or more employees** must provide a **creche (childcare) facility** for the children of working mothers. The creche must be easily accessible, and mothers are entitled to visit the creche up to four times a day to feed their babies.

This provision is aimed at supporting working mothers, particularly those who may not have family support or affordable childcare options. The availability of a creche allows mothers to continue working while ensuring that their children are taken care of in a safe, supervised environment. It encourages corporate responsibility and helps improve gender equality in the workplace by making it easier for mothers to stay in the workforce.

- 5. Protection from Discrimination and Job Termination:** The Maternity Benefit (Amendment) Act provides strong protections against discrimination for pregnant women and mothers. Employers are prohibited from terminating women employees during their maternity leave or during any period before or after childbirth that is linked to maternity benefits. This provision ensures that women do not lose their jobs because of pregnancy and childbirth and promotes job security for working mothers.

This provision is particularly important in a country where women often face discrimination in the workplace when they become pregnant, and it guarantees that women's rights to maternity benefits are respected and upheld.

- 6. Widened Scope of Eligibility: The Maternity Benefit (Amendment) Act, 2017** expands the scope of the law to include more categories of women employees. While the original Maternity Benefit Act applied only to women

employed in the organized sector, the amendment extends benefits to **women working in all establishments with 10 or more employees**, covering a broader segment of the workforce. This includes both private and public sector employees, as well as workers in shops and establishments.

This expanded coverage ensures that more women are protected under the law and helps in promoting social security for women across various sectors.

- 7. Penalties for Non-Compliance:** The amendment also includes stricter penalties for employers who fail to comply with the provisions of the Act. Employers who deny maternity leave, fail to provide creche facilities, or engage in wrongful termination during maternity leave can face fines or even imprisonment. The introduction of penalties is aimed at ensuring greater accountability and preventing exploitation of working women by employers.

These penalties serve as a deterrent for businesses that might otherwise attempt to ignore or circumvent the provisions meant to protect working mothers, thereby reinforcing the importance of these rights.

#### **10.4.2 Impact of the Maternity Benefit (Amendment) Act, 2017**

The **Maternity Benefit (Amendment) Act, 2017** has had a profound impact on the working women in India:

- **Improved Health and Well-being:** With the extended maternity leave and adoption benefits, women now have the necessary time to recover physically and emotionally from childbirth, reducing stress and improving maternal and infant health.
- **Work-Life Balance:** The introduction of provisions such as the option to work from home and the requirement for creche facilities has made it easier for women to maintain a work-life balance, encouraging more women to participate in the workforce without compromising their responsibilities as mothers.
- **Gender Equality:** The Act helps level the playing field by ensuring that women, particularly mothers, are not discriminated against in the workplace. The provisions for job protection and equality promote gender parity and help create a more inclusive work environment.
- **Increased Workforce Participation:** The amendments are likely to encourage more women to enter or remain in the workforce, knowing that they will be supported during pregnancy and motherhood. The combination of paid leave, job security, and workplace flexibility makes the workplace more attractive to women.

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#### **10.5 Maternity benefit**

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Maternity benefits at the workplace are necessary to ensure job security, protect women's economic rights and support their maternal duties. In India,

the Maternity Benefit Act 1961 provides maternity benefits in the form of maternity leave for all women employees.

The 2017 landmark amendment to the Maternity Benefit Act of 1961 (**MBA**), effective as of the 1st of April, 2017, has been welcomed by employees and employers. The key changes include: (i) increased paid maternity leave from 12 weeks to 26 weeks for women employees, unless they have two or more surviving children; (ii) recognition of the rights of an adopting mother and of a commissioning mother (using a surrogate to bear a child) for the first time, who may claim paid maternity leave for 12 weeks; (iii) a “work from home” option that may be of benefit after the maternity leave expires; (iv) and, effective as of the 1st of July, 2017, mandatory crèche (day care) facilities for every establishment employing 50 or more employees, including the right of mothers to visit the crèche four times per day.

Employers are obligated to educate employees about these benefits. However, certain aspects of the MBA will need further clarification. For instance, it is not clear whether the amendment is applicable to establishments with 50 women employees or 50 employees in total. More significantly, employers have questions about who bears the costs of crèche facilities and how the facilities need to be provided. Fortunately, other social welfare legislation in India can provide helpful guidance pending the promulgation of rules under the MBA.

#### **-Costs**

Although the amendment is silent on costs, other social welfare legislation, such as the Factories Act, 1948, the Contract Labour (Regulation and Abolition) Act, 1970, the Karnataka Shops and Establishment Act, 1961, and the Karnataka Factories Rules, 1969, places the burden clearly on the employer. Moreover, in response to a Right to Information Application, the Ministry of Labour & Employment has stated that the costs for providing crèche facilities are required to be borne by the employer.

#### **-Provision of facilities**

Some employers have chosen to comply with the new amendment by providing an allowance to their employees, or by reimbursing them, for crèche facilities located outside of the workplace. This practice may not be in line with the legislative intent, however, which appears to require that accessible crèche facilities be set up within a prescribed distance of the workplace. For instance, rules specifically applicable to mines and circuses require that the crèche be located within 500 meters from the main entrance of the establishment, either separately or with other establishments.

Other social welfare legislation in India also provides for similar crèche facilities and contains clear specifications. For example, under the Factories Act, 1948, a factory employing more than 30 women is required to maintain a suitable room for the use of children under the age of 6 years. Such rooms are to be kept under the charge of women trained in the care of children and infants. And under the Karnataka Factories Rules, 1969 (made by the state government pursuant to the federal act), the crèche may not be situated in close proximity to any part of the factory where obnoxious fumes, dust or odours are given off or in which

excessively noisy processes are carried on. The building in which the crèche is situated is required to be of sound construction and all of the walls and roof must be made of suitable heat-resisting materials and be waterproof. The floor and internal walls of the crèche are required to be so laid or finished as to provide a smooth, impervious surface. The height of the rooms in the building may not be less than 3.7 meters from the floor to the lowest part of the roof and there may not be less than 1.86 sq. m. of floor area for each child to be accommodated. The employer is required to ensure that there is adequate ventilation of fresh air and suitable toys and furnishing, with cots and cradles and bedding.

The Kerala Shops and Commercial Establishments Act (KSCEA) also provides for free crèche facilities to be provided by establishments employing more than 20 women. The crèche is required to be conveniently accessible to the employees and to be utilized by children of employees who are under six years of age. The employer is required to engage woman with sufficient training and experience in the field of infant and child care to be in charge of the crèche. The children are to be provided with milk and other refreshments. KSCEA also provides specifications regarding the construction of the crèche, including not less than 15 sq. feet of floor area for each child, adequate protection against heat and moisture, and a smooth and impervious floor surface. In addition, adequate fans, wholesome drinking water, fresh air, natural and artificial lighting, hygienic washrooms and sufficient mattresses and cradles are required.

It should be anticipated that rules to be promulgated under the MBA will be similar, including with respect to proximity, the age of the children, the qualifications of the women in charge, lighting and ventilation, sanitary conditions and the other construction requirements.

### **-Current practice**

A recently published circular (Circular dated November 17, 2017 issued by Ministry of Labour and Employment, Government of India) requests that all state governments propose rules to be promulgated for amenities and facilities under the MBA as soon as possible. In the meantime, employers have chosen to adopt various models to comply with the new amendment, including the following:

- Providing an in-house crèche facility which is self-administered by the employer;
- Providing an in-house crèche facility where the administration is outsourced to a third party;
- Setting up a dedicated crèche facility outside of the establishment;
- Partnering with an external crèche facility; and
- Utilizing the spare capacity of another employer providing an in-house crèche facility.

Of these models, the most popular choice appears to be arrangements with third party service providers close to the establishment. Employers select a daily, weekly and a monthly rate to meet the needs of their employees. Interestingly, the

number of employees who are actually using the crèches does not appear to be high. Indian parents prefer to leave their children in the care of extended family or nannies who provide child care within the comfort of their homes.

### **-Taxation concerns**

Under Indian income tax laws, a “perquisite” is understood to mean any benefit that is extended to an employee by an employer. Perquisites are generally taxable, unless specifically exempted. In the absence of a specific exemption, a crèche facility provided by the employer may be taxable. However, in view of the different models that are being adopted by employers, it may be challenging to determine the total costs incurred by the employer and thereafter apportion them to each employee. Further guidance is required from the Indian tax authorities.

There is no doubt that the lack of quality child care is a major factor when women choose not to return to work after childbirth. The new amendment should be helpful, but clearer rules need to be promulgated for employers as quickly as possible.

India now surpasses many European and Asian countries in terms of maternity benefits. Prime Minister Narendra Modi called the law a “landmark moment in our efforts towards women-led development.” Notably, India places all of the cost on the employer whereas other countries split the cost between the government, the employer, insurance and other social programs. Some are concerned that this circumstance might adversely impact the demand for female workers or their salaries. Another concern is that the new law only applies to India’s 1.8 million female workers in so-called “organized labour” and not to many other women who work outside of that classification.

### **❖ Exercise**

- **Long Questions:-**

1. Explain child labour laws .
2. What laws are applicable to a person performing child labour ?
3. Explain maternity Benefits under amendment act.
4. What are the aims of government behind These Acts?
5. Introduction to maturity.

યુનિવર્સિટી ગીત

સ્વાધ્યાય: પરમં તપ:

સ્વાધ્યાય: પરમં તપ:

સ્વાધ્યાય: પરમં તપ:

શિક્ષણ, સંસ્કૃતિ, સદ્ભાવ, દિવ્યબોધનું ધામ  
ડૉ. બાબાસાહેબ આંબેડકર ઓપન યુનિવર્સિટી નામ;  
સૌને સૌની પાંખ મળે, ને સૌને સૌનું આભ,  
દશે દિશામાં સ્મિત વહે હો દશે દિશે શુભ-લાભ.

અભણ રહી અજ્ઞાનના શાને, અંધકારને પીવો ?  
કહે બુદ્ધ આંબેડકર કહે, તું થા તારો દીવો;  
શારદીય અજવાળા પહોંચ્યાં ગુર્જર ગામે ગામ  
ધ્રુવ તારકની જેમ ઝળહળે એકલવ્યની શાન.

સરસ્વતીના મયૂર તમારે ફળિયે આવી ગહેકે  
અંધકારને હડસેલીને ઉજાસના ફૂલ મહેકે;  
બંધન નહીં કો સ્થાન સમયના જવું ન ઘરથી દૂર  
ઘર આવી મા હરે શારદા દૈન્ય તિમિરના પૂર.

સંસ્કારોની સુગંધ મહેકે, મન મંદિરને ધામે  
સુખની ટપાલ પહોંચે સૌને પોતાને સરનામે;  
સમાજ કેરે દરિયે હાંકી શિક્ષણ કેરું વહાણ,  
આવો કરીયે આપણ સૌ  
ભવ્ય રાષ્ટ્ર નિર્માણ...  
દિવ્ય રાષ્ટ્ર નિર્માણ...  
ભવ્ય રાષ્ટ્ર નિર્માણ

